

## Professional Indemnity Insurance for Trustees

Following the appointment of provisional liquidators for HIIH Insurance, Bankruptcy Regulation has recently undertaken a review of the insurance arrangements in place for all registered trustees. The results of this review reveal that a significant proportion of trustees had taken out professional indemnity insurance with the HIIH Insurance group.

The requirements for registration of trustees are set out in Division 2 Part VII of the *Bankruptcy Act 1966*. Section 155A(2)(a) to (e) sets out the matters that an applicant for registration as a trustee must satisfy a Committee convened to consider his/her application. In particular, s155A(2)(b) requires the applicant to satisfy the Committee that he/she will take out insurance against liabilities that the applicant may incur working as a registered trustee. If the applicant does not satisfy the Committee that such insurance will be taken out then it is mandatory for the Committee to decide that the applicant should not be registered as a trustee: s155A(4)(a).

A trustee may also apply for extension of his/her registration as a trustee pursuant to s155D of the Act. Regulation 8.04 requires a trustee to provide proof of insurance of a kind reasonably acceptable to the Inspector-General before the trustee can be re-registered.

Trustees should be aware that if the trustee is not insured and incurs a liability from his/her work as a trustee then the trustee will be personally liable. Further, in such circumstances the Inspector-General has the power under s155H(1)(c):

- to consider involuntary termination of a trustee's registration; and
- to require the trustee to provide a written explanation as to why the trustee should continue to be registered.

Accordingly, trustees who previously had professional indemnity insurance with HIIH insurance should take immediate steps, if they have not already done so, to arrange professional indemnity insurance with an alternative insurer. All trustees should forward to Bankruptcy Regulation within 28 days of the date of this notice:

- Confirmation that they possess current professional indemnity insurance and the details of the insurance provider; or

- where the trustee previously had professional indemnity insurance with HHH Insurance, details of the new insurance arrangements in place; or
- where the processing of a new application for insurance is taking some time, details of the steps taken to arrange new professional indemnity insurance and any difficulties being experienced.

Details should be forwarded to the:

The Registration Officer  
Bankruptcy Regulation  
Insolvency and Trustee Service Australia  
Level 10, 360 Elizabeth Street  
Melbourne VIC 3000

Bankruptcy Regulation will be seeking confirmation that a current professional indemnity policy is in place at the time that it undertakes an inspection of each registered trustee's administrations.

Trustees should be aware that where appropriate insurance cover is not in place and no steps have been taken to address this issue or to advise Bankruptcy Regulation of any difficulties being encountered by the trustee, consideration will be given to invoking the power under s155H to involuntarily terminate registration. A trustee would then be required to provide an explanation as to why their registration should not be involuntarily terminated and, if necessary, appropriate action will be taken by the Inspector-General to terminate the registration of the trustee.

Office of the Inspector-General in Bankruptcy  
Canberra  
4 June 2001