



## Break through complexity

Insurance and Risk Management solutions  
for the Insolvency & Turnaround sector



**Gallagher**

Insurance | Risk Management | Consulting



# Outstanding insurance for the Insolvency & Turnaround sector



Gallagher's Insolvency & Turnaround (I&T) team currently services more than 109 insolvency accountant clients in 168+ offices throughout Australia. We've earned their trust through our commitment to customer service, our proactive advice and best-in-class insurance solutions. Some of our core products and services are outlined on these pages, but with a team of 22 specialists operating across every region, just reach out if you require more information. Contact details for our regional teams are on the back cover of this document.

## Adverse Costs Order Insurance

Adverse Costs Order (ACO) insurance policies, also commonly referred to as After The Event (ATE) insurance policies, are a legal expenses policy which covers a litigant's exposure to their opponent's legal costs being awarded following an unsuccessful action. It can also be used as evidence as security for costs in an action for a claimant, where required by the court.

Insolvency practitioners looking to bring an action against a party on behalf of the creditors are often prohibited by the potential quantum of adverse costs that could be awarded against them if unsuccessful. Gallagher is the global market leader in this space and has access to place ACO insurance for insolvency practitioners on an individual case basis, where there is no litigation funder involved.

The premium for these policies are driven by the merits and risks of the case, along with the sum insured sought. Premium structure can alter depending on the current position of the matter at the time the policy enquiry is made. Some further explanation regarding the premium payment options are as follows:

### Option 1: Upfront premium

Where an insured has the ability and appetite to pay the entirety of the ACO insurance premium upfront, they are often in the strongest bargaining position to secure the lowest overall rate. Insurers can often charge a significantly smaller premium where it is paid upfront as opposed to a stepped premium, where the insurer only collects its premium if the case succeeds.

### Option 2: Stepped premium

Where an insured pays the total premium in three trenches. An initial payment is required at the inception of the policy; then the next payment is required at discovery with the premium payable only if the case reaches disclosure; and the final payment is only required if the case reaches trial. The overall premium rate is generally higher for this option.

### Option 3: Fully deferred and contingent premium

A deferred and contingent premium means that the insurer is paid their premium at the conclusion of the litigation and only in the event that it is successful. Accordingly, if the case is lost, the insurer pays a claim up to the limit of indemnity and doesn't receive any premium whatsoever.

As you would expect, this type of 'no win, no fee' premium is more expensive than others but, for an insured who has little or no available funds, a contingent ACO premium might be the only means through which they can afford to pursue their case. We can also negotiate to have a small 'deposit' premium upfront and then the remainder of the premium being fully deferred in order for a premium rate reduction.



## Safe Harbour Advisory Services Outside Directorships Directors & Officers insurance (OD/D&O)

This cover was created to assist on corporate advisory / turnaround engagements. Insolvency and turnaround specialists often potentially expose themselves to the risks associated to that of a director of an entity when they are engaged to work within an entity to deliver advice. This can come about either based on perception or by formally agreeing to taking on a role of a director/officer within an organisation that is undertaking change/turnaround/re-structuring etc.

The basis of the OD/D&O policy is to mitigate risk for clients where they have risk beyond the scope of PI cover that needs to be addressed within a Directors & Officers insurance policy. Gallagher has partnered with Lloyd's of London to develop the first bespoke solution to this area of professional risk in the Australian market.

### The product format is as follows:

The policy is effected by a client on an annual basis – nominal cost. Each Advisory/Turnaround engagement the client takes on requires the Client to advise Gallagher, and each new engagement will have an option of being dealt with in 2 ways:

#### 1. OD/D&O becomes a secondary line of defence for the client:

- Where the entity which has engaged the client has in place its own D&O and where it is agreed that the client will rely upon this D&O as their primary line of D&O defence, an endorsement to the client's OD/D&O will be issued stating the primary D&O policy and declaring the OD/D&O policy is declared as an Excess Difference in Conditions cover.

#### 2. OD/D&O becomes the primary line of defence for the client:

- Where the entity which has engaged the client does not have in place its own D&O, or where the client or the entity does not wish to declare the entity's D&O to be the primary policy also covering the client, an endorsement to the client's OD/D&O will be issued stating it to be the primary D&O policy for the client.

The OD/D&O policy is structured in the above way in order to provide the option of how the cover will apply on a case by case basis and therefore as to how premium will be levied for each engagement.

## Professional Indemnity (PI) for insolvency practitioners

In 2008 ASIC brought into force RG194 (now RG258) which brought about a number of key changes with respect to the insurance requirements of registered liquidators. RG258 established a number of key standards, chiefly:

- level of cover for PI which must be effected.
- level of Excess which an insured might hold.
- requirement to effect Fidelity insurance &/or ensure the PI policy had a sufficiently broadened "Fraud & Dishonesty" section to include "Money", which would respond to Third Party claims for fidelity.

It also created a requirement that a PI policy when entered into, renewed, varied or extended on or after 1 August 2010, must contain an automatic provision for at least one year's runoff cover should the registered liquidator become insolvent or there be an insolvency appointment over their firm.

Gallagher I&T constantly engages with various insolvency industry bodies, ASIC and leading insurance markets and has extensive expertise at providing clients with PI products which cater for the unique requirements of RG258.

### Global Territories / Jurisdiction PI policy for "INSOL Global Insolvency Practice Course" certificate

Gallagher I&T developed this solution as a standalone PI solution for holders of this specific qualification who require a PI policy to meet the exposures of providing insolvency services on a global scale, in all jurisdictions. This cover is not commonly available through other insurance brokers.

# Why choose Gallagher?

Gallagher's Insolvency & Turnaround practice is widely regarded as being Australia's market leader. With 21 experienced, specialist team members across all Australian regions, we have the expertise to provide outstanding cover options for even the most complex insolvency appointments. Being part of Gallagher's global network means we can provide cover terms and secure deals beyond the reach of other broking houses.

We currently service more than 109 insolvency accountant clients across 168+ offices throughout Australia. We've earned their trust through our commitment to customer service, our proactive advice and best-in-class insurance solutions. We'd love to work with you, too.

For more details of our capability visit [ajg.com.au/insolvency](http://ajg.com.au/insolvency)

## Get in touch



**Luke Goss**

*National Manager & Regional Manager - WA, Insolvency and Turnaround*

**T:** +61 8 9424 9415

**M:** +61 417 097 002

**E:** [luke.goss@ajg.com.au](mailto:luke.goss@ajg.com.au)



**Adele May**

*Regional Manager - VIC, SA, NT & TAS, Insolvency and Turnaround*

**T:** +61 3 8611 0962

**M:** +61 439 294 380

**E:** [adele.may@ajg.com.au](mailto:adele.may@ajg.com.au)



**Britta Green**

*Regional Manager - QLD, Insolvency and Turnaround*

**T:** +61 7 3002 2210

**M:** +61 427 112 930

**E:** [britta.green@ajg.com.au](mailto:britta.green@ajg.com.au)



**Neil Collins**

*National Manager - NSW & ACT, Insolvency and Turnaround*

**T:** +61 2 9424 1811

**M:** +61 448 142 234

**E:** [neil.collins@ajg.com.au](mailto:neil.collins@ajg.com.au)



**Andrea Hyslop**

*National Manager, Insolvency and Turnaround - MIS Mortgage Insurance Services*

**T:** +61 7 3002 2213

**M:** +61 419 774 297

**E:** [andrea.hyslop@ajg.com.au](mailto:andrea.hyslop@ajg.com.au)



# Gallagher

Insurance | Risk Management | Consulting

Arthur J. Gallagher & Co (Aus) Limited. Operates under AFSL No. 238312. Any advice provided in this document does not consider your objectives, financial situation or needs. You should consider if the insurance is suitable for you and read the Product Disclosure Statement (PDS) and Financial Services Guide (FSG) before buying the insurance. If you purchase this insurance, we may charge you a fee for our service to you. Ask us for more details before we provide you with any services on this product. PDS available on request. Our FSG is available on our website, [www.ajg.com.au](http://www.ajg.com.au). Arthur J. Gallagher & Co (Aus) Limited. ABN 34 005 543 920, Level 12, 80 Pacific Highway, North Sydney, NSW 2060. REF2572-0719-1.3