Law Society of Ireland

Run-off Fund Guidelines

October 2012

This information is intended as general guidance and does not constitute a definitive statement of law

RUN-OFF FUND GUIDELINES

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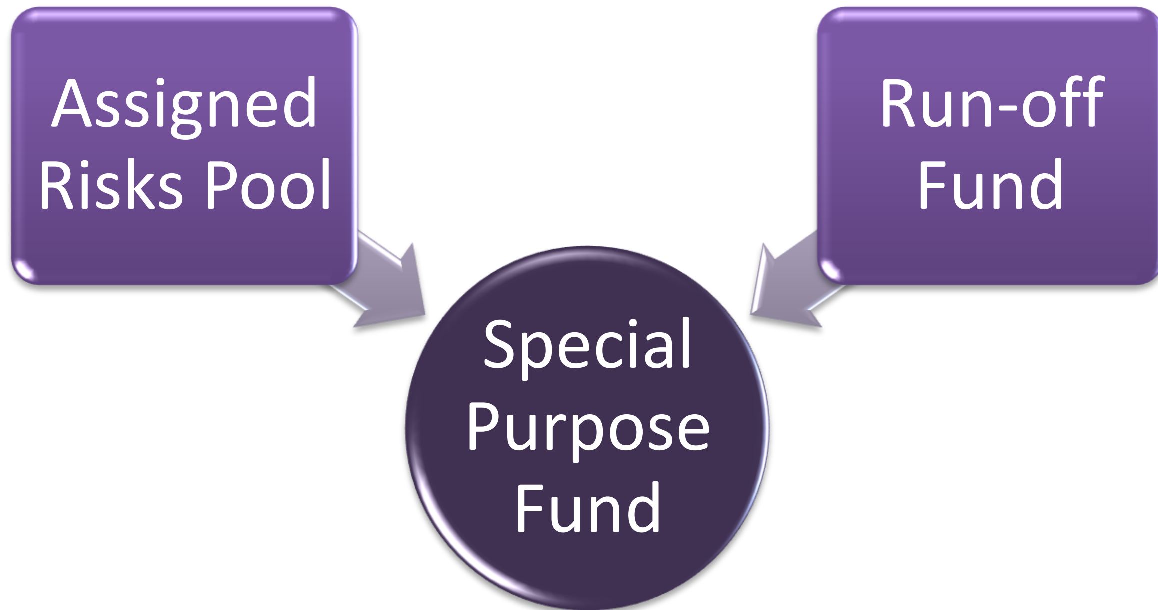
Special Purpose Fund

The Special Purpose Fund ("SPF") was established for the 2011-2012 indemnity period and consists of two parts:



SPF Manager

The SPF Manager has responsibility for managing both the Assigned Risks Pool ("ARP") and the Run-off Fund ("ROF"). However, each fund is a separate entity.

The position of the SPF Manager was awarded to Capita Commercial Insurance Services following an extensive tender process.

Every run-off firm will be required to provide the SPF Manager with any information the SPF Manager, in its discretion, reasonably requires to deal efficiently and effectively with the firm's membership of the ROF

SPF Manager contact details

Address:

Special Purpose Fund Manager
Capita Commercial Insurance Services
40 Dukes Place
London EC3A 7NH

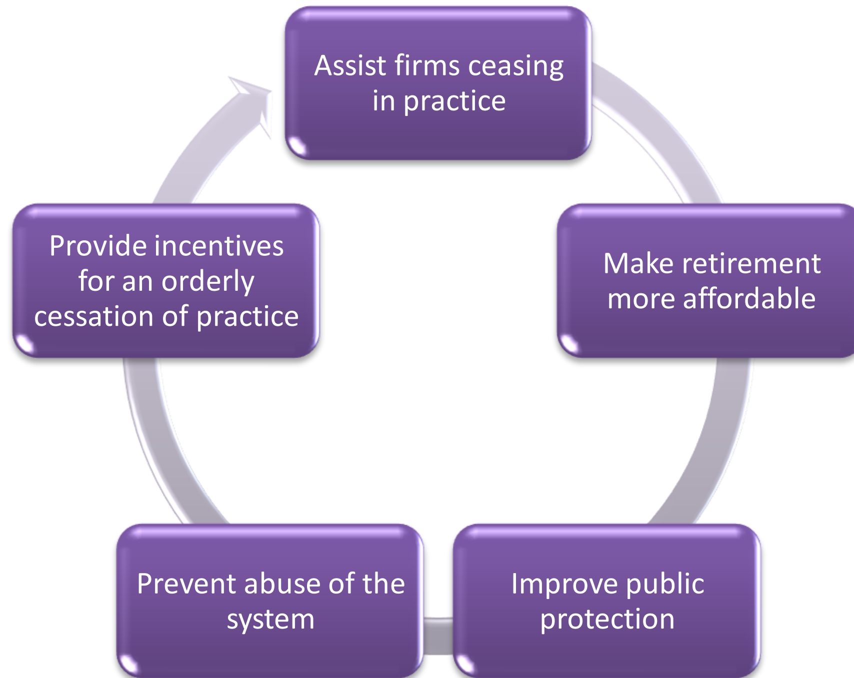
Phone:

0044 - 207 - 397 - 4539

Email:

spf@capita.co.uk

The Run-off Fund was established in the current indemnity period for the following reasons:



One of the primary motivating factors behind the introduction of the new run-off scheme was to assist a sole practitioner to retire from practice and to transfer his or her files to another practice to ensure continuity of service for his or her clients and to assist one partner in a two partner firm to retire from practice and to allow the other partner to take a partnership in another firm and to take the files of the ceased practice to that other firm.

Under the previous regime for professional indemnity insurance, solicitors who wish to retire from practice were required to pay for two years run-off cover from the end of the indemnity period in which their practice ceased. Run-off cover under this regime proved to be very expensive and therefore in the view of the Society the requirement to pay for run-off cover has been an impediment to solicitors who wished to retire.

Under the current scheme ROF provides run-off cover for firms ceasing practice:

Run-off cover

Run-off cover is provided to firms through the ROF under the following terms:

Indefinite Cover

Run-off cover should be provided indefinitely for so long as the freedom of choice model is retained or master policy is introduced in future

No premium

The cost of providing this run-off will be recovered by insurers through general premiums collected, rather than by way of an additional premium paid by the firm

Same self-insured excess

All firms will carry the same self-insured excess into run-off that they had in their last coverage period in practice. This standard excess will be separate from any additional self-insured excesses which may be applied in certain cases

Cessation obligations

Firms obtaining run-off cover through the ROF will not be required to bear any additional self-insured excesses for run-off cover, provided they meet the necessary cessation obligations in the required timeframes

Additional self-insured excesses

Additional self-insured excesses will be applied to firms commensurate with their failure to meet cessation obligations. There will be no payment by insurers of such excesses for claims by financial institutions

Commencement of cover

Run-off cover will commence at the end of the expiring coverage period for a firm, not at the date of cessation of practice of the firm

Phoenix firms and anti-abuse provisions

Anti-abuse provisions are in place to prevent "phoenix firms" (i.e. firms ceasing in practice in order to put claims through the ROF and then reopening under another identity

Terms and conditions same as MT&C

Terms and conditions of run-off cover as provided by the ROF will reflect the minimum terms and conditions for each subsequent indemnity period

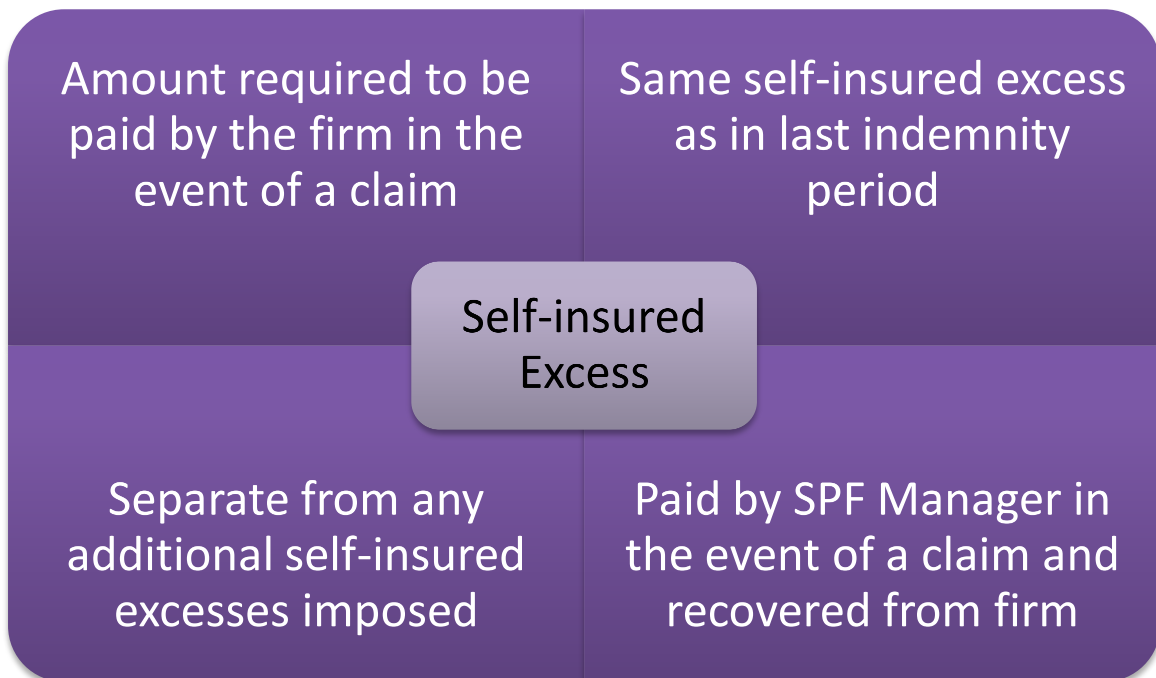
Self-Insured Excess

Self-insured excess means the amount the insured (in this case, the firm) is required by terms of any contract between the insured and the insurer to pay a claimant in the event of a claim.

Firms carry the same self-insured excess into run-off that they had in their last indemnity period in practice.

This standard self-insured excess is separate from any additional excesses imposed.

The SPF Manager will pay any amount that is within the carried-forward self-insured excess of any firm's run-off cover to a claimant, but will be entitled to recover this amount in full from the firm.



Cessation obligations

Firms obtaining run-off cover through the ROF will not be required to bear any additional self-insured excesses for run-off cover with regard to claims provided they meet the following cessation obligations in the required timeframes:

Additional self-insured excesses

Additional self-insured excesses will be applied to firms where claims arise commensurate with any failure to meet these cessation obligations. These additional self-insured excesses will be in addition to the standard self-insured excess for claims against the firm.

Such self-insured excesses will be applied as aggregate excesses (not each and every claim) as set out in Schedule 2 of the run-off rules.

Adherence to close of practice guidelines, prompt notification of claims and cooperation with the conduct of claims will be subject to continuous assessment.

The SPF Manager will not be required to pay any amount that is within the additional self-insured excess in respect of claims made by financial institutions.

SCHEDULE 2

Self Insured Excess

	Obligation:	**Maximum Additional Excess per Indemnity Period**
1.	Provide the *SPF manager* with a written notice of its intention to cease *practice* to include such information as contained in the Notice of Closure Form at Appendix 1 of these terms. This notice must be accompanied by the following: (i) the *firm*'s most recent completed proposal form; and (ii) the policy of *qualifying insurance* held by the *firm* at the time it ceased *practice.*	€15,000
2.	Comply with the *close of practice guidelines* as published by the *PII committee.*	€30,000
3.	Satisfaction of the minimum common risk management standard. published in accordance with the Regulations.	€15,000
4.	Fully co-operate with the *SPF manager* in the conduct of claims and notify any claim or circumstances required to be notified to the *SPF manager* within the period prescribed in Clause 8 of these rules.	€30,000

Cessation obligation – notification of closure

A firm which intends to cease practice should provide the SPF Manager with a written notice of its intention to cease practice by whichever is the earlier of the following:

(a) at least 60 days prior to ceasing practice; or

(b) at least 60 days prior to the expiry of the coverage period for the firm.

The written notice of intention to cease practice can be in the form of the Notice of Closure Form available on the Society's website (and appended to this document) or in any written form that includes the all the information contained in the Notice of Closure Form.

Any notification of closure must include the following:

(a) a copy of the firm's most recent completed proposal form; and

(b) a copy of the firm's most recent policy of qualifying insurance.

Failure to provide the SPF Manager with the required notification of closure within the required timeframes will result in the imposition of an additional self-insured excess of €15,000 in accordance with Schedule 2 of the Run-off Rules.

Cessation obligation – minimum common risk management standard

As part of the cessation obligations in relation to the Run-off Fund, firms should meet a minimum common risk management standard. This is assessed by way of a risk management audit.

A risk management audit is an investigation of the practice of a firm by a risk management auditor assigned by the SPF Manager, with a view to ascertaining whether the firm has satisfied the minimum common risk management standard as published by the PII Committee (available on the Society's website and appended to this document)

Risk management audits are on a pass/fail basis. Failure to achieve a passing grade in the audit will result in the imposition of an additional self-insured excess per indemnity period of €15,000.

The ROF will pay the costs and expenses of the first risk management audit for firms ceasing practice. Firms will be required to pay a fee for any repeat of the audit and unlimited repeats will be allowed.

As these are statutory audits, legal privilege or client confidentiality will not impede these risk management audits. Clients are deemed to have accepted the qualification of confidentiality for regulatory purposes when instructing a solicitor.

It should be noted that if a firm themselves commissions a risk management audit, client confidentiality also does not impede the audit as the auditor would be acting as an agent of the firm. However, legal privilege and client confidentiality do apply if an audit is commission by a third party, such as an insurer.

Cessation obligation – close of practice guidelines

Firms ceasing in practice should comply with the close of practice guidelines published by the PII Committee (available on the Society's website and appended to this document).

Failure to comply with the close of practice guidelines will result in the imposition of a maximum additional self-insured excess per indemnity period of €30,000.

Adherence to close of practice guidelines by a firm is subject to continuous assessment and imposition of additional self-insured excess will be commensurate with the firm's failure to adhere to the guidelines as published.

Cessation obligation – notification of and cooperation with claims

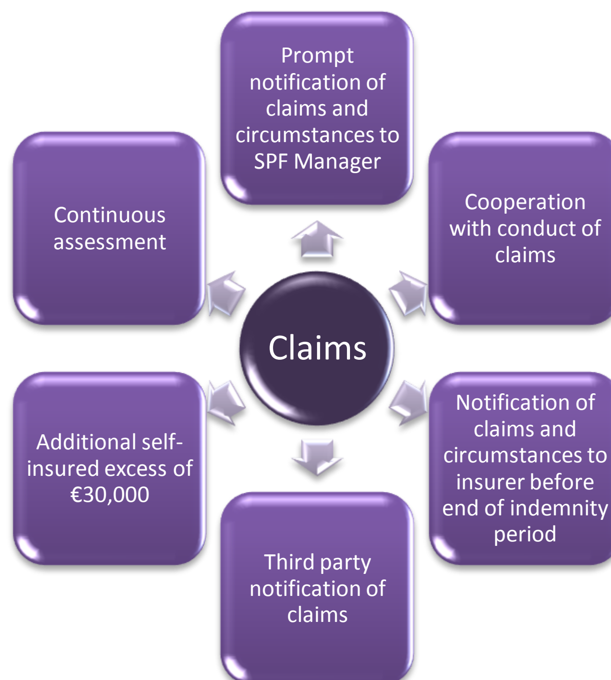
Within a reasonable time following the notification of closure, and before the date of cessation, the firm should provide confirmation to the SPF Manager that the firm is not aware of any other claims or circumstances which may give rise to future claims and the firm should continue to notify its insurers of any such claims or circumstances in the period until the expiry of its policy.

The firm should report any matters to the SPF Manager which comes to their attention with regard to claims, notifications or circumstances which may give risk to claims in a timely manner, following commencement of coverage of the firm by the Run-off Fund.

Any interested party may notify a claim or circumstance relating to a run-off firm to the SPF Manager and the insurer may not dispute the validity of such notification solely on the grounds that it was not made directly by the firm.

Failure to fully cooperate with the SPF Manager with regard to claims, and failure to notify the SPF Manager of claims and circumstances required to be notified to the SPF Manager within the period prescribed by the Run-off Rules will result in the imposition of a maximum additional self-insured excess per indemnity period of €30,000.

Prompt notification of claims and cooperation with the conduct of claims will be subject to continuous assessment and imposition of an additional self-insured excess will be commensurate with the firm's failure to meet these cessation obligations.



Succeeding practice rule

Definition

Succeeding practice means a practice that has satisfied one or more of the following conditions in relation to another practice (such other practice being a preceding practice for these purposes):

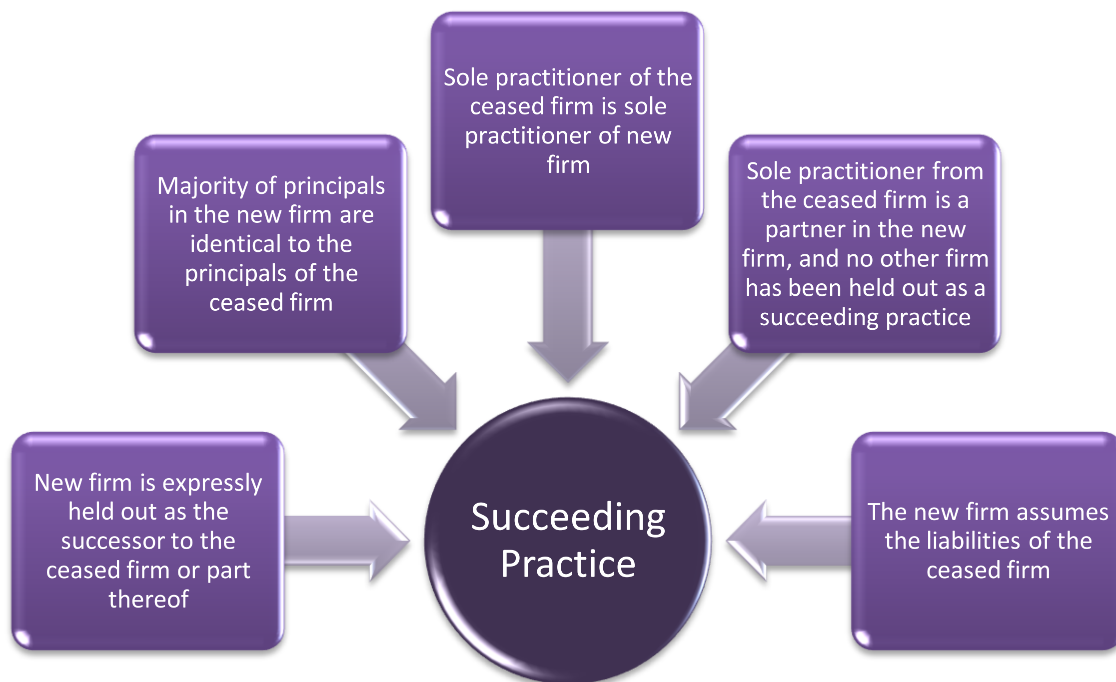
1. it is expressly held out as being a successor to the practice or part thereof of the preceding practice; or

2. it is conducted by a partnership that has a majority of principals that are identical to those persons that were principals of any partnership that conducted the preceding practice; or

3. it is conducted by a sole practitioner who was the sole practitioner conducting the preceding practice; or

4. it is conducted by a partnership in which the sole practitioner conducting the preceding practice is a partner and where no other person has been held out as a successor to the preceding practice; or

5. the partnership which, or sole practitioner who, conducts the practice has assumed the liabilities of the preceding practice.



Not a succeeding practice

It is important to bear in mind that run-off cover will not apply to a firm in respect of which there is a succeeding practice, as that term is defined in the relevant PII regulations.

Accordingly, in order to assist solicitors to retire from practice, the definition of a succeeding practice was amended in the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011 (S.I. No.409 of 2011) . As a result of the amendment, the succeeding practice rule will not apply to a situation where:

(a) a sole practitioner retires and passes his or her files to another firm; or

(b) one partner in a two partner firm retires, and the other partner takes up a partnership in another firm and takes the files of the ceased practice to the other firm;

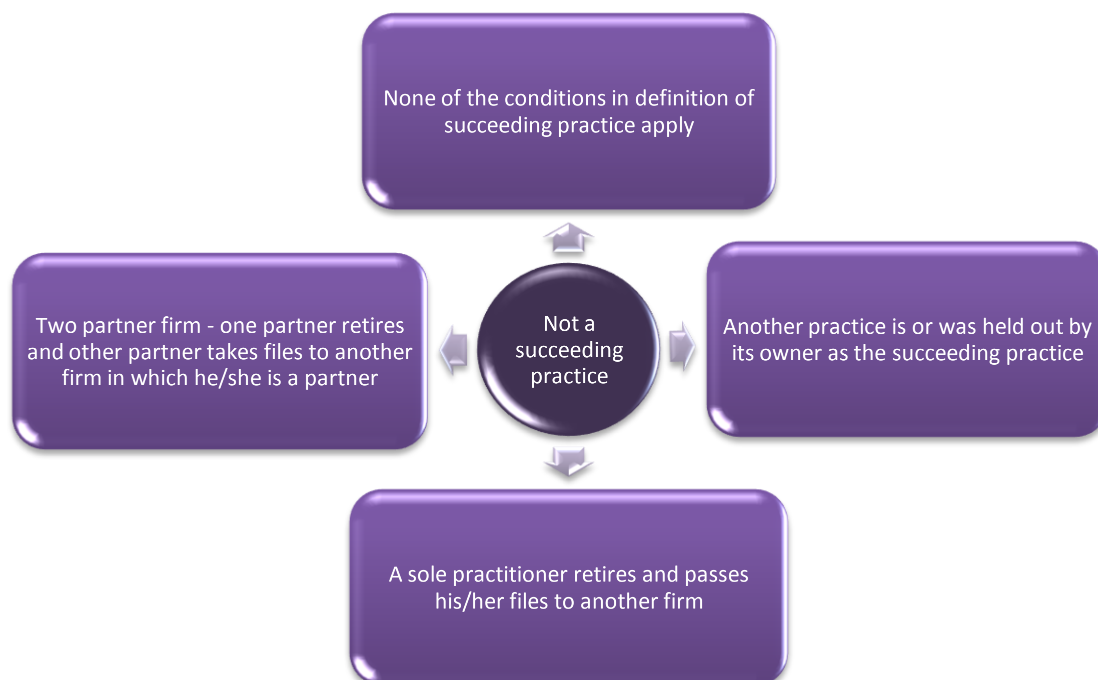
provided that, in each case:

(a) the new firm does not expressly hold itself out as a successor to any or all parts of the ceased practice; and

(b) the new firm does not agree to assume the liabilities of the ceased practice;

as either of these would result in the new firm falling under the definition of a succeeding practice as set out in the regulations.

It should be noted that making a payment to a ceased practice for its files does not trigger application of the succeeding practice rule.



“Expressly held out” as a succeeding practice

The first part of the definition of a succeeding practice is that the practice is “expressly held out” as being the successor to all or part of the ceased practice.

It is difficult to envisage every situation in which a practice might be deemed to have expressly held itself out as a successor to a ceased practice. It is clear, however, that there are a number of situation which the new firm should take care to avoid, as follows:

How to avoid holding yourself out as a succeeding practice to a ceased firm

- Do not include any reference to the ceased practice on any of your firm's business stationery including notepaper, business cards or invoices
- Do not advertise the fact that your firm has taken on the business of the ceased practice
- Do not lead clients of the ceased firm to think that your firm is a continuation of the ceased firm
- Despite being desireable in business development terms, do not use the name of the ceased practice for promotional purposes

What to say to clients of the ceased firm

- Make a clear distinction between your firm and the ceased practice
- Make it clear that your firm is a separate practice - it is not a continuation of the ceased firm
- Inform the clients that your firm has reached an agreement to take on the files of the ceased firm in order to offer a continuity of services to its clients to ensure that there is no disruption in the handling of their legal affairs
- Remember that the files belong to the client - give them the option nominate your firm as their new solicitor, to have the file sent on to another nominated solicitor or to have the file returned to them

Phoenix firms and anti-abuse provisions

"Phoenix firms" are firms that cease practice in order to put claims in the ROF and then reopen under another identity.

A phoenix firm is any firm that is carrying on a practice that, in the absolute discretion of the PII Committee, is largely similar to, or has succeeded to the practice formerly carried on by a predecessor firm or any part thereof.

Two or more firms may be treated as each being phoenix firms to a single predecessor firm.

The PII Committee may, in its absolute discretion, at any time, decide to treat any firm as being a phoenix firm to another firm, thereby rendering the predecessor firm unable to become an ARP eligible firm or a run-off firm. The PII Committee may, for the purposes of making such a decision, take into account such facts and matters as appear to it to be appropriate and relevant.

Anti-abuse provisions have been put in place to seek to prevent phoenix firms. Such provisions include:

Phoenix firm anti-abuse provisions

- A firm that ceases practice that is entering the ROF will be required to sign a declaration stating that they have no intention in forming a successor (phoenix) practice and confirming that all claims and circumstances have been notified to their existing insurers up to expiry of the firm's insurance
- A "phoenix capture system" will be in place to identity any phoenix firm that attempts to open in practice and such firms will be designated as phoenix firms by the PII Committee
- Phoenix firms will be required to obtain insurance covering all claims by their predecessor firm from the date of cessation of the predecessor firm in order to commence in practice in the new firm. Insurers will have the right of reimbursement for claims already paid by the ROF for the predecessor firm
- Phoenix firms that do not obtain the required insurance will not be allowed to commence in practice

Law Society of Ireland

Appendix 1

Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011

STATUTORY INSTRUMENTS.

S.I. No. 409 of 2011

THE SOLICITORS ACTS 1954 TO 2008 (PROFESSIONAL INDEMNITY INSURANCE) REGULATIONS 2011

(Prn. A11/1363)

S.I. No. 409 of 2011

THE SOLICITORS ACTS 1954 TO 2008 (PROFESSIONAL INDEMNITY INSURANCE) REGULATIONS 2011

ARRANGEMENT OF REGULATIONS

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4. Self-Insured Excess on Qualifying Insurance
5. Maintenance of Insurance in Run-off
6. Defaulting Run-off Cover
7. Establishment of Special Purpose Fund
8. Entering the Run-off Fund
9. Entering the Assigned Risks Pool
10. Operation of ARP Coverage
11. Membership of the Assigned Risks Pool
12. Variation of the Minimum Terms and Conditions
13. Defaulting Firms
14. Insolvency of Qualified Insurers and Other Events
15. Risk Management Audits
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17. Responsibilities of Principals
18. Professional Indemnity Insurance Committee
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APPENDIX 2

Risk Management Audit Terms of Reference

S.I. No. 409 of 2011

THE SOLICITORS ACTS 1954 TO 2008 (PROFESSIONAL INDEMNITY INSURANCE) REGULATIONS 2011

THE LAW SOCIETY OF IRELAND, in exercise of the powers conferred on them by section 26 of the Solicitors (Amendment) Act 1994 hereby make the following Regulations:-

1. Citation:

(*a*) These Regulations may be cited as The Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011.

(*b*) These Regulations shall come into operation on 1 December 2011.

(*c*) The regulations listed in the Schedule to these Regulations shall cease to have effect as from 11:59 pm on 30 November 2011 to the extent set out in the Schedule

2. Interpretation:

(*a*) In these Regulations, the following terms shall have the following meanings—

"additional ARP premium" has the meaning ascribed to it in Regulation 9(*d*)(ii);

"ARP" means the assigned risks pool;

"ARP coverage" means an arrangement for indemnification issued by the SPF manager on behalf of those qualified insurers that participate in the assigned risks pool in respect of the indemnity period in which the coverage incepts and incorporating the minimum terms and conditions as varied by these Regulations but shall not include coverage issued to a defaulting firm through the assigned risks pool;

"ARP default premium" means the sums payable by a defaulting firm for any coverage arranged pursuant to Regulation 13(*a*) from time to time;

"ARP eligibility criteria", in relation to a firm, means that the firm does not hold qualifying insurance with a qualified insurer and:—

(i) (*a*) in respect of a firm that held ARP coverage from the assigned risks pool for the indemnity period which commenced on 1 December 2010, that the firm has not been in the assigned risks pool for more than 24 (twenty four) of the 60 (sixty) months preceding the date of its application to enter the

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 5th August, 2011.

assigned risks pool and is not a successor firm to such a firm; or

(*b*) in respect of all other firms, that the firm has not been in the assigned risks pool for more than 12 (twelve), or such other period (not to exceed 24 (twenty four) months) as the PII committee may from time to time determine, of the 60 (sixty) months preceding the date of its application to enter the assigned risks pool and is not a successor firm to such a firm, and

(ii) in respect of a firm which commenced practice on or subsequent to the operative date, it established qualifying insurance with a qualified insurer or more than one (1) qualified insurer with effect from the date of commencement of its practice, and

(iii) that no direction in relation to the firm is in effect pursuant to Regulation 15 (*g*) or Regulation 16 (*e*)(iv), and

(iv) that the firm is not a defaulting run-off firm;

"ARP eligibility dispensation" means, in respect of any firm, a dispensation under Regulation 9(*b*);

"ARP eligible firm" means a firm that satisfies the ARP eligibility criteria or in respect of which an ARP eligibility dispensation is in effect;

"ARP premium" means, in respect of each firm which has been issued with an ARP coverage, the initial ARP premium and the additional ARP premium in respect of an indemnity period (or part thereof);

"ARP premium schedule" means the schedule to be determined by the PII committee and published by the Law Society from time to time which sets out the terms pursuant to which premium levels, in respect of firms which are issued with coverage in the assigned risks pool, are to be determined by the SPF manager in accordance with these Regulations;

"ARP run-off cover" means run-off cover from the run-off fund on like terms and conditions to ARP coverage;

"ARP run-off eligibility criteria" means in relation to a firm, a firm which:—

(i) held ARP coverage on the date of cessation of its practice, and

(ii) in respect of a firm which held ARP coverage prior to the operative date, continued to satisfy the ARP eligibility criteria on the operative date, and

(iii) in respect of which there is no succeeding practice, and

(iv) is not a defaulting firm;

"ARP run-off eligible firm" means a firm that satisfies the ARP run-off eligibility criteria;

"assigned risks pool" means the assigned risks pool referred to in Regulation 7 through which an ARP eligible firm or a defaulting firm may obtain or be granted coverage that incorporates the minimum terms and conditions as varied by these Regulations;

"authorised insurer" means an insurer that holds an authorisation to carry on insurance business for the purposes of Directive 73/239/EEC or that is otherwise entitled to carry on non-life insurance business in the State;

"claim" means a request or demand for, or an assertion of a right to, or an intimation of an intention to seek:—

(i) civil compensation of any nature,

(ii) civil damages of any nature, or

(iii) any award to be made pursuant to the provisions of the Solicitors Acts 1954 to 2008 for compensation or restitution to clients or any other obligations that may be imposed on solicitors to compensate or make restitution to clients by statute from time to time,

but for the avoidance of doubt, the term "claim" does not include any claim for payment of costs incurred by an insured in defending or resisting proceedings seeking an award against that insured of the nature described in paragraph (iii) of this definition where the qualifying insurance, in accordance with the minimum terms and conditions, excludes a qualified insurer's liability to indemnify an insured in respect of such costs;

"close of practice guidelines" means the close of practice guidelines to be published by the PII committee from time to time;

"Commercial Property Regulations" means the Solicitors (Professional Practice, Conduct and Discipline — Commercial Property Transactions) Regulations 2010;

"Council" means the council of the Law Society;

"coverage period" means the period for which the qualifying insurance or the ARP coverage (as the case may be) held by a firm affords cover;

"defaulting firm" means a firm that does not hold qualifying insurance and which falls within one (1) of the following categories:—

(i) in the case of a firm that is an ARP eligible firm, it has failed to make an application to be admitted into the assigned risks pool

prior to the start of any relevant indemnity period or immediately prior to the expiry of its coverage period, whichever is the earlier,

(ii) in the case of a firm that is not an ARP eligible firm, it is a firm that is carrying on a practice without qualifying insurance,

(iii) a firm designated as a defaulting firm pursuant to Regulation 9(*f*);

"defaulting run-off firm" means a firm that ceases a practice in circumstances where it is required pursuant to these Regulations to establish and maintain run-off cover, but where it is neither an ROF eligible firm nor an ARP run-off eligible firm (and a firm on whose behalf the SPF manager makes arrangements for run-off cover to be extended to that firm following the cessation of its practice, through the run-off fund, because it is neither an ROF eligible firm nor an ARP run-off eligible firm shall be regarded as a defaulting run-off firm);

"defence costs" mean legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the consent of a qualified insurer in relation to a claim including without limitation the costs of:—

(i) defending any proceedings, or

(ii) conducting any proceedings for indemnity, contribution or recovery, or

(iii) investigating, reducing, avoiding or compromising any actual or potential claim;

but the term "defence costs" does not include:—

(*a*) any internal overhead expenses of a firm or a qualified insurer or the cost of any insured's time, or

(*b*) any costs incurred by an insured in defending or resisting proceedings seeking an award against that insured of the nature described in paragraph (iii) under the definition of "claim" where the qualifying insurance, in accordance with the minimum terms and conditions, excludes a qualified insurer's liability to indemnify an insured in respect of such costs;

"financial institution" means any of the following:—

(i) a credit institution as defined in section 2(1) of the 1995 Act,

(ii) a credit institution that is the holder of an authorisation for the purposes of Article 4(1) of Directive 2006/48/EC,

(iii) a retail credit firm authorised pursuant to section 31 of the 1997 Act,

(iv) a home reversion firm authorised pursuant to section 31 of the 1997 Act,

(v) any other party that engages on a professional basis in the business of providing financial accommodation of any nature to another person,

(vi) any assignee of debt from an entity that has been engaged in the business of providing financial accommodation of any nature to another person, including without limitation, NAMA,

but, for the avoidance of doubt, does not include a Minister of the Government in the exercise of the functions, powers or duties of his office;

"firm" means:—

(i) any partnership of two (2) or more lawyers (as constituted from time to time, whether before or during any relevant indemnity period) where such partnership includes at least one (1) solicitor or registered lawyer and whether or not such partnership includes non-registered lawyers, and

(ii) any sole practitioner being either a solicitor or registered lawyer, and including a sole practitioner who employs one (1) or more solicitors or registered lawyers, and a sole practitioner who is employed by a person who is not a solicitor or registered lawyer,

where the relevant partnership or relevant sole practitioner, as the case may be, carries on a practice;

"firm's practice" means the practice carried on by a firm, and includes the business of any trustee, nominee, service or administration company owned by the principals of the firm;

"indemnity period" means any period of one (1) year starting on 1 December in each year;

"initial ARP premium" has the meaning ascribed to in Regulation 9(*d*)(ii);

"insolvency event" means, in relation to a qualified insurer:—

(i) the appointment of a liquidator, receiver, administrative receiver, administrator or examiner to the qualified insurer (or an analogous appointment being made in respect of the qualified insurer in any jurisdiction outside the State),

(ii) the passing by the members of a qualified insurer of a resolution for a voluntary winding up (or an analogous step being taken in relation to a qualified insurer in any jurisdiction outside the State),

(iii) the making of a winding up order in relation to a qualified insurer (or an analogous order being made in relation to a qualified insurer in any jurisdiction outside the State), or

(iv) the approval of a voluntary arrangement or similar form of composition with creditors in respect of a qualified insurer (or an analogous event occurring in relation to a qualified insurer in any jurisdiction outside the State);

"insurer reimbursement claim" means a claim maintained and upheld against a qualified insurer, by a claimant other than a financial institution, which would have been paid by a qualified insurer:—

(i) in circumstances where if that claimant had been a financial institution, the qualified insurer would have been entitled to exclude liability for the claim in accordance with clause 6.15 of the minimum terms and conditions; and

(ii) the qualified insurer has not recovered the full extent of the sums paid by it by way of a claim for reimbursement pursuant to clause 7.2 of the minimum terms and conditions;

"investment advice" has the meaning given in the Investment Intermediaries Act 1995;

"investment business service" has the meaning given in the Investment Intermediaries Act 1995;

"Law Society" means the Law Society of Ireland;

"legal services" means services of a legal or financial nature and includes any part of such services, and for the avoidance of doubt, includes (without limitation):—

(i) any investment business services or investment advice provided by a firm,

(ii) acting as personal representative or trustee,

(iii) acting as notary public,

(iv) acting as a commissioner for oaths,

(v) acting as liquidator or receiver,

(vi) acting as company secretary,

(vii) acting as director of any body corporate owned by the principals of a firm that provides trustee, nominee, administration or other services,

(viii) acting as arbitrator or mediator, and

(ix) acting on a pro bono basis;

"minimum common risk management standard" means the minimum common risk management standard or any equivalent by whatever name called published by the Law Society (in terms approved by the PII committee) from time to time or if none is published or in force then as shall be determined by the SPF management committee;

"minimum terms and conditions" means the minimum terms and conditions set out in Appendix 1 to these Regulations with which a qualifying insurance (or, in the case of a qualifying insurance provided as a co-insurance, any part thereof) underwritten by a qualified insurer is required by these Regulations to comply, or in the case of ARP coverage and run-off cover, such minimum terms and conditions, as varied by or pursuant to these Regulations, to apply in respect of such cover;

"misconduct" has the meaning given in section 3 of the Solicitors (Amendment) Act 1960 (as amended by section 24 of the Solicitors (Amendment) Act 1994 and section 7 of the Solicitors (Amendment) Act 2002);

"NAMA" means the National Asset Management Agency;

"non-performance event" means, in relation to a qualified insurer the loss by that qualified insurer of its ability to lawfully fulfil any obligations undertaken by it in respect of qualifying insurance in the State (whether by withdrawal or qualification of its authorisation to do so or otherwise);

"operative date" means 1 December 2011;

"phoenix firm" means, in relation to any firm (a "predecessor firm"), a firm that is carrying on a practice that, in the absolute discretion of the PII committee, is largely similar to or has succeeded to the practice formerly carried on by a predecessor firm or any part thereof, and two (2) or more firms may be treated as each being phoenix firms to a single predecessor firm for the purpose of these Regulations;

"PII committee" means the professional indemnity insurance committee constituted under Regulation 18;

"practice" means a business (which term includes any gainful occupation) or any part thereof consisting of the provision of legal services from an establishment in the State and where such legal services (as they involve the provision of legal advice) relate to the law of the State (including European Union law as it forms part of the law of the State);

"practising certificate" has the meaning given in section 46 of the Solicitors Act 1954;

"preceding practice" means each practice to which the firm's practice is a succeeding practice;

"predecessor firm" is a firm in relation to which pursuant to these Regulations another firm is a phoenix firm;

"principal" means:—

(i) the sole practitioner of any firm which during any indemnity period carries on or carried on business as a sole practitioner and includes a sole practitioner who employs or employed one (1) or more solicitors or registered lawyers,

(ii) every partner of a firm and every person held out as a partner of a firm that during any indemnity period carries on or carried on business as a partnership;

"qualifying certificate" has the meaning given in the European Communities (Lawyers' Establishment) Regulations 2003 (Statutory Instrument No. 732 of 2003);

"qualifying insurance" means a policy or policies of insurance which (in the case of a single such policy) includes the relevant minimum terms and conditions or (in the case of a number of policies) taken together include the minimum terms and conditions in effect at the date of inception, extension, renewal or replacement of the policy or policies of insurance;

"qualified insurer" means, in respect of an indemnity period, an authorised insurer which has entered into and duly executed a qualified insurers agreement with the Law Society on or before 1 November immediately prior to the commencement of that indemnity period and which is effective to permit such insurer to underwrite qualifying insurance;

"qualified insurers agreement" means an agreement in such terms as the PII committee may from time to time designate setting out the terms and conditions on which a qualified insurer may provide qualifying insurance to firms in the State and the terms on which such qualified insurer shall participate in the special purpose fund;

"re-calculated ARP premium" has the meaning ascribed to it in Regulation 9(*e*);

"registered lawyer" has the meaning given in the European Communities (Lawyers' Establishment) Regulations 2003 (Statutory Instrument No. 732 of 2003) and a reference to a registered lawyer in these Regulations, where consistent with the context thereof, includes a former registered lawyer or a deceased registered lawyer;

"relevant person" has the meaning ascribed to it in the Commercial Property Regulations;

"relevant premium income" has the meaning ascribed to it in the qualified insurers agreement;

"residential property" has the meaning ascribed to it in the Commercial Property Regulations;

"residential property transaction" has the meaning ascribed to it in the Commercial Property Regulations;

"risk management audit" means an investigation of the practice of a firm that has been admitted to or that seeks to be admitted to the assigned risks pool, with a view to ascertaining the management and other conditions prevailing within the firm and the management and professional competence of the personnel employed by or engaged in the firm's practice (including the principals of the firm);

"risk management auditor" means any person or persons (including any body corporate, partnership or unincorporated body) selected and appointed by the SPF management committee to conduct a risk management audit in accordance with these Regulations;

"risk management audit recommendations" means any recommendations made by a risk management auditor in a risk management audit report in relation to the future management of the practice of a firm;

"risk management audit report" means a report produced by a risk management auditor appointed to conduct a risk management audit into the practice of a firm, and detailing in particular (but without limitation) the following matters:—

(i) the risk management auditor's view as to the management and other conditions prevailing within the firm and the management and professional competence of the personnel employed by or engaged in the firm's practice and of the principals of the firm,

(ii) providing such information in relation to the practice conducted by the firm as is necessary to ensure that the report responds to the matters required to be addressed by the risk management audit terms of reference,

(iii) giving the views of the risk management auditor as to the reasons why the firm was unable to obtain qualifying insurance, and

(iv) making recommendations as to the steps that should be taken by the firm to enhance its prospects of being in a position to obtain qualifying insurance from a qualified insurer outside the assigned risks pool in the future;

"risk management audit terms of reference" means the matters set out in Appendix 2 to these Regulations, as such matters as may be varied from time to time by the PII committee;

"ROF" means the run-off fund;

"ROF coverage" means an arrangement for indemnification issued by the SPF manager to a ROF eligible firm on behalf of those qualified insurers that participate in the special purpose fund and incorporating the minimum terms and conditions as varied by or pursuant to these Regulations;

"ROF eligibility criteria", in relation to a firm, means a firm:—

(i) which:

(*a*) was carrying on a practice on the operative date and which established qualifying insurance with a qualified insurer or more than one (1) qualified insurer with effect from the operative date, or

(*b*) commenced a practice subsequent to the operative date and which established qualifying insurance with a qualifying insurer or more than one (1) qualified insurer with effect from the date it commenced practice, and

(ii) which held qualifying insurance with a qualified insurer or more than one (1) qualified insurer immediately prior to becoming a run-off firm, and

(iii) which was not a defaulting firm immediately prior to the operative date, and

(iv) in respect of which there is no succeeding practice;

"ROF eligible firm" means a firm that satisfies the ROF eligibility criteria;

"roll" has the meaning ascribed to it in the Solicitors Act 1954;

"run-off cover" means an arrangement for indemnification issued by the SPF manager on behalf of those qualified insurers that participate in the special purpose fund for a firm that has ceased to carry on a practice which includes the relevant minimum terms and conditions as varied by or pursuant to these Regulations;

"run-off cover rules" means the model terms and conditions to be published by the PII committee pursuant to Regulation 5(*g*);

"run-off firm" means a firm that:—

(i) was carrying on a practice on the operative date or that subsequently commenced a practice, and

(ii) has ceased to carry on a practice, and

(iii) in respect of which there is no succeeding practice;

"run-off fund" means the run off fund established pursuant to Regulation 7(*c*);

“solicitor” has the meaning given in section 3 of the Solicitors Act 1954 (as amended by section 3 of the Solicitors (Amendment) Act 1994) and a reference to a solicitor in these Regulations, where consistent with the context thereof, includes a former solicitor or a deceased solicitor;

“SPF management committee” means the SPF management committee constituted under Regulation 19;

“SPF manager” means any person (including any body corporate, partnership or unincorporated body) from time to time appointed by the PII committee to manage the special purpose fund, and includes any replacement to such a person appointed from time to time;

“special purpose fund” means the special purpose fund constituted under Regulation 7;

“succeeding practice” means a practice that satisfies any one (1) or more of the following conditions in relation to another practice (such other practice being a preceding practice for these purposes):—

(i) it is expressly held out as being a successor to the practice or part thereof of the preceding practice, or

(ii) it is conducted by a partnership that has a majority of principals that are identical to those persons that were principals of any partnership that conducted the preceding practice, or

(iii) it is conducted by a sole practitioner who was the sole practitioner conducting the preceding practice, or

(iv) it is conducted by a partnership in which the sole practitioner conducting the preceding practice is a partner and where no other person has been held out as a successor to the preceding practice, or

(v) the partnership which, or sole practitioner who, conducts the practice has assumed the liabilities of the preceding practice;

but notwithstanding the foregoing a practice shall not be treated as a succeeding practice for the purposes of the minimum terms and conditions pursuant to paragraphs (ii), (iii), (iv) or (v) of this definition if another practice is or was held out by the owner of that other practice as the succeeding practice;

“the 1995 Regulations” means The Solicitors Acts 1954 to 1994 (Professional Indemnity Insurance) Regulations 1995, as amended by the Professional Indemnity Insurance (Amendment) Regulations 1998, The Solicitors Acts 1954 to 1994 (Professional Indemnity Insurance) (Amendment) Regulations 1999, The Solicitors Acts 1954 to 1994 (Euro Changeover) Regulations 2001, The Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance)(Amendment) Regulations 2004 and The Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance)(Amendment) Regulations 2005;

"the 2007 Regulations" means The Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007 (Statutory Instrument No. 617 of 2007) as amended by The Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) (Amendment) Regulations 2009 (Statutory Instrument No. 384 of 2009), The Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) (Amendment No. 2) Regulations 2009 (Statutory Instrument No. 441 of 2009) and The Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) (Amendment) Regulations 2010 (Statutory Instrument No. 495 of 2010);

"working day" means every day, not including a Saturday, Sunday or public holiday, on which banks generally are open for the transaction of normal banking business in the State.

(*b*) Other words and phrases in these Regulations shall have the meanings (if any) assigned to them by The Solicitors Acts 1954 to 2008.

(*c*) The Interpretation Act 2005 shall apply for the purpose of interpreting these Regulations as it applies to the interpretation of an Act of the Oireachtas, except insofar as it may be inconsistent with The Solicitors Acts 1954 to 2008 or with these Regulations.

(*d*) A reference in these Regulations to any, directive, statute, statutory provision, statutory instrument or other similar instrument includes:—

(i) any subordinate legislation made under it, and

(ii) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it either before, at or after the date of commencement of these Regulations

3. Maintenance of Insurance:

(*a*) Every firm that carries on a practice during an indemnity period where such indemnity period (or part thereof) commences on or after the operative date shall, subject to and in accordance with the remaining provisions of these Regulations, establish and maintain in place qualifying insurance with a qualified insurer.

(*b*) The PII committee shall be entitled, in its discretion at any time and from time to time, for such period or periods as it considers fit and subject to such conditions as it may specify, to recognise a policy of insurance held by a firm (including, but not limited to, a firm at least one (1) of the principals of which is a registered lawyer) as being equivalent to qualifying insurance for all or some of the purposes of these Regulations. For the avoidance of doubt, the PII committee shall be entitled to exercise its discretion under this Regulation 3(*b*) by prescribing categories of policies of insurance or other arrangements for coverage that shall be regarded as equivalent to qualifying insurance for all or some of the purposes of these Regulations.

(*c*) The PII committee shall have power to treat a firm as complying with any requirements of these Regulations notwithstanding that the firm has failed so to comply where such non-compliance is regarded by the PII committee in a particular case or cases as being insignificant.

(*d*) The PII committee shall have power at such time or times and on such conditions as it thinks fit, to waive any provision or part of a provision of these Regulations in a particular case or cases, including by extending the time, either prospectively or retrospectively, for the doing of any act under any provision of these Regulations.

(*e*) Where a firm is required by these Regulations to establish and maintain in place qualifying insurance during an indemnity period, no individual solicitor or registered lawyer employed by or engaged in the firm's practice shall, during his or her period of employment or engagement with the firm, also be required to establish or maintain in place qualifying insurance in respect of that part of such individual's practice as is carried on in the name of and for the account of the firm.

(*f*) Regulation 3(*a*) shall not apply to or in respect of any solicitor or registered lawyer who provides legal services only as part of an employment within the State to provide legal services to and for his or her employer, provided that:—

(i) the solicitor's or registered lawyer's employer is not also a solicitor or a registered lawyer; and

(ii) the solicitor or registered lawyer confirms to the Law Society in a manner acceptable to it that, for the duration of a relevant indemnity period, the solicitor or registered lawyer has not and will not engage in the provision of legal services to or for any person other than his or her employer; and

(iii) the solicitor or registered lawyer shall notify the Law Society immediately in writing if the exemption from Regulation 3(*a*) under Regulation 3(*f*) shall cease to apply in respect of the solicitor or registered lawyer.

(*g*) A firm to which Regulation 3(*a*) applies shall be required to establish and maintain qualifying insurance in respect of any indemnity period (or part thereof) in which the firm carries on a practice, or as at and from the commencement by the firm of a practice, whichever is the earlier.

(*h*) No firm shall be permitted to agree a coverage period with a qualified insurer which is greater than 24 (twenty four) months.

(*i*) A firm shall provide to the Law Society such evidence that it has established and is maintaining qualifying insurance in accordance with these Regulations as the Law Society may from time to time require.

(*j*) Without prejudice to the generality of Regulation 3(i), a firm shall be required to provide to the Law Society, or procure that there is provided to the Law Society on its behalf, such confirmation and evidence, in any form designated by the Law Society, that it has established and is maintaining qualifying insurance within ten (10) working days of the commencement of the coverage period to which the qualifying insurance relates.

(*k*) Without prejudice to the generality of Regulation 17(*a*), every principal of a firm to which these Regulations apply shall be responsible for ensuring:—

(i) that the firm has established and maintains in place qualifying insurance where required under these Regulations during any indemnity period (or part thereof) in which the firm carries on a practice; and

(ii) that the firm provides in a timely manner any evidence that may be required under or pursuant to these Regulations that it has established and is maintaining qualifying insurance where required under these Regulations.

(*l*) A phoenix firm shall not be in compliance with its requirement to establish and maintain qualifying insurance with a qualified insurer pursuant to Regulation 3(*a*) unless its professional indemnity insurance cover includes cover in accordance with the minimum terms and conditions for claims made against any other firm in respect of which it is treated as a phoenix firm pursuant to Regulation 3(*m*).

(*m*) The PII committee may, in its absolute discretion at any time, decide to treat any firm as being a phoenix firm to another firm, or as not being a phoenix firm to another firm, in circumstances where the effect of treating the first-mentioned firm as a phoenix firm to the second-mentioned firm, or the effect of treating the first-mentioned firm as not being a phoenix firm to the second-mentioned firm, would be that the first-mentioned firm would not then be, or would then be, an ARP eligible firm or a run-off firm (as the respective case may be) and the PII committee may, for the purposes of making any such decision, take into account such facts and matters as to it appear appropriate and relevant.

4. Self-Insured Excess on Qualifying Insurance:

(*a*) A firm shall be permitted, in accordance with the minimum terms and conditions, to agree with its qualified insurer a self-insured excess in respect of its qualifying insurance, to be borne by the firm in the event of a claim, provided that the qualified insurer has agreed that, in any case where the firm defaults in making payment of any part of such self-insured excess to a claimant when lawfully due, the qualified insurer will pay the outstanding amount directly to the claimant.

(*b*) Every firm shall be required to make prompt payment to a claimant, in the event of a claim being upheld against it, of the amount of any self-insured excess provided for under a qualifying insurance when the same is lawfully due to the claimant.

(*c*) Without prejudice to the generality of Regulation 17(*a*), every principal of a firm to which these Regulations apply shall be responsible for ensuring that the firm makes prompt payment of any self-insured excess under its qualifying insurance as required by these Regulations.

5. Maintenance of Insurance in Run-off:

(*a*) Every run-off firm shall be required to establish and maintain run-off cover from the expiry of the coverage period during which its practice ceases.

(*b*) The run-off cover required to be obtained by a run-off firm pursuant to Regulation 5(*a*) shall be as follows:—

(i) for a run-off firm that is a ROF eligible firm, ROF coverage.

(ii) for a run-off firm that is an ARP run-off eligible firm, ARP run-off cover.

(*c*) No premium shall be payable by an ROF eligible firm or an ARP run-off eligible firm for run-off cover from the run-off fund.

(*d*) The run-off cover provided by the run-off fund shall commence from the expiry of the coverage period during which that firm's practice ceases, such cover to be provided on the basis of the minimum terms and conditions as varied by or pursuant to these Regulations.

(*e*) For the avoidance of doubt, where run-off cover is extended to a ROF eligible firm or to an ARP run-off eligible firm by the run-off fund, that firm shall be deemed to have "established" run-off cover for the purposes of the definition of defaulting run-off firm and any other relevant definitions or provisions that require a firm to "establish and maintain" run-off cover.

(*f*) Run-off cover is not subject to cancellation on any basis whatsoever, save that it may be cancelled on terms to be agreed between the SPF manager and the firm where the following conditions are met:—

(i) the firm has obtained replacement qualifying insurance in accordance with the minimum terms and conditions on the date of cancellation of the relevant run-off cover;

(ii) the qualified insurer or qualified insurers under the replacement qualifying insurance referred to in Regulation 5(*f*)(i) have confirmed in writing to the firm and to the SPF manager that they are providing qualifying insurance on the basis that the firm's practice is to be treated as a continuation of the firm's practice

prior to the cessation thereof and that accordingly they will be liable for any claims against the firm arising from matters that occurred prior to the cessation; and

(iii) the qualified insurer or qualified insurers under the replacement qualifying insurance referred to in Regulation 5(*f*)(i) have provided any required confirmations of coverage to the Law Society pursuant to these Regulations.

(*g*) The PII committee may from time to time, prior to the beginning of an indemnity period, publish model terms and conditions to apply to run-off cover, which shall when published constitute the minimum terms and conditions applicable to such cover.

6. Defaulting Run-off Cover:

(*a*) The SPF manager shall make arrangements to ensure that a defaulting run-off firm is covered through the run-off fund in respect of any period during which such a firm does not hold run-off cover in accordance with its obligations under Regulation 5 and such arrangements shall procure that a defaulting run-off firm in respect of which the arrangements apply is covered in respect of all claims and circumstances where coverage would extend to a defaulting firm through the assigned risks pool. Any arrangements made by the SPF manager pursuant to this Regulation 6(*a*) in respect of defaulting run-off firms shall not be regarded as run-off cover for the purposes of satisfying Regulation 5(*a*).

(*b*) No premium shall be payable by a defaulting run-off firm for arrangements made under Regulation 6(*a*).

(*c*) The SPF manager, on behalf of qualified insurers, shall be entitled to recover from each and every principal in a defaulting run-off firm all amounts paid in or towards the discharge of a claim and defence costs pursuant to arrangements made under Regulation 6(*a*) together with interest thereon at two percent (2%) over the base lending rate of the European Central Bank from time to time.

7. Establishment of Special Purpose Fund:

(*a*) On the operative date there shall be and is hereby established by these Regulations a fund to be known as the "special purpose fund" to fulfil the functions assigned to it by these Regulations.

(*b*) From the operative date, the assigned risks pool shall form a constituent part of the special purpose fund.

(*c*) On the operative date there shall be and is hereby established by these Regulations a fund to be known as the run-off fund. The run-off fund shall form a constituent part of the special purpose fund and shall fulfil the functions assigned to it by these Regulations.

(*d*) In each indemnity period, the special purpose fund shall be participated in by each insurer which is a qualified insurer in that indemnity period.

8. Entering the Run-off Fund:

(*a*) A firm which intends to cease practice shall provide the SPF manager with a written notice of its intention to cease practice at least 60 (sixty) days, or such other period as the PII committee may from time to time determine, prior to ceasing practice and at least 60 (sixty) days, or such other period as the PII committee may from time to time determine, prior to the expiry of its coverage period, whichever is the earlier. The firm shall include its most recent completed proposal form with such notice.

(*b*) The SPF manager shall procure that:—

(i) in respect of a ROF eligible firm, ROF coverage shall be issued to the firm with effect from the date of expiry of the coverage period in which its practice ceases; and

(ii) in respect of an ARP run-off eligible firm, ARP run-off cover shall be issued to that firm with effect from the date of expiry of its coverage period.

(*c*) Every firm that holds run-off cover through the run-off fund, or in respect of which arrangements are made under Regulation 6(*a*) shall notify any claim or circumstance required to be reported or notified to the SPF manager pursuant to its run-off cover or arrangements within any time prescribed therefor under such run-off cover or arrangements.

(*d*) ROF coverage issued to a ROF eligible firm shall have a self-insured excess equal to the self-insured excess applicable to the qualifying insurance held by that firm at the time it ceased practice. ARP run-off cover issued to an ARP run-off eligible firm shall have a self-insured excess equal to the self-insured excess applicable to ARP coverage.

(*e*) Subject to Regulation 8(*g*), the SPF manager shall pay any amount that is within the self-insured excess of any firm's run-off cover to a claimant but shall be entitled to recover any amount so paid from the firm.

(*f*) Where a run-off firm fails to:—

(i) comply with the close of practice guidelines; or

(ii) notify the SPF manager of its intention to cease practice in accordance with Regulation 8(*a*); or

(iii) send its most recently completed proposal form to the SPF manager in accordance with Regulation 8(*a*); or

(iv) comply with the minimum common risk management standard; or

(v) fully co-operate with the SPF manager in the conduct of claims; or

(vi) notify any claim or circumstance required to be notified to the SPF manager pursuant to Regulation 8(*c*) within a reasonable period of time,

an additional self-insured excess as determined by the SPF manager in accordance with the run-off cover rules shall apply to that firm's run-off cover.

(*g*) The SPF manager shall not be obliged to pay any amount which is within the additional self-insured excess (as determined by the SPF manager in accordance with Regulation 8(*f*)) in respect of a claim made by a financial institution.

(*h*) Every run-off firm that is issued with run-off cover by the run-off fund, or in respect of which arrangements are made under Regulation 6(*a*), shall provide to the SPF manager such information as the SPF manager may from time to time in its discretion reasonably require to deal efficiently and effectively with that firm's membership of the run-off fund.

9. Entering the Assigned Risks Pool:

(*a*) Subject to Regulation 9(*k*), where at any time a firm either has not established or fails to maintain qualifying insurance underwritten by a qualified insurer as required by these Regulations, that firm shall (if it is an ARP eligible firm) apply to enter the assigned risks pool prior to:—

(i) the date on which the relevant indemnity period commences, or

(ii) the date on which it fails to maintain qualifying insurance,

whichever date is the earliest.

(*b*) The PII committee, in its absolute discretion, shall have power to grant a dispensation from the ARP eligibility criteria (or any part thereof) to a firm in an appropriate case.

(*c*) The ARP premium payable by any firm in respect of whose practice an ARP coverage is to be issued from time to time, shall be calculated by the SPF manager in accordance with the ARP premium schedule.

(*d*) A firm that is required to apply to enter the assigned risks pool and that is an ARP eligible firm shall apply in the following manner:—

(i) it shall submit to the SPF manager a proposal form, in a format designated from time to time by the SPF management committee, seeking to obtain ARP coverage and stating the date upon which such coverage should commence (not being a date earlier than the date upon which the application is made), together with such further information (if any) as may be required by the SPF manager for the purposes of considering the firm's application and determining the applicable ARP premium in accordance with Regulation 9(*d*);

(ii) it shall pay in advance of entry to the assigned risks pool such sum by way of an advance payment of premium to be known as the "initial ARP premium" as the SPF manager may determine in accordance with the ARP premium schedule, and it shall undertake to pay and shall pay such further sums, to be known as "additional ARP premium", by way of premium calculated in accordance with the ARP premium schedule, on such further dates as the SPF manager may from time to time determine;

(iii) it shall submit to the Law Society a signed undertaking, in a format designated from time to time by the SPF management committee, confirming that it will:—

(A) submit to such monitoring and risk management audits and take all such actions and pay such costs and expenses thereof as is provided for under and pursuant to these Regulations, and

(B) pay any costs and expenses incurred by the Law Society or the SPF manager from time to time as a result of any failure on its part to comply with any provision of these Regulations.

(*e*) Where a firm with ARP coverage is deemed to be in compliance with the minimum common risk management standard in respect of an indemnity period pursuant to Regulation 16, that firm shall be entitled to have its ARP premium for that indemnity period re-calculated in accordance with the relevant provisions of the ARP premium schedule, to be known as the "re-calculated ARP premium". Where the re-calculated ARP premium is lower than that firm's ARP premium:

(i) if the firm has already paid the ARP premium for that indemnity period to the SPF manager, it shall be entitled to reimbursement from the SPF manager of the difference between the re-calculated ARP premium and the ARP premium; or

(ii) if the firm has not already paid the ARP premium for that indemnity period to the SPF manager, it shall pay the re-calculated ARP premium to the SPF manager on such date at the SPF manager may from time to time determine.

(*f*) The provisions of Regulation 9(*e*) may, from time to time, be cancelled or varied by the PII committee in its sole discretion and for such period as it may, in its sole discretion, determine.

(*g*) Where a firm has been issued with ARP coverage, the terms of the ARP coverage shall prescribe that, and the firm shall be deemed to agree that, any additional ARP premium or re-calculated ARP premium (as the case may be) determined in accordance with Regulation 9(*d*) to be applicable in respect of such an ARP coverage shall, as from the date upon which the additional ARP premium or re-calculated ARP Premium is due (as determined by the SPF manager pursuant to Regulation 9(*d*)) (if not already paid by the firm), constitute a debt due from the firm to the SPF manager as agent of all qualified insurers participating in the special purpose fund. Failing payment of the additional ARP premium or, re-calculated ARP premium within three (3) days of the relevant due date, the SPF manager shall be entitled to treat the firm as a defaulting firm for the period during which the additional ARP premium or re-calculated ARP premium remains outstanding, such that the ARP premium for that firm for that period shall be calculated in accordance with Regulation 13(*e*).

(*h*) Every firm that applies to enter the assigned risks pool shall provide to the SPF manager such information as the SPF manager may from time to time in its discretion reasonably require to progress the firm's application for entry to the assigned risks pool and otherwise to deal efficiently and effectively with the firm's membership of the assigned risks pool.

(*i*) Every firm to which this Regulation 9 applies shall be required to take all reasonable steps to ensure that the firm receives an acknowledgement in writing of receipt by the SPF manager of its application, pursuant to this Regulation 9, to enter the assigned risks pool within ten (10) working days of the date of despatch of such application by or on behalf of the firm, and where no such acknowledgement in writing is received within ten (10) working days of such date, the application shall be deemed never to have been made, and the firm shall be required to re-apply in accordance with the provisions of Regulation 9.

(*j*) An ARP eligible firm that has applied in the manner prescribed by these Regulations to enter the assigned risks pool will be issued by the SPF manager with an ARP coverage.

(*k*) An ARP eligible firm may apply to enter the assigned risk pool within 60 (sixty) days immediately following the expiry of its most recent coverage period.

(*l*) The provisions of Regulation 9(*k*) are a dispensation solely in relation to the time limits for making an application to join the assigned risks pool and such provisions shall not in any way relieve a firm of any

requirement of these Regulations to establish or maintain qualifying insurance.

10. Operation of ARP Coverage:

(*a*) The period of coverage under each ARP coverage shall commence:—

(i) in the case of a firm that applies to enter the assigned risks pool prior to the commencement of an indemnity period, from the start of that indemnity period;

(ii) in the case of a firm that applies to enter the assigned risks pool during an indemnity period, from the date specified in the firm's application, but that date may not be earlier than the date upon which the application was made, and no ARP coverage may provide retrospective cover.

(*b*) The period of coverage under each ARP coverage shall terminate on the earliest to occur of the following dates:—

(i) the date upon which the relevant indemnity period ends;

(ii) the date upon which the firm obtains qualifying insurance outside the assigned risks pool; or

(iii) the date when the firm ceases to be an ARP eligible firm.

(*c*) Every firm that holds ARP coverage shall be required to report or notify any claim or circumstance required to be reported or notified pursuant to its ARP coverage to the SPF manager within any time prescribed therefor under that ARP coverage.

(*d*) Without prejudice to the generality of Regulation 17(*a*), every principal of a firm to which these Regulations apply shall be responsible for ensuring:—

(i) that the firm applies to enter the assigned risks pool within the time limits and in the manner required under these Regulations;

(ii) that the firm pays any premium due in respect of an ARP coverage to the SPF manager promptly when due;

(iii) that the firm takes steps to ensure that it is provided with an acknowledgement of its application to enter the assigned risks pool when required to do so under these Regulations; and

(iv) that the firm makes any notifications or reports required by these Regulations to be made pursuant to its ARP coverage in a timely manner.

(*e*) The SPF manager shall make arrangements to procure that a qualified insurer shall be reimbursed in respect of insurer reimbursement

claims and shall ensure that the amount of such reimbursement is equal to the sums paid by that qualified insurer in respect of the relevant claim, provided however that the amount of such reimbursement shall be without prejudice to any sums to be paid by the qualified insurer following a demand being made by the SPF manager, pursuant to the qualified insurers agreement, for the purposes of settling liability in respect of the relevant claim. No qualified insurer shall be entitled to such reimbursement unless that qualified insurer can demonstrate, to the reasonable satisfaction of the SPF manager, that it has acted in a commercially reasonable manner and as though recourse to the assigned risks pool is not available to it and has used its best efforts to obtain reimbursement of amounts paid by it pursuant to its rights under clause 7.2 of the minimum terms and conditions.

11. Membership of the Assigned Risks Pool:

(*a*) A firm that has been issued with an ARP coverage but that is no longer an ARP eligible firm shall be required, as from the date upon which it ceases to be an ARP eligible firm, to establish and maintain qualifying insurance with a qualified insurer in accordance with Regulation 3(*a*) and if it fails to do so, it shall be required to cease its practice.

(*b*) A firm may leave the assigned risks pool at any time after it has provided to the Law Society such evidence as the Law Society may require that it has obtained qualifying insurance from a qualified insurer that satisfies the provisions of these Regulations for at least the remainder of the then-current indemnity period.

(*c*) Where a firm applies for membership of the assigned risks pool but is not permitted to enter the assigned risks pool, that firm shall be required to indemnify the Law Society, the SPF manager and the SPF management committee on demand in respect of any costs, fees, expenses, losses or liabilities incurred by the Law Society, the SPF manager and the SPF management committee in relation to its application.

12. Variation of the Minimum Terms and Conditions in respect of cover granted by the Assigned Risks Pool:

(*a*) The minimum terms and conditions to apply in respect of ARP coverage are amended to the extent that claims made by financial institutions shall not be covered by the ARP, with the exception of a claim made by a financial institution in respect of a residential property transaction where:—

(i) the relevant firm was first instructed to provide legal services in respect of that transaction on or after the operative date; and

(ii) the relevant firm was deemed to be or found to be in compliance with the minimum common risk management standard in accordance with Regulation 16 prior to the commencement of the provision of the legal services.

(*b*) The PII committee may from time to time publish model terms and conditions to apply to ARP coverage, which shall when published constitute the minimum terms and conditions applicable to such coverage.

(*c*) The provisions of Regulation 12(*a*) may, from time to time, be cancelled or varied by the PII committee in its sole discretion and for such period as it may, in its sole discretion, determine.

(*d*) The PII committee may, in its sole discretion and for such period as it may, in its sole discretion, determine, impose an aggregate limit on the ARP's liability for claims in respect of any one firm in any one indemnity period and such limit shall, unless otherwise determined by the PII committee, be €1,500,000 (one million five hundred thousand euro).

(*e*) Any limit or exclusion imposed by the PII committee in accordance with Regulation 12(*d*) shall not apply in respect of defence costs, save that in such cases ARP coverage will apply proportionate liability for defence costs in accordance with clause 3 of the minimum terms and conditions.

(*f*) If a claim is made that would otherwise exceed the limit of liability, as imposed by the PII committee in accordance with Regulation 12(*d*), whether on its own or in aggregate with prior or concurrent claims, the ARP will be liable only for the amount of such claim that does not exceed the limit prescribed thereunder by the PII committee.

13. Defaulting Firms:

(*a*) The SPF manager shall make arrangements to ensure that a defaulting firm is covered in respect of any period in which such a firm does not hold qualifying insurance with a qualified insurer and has not applied to enter the assigned risks pool and been issued by the SPF manager with an ARP coverage, and such arrangements shall procure that a defaulting firm in respect of which the arrangements apply is covered in respect of all claims and circumstances where coverage would have extended pursuant to the minimum terms and conditions as varied by or pursuant to these Regulations.

(*b*) Every defaulting firm shall be liable to pay to the SPF manager the ARP default premium in respect of any coverage arranged in respect of its practice or former practice pursuant to Regulation 12(*c*)(*a*).

(*c*) The SPF manager on behalf of qualified insurers shall be entitled to recover from each and every principal in a defaulting firm all amounts paid in or towards the discharge of a claim and defence costs pursuant to arrangements made under Regulation 12(*c*)(*a*), together with interest thereon at two percent (2 %) over the base lending rate of the European Central Bank from time to time.

(*d*) A defaulting firm may, at the discretion of the PII committee, be required to cease its practice unless it obtains qualifying insurance from a qualified insurer outside the assigned risks pool.

(*e*) The amount of the ARP default premium payable by:—

(i) any firm designated as a defaulting firm pursuant to Regulation 9(*f*); or

(ii) any defaulting firm in respect of which arrangements pursuant to Regulation 12(*c*)(*a*) are made from time to time;

shall be calculated by the SPF manager in accordance with the ARP premium schedule determined by the PII committee from time to time.

14. Insolvency of Qualified Insurers and Other Events:

(*a*) Where a firm has established qualifying insurance with a qualified insurer or a number of qualified insurers in accordance with Regulation 3, and an insolvency event or non-performance event occurs in respect of that qualified insurer or one (1) or more of those qualified insurers, as the case may be, the firm shall, as soon as reasonably practicable and in any event within 30 (thirty) working days after the date upon which such insolvency event or non-performance event occurs (but not counting the date upon which such event occurs):—

(i) establish and maintain in place qualifying insurance with a qualified insurer or qualified insurers that is or are unaffected by an insolvency event or non-performance event; or

(ii) where it is an ARP eligible firm, apply under Regulation 9 to enter the assigned risks pool.

(*b*) A firm to which Regulation 14(*a*) applies shall provide to the Law Society such evidence that it has established and is maintaining qualifying insurance or that it has applied to enter the assigned risks pool, as the Law Society may from time to time require.

(*c*) Without prejudice to the generality of Regulation 14(*b*), a firm shall be required to provide to the Law Society, or procure that there is provided to the Law Society on its behalf, confirmation in any form designated by the Law Society that it has established and is maintaining qualifying insurance or that it has applied to enter the assigned risks pool within 30 (thirty) working days of the insolvency event or non-performance event that gives rise to the obligation to establish and maintain qualifying insurance pursuant to Regulation 14(*a*).

(*d*) Without prejudice to the generality of Regulation 17(*a*), every principal of a firm to which these Regulations apply, shall be responsible for ensuring:—

(i) that the firm has established and maintains in place qualifying insurance following the occurrence of an insolvency event or a non-performance event in respect of its former qualified insurer or qualified insurers, with a qualified insurer or qualified insurers that is or are unaffected by such an event, or that it applies to enter the assigned risks pool; and

(ii) that the firm provides any evidence that the firm has established and is maintaining qualifying insurance or that it has applied to enter the assigned risks pool following the occurrence of an insolvency event or a non-performance event in respect of its former qualified insurer or qualified insurers as may be required under or pursuant to these Regulations in a timely manner.

15. Risk Management Audits:

(*a*) A firm that enters or that seeks to enter the assigned risks pool shall be required to submit to and co-operate with a risk management audit to be conducted by a risk management auditor selected and appointed by the SPF management committee at such times and at such intervals during the firm's membership of the assigned risks pool as the SPF management committee may in its absolute discretion determine.

(*b*) Every principal of a firm to which Regulation 15(*a*) applies shall be responsible for ensuring that the firm submits to and co-operates with any risk management audit that is directed by the SPF management committee in relation to the firm's practice pursuant to Regulation 15(*a*).

(*c*) Where the SPF management committee directs that a risk management audit is to be carried out in relation to the practice of a firm, every principal of that firm shall be responsible for ensuring that the risk management auditor appointed to carry out the risk management audit is afforded every possible facility to carry out the following tasks:—

(i) to attend at any place or places where the firm engages in its practice and, for the avoidance of doubt, any place or places where the firm may store its records (including electronic records) in relation to matters it is involved in;

(ii) to interview any principal of the firm and such other persons employed by or associated with the firm as the risk management auditor deems necessary and appropriate;

(iii) to inspect such documents relating to the practice of the firm as the risk management auditor deems necessary and appropriate; and

(iv) to provide the risk management auditor with access to all electronic records maintained by or on behalf of the firm and to all

computer or electronic communication systems operated by the firm and relating in either case to the practice of the firm.

(*d*) Every principal of a firm to which this Regulation 15 applies shall direct all persons employed by the firm and any relevant third party (to the extent that it is possible for that principal to do so) to facilitate and provide all necessary assistance to the risk management auditor in reviewing any documents referred to in Regulation 15(*c*)(iii) and any records or systems referred to in Regulation 15(*c*)(iv).

(*e*) It shall be misconduct for any principal of a firm, or any solicitor or registered lawyer employed by a firm to which this Regulation 15 applies to fail to attend at any interview with a risk management auditor of which not less than two (2) working days notice has been given to that person, or to fail to provide a risk management auditor with access to documents, records or computer or communication systems within two (2) working days of a request in that regard being made to such principal, solicitor or registered lawyer by a risk management auditor pursuant to these Regulations.

(*f*) Where the SPF management committee directs that a risk management audit is to be carried out in relation to the practice of a firm, that firm shall be required to indemnify the Law Society (or as the Law Society may direct) on demand in respect of any costs, fees, expenses, losses or liabilities incurred by the Law Society in relation to the conduct of that risk management audit, and every principal of that firm shall be responsible for ensuring that the firm discharges its liabilities to the Law Society under Regulation 15.

(*g*) Where a firm fails to comply with any provision of this Regulation 15, the SPF management committee may direct that such firm shall no longer be treated as an ARP eligible firm, and may further direct that any successor firm to such a firm shall not be an ARP eligible firm.

16. Risk Management Audit Reports:

(*a*) A risk management auditor who conducts a risk management audit in relation to a firm shall, as soon as practicable thereafter, furnish a written risk management audit report to the SPF manager and to the SPF management committee. The report shall include an opinion from the risk management auditor as to whether the firm is in compliance with the minimum common risk management standard in the indemnity period in which the risk management audit is carried out.

(*b*) The SPF management committee shall, on receipt of a risk management audit report, provide a copy thereof to the firm concerned and shall invite such firm to provide any written response thereto to the SPF management committee within ten (10) working days of receipt by the firm of such risk management audit report.

(*c*) Following receipt by the SPF management committee of the written response (if any) of a firm the subject of a risk management audit report or (failing any such written response) at any time after the expiry of the relevant time period for such firm to provide a written response, the SPF management committee may provide the firm concerned with a written direction indicating:—

(i) which of the risk management audit recommendations are to be binding on the firm, and any such direction made by or on behalf of the SPF management committee shall be binding upon the firm immediately upon such direction being made by the SPF management committee and the firm shall forthwith take steps at its own expense to comply with any such direction; and

(ii) whether the opinion of the risk management auditor as to whether the firm is in compliance with the minimum common risk management standard is to be binding on the firm and any such direction made by or on behalf of the SPF management committee shall be binding upon the firm immediately upon such direction being made by the SPF management committee.

(*d*) At any time following the receipt by the SPF management committee of the written response (if any) of a firm the subject of a risk management audit report or (failing any such written response) at any time after the expiry of the relevant time period for such firm to provide a written response, the SPF management committee may, on giving not less than two (2) working days notice, require any principal of such firm to attend before it to respond to such questions and to provide such information or to produce such documents regarding the management of the practice of the firm as may appear appropriate to the SPF management committee.

(*e*) At any time following the receipt by the SPF management committee of the written response (if any) of a firm the subject of a risk management audit report or (failing any such written response) at any time after the expiry of the relevant time period for such firm to provide a written response, the SPF management committee may take any one (1) or more of the following measures:—

(i) direct the firm concerned to comply with such measures within such time period as the SPF management committee may deem appropriate and reasonable to avoid or mitigate the risk of claims in respect of civil liability arising from the practice of the firm, and such measures may be more extensive than any risk management audit recommendations, and the firm shall forthwith take steps at its own expense to comply with any such direction;

(ii) instruct any risk management auditor to assist and supervise the firm concerned or any principal of the firm or any solicitor or registered lawyer employed by the firm and to report to the SPF

management committee as appropriate in relation to compliance by the firm, principal, solicitor or registered lawyer concerned with any measures directed by the SPF management committee pursuant to Regulation 16(*e*)(i);

(iii) commission any further inquiry into the affairs of the firm concerned to be made as to the SPF management committee may appear appropriate and necessary to permit the SPF management committee properly to assess the prevailing state of management of that firm;

(iv) conclude that the circumstances of the state of management of the firm concerned as disclosed by a risk management audit report, or by any subsequent report or investigation directed by the SPF management committee to be undertaken are such that it is not appropriate and reasonable that the firm should be provided or continue to be provided with ARP coverage by the assigned risks pool and may in consequence decide, on not less than two (2) working days notice in writing to the firm concerned, to declare that the firm in question shall no longer be an ARP eligible firm and shall be treated thenceforth as a defaulting firm.

(*f*) Where the SPF management committee takes any step pursuant to Regulation 16(*e*)(ii) or Regulation 16(*e*)(iii) in relation to the practice of a firm, that firm shall be required to indemnify the Law Society (or as the Law Society may direct) on demand in respect of any costs, fees, expenses, losses or liabilities incurred by the Law Society in relation to the steps taken, and every principal of that firm shall be responsible for ensuring that the firm discharges its liabilities to the Law Society under this Regulation 16(*f*).

(*g*) The PII committee may in its discretion and on such terms and conditions as it deems appropriate:—

(i) permit the Law Society to use any risk management audit report as the Law Society deems appropriate for the purposes of exercising any of its statutory powers and functions;

(ii) provide to qualified insurers a copy of any risk management audit report in accordance with the confidentiality provisions of the then current qualified insurers agreement.

17. Responsibilities of Principals:

(*a*) Every principal of a firm to which these Regulations apply shall be responsible for ensuring that the firm complies with its obligations and responsibilities under these Regulations, and it shall be misconduct for a principal to fail to procure that the firm so complies.

(*b*) Without prejudice to the generality of Regulation 17(*a*), every principal of a firm to which these Regulations apply, and in the case of a firm that has ceased its practice every person that is or was a principal

of that firm at the relevant time as determined by the PII committee in its discretion, shall be responsible for ensuring:—

(i) that the firm ceases its practice where required so to do under these Regulations;

(ii) that the firm discharges any costs, liabilities and expenses due to the Law Society under these Regulations promptly on demand; and

(iii) that the firm and each principal thereof complies with each of the responsibilities imposed upon it under Regulations 15 and 16.

(*c*) Where any firm fails to comply with any of its obligations and responsibilities under or pursuant to these Regulations, or any principal of a firm fails to comply with any of his or her obligations and responsibilities under or pursuant to these Regulations, the PII committee may take any one (1) or more of the following courses of action:—

(i) apply to the High Court for suspension of the practising certificate or qualifying certificate of any principal or former principal of that firm, or of the principal concerned, as the case may be; or

(ii) direct the Registrar to refuse to issue a practising certificate or qualifying certificate to any principal or former principal of that firm, or to the principal concerned, as the case may be; or

(iii) apply to the Disciplinary Tribunal for an inquiry into the conduct of any principal or former principal of that firm, or of the principal concerned, as the case may be, on grounds of misconduct; or

(iv) apply to the High Court for an order to prohibit any principal or former principal of that firm, or the principal concerned, as the case may be, from contravening any provision of these Regulations; or

(v) apply to the High Court for an order to require any principal or former principal of that firm, or the principal concerned, as the case may be, to perform any obligation imposed on the firm or such principal by any provision of these Regulations.

(*d*) Where the PII committee decides to take one (1) of the courses of action referred to in Regulation 17(*c*), the PII committee shall give to each affected principal or former principal of that firm, notice in writing of its intention to do so.

(*e*) The provisions of Regulation 17 are without prejudice to the designation by these Regulations as misconduct of any particular act or omission by a solicitor or a registered lawyer, or to any other right or power given under these Regulations, under the Acts or under any

instrument made under or pursuant to the Acts to the PII committee or to the Law Society.

18. Professional Indemnity Insurance Committee:

(*a*) The Council shall, as soon as practicable after the coming into operation of these Regulations, appoint a professional indemnity insurance committee which shall be responsible for exercising on behalf of the Council the functions vested in:—

(i) the Law Society by or under section 26 of the Solicitors (Amendment) Act 1994; and

(ii) the PII committee by or under these Regulations; and

(iii) (to the extent that the 1995 Regulations remain in force by virtue of these Regulations) the committee constituted under the 1995 Regulations and designated as the PII committee thereunder by or under the 1995 Regulations; and

(iv) (to the extent that the 2007 Regulations remain in force by virtue of these Regulations) the committee constituted under the 2007 Regulations and designated as the PII committee thereunder by or under the 2007 Regulations,

save in each case for the making of regulations.

(*b*) The Council shall from time to time in its discretion determine the number of members of the PII committee and appoint the members thereof and may, in its sole discretion and for such period as it may determine, retain as members of the PII committee each or any of the members of the PII committee in place at the coming into operation of these Regulations.

(*c*) The quorum of the PII committee shall be three (3).

(*d*) The PII committee may establish sub-committees to carry out some or all of its functions, or delegate some or all of its functions to an executive of the Law Society, the SPF management committee or the SPF manager.

(*e*) The PII committee shall exercise on behalf of the Council the following functions of the Law Society:—

(i) making recommendations, issuing guidance or giving directions on behalf of the Law Society in relation to the management, administration and protection by the SPF manager of the special purpose fund;

(ii) (without prejudice to the generality or specificity of any Regulation) directing steps necessary or expedient to be taken to

ascertain whether these Regulations or the provisions of the 2007 Regulations are being complied with;

(iii) specifying circumstances in which any solicitor or registered lawyer or specified category of solicitors or registered lawyers may be exempted in whole or in part from compliance with these Regulations or the 2007 Regulations;

(iv) specifying the manner in which solicitors or registered lawyers or any specified category of solicitors or registered lawyers shall bring their compliance with, or exemption from, these Regulations or the 2007 Regulations to the notice of their clients or the Law Society;

(v) determining whether a perceived breach of section 26(6) of the Solicitors Act, 1994 or of these Regulations or of the 2007 Regulations by a solicitor or registered lawyer should be the subject of an application by the Law Society to the Disciplinary Tribunal for an inquiry into the conduct of that solicitor or registered lawyer on the ground of alleged misconduct;

(vi) making decisions in relation to matters (including procedural matters) deemed to be in pursuance of or incidental or supplementary to the functions vested in the Law Society under section 26 of the Solicitors (Amendment) Act 1994 or in pursuance of or incidental or supplementary to the provisions of these Regulations or of the 2007 Regulations.

(*f*) The PII committee shall, at least once in every calendar year, review the minimum terms and conditions and shall recommend to the Law Society any amendments thereto as to the PII committee appear appropriate.

(*g*) The PII committee shall be entitled to appoint the SPF manager to discharge the functions and responsibilities of:

(i) the person or entity appointed as pool manager under the 1995 Regulations to the extent that those regulations remain in effect by virtue of these Regulations; and

(ii) the person or entity appointed as ARP manager under the 2007 Regulations to the extent that those regulations remain in effect by virtue of these Regulations.

(*h*) The PII committee shall from time to time and in its sole discretion issue rules regulating the conduct of coverage disputes and any rules (or part thereof) issued by the PII committee under this Regulation 18(*h*) shall be binding upon a qualified insurer and a firm immediately upon such rules being made by the PII committee and each qualified insurer and each firm shall forthwith take steps at its own expense to comply with any such rules.

19. SPF Management Committee:

(*a*) The PII committee shall, as soon as practicable after the coming into operation of these Regulations appoint a special purpose fund management committee which shall be responsible for exercising the functions vested in:

(i) the SPF management committee by or under these Regulations; and

(ii) any functions delegated to it by the PII committee pursuant to Regulation 18.

(*b*) The number of members of the SPF management committee shall be five (5).

(*c*) The members of the SPF management committee shall be appointed by the Law Society and shall comprise the SPF manager, two (2) representatives of the Law Society and one (1) representative of each of the two (2) qualified insurers with the largest relevant premium income for that indemnity period as calculated in accordance with Schedule 2 of the qualified insurers agreement.

(*d*) The SPF management committee shall provide a quarterly report to the PII committee summarising its activities and the decisions it has taken in the previous quarter. The SPF management committee shall receive and consider any comments that the PII committee may have on any such report.

20. Provision of Information and Co-Operation with Qualifying Insurers and SPF Manager:

(*a*) If a person asserts a claim against a firm or any person insured under that firm's qualifying insurance and the claim relates to a matter within the scope of coverage under the minimum terms and conditions, that firm and every principal thereof (including, in the case of a firm that has ceased its practice, any former principal thereof) shall be required to provide that claimant on request with details of the identity of the qualified insurers that provided the qualifying insurance, together with any applicable coverage reference number and the relevant qualified insurers' contact details.

(*b*) The Law Society may maintain in such form or forms as it considers appropriate a register of firms showing such details of any qualifying insurance, ARP coverage or run-off cover maintained by those firms appearing on the register as the Law Society deems fit, together with details of any firms that have not maintained such insurance and/or cover, and may permit persons to enquire as to the registered status of firms and provide persons with the information contained in the register relating to firms in such manner and to such extent as the Law Society may determine.

(*c*) The Law Society may, based on the information available to it, establish an information service to disclose certain information to qualified insurers in such a manner as it may in its absolute discretion deem fit, including the following:—

(i) on or before 31 January in each indemnity period, provide a qualified insurer with details of the identity of firms which maintained qualifying insurance with that qualified insurer in the prior indemnity period, together with the identity of the current qualified insurer (including for the avoidance of doubt, the assigned risks pool and the run-off fund) of any such firm;

(ii) from time to time, to provide a qualified insurer with details of the identity of any firm, which has had all of its principals suspended or struck off the roll.

(*d*) All firms and their principals shall extend such co-operation to the qualified insurer providing qualifying insurance or the SPF manager (as appropriate) as is required by the minimum terms and conditions. In the event that a qualified insurer or the SPF manager (as appropriate) considers that a firm or its principals have failed to extend such co-operation, the qualified insurer or the SPF manager (as appropriate) may notify the Law Society and the Law Society may take disciplinary action against the principals and the former principals of such firm as appropriate.

(*e*) In the event that a qualified insurer or the SPF manager (as appropriate) considers that a firm has failed to pay any stamp duty which the firm is liable to pay, the qualified insurer or the SPF manager (as appropriate) may notify the Law Society and the Law Society may take disciplinary action against the principals and the former principals of such firm as appropriate.

21. Amendment to Independent Law Centres Regulations:

(*a*) The Solicitors Acts 1954 to 2002 (Independent Law Centres) Regulations, 2006 are hereby amended by the deletion of Regulation 8 thereof and its replacement with the following:—

"For the avoidance of doubt, an employed solicitor shall be required to comply with the Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2011."

Dated this 3rd day of August 2011.

Signed on behalf of the Law Society of Ireland pursuant to Section 79 of the Solicitors Act 1954.

JOHN COSTELLO,
President of the Law Society of Ireland

SCHEDULE

TABLE OF REVOCATIONS

NAME OF INSTRUMENT	EXTENT OF REVOCATION
The Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007 (Statutory Instrument No. 617 of 2007)	Revoked in its entirety save that:—(i) the instrument (as subsequently amended) shall remain binding upon solicitors and registered lawyers required, prior to the operative date, by virtue of the provisions of the instrument to maintain run-off cover (as defined by the instrument) such that those solicitors and registered lawyers shall be required to continue to maintain such coverage in accordance with the terms of the instrument and that the provisions of the instrument (including provisions relating to the enforcement thereof and the penalties thereunder) shall be fully continued in effect as regards such solicitors and registered lawyers and such run-off cover; and (ii) the instrument (as subsequently amended) shall remain in effect to the extent necessary to permit the proper functioning and operation of the assigned risks pool constituted by virtue of the provisions of the instrument to permit that assigned risks pool to be administered to fulfil the terms of all coverages granted thereunder (iii) the instrument (as subsequently amended) shall remain in effect to permit the proper functioning and operation of the SMDF (as defined therein) to permit the SMDF to be administered to fulfil the terms of all coverages granted by it.
The Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) (Amendment) Regulations 2009 (Statutory Instrument No. 384 of 2009), The Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) (Amendment No. 2) Regulations 2009 (Statutory Instrument No. 441 of 2009), The Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) (Amendment) Regulations 2010 (Statutory Instrument No. 495 of 2010)	Each revoked in their entirety save that the provisions of the relevant instruments shall be continued in effect to the extent that they amend The Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007 (Statutory Instrument No. 617 of 2007) in order to give effect to the provisions of this Table as they relate to the revocation of The Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007 (Statutory Instrument No. 617 of 2007).

APPENDIX 1

MINIMUM TERMS AND CONDITIONS OF PROFESSIONAL INDEMNITY INSURANCE FOR SOLICITORS AND REGISTERED LAWYERS IN IRELAND

1 INTERPRETATION

1.1 In these terms and conditions, the following expressions shall have the following meanings:—

"Amount Insured" means the aggregate limit of liability of each Insurer under the Insurance, including, for the avoidance of doubt, the aggregate limit of liability of all Insurers where the coverage is provided on the basis of co-insurance;

"Authorised Insurer" means an insurer that holds an authorisation to carry on insurance business for the purposes of Directive 73/239/EEC or that is otherwise entitled to carry on non-life insurance business in the State;

"Circumstance" means an incident, fact, occurrence, matter, act or omission that may give rise to a Claim in the context of civil liability;

"Claim" means a request or demand for, or an assertion of a right to, or an intimation of an intention to seek:—

(*a*) civil compensation of any nature,

(*b*) civil damages of any nature, or

(*c*) any award to be made pursuant to the provisions of the Solicitors Acts 1954 to 2008 for compensation or restitution to clients or any other obligations that may be imposed on solicitors to compensate or make restitution to clients by statute from time to time,

but for the avoidance of doubt, the term "Claim" does not include any claim for payment of costs incurred by an Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in paragraph (*c*) of this definition where the Insurance, in accordance with the Minimum Terms and Conditions, excludes the Insurer's liability to indemnify the Insured in respect of such costs;

"Claimant" means a person or entity that has made or may make a Claim (including a Claim for contribution or indemnity);

"Commercial Property Regulations" means the Solicitors (Professional Practice, Conduct and Discipline — Commercial Property Transactions) Regulations 2010;

"Coverage Period" means the period for which the Qualifying Insurance or the ARP coverage (as the case may be) held by a Firm affords cover;

"Defence Costs" mean legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the consent of the Insurer in relation to a Claim including without limitation the costs of:—

(*a*) defending any proceedings, or

(*b*) conducting any proceedings for indemnity, contribution or recovery, or

(*c*) investigating, reducing, avoiding or compromising any actual or potential Claim;

but the term "Defence Costs" does not include:—

(i) any internal overhead expenses of the Firm or the Insurer or the cost of any Insured's time, or

(ii) any costs incurred by an Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in paragraph (*c*) under the definition of "Claim" where the Insurance, in accordance with the Minimum Terms and Conditions, excludes the Insurer's liability to indemnify the Insured in respect of such costs;

"Direction" shall have the meaning ascribed to it in clause 8.3;

"Employee" means any person, other than a Principal, employed or otherwise engaged in the Firm's Practice, including, without limitation, solicitors, registered lawyers, other lawyers, trainee solicitors, consultants, associates, locum staff members, persons seconded to work in the Firm's Practice or persons seconded by the Firm to work elsewhere, office and clerical staff or otherwise;

"Financial Institution" means any of the following:—

(*a*) a credit institution as defined in section 2(1) of the 1995 Act,

(*b*) a credit institution that is the holder of an authorisation for the purposes of Article 4(1) of Directive 2006/48/EC,

(*c*) a retail credit firm authorised pursuant to section 31 of the 1997 Act,

(*d*) a home reversion firm authorised pursuant to section 31 of the 1997 Act,

(*e*) any other party that engages on a professional basis in the business of providing financial accommodation of any nature to another person,

(*f*) any assignee of debt from an entity that has been engaged in the business of providing financial accommodation of any nature to another person, including without limitation, NAMA,

but, for the avoidance of doubt, does not include a Minister of the Government in the exercise of the functions, powers or duties of his office;

"Firm" means:—

(*a*) any Partnership of two (2) or more lawyers (as constituted from time to time, whether before or during any relevant indemnity period) where such Partnership includes at least one (1) solicitor or registered lawyer and whether or not such Partnership includes non-registered lawyers, and

(*b*) any sole practitioner being either a solicitor or registered lawyer, and including a sole practitioner who employs one (1) or more solicitors or registered lawyers, and a sole practitioner who is employed by a person who is not a solicitor or registered lawyer;

where the relevant partnership or relevant sole practitioner, as the case may be, carries on a practice;

"Firm's Practice" means the practice carried on by the Firm, and includes the business of any trustee, nominee, service or administration company owned by the Principals of the Firm;

"Insurance" means the professional indemnity insurance or coverage required by each Firm pursuant to the Regulations;

"Insured" means, in respect of a Firm:—

(*a*) the Firm,

(*b*) each trustee, nominee, service or administration company owned by the Firm and/or the Principals of the Firm from time to time,

(*c*) each director, officer or employee of any such company as is referred to in paragraph (*b*) above from time to time,

(*d*) each Principal or former Principal of the Firm from time to time,

(*e*) each Employee or former Employee of the Firm from time to time, or

(*f*) the estate or legal personal representatives of any deceased former Principal or Employee of the Firm;

"Insurer" means the underwriter of the Insurance or the provider of the coverage the subject of the Minimum Terms and Conditions;

"Investment Advice" has the meaning ascribed to such term in the Regulations;

"Investment Business Service" has the meaning ascribed to such term in the Regulations;

"Law Society" means the Law Society of Ireland;

"Lead Insurer" means the Insurer named as such in the contract of Insurance but if contrary to clause 3.6.2 no Lead Insurer is named as such, means the first-named Insurer on the relevant certificate of insurance;

"Legal Services" means services of a legal or financial nature and includes any part of such services, and for the avoidance of doubt, includes (without limitation):—

(*a*) any Investment Business Services or Investment Advice provided by a Firm,

(*b*) acting as personal representative or trustee,

(*c*) acting as notary public,

(*d*) acting as commissioner for oaths,

(*e*) acting as liquidator or receiver,

(*f*) acting as company secretary,

(*g*) acting as director of any company owned by the Principals of a Firm that provides trustee, nominee, administration or other services,

(*h*) acting as arbitrator or mediator, and

(*i*) acting on a pro bono basis;

"Minimum Terms and Conditions" means the minimum terms and conditions set out in Appendix 1 to the Regulations with which a Qualifying Insurance (or, in the case of a Qualifying Insurance provided as a co-insurance, any part thereof) underwritten by a Qualified Insurer is required by these Regulations to comply, or in the case of ARP coverage and run-off cover, such minimum terms and conditions, as varied by or pursuant to these Regulations, to apply in respect of such cover;

"Misconduct" has the meaning ascribed to such term in the Regulations;

"NAMA" means the National Asset Management Agency;

"Partner" means a partner in a Firm;

"Partnership" means an unincorporated firm;

"Policy" means a contract of professional indemnity insurance made between a Qualified Insurer (whether alone or in conjunction with other

qualified insurers) and a Firm, and "Policies" shall be construed accordingly;

"Practice" means a business (which term includes any gainful occupation) or any part thereof consisting of the provision of Legal Services from an establishment in the State and where such Legal Services (as they involve the provision of legal advice) relate to the law of the State (including European Union law as it forms part of the law of the State);

"Preceding Practice" means each practice to which the Firm's Practice is a Succeeding Practice;

"Principal" means:—

(*a*) the sole practitioner of any Firm which during any indemnity period carries on or carried on business as a sole practitioner and includes a sole practitioner who employs or employed one (1) or more solicitors or registered lawyers,

(*b*) every Partner of a Firm and every person held out as a Partner of a Firm that during any indemnity period carries on or carried on business as a Partnership;

"Regulations" means the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011, as the same may be amended from time to time;

"Qualified Insurer" means, in respect of an Indemnity Period, an Authorised Insurer which has entered into and duly executed a Qualified Insurers Agreement with the Law Society on or before 1 November immediately prior to the commencement of that Indemnity Period and which is effective to permit such Insurer to underwrite Qualifying Insurance;

"Qualified Insurers Agreement" means an agreement in such terms as the PII Committee may from time to time designate setting out the terms and conditions on which a Qualified Insurer may provide Qualifying Insurance to Firms in the State and the terms on which such Qualified Insurer shall participate in the Special Purpose Fund;

"Qualifying Insurance" means a Policy or Policies of insurance which (in the case of a single such Policy) includes the relevant Minimum Terms and Conditions or (in the case of a number of Policies) taken together include the Minimum Terms and Conditions in effect at the date of inception, extension, renewal or replacement of the Policy or Policies of insurance;

"Self-Insured Excess" means an amount that the Insured is required by the terms of any contract between the Insured and the Insurer to pay to the Claimant in the event of a Claim;

"Special Purpose Fund" has the meaning ascribed to it in the Regulations;

"Succeeding Practice" means a Practice that satisfies any one (1) or more of the following conditions in relation to another Practice (such other practice being a Preceding Practice for these purposes):—

(*a*) it is expressly held out as being a successor to the practice or part thereof of the Preceding Practice, or

(*b*) it is conducted by a Partnership that has a majority of Principals that are identical to those persons that were Principals of any partnership that conducted the Preceding Practice, or

(*c*) it is conducted by a sole practitioner who was the sole practitioner conducting the Preceding Practice, or

(*d*) it is conducted by a Partnership in which the sole practitioner conducting the Preceding Practice is a partner and where no other person has been held out as a successor to the Preceding Practice, or

(*e*) the Partnership which, or sole practitioner who, conducts the practice has assumed the liabilities of the Preceding Practice,

but notwithstanding the foregoing a practice shall not be treated as a Succeeding Practice for the purposes of these Minimum Terms and Conditions pursuant to paragraphs (*b*), (*c*), (*d*) or (*e*) if another practice is or was held out by the owner of that other practice as the Succeeding Practice;

"the 1995 Act" means the Consumer Credit Act 1995 (as amended);

"the 1997 Act" means the Central Bank Act 1997 (as amended);

"the 2007 Regulations" means The Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007 (Statutory Instrument No. 617 of 2007) as amended by The Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) (Amendment) Regulations 2009 (Statutory Instrument No. 384 of 2009), The Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) (Amendment No. 2) Regulations 2009 (Statutory Instrument No. 441 of 2009) and The Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) (Amendment) Regulations 2010 (Statutory Instrument No. 495 of 2010);

"Working Day" means every day, not including a Saturday, Sunday or public holiday, on which banks generally are open for the transaction of normal banking business in the State.

1.2 In these Minimum Terms and Conditions, unless the context otherwise requires:—

(*a*) words and expressions shall have the same meaning and shall be construed consistently with the same words and expressions in the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011;

(*b*) the Interpretation Act 2005 shall apply for the purpose of interpreting these Minimum Terms and Conditions as it applies to the interpretation of an act of the Oireachtas, except insofar as it may be inconsistent with the Solicitors Acts 1954 to 2008 or with these Minimum Terms and Conditions;

(*c*) a reference in these Minimum Terms and Conditions to any directive, statute, statutory provision, statutory instrument or other similar instrument includes:—

(i) any subordinate legislation made under it, and

(ii) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it either before, at or after the date of commencement of these Minimum Terms and Conditions;

(*d*) the singular includes the plural, and vice versa;

(*e*) words denoting any gender include all genders and words denoting the singular include the plural and vice versa;

(*f*) any reference to a person shall be construed as a reference to any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two (2) or more of the foregoing;

(*g*) references to a "company" include any body corporate;

(*h*) headings are inserted for convenience only and shall not affect the interpretation of these Minimum Terms and Conditions; and

(*i*) references to awareness of the Insured shall be limited to the actual knowledge of a Principal of the Firm, or any solicitor or registered lawyer employed by the Firm.

2 SCOPE OF COVER

2.1 The Insured

The person insured under each Insurance must include, and coverage under the Insurance as joint insureds must extend to, all those persons and entities set out in clause 1 under the definition of "Insured".

2.2 Civil Liability

The Insurance must indemnify each Insured against civil liability incurred by an Insured arising from any provision of Legal Services provided that:—

(*a*) a Claim in respect of such civil liability is:

(i) first made against the Insured during the Coverage Period; and

(ii) notified to the Insurer during the Coverage Period or within three (3) Working Days immediately following the end of the Coverage Period; or

(*b*) a Claim in respect of such liability is first made during or after the Coverage Period and:

(i) arises from Circumstances first notified to the Insurer during the Coverage Period; or

(ii) arises from Circumstances first notified to the Insurer within three (3) Working Days immediately following the end of the Coverage Period provided that the Insured was aware of the Circumstances during the Coverage Period.

2.3 Defence Costs

The Insurance must indemnify the Insured against Defence Costs in relation to:—

(*a*) any Claim referred to in clauses 2.2, 2.4 and 2.5; and

(*b*) any Circumstance referred to in clauses 2.2, 2.4 and 2.5,

and the Insurance shall provide that such Defence Costs will be met by the Insurer as and when they are determined, due and payable.

2.4 Preceding Practice

2.4.1 The Insurance must indemnify each Insured against civil liability to the extent that such liability arises from any provision of Legal Services in connection with a Preceding Practice, provided that:—

(*a*) a Claim in respect of such liability is:

(i) first made against an Insured during the Coverage Period; and

(ii) notified to the Insurer during the Coverage Period or within three (3) Working Days immediately following the end of the Coverage Period; or

(*b*) a Claim in respect of such liability is first made during or after the Coverage Period and:

(i) arises from Circumstances first notified to the Insurer during the Coverage Period; or

(ii) arises from Circumstances first notified to the Insurer within three (3) Working Days immediately following the end of the Coverage

Period provided that the Insured was aware of such circumstances during the Coverage Period.

2.4.2 For the purposes of such cover as is contemplated in clause 2.4, the Insurance must include:—

(*a*) each Partnership or sole practitioner who carried on the Preceding Practice;

(*b*) each trustee, nominee, service or administration company owned by the persons referred to in paragraph (*a*) from time to time;

(*c*) each director or officer of any such company as is referred to in paragraph (*b*) above from time to time;

(*d*) each Principal and former Principal of any Partnership referred to in paragraph (*a*);

(*e*) each Employee and former Employee of any Partnership or sole practitioner or company referred to in paragraph (*a*) and (*b*); and

(*f*) the estate or legal personal representatives of any person referred to in this clause 2.4.2 who is deceased or legally incapacitated.

2.4.3 The Insurance may permit the Insurer to charge an additional premium in respect of coverage for a Preceding Practice provided pursuant to this clause 2.4, but the Insurance may not provide that the Insurer can decline to indemnify the Insured or cancel, terminate or avoid the Insurance due to non-payment of any such additional premium when due.

2.5 Succeeding Practice

2.5.1 Where there is a Succeeding Practice to the Firm's Practice the Insurance must indemnify each Insured against civil liability arising from any provision of Legal Services in connection with a Succeeding Practice to the Firm's Practice, provided that:—

(*a*) a Claim in respect of such liability is:

(i) first made against an Insured during the Coverage Period; and

(ii) notified to the Insurer during the Coverage Period or within three (3) Working Days immediately following the end of the Coverage Period; or

(*b*) a Claim in respect of such liability is made during or after the Coverage Period and:

(i) arises from Circumstances first notified to the Insurer during the Coverage Period; or

(ii) arises from circumstances first notified to the Insurer within three (3) Working Days immediately following the end of the Coverage Period provided that the Insured was aware of such circumstances during the Coverage Period.

2.5.2 For the purposes of such cover as is contemplated in this clause 2.5 the Insurance must include:—

(*a*) each Partnership or sole practitioner who carries on the Succeeding Practice;

(*b*) each trustee, nominee, service or administration company owned by the persons referred to in paragraph (*a*) from time to time;

(*c*) each director or officer of any such company as is referred to in paragraph (*b*) above from time to time;

(*d*) each Principal and former Principal of any Partnership referred to in paragraph (*a*);

(*e*) each Employee and former Employee of any Partnership or sole practitioner or company referred to in paragraph (*a*) and (*b*); and

(*f*) the estate or legal personal representatives of any person referred to in this clause 2.5.2 who is deceased or legally incapacitated.

2.5.3 The Insurance may permit the Insurer to charge an additional premium in respect of coverage for a Succeeding Practice provided pursuant to this clause 2.5, but the Insurance may not provide that the Insurer can decline to indemnify the Insured or cancel, terminate or avoid the Insurance due to non-payment of any such additional premium when due.

3 MINIMUM LEVEL OF INSURANCE COVER

3.1 Minimum Level of Cover

The Amount Insured for each and every Claim (exclusive of Defence Costs) must be at least €1,500,000 (one million five hundred thousand euro).

3.2 Cover for Defence Costs

There must be no limit on the cover for Defence Costs.

3.3 Proportionate liability for Defence Costs

The Insurance may provide that liability for Defence Costs in relation to a Claim that exceeds the Amount Insured is limited to the proportion of such Defence Costs that the Amount Insured bears to the total amount paid or payable to dispose of that Claim.

3.4 No retrospective dates

The Insurance must not exclude or limit the liability of the Insurer in respect of Claims arising from incidents, occurrences, facts, matters, acts and/or omissions that occurred prior to any specified date.

3.5 No other limits

The Insurance may not apply any monetary exclusions or limits except as provided for by clauses 3.1 and 3.3 and where the Insurance is underwritten on a co-insurance basis, to the extent provided for in clause 3.6.2. For the avoidance of doubt, this clause 3.5 shall not be construed to prevent an Insured and an Insurer from agreeing that the cover shall provide for a Self-Insured Excess where this is otherwise permitted under these Minimum Terms and Conditions.

3.6 Co-insurance

3.6.1 The Insurance may be underwritten by more than one (1) Insurer, each of which must be a Qualified Insurer and the Insurance may in such circumstances provide that the Insurer shall be severally liable only for its respective proportion of liability in accordance with the terms of the Insurance and shall state the respective proportions of liability of each of the relevant Qualified Insurers.

3.6.2 Where the Insurance is underwritten jointly by more than one (1) Insurer, the Insurance must state which Qualified Insurer shall be the Lead Insurer and in addition to any proportionate limit of Defence Costs in accordance with clause 3.3, the Insurance may provide that each Insurer's liability for Defence Costs is further limited to the extent of the proportion of that Insurer's liability (if any) in relation to a relevant Claim.

4 SELF-INSURED EXCESSES

4.1 Self-Insured Excess

The Self-Insured Excess (if any) applicable to the Insurance is a matter of contract to be determined between the Insurer and the Firm in each case.

4.2 Effect of Self-Insured Excess

4.2.1 The Insurance must provide that the Self-Insured Excess does not reduce or limit the liability of the Insurer contemplated by clause 3.1.

4.2.2 The Self-Insured Excess must not apply to Defence Costs.

4.2.3 The Insurance may provide for multiple Claims to be treated as one (1) Claim for the purposes of the Self-Insured Excess on such terms as the Insurer and the Firm may agree.

4.2.4 In the case of Insurance written on an excess of loss basis, there shall be no Self-Insured Excess except in relation to the primary layer.

4.3 Payment of Self-Insured Excess to Claimant

In the event that an amount which is within the Self-Insured Excess is not paid by a Firm to a Claimant within 30 (thirty) Working Days of its becoming due, the Insurer must redress the default on the part of the Firm and make payment thereof to the Claimant, and in such circumstances, the Insurance may provide that the Insurer shall be entitled to recover any amount so paid from the Firm.

5 SPECIAL CONDITIONS

5.1 Minimum Terms and Conditions must prevail

5.1.1 The terms and conditions of the Insurance must comply with the Minimum Terms and Conditions as and to the extent prescribed by the Regulations.

5.1.2 Any provision of the Insurance that is inconsistent with the Minimum Terms and Conditions shall either be severed from the terms of the Insurance or the Insurance shall be rectified so as to comply with the Minimum Terms and Conditions.

5.1.3 The Insurance must provide that the Minimum Terms and Conditions shall always prevail in the event of a conflict between the terms and conditions of the Insurance and the Minimum Terms and Conditions.

5.2 No cancellation

5.2.1 The terms of the Insurance must provide that the Insurance or coverage cannot be cancelled unless:

(*a*) the Firm's Practice is merged into a Succeeding Practice provided that the Succeeding Practice has Insurance in compliance with the Minimum Terms and Conditions as and to the extent prescribed by the Regulations, or

(*b*) replacement Insurance complying with the Minimum Terms and Conditions as and to the extent prescribed by the Regulations commences (but only where any replacement Insurance is not or would not in the event of cancellation of the original Insurance be provided wholly or partly by the Special Purpose Fund).

5.2.2 The terms of the Insurance must further provide that any cancellation must not prejudice the accrued rights and obligations of the parties thereto as at the effective date of cancellation.

5.3 No avoidance or repudiation

Without prejudice to clause 6.17, the Insurance must provide that the Insurer is not entitled to avoid or repudiate the Insurance on any grounds

whatsoever including, without limitation, where there has been non-disclosure or misrepresentation by the Insured, whether such non-disclosure or misrepresentation is or is alleged to be innocent, negligent or fraudulent.

5.4 Rights of Insurer

5.4.1 Without prejudice to clause 5.3, the Insurance may provide that the Insurer is entitled to recover any outstanding premium or additional premium amounts from the Firm in any circumstance where (but for the operation of clause 5.3) the Insurer would have been entitled to avoid or repudiate the Insurance.

5.4.2 The Insurance may further provide that, in any situation where the Insurer becomes aware that there has been fraudulent non-disclosure or fraudulent misrepresentation to the Insurer in connection with a placement or renewal of Insurance for a Firm, the Insurer may refer the conduct of any relevant Principal of that Firm to the Law Society to permit the Law Society to take action against that Principal under the Solicitors Acts 1954 to 2008 or otherwise.

5.5 No set-off

The Insurance must provide:—

(*a*) that any indemnity amount payable to the Insured by the Insurer must be paid only to the relevant Claimant or as the Claimant may direct, and

(*b*) that the Insurer is not entitled to set off against any such indemnity amount any payment owing to the Insurer by the Insured, including, without limitation, any payment of premium due to, or any payment required to be made by the Insured to reimburse, the Insurer.

5.6 No other policy to bar recovery

Save to the extent permitted under clause 6.4, the Insurance must provide that no rights of recovery available to a Firm under another policy of insurance may bar recovery under the Insurance.

5.7 Contribution where Succeeding Practice exists

Where there is a Succeeding Practice in relation to the Firm's Practice during the Coverage Period, and as a result more than one (1) Qualifying Insurance covers a Claim or Circumstance, the Insurance may provide that contribution between Insurers shall be determined in accordance with the relative numbers of Principals of the owners of the respective constituent practices immediately prior to the relevant succession.

5.8 No denial or reduction

Subject to clause 2.2, the Insurer shall not on any grounds whatsoever, including but not limited to the following:—

(*a*) any failure to notify a Claim or Circumstance within a prescribed period, or

(*b*) any breach of any term or condition of the Insurance, or

(*c*) any failure to pay any part of the premium in relation to the Insurance

be entitled to reduce or deny its liability under the Insurance, except in circumstances where a prescribed exclusion contemplated by clause 6 applies.

5.9 Coverage Period

The Coverage Period must run from the date of inception of the relevant Insurance and must expire no later than 24 months from the date of inception of the relevant Insurance.

5.10 Contesting Liability

A Firm or an Insured shall not be required against its wish to contest the issue of liability in any legal or arbitration proceedings arising from any Claim unless a solicitor or a member of the Irish Bar (as mutually agreed upon between the Firm and the relevant Insurer, or failing agreement, to be appointed by the Chairman of the Bar Council of Ireland) shall advise that such proceedings or arbitration should be contested.

6 EXCLUSIONS

6.1 No other exclusions

The Insurance must not exclude or limit the liability of the Insurer on any basis whatsoever save where and to the extent that any Claim or related Defence Cost is proved to have arisen from one (1) or a number of the matters set out in this clause 6.

6.2 Death or bodily injury

The Insurance may exclude all and any liability of any Insured for causing death or bodily injury, save that the Insurance must cover liability for psychological injury or emotional distress (including but not limited to stress-related claims).

6.3 Property

The Insurance may exclude liability of the Insurer to indemnify for any act or omission which results in or contributes to damage to, or destruction or physical loss of any property of any kind whatsoever, other than property in the care, custody or control of any Insured in connection with the

Firm's Practice and not occupied or used in the course of the Firm's Practice, unless such liability is occasioned by the Insured being in breach of professional duty in the performance of or failure to perform Legal Services.

6.4 Previous cover

The Insurance may exclude liability in respect of Claims where another professional indemnity insurance contract for a period earlier than the Coverage Period entitles the Insured to be indemnified in respect of the same Claim. Save as specified in this clause 6.4, the Insurance must comply with clause 5.6.

6.5 Fraud or dishonesty

The Insurance may exclude liability of the Insurer to indemnify all Insureds under the relevant Insurance to the extent that any civil liability or related Defence Costs arise from the dishonesty of or a fraudulent act or omission committed or condoned by any Insured.

6.6 Trading debts

The Insurance may exclude liability of the Insurer to indemnify any Insured against any trading loss or personal debt incurred by the Insured.

6.7 Partnership Agreement

The Insurance may exclude liability of the Insurer to indemnify the Insured against any actual or alleged breach or other relief in respect of disputes relating to the membership of and rights and obligations relating to membership of, the Firm, or disputes relating to or arising out of the partnership agreement between any two (2) or more persons comprising or formerly comprising the Firm.

6.8 Solicitors Acts

Save as specifically provided in this clause, the Insurance may generally exclude liability of the Insurer to indemnify the Insured against any loss occurring as a result of any process or proceedings brought against the Insured by or on behalf of the Law Society or any other person so entitled to ensure compliance with, or consequent on the breach (or alleged breach) by the Insured of any provisions of the Solicitors Acts 1954 to 2008 or any regulations made thereunder or in respect of Misconduct (including, for the avoidance of doubt, any costs incurred by an Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in sub-clause (*c*) of the definition of "Claim"). However, the Insurance must specifically indemnify each Insured for any awards made under the provisions of the Solicitors Acts 1954 to 2008 for compensation or restitution to clients or any other obligations that may be imposed on solicitors or registered lawyers by statute from time to time to compensate or make restitution to clients.

6.9 Insured acting as their own lawyer

The Insurance may exclude liability of the Insurer to indemnify the Insured against any liability arising in respect of a transaction where the Insured has acted as his or her own lawyer save and except where another solicitor or registered lawyer in the Firm concerned has bona fide acted at arm's length for the Insured concerned in respect of any such transaction or where the Claim is by a bona fide third party in respect of such transaction.

6.10 Claims/Exposure to risk outside Ireland

The Insurance may exclude liability of the Insurer to indemnify the Insured against any loss occurring or any liability arising in connection with:—

(*a*) any part of the Firm's Practice carried on from offices of the Firm located outside the Republic of Ireland, or

(*b*) any advice given or action taken or omitted to be taken by the Insured in relation to any law other than the law of the Republic of Ireland (for this purpose the law of the Republic of Ireland includes European Union law where the same forms part of the law of the Republic of Ireland).

6.11 Employment

The Insurance may exclude liability of the Insurer to indemnify the Insured against any Claim or Circumstance arising out of:—

(*a*) a wrongful dismissal, or

(*b*) any other alleged or actual breach, or any other relief in respect of any contract of employment (including but not limited to a stress-related claim brought by an Employee against a Firm where such claim arises out of the employment relationship between that Employee and the Firm),

where such dismissal or breach is alleged or such relief is sought against the Insured.

6.12 Contracts

The Insurance may exclude liability of the Insurer to indemnify the Insured against:—

(*a*) wrongful termination by the Insured of, or

(*b*) any other actual or alleged breach by the Insured of, or

(*c*) any other relief claimed against the Insured in respect of

any contract for supply to or use by the Insured of services and/or materials and/or equipment and/or other goods.

6.13 Directors' liability

The Insurance may exclude liability of the Insurer to indemnify any natural person in their capacity as a director or officer of a company, other than an administration, nominee, service or trustee company in respect of which coverage is required to be extended pursuant to these Minimum Terms and Conditions, except that:—

(*a*) the Insurance must cover any liability of that person which arises from a breach of duty in the performance of or failure to perform Legal Services, and

(*b*) the Insurance must cover each other Insured against any vicarious or joint liability.

6.14 War, Terror, Asbestos, Radiation

The Insurance may exclude liability of the Insurer to indemnify any Insured in respect of losses directly or indirectly caused by:—

(*a*) war, riot, civil commotion and other hostilities,

(*b*) terrorism,

(*c*) asbestos or any actual or alleged asbestos related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos, and

(*d*) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or from the radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof,

provided that in each case any such exclusion or endorsement does not exclude or limit any liability of the Insurer to indemnify the Insured against civil liability or related Defence Costs arising from any actual or alleged breach of duty in the performance of (or failure to perform) Legal Services or failure to discharge or fulfil any duty incidental to the Firm's Practice.

6.15 Undertakings to Financial Institutions in respect of Commercial Property Transactions

Certain capitalised terms in this clause are defined in clause 6.16.

(*a*) Undertakings to Financial Institutions in respect of Commercial Property Transactions before 1 December 2009

The Insurance may exclude the liability of the Insurer to indemnify all Insureds under the relevant Insurance in respect of Claims arising directly or indirectly as a result of the provision by any Insured of a Relevant Undertaking in the course of a Commercial Property Transaction, before 1 December 2009, to a Financial Institution or to any director, officer, employee, agent or advisor of a Financial Institution, where:—

(i) the Relevant Undertaking was given by that Insured (acting either for a client borrower alone, or for a client borrower and a Financial Institution jointly) in connection with the provision by the relevant Financial Institution of financial accommodation to that Insured's client to permit that client to effect the relevant Commercial Property Transaction; and

(ii) such Claims are made by a Financial Institution; and

(iii) to the extent that the Insurer can demonstrate (and for the avoidance of doubt, the burden of proof in this regard shall rest with the Insurer) any civil liability or related Defence Costs arise from any dishonest, fraudulent, criminal or malicious act or omission by that Insured, or any acts or omissions which were done by that Insured knowing them to be wrongful.

For the avoidance of doubt, nothing in this clause 6.15(*a*) shall be construed to permit liability to be excluded in circumstances where any Relevant Undertaking is provided to a Financial Institution in the course of the Insured's sole representation of that Financial Institution as the Insured's own client.

(*b*) Undertakings to Financial Institutions in respect of Commercial Property Transactions on or after 1 December 2009 but before 1 December 2010

The Insurance may exclude the liability of the Insurer to indemnify all Insureds under the relevant Insurance in respect of Claims arising directly or indirectly as a result of the provision by any Insured of a Relevant Undertaking in the course of a Commercial Property Transaction, on or after 1 December 2009, to a Financial Institution or to any director, officer, employee, agent or advisor of a Financial Institution, where the Relevant Undertaking was given by that Insured (acting either for a client borrower alone, or for a client borrower and a Financial Institution jointly) in connection with the provision by the relevant Financial Institution of financial accommodation to that Insured's client to permit that client to effect the relevant Commercial Property Transaction.

For the avoidance of doubt nothing in this clause 6.15(*b*) shall be construed to permit liability to be excluded in circumstances where any Relevant Undertaking is provided to a Financial Institution in the

course of the Insured's sole representation of that Financial Institution as the Insured's own client.

(*c*) Undertakings in breach of the Commercial Property Regulations on or after 1 December 2010

The Insurance may exclude the liability of the Insurer to indemnify all Insureds under the relevant Insurance in respect of Claims arising directly or indirectly as a result of any Insured acting in breach of the Commercial Property Regulations.

6.16 Interpretation of Clause 6.15

For the purposes of clause 6.15 the following terms have the following meanings:

"Accountable Trust Receipt" has the meaning ascribed thereto in the Commercial Property Regulations;

"Certificate of Title" has the meaning ascribed thereto in the Commercial Property Regulations;

"Commercial Development" has the meaning ascribed thereto in the Commercial Property Regulations;

"Commercial Property Transaction" has the meaning ascribed thereto in the Commercial Property Regulations;

"Relevant Person" has the meaning ascribed thereto in the Commercial Property Regulations;

"Relevant Undertaking" has the meaning ascribed thereto in the Commercial Property Regulations;

"Representative" has the meaning ascribed thereto in the Commercial Property Regulations;

"Residential Property" has the meaning ascribed to such term in the Commercial Property Regulations;

"Residential Property Transaction" has the meaning ascribed thereto in the Commercial Property Regulations;

"Solicitor" has the meaning assigned to it in Section 3 of the Solicitors (Amendment) Act, 1994 and includes two (2) or more Solicitors acting in partnership or association; and

"Undertaking" has the meaning ascribed to such term in the Commercial Property Regulations.

6.17 Misrepresentation and Non-Disclosure

The Insurance may exclude liability of the Insurer to indemnify all Insureds under the relevant Insurance in respect of any Claim by a Financial Institution in circumstances where the Insurer can demonstrate (and for the avoidance of doubt, the burden of proof in this regard shall rest with the Insurer) that any Insured was guilty of any material misrepresentation or material non-disclosure in placing the Insurance, save that liability shall not be excluded on the grounds of innocent misrepresentation or innocent non-disclosure on the part of the Insured. For the avoidance of doubt, the effect of this clause 6.17 shall be that no such Claims shall be valid as against a Qualified Insurer.

7 GENERAL CONDITIONS

7.1 General Conditions

The Insurance may contain such general conditions as are agreed between the Insurer and the Firm, but the Insurance must provide that the special conditions required by clause 5 prevail in the event of any inconsistency.

7.2 Reimbursement

7.2.1 The Insurance may provide that each Insured who committed or condoned an innocent or negligent non-disclosure or misrepresentation or other innocent or negligent breach of the terms and conditions of the Insurance will reimburse the Insurer to the extent that is just and equitable, having regard to the prejudice caused to the Insurer's interests by such non-disclosure, misrepresentation or breach, provided that no Insured shall be required to make any such reimbursement to the extent that any such breach of the terms or conditions of the Insurance was in order to comply with any applicable rules or codes laid down from time to time by the Law Society.

7.2.2 The Insurance may provide that each Insured who committed or condoned a dishonest or fraudulent non-disclosure or misrepresentation or other dishonest or fraudulent breach of the terms and conditions of the Insurance will be required to indemnify the Insurer in full in respect of any sums paid by it in or in connection with the discharge of any Claim pursuant to the Insurance.

7.2.3 The Insurance must provide that no non-disclosure, misrepresentation, breach, dishonesty, act or omission will be imputed to a company unless it was committed or condoned by, in the case of a company, all directors and officers of that company.

7.2.4 The Insurance must provide that any right of reimbursement contemplated by this clause 7.2 against any Employee, each former Employee, and each person who becomes an Employee of the Firm during the Coverage Period, or their personal representatives, is limited to the extent that is just and equitable having regard to the prejudice caused to the Insurer's interests by that person having committed or condoned

(whether knowingly or recklessly) dishonesty or any fraudulent act or omission.

7.3 Reimbursement of Defence Costs

The Insurance may provide that each Insured will reimburse the Insurer for Defence Costs advanced on that Insured's behalf that the Insurer is not ultimately liable to pay.

7.4 Reimbursement of the Self-Insured Excess

The Insurance may provide for those persons who are Principals of the Firm at any time during the Coverage Period to reimburse the Insurer for any Self-Insured Excess paid by the Insurer on an Insured's behalf.

7.5 Reimbursement of monies paid pending dispute resolution

The Insurance may provide that each Insured will reimburse the Insurer following resolution of any coverage dispute for any amount paid by the Insurer on that Insured's behalf that, on the basis of the resolution of the dispute, the Insurer is not ultimately liable to pay.

7.6 Claims Reports

The Insurer shall provide a report (a "Claims Report") to any Firm to which it has issued a Policy either in the then current or in any previous Indemnity Period, within a reasonable time from receiving a request to do so, setting out (as applicable), as at the date specified in the Claims Report:—

7.6.1 a summary of each Claim of which the Insurer is aware made against the Firm under each Policy;

7.6.2 the amount reserved by the Insurer against each Claim;

7.6.3 the basis on which each such amount is calculated (for example, whether the figure represents a loss actually incurred, an estimate of probable maximum loss, or any other basis of reserving);

7.6.4 whether or not each such amount includes Defence Costs;

7.6.5 whether each such amount includes or is in excess of the amount of any excess or deductible that may apply in relation to such Claim, and the amount of any such excess or deductible; and

7.6.6 any amounts paid out in relation to each Claim, in each case indicating whether such sums include any excess or deductible due from but not paid by the Firm.

7.7 In providing Claims Reports, the Insurer shall use its reasonable endeavours to provide all of the information set out in clause 7.6, but shall not be required to provide any part of that information to the extent that

doing so would not be reasonably practicable having regard to the manner in which Claims information is stored on the computer systems of the Insurer.

8 DISPUTE RESOLUTION

8.1 Arbitration

The Insurance must contain the following arbitration clause:

All disputes and differences arising under or in connection with this Policy shall be referred to the decision of a sole arbitrator to be agreed between the parties or, failing agreement between the parties within 14 (fourteen) days of either party having made a request in writing to the other party to concur in the appointment of an arbitrator, a person to be nominated by the Chairman for the time being (or failing the Chairman any other member of the Committee) of the Chartered Institute of Arbitrators (Irish Branch) upon the application of either party.

Every or any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2010 or any act or statutory provision amending same and shall be an arbitration conducted in Dublin, Ireland in the English language and governed by the Arbitration Act 2010.

8.2 Related Disputes

The Insurance must provide that any dispute between the Insured and the Insurer as to coverage of any Claim or Circumstance under the Insurance shall be heard and determined in conjunction with any other related dispute between any insured party and that party's insurer.

8.3 Conduct of Claims

The Insurance must provide that, pending resolution of any coverage dispute and without prejudice to any issue in dispute, the Insurer shall if so directed by the Law Society conduct any Claim against the Insured, advance Defence Costs to the Insured and if appropriate compromise and/or pay any Claim against the Insured, such a direction by the Society to be known as a Direction. The Society may make such a Direction if it is satisfied, in its absolute discretion, that:—

8.3.1 the party requesting the Direction has taken all reasonable steps to resolve the dispute with the other party;

8.3.2 there is a reasonable prospect that the coverage dispute will be resolved or determined in the Insured's favour; and

8.3.3 it is fair and equitable in all the circumstances for such Direction to be given.

The Insurance may provide that the Insured shall be required to afford reasonable co-operation to the Insurer in relation to the handling of any Claim against the Insured, subject to the Insurer agreeing to meet the Insured's reasonable costs of such co-operation, and the Insurance may further provide that the Insurer shall be entitled to recover from the Insured by way of damages a sum equal to the Insurer's loss arising from or connected with the Insured's failure to co-operate as required by the Insurance. For the avoidance of doubt, the Insurance may not permit the Insurer to refuse to pay any claim, or to cancel, terminate or avoid the Insurance, due to the Insured's failure to co-operate as required by the Insurance.

APPENDIX 2

RISK MANAGEMENT AUDIT TERMS OF REFERENCE

(*a*) Each risk management audit report should estimate the number of files held by the firm and break these down statistically, giving the percentage of total files and the percentage of gross fees of the firm falling under such different categories of business as may be appropriate.

(*b*) Each risk management audit report should give an account of the methods of file maintenance and post and communications delivery used by the firm and should confirm:—

(i) that all filing is up to date and is contained in fire-proof storage facilities; and

(ii) that provision has been made for back-up storage of all electronic files and communication records held by the firm.

(*c*) Each risk management audit report should give details of any diary system used by the firm and set out details of how the diaries of any solicitor, registered lawyer, principal or other person employed by or engaged in the practice of the firm (including any consultants) is managed and monitored during any absences.

(*d*) Each risk management audit report should set out a list of the principals of the firm and of every staff member employed by or engaged in the practice of the firm (including any consultants) and should list and summarise:—

(i) their roles and years of service;

(ii) their qualifications;

(iii) any other relevant information.

(*e*) Each risk management audit report should include an account of interviews held with each principal of the firm and any other staff member employed by or engaged in the practice of the firm believed by the risk management auditor to be relevant to obtain a proper view of the levels of risk management pertaining within the firm.

(*f*) Each risk management audit report should include a list of the files closed within the firm during the 12 months preceding the date of the risk management auditor's visit to the firm and these files should be examined by the risk management auditor to obtain a summary view of them from a risk management perspective.

(*g*) Each risk management audit report should include an account of an examination by the risk management auditor of the firm's accounting system, indicating that access to ledgers, account cards or any relevant electronic record storage system was obtained, and further indicating any areas of concern that arise from a risk management perspective.

(*h*) Each risk management audit report should indicate whether a centralised record of undertakings given by the firm is maintained, and should include an examination of such record, indicating any areas of concern that arise from a risk management perspective.

(i) Each risk management audit report should give an account of any files identified by the risk management auditor as being of concern from a risk management perspective, and should report as to the extent of liability involved in each case.

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Law Society of Ireland

Appendix 2

Run-off cover rules

THE RUN OFF COVER RULES

RUN-OFF COVER RULES

Indemnity Period 2011/2012

Pursuant to the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011 (the "**Regulations**") the Professional Indemnity Insurance Committee has determined that, pursuant to Regulation 5(g) of the Regulations, the following terms and conditions shall apply to the *run-off cover* offered to *firms* for the *indemnity period* or part thereof commencing 1 December 2011.

For the avoidance of doubt, undefined italicised terms herein shall have the meaning ascribed to such terms by the Regulations.

1. The Run-off Fund

The *ROF* shall be a constituent part of the *SPF* in the *indemnity period* commencing on 1 December 2011 and shall be contributed to by the *qualified insurers* in proportion to their market share as calculated in accordance with Schedule 2 of *the qualified insurers agreement*. It shall provide *run-off cover* to *ROF eligible firms* and to *ARP eligible firms*.

2. Notice of Closure

A *firm* which intends to cease *practice* shall provide the *SPF manager* with a written notice of its intention to cease *practice* by whichever is the earliest of the following:

(i) at least 60 days prior to ceasing *practice;* or
(ii) at least 60 days prior to the expiry of its *coverage period*.

Notice of closure can be provided by the *firm* to the *SPF manager* in the form of the Notice of Closure Form at Schedule 1 or in any written form provided that it includes the information contained in the Notice of Closure Form.

The *firm* shall provide to the *SPF manager* its most recent completed proposal form and its most recent policy of *qualifying insurance* with such notice of closure.

3. Period of Cover

Run-off cover in respect of each firm shall commence at the expiry of the *coverage period* during which the *firm* ceases *practice* or on the date of expiry of its *ARP coverage,* as the case may be.

4. Paying for Run-off Cover

No *run-off firm* shall be required to pay a premium for *run-off cover.*

5. Self-insured Excess

The *ROF cover* issued to *ROF eligible firms* shall have a self-insured excess equal to the self-insured excess applicable to the *qualifying insurance* held by the *firm* at the time it ceased *practice.*

ARP run-off cover issued to an *ARP run-off eligible firm* shall have a self-insured excess equal to the self-insured excess applicable under the *ARP coverage*.

The *SPF manager* shall pay any amount that is within the self-insured excess of any *firm's run-off cover* to a claimant but shall be entitled to recover any amount so paid from the *firm*.

6. Additional self-insured excess

Firms obtaining *run-off cover* through the *ROF* will not be required to bear any additional excess for *run-off cover* provided they meet the following obligations:

(i) notification of closure to the *SPF manager* in accordance with Clause 2 above;

(ii) compliance with the *close of practice guidelines* as published by the *PII committee;*

(iii) satisfaction of the *minimum common risk management standard*; and

(iv) fully co-operate with the *SPF manager* in the conduct of claims and notify any claim or circumstances required to be notified to the *SPF manager* within the period prescribed in Clause 8 of these rules.

Where a *firm* fails to comply with the obligations set out in Clause 6(i) and/or Clause 6(iii), the additional self-insured excess set out opposite that obligation in Schedule 2 shall apply to that *firm*'s *run-off cover* in respect of its failure to comply with that obligation.

Where, in the opinion of the SPF manager, a firm fails to comply with the obligations set out in Clause 6(ii) and/or Clause 6(iv), the SPF manager shall determine the additional self-insured excess to apply to that firm's run-off cover in respect of its failure to comply with that obligation. The additional self-insured excess to apply to a *firm*'s *run-off cover* in respect of its failure to comply with its obligations in Clause 6(ii) and/or Clause 6(iv) shall in each case not exceed the maximum amount set out opposite that obligation in Schedule 2.

The maximum additional self-insured excess that may apply to any one *firm's run-off cover* in respect of its failure to comply with its obligations in Clauses 6(i) to 6(iv) is €90,000.

The additional self-insured excess to apply to any one *firm's run-off cover,* as determined in accordance with this Clause 6, shall be applied by the *SPF manager* on an aggregate basis.

The additional self-insured excess to apply to any one *firm's run-off cover,* as determined in accordance with this Clause 6, shall apply to that firm's *run-off cover* in each *indemnity period* in which that firm holds *run-off cover* from the *ROF* unless otherwise determined by the *SPF manager*, at its discretion, following a review carried out by the *SPF manager* in accordance with this Clause 6.

Where the *SPF manager* has imposed an additional self-insured excess pursuant to a failure to meet the obligations in Clause 6(ii) and/or Clause 6(iv), the *SPF manager* shall review the *firm*'s compliance with these obligations on a regular basis in order to determine, at its discretion, whether there should be any revision of the additional self-insured excess amount. Any changes to be made shall be at the discretion of the *SPF manager*.

The *SPF manager* shall not be required to pay any amount that is within the additional self-insured excess in respect of claims made by *financial institutions.*

7. Risk management audits

The *ROF* shall be responsible for the cost and expenses of the *firm*'s *risk management audit.*

The *SPF manager* shall pay, on behalf of the *qualified insurers,* the costs of the first *risk management audit.*

The *SPF manager* shall pay, on behalf of the *qualified insurers,* the costs of any further *risk management audit* carried out in relation to the *practice* of a *firm*. However, the *firm* shall be required to indemnify the *SPF manager* on demand in respect of any costs, fees, expenses, losses or liabilities incurred by the *SPF manager* in relation to the conduct of that *risk management audit* or to reimburse the *SPF manager* thereafter. Every principal of that *firm* shall be responsible for ensuring that the *firm* discharges its liabilities to the *SPF manager.*

Risk management auditors shall be appointed by the *SPF management committee* on such terms as may be determined by the *SPF management committee.*

8. Claims

Every *firm* that holds *run-off cover* must notify any claim or circumstance to the *SPF manager* as soon as is reasonably practicable after the *principal* of the *firm,* or any solicitor or registered lawyer employed by the *firm* at the time it ceased practice first becoming aware of such claim.

Any interested party may notify a claim or circumstance on behalf of a *run-off firm* to the *SPF manager* and neither the *SPF manager* nor any *qualified insurer* may dispute the validity of such notification solely on the grounds that it was not made directly by the *firm*.

Every *firm* that holds *run-off cover* must confirm to the *SPF manager* at the end of each *indemnity period* that they are not aware of any claims or circumstances which have not been reported.

9. Provision of additional information

Every *run-off firm* shall provide to the *SPF manager* such information as the *SPF manager* may from time to time in its discretion reasonably require to deal efficiently and effectively with that *firm*'s membership of the *run-off fund.*

10. Cancellation of run-off cover

Subject to Clause 11, *run-off cover* cannot be cancelled, except on terms agreed between the *SPF manager* and the *firm* where the following conditions are met:

(a) i) The *firm* shall obtain replacement qualifying insurance in accordance with the minimum terms and conditions on the date of cancellation of the relevant *run-off cover;*

ii) The *qualified insurer* under the replacement *qualifying insurance* shall confirm in writing to the *firm* and to the *SPF manager* that they are providing *qualifying insurance* on the basis that the *firm*'s *practice* is to be treated as a continuation of the *firm*'s practice prior to the cessation thereof and that the *qualified insurer* shall be liable for any claims against the *firm* arising from matters that occurred prior to the cessation and that accordingly they will be liable for any claims against the *firm* arising from matters that occurred prior to the cessation; and

iii) The *qualified insurer* under the replacement insurance shall provide any required confirmations of coverage to the *Law Society* pursuant to the Regulations; or

(b) The *firm* ceases to be a ROF Eligible Firm.

11. Phoenix Firms

Run-off cover held by a *run-off firm* may be cancelled by the *SPF Manager* where, pursuant to Regulation 3(m) of the Regulations, the *PII Committee* decides to treat another firm as a *phoenix firm* to the *run-off firm*.

In the event of such cancellation, the *SPF manager* shall honour and discharge any amount due and owing in respect of any claim or circumstance notified to the *SPF Manager* within the period from the commencement of the *run-off cover* until its cancellation by the SPF Manager pursuant but the *SPF Manager* shall be entitled to recover any amount so paid from the *run-off firm* or from those persons who were *principals* of the *run-off firm* immediately prior to the date it ceased practice.

Where the *PII Committee* decides to treat another firm as a *phoenix firm* to a *run-off firm* the former *principals* for the *run-off firm* shall procure that the *phoenix firm* establishes and maintains professional indemnity insurance which includes cover in accordance with the *minimum terms and conditions* for claims made against the *run-off firm* from the date it ceased practice. A *phoenix firm* shall not be in compliance with its requirement to establish and maintain *qualifying insurance* with a *qualified insurer* pursuant to the Regulations where it fails to comply with this requirement.

12. Management of the ROF

The *SPF manager* shall be responsible for managing and administering the *ROF* and its duties shall include, but shall not be limited to, the following:

i) Issue *run-off cover* and related documentation to *firms* in the *ROF* on behalf of the *qualified insurers* participating in the *ROF*;

ii) Receive notice of, negotiate, settle and pay claims on behalf of all *qualified insurers* participating in the *ROF*;

iii) Conduct any claims against a *firm* in the *ROF*, advance *defence costs* and, if appropriate, compromise and pay any such claim in the normal course on behalf of each relevant *qualified insurer*; and

iv) Do all things necessary and incidental to any of the above and any other such things as may be necessary from time to time to facilitate the operation of the *ROF*.

13. Reporting to qualified insurers

The *SPF manager* shall, on or about the end of each calendar quarter (or within 10 working days of the end of each such quarter) provide a bordereau to each *qualified insurer* participating in the *ROF* setting out the claims made or notified in respect of that *indemnity period* (including claims made in respect of *financial institutions*) and the establishment, administration and management costs and expenses incurred by the *SPF manager* relating to that *indemnity period*. The obligation to report on those matters will remain so long as any claims made on the *ROF* incepting in that *indemnity period* remain outstanding.

14. Reporting to the Law Society

The *SPF manager*, acting as an agent for the *qualified insurers*, will provide such data to the *Law Society* as the *Law Society* may request from time to time in relation to the *run-off cover*, *firms* in the *ROF*, *run-off firms* where the *SPF manager* has arranged cover through the *ROF* and *defaulting run-off firms* in respect of which the *SPF manager* has arranged cover through the *ROF*.

15. Disclosure of information from the Law Society to the qualified insurers

The *Law Society* may establish an information service to disclose certain information to the *qualified insurers* in such a manner as it may, in its absolute discretion, deem fit, including the following:

i) On or before 31st January in each *indemnity period*, provide a *qualified insurer* with details of the identity of *run-off firms* which maintained insurance with that *qualified insurer* in the prior indemnity period.

ii) Provide *qualified insurers* with the details of the identity of any *run-off firm* which has had all of its principals suspended or struck off the roll.

SCHEDULE 1

Notice of Closure Form

Dear Sirs

Pursuant to Regulation 8(a) of the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011 (the "**Regulations**") , we hereby give notice of our intention to cease practice on [*insert date*].

We hereby confirm that this notice is given at least 60 days prior to the earliest to occur of the following:

(a) the cessation of the firm's practice; or

(b) the expiry of the policy of professional indemnity insurance or ARP coverage held by the firm.

We further confirm that no person who is a principal of the firm at the time it ceases practice shall carry on a practice which is largely similar to the practice of the firm or which has succeeded the practice of the firm such that it could be treated as a phoenix firm pursuant to Regulation 3(m) of the Regulations.

We enclose with this notice the firm's most recently completed proposal form for professional indemnity insurance and most recent policy of professional indemnity insurance.

Yours faithfully

SCHEDULE 2

Self Insured Excess

	Obligation:	Maximum Additional Excess per Indemnity Period
1.	Provide the *SPF manager* with a written notice of its intention to cease *practice* to include such information as contained in the Notice of Closure Form at Appendix 1 of these terms. This notice must be accompanied by the following: (i) the *firm*'s most recent completed proposal form; and (ii) the policy of *qualifying insurance* held by the *firm* at the time it ceased *practice.*	€15,000
2.	Comply with the *close of practice guidelines* as published by the *PII committee.*	€30,000
3.	Satisfaction of the minimum common risk management standard. published in accordance with the Regulations.	€15,000
4.	Fully co-operate with the *SPF manager* in the conduct of claims and notify any claim or circumstances required to be notified to the *SPF manager* within the period prescribed in Clause 8 of these rules.	€30,000

Appendix 3

Close of practice guidelines

Law Society of Ireland

CLOSE OF PRACTICE GUIDELINES

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1

Introduction

The purpose of the Run-off Fund ("ROF") is to provide run-off cover to firms that meet the necessary criteria. Firms with succeeding practices cannot avail of run-off cover through the ROF.

Firms obtaining run-off cover through the ROF will not be required to bear any additional self-insured excesses for run-off cover provided that they meet the criteria as laid out in Regulation 8(f) of the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011 [S.I. No.409 of 2011], one of which is the requirement to comply with close of practice guidelines.

Close of practice guidelines are defined in the regulations to mean "*the close of practice guidelines to be published by the PII Committee from time to time*", and are listed in this document. These guidelines were approved by the PII Committee on 23rd January 2012.

Failure to comply with these guidelines in full may result in the imposition of additional self-insured excesses.

It should be noted that run-off cover provided by the ROF is for the minimum sum insured (currently €1,500,000). If firms require cover in excess of this amount, they will need to make their own separate arrangements.

2

Long Term Planning

2.1 Types of closure

Firms close for a variety of reasons, some involuntary and some voluntary including:

(a) Principal's illness.

(b) Principal's death.

(c) Practice is no longer viable.

(d) Regulatory action.

(e) Life events.

(f) Decision to retire.

2.2 Planning for emergencies

A sole practitioner/principal who is planning prudently for the future of his/her firm should put measures in place to deal with the closure of their firm in the event of serious illness or death or a prolonged absence from their firm due to ill health that could otherwise result in the closing of the firm. These measures should include the following:

(a) A will appointing a solicitor as one of the executors to deal with the disposal of the practice after the death of the sole practitioner/principal.

(b) Agreement for management – to be used if the solicitor is likely to return to practice.

(c) Power of attorney – to be used if the sole practitioner/principal will not, or is unlikely to, return to practice in his/her former role.

(d) Enduring power of attorney – to be used if the solicitor is not *compos mentis* and will not, or is unlikely to return to practice

(e) Insurance policies – such as an income protection insurance (known as permanent health) or 'keyman' policy.

(f) Authority to operate bank accounts.

More comprehensive information on these recommended measures can be found in Appendix 1. It is never too early for firms to prepare such measures and it is strongly recommended that such measures are prepared by firms as soon as they commence practice.

2.3 Wind-down plan

Firms should have a wind-down plan in place in readiness for a decision to voluntarily close the firm in the future. Further information on the preparation of a wind-down plan can be found in Appendix 2. Any wind-down plan put in place should be periodically reviewed and updated by the firm.

2.4 Budget for costs

All firms should budget for the costs that will be associated with a voluntary or involuntary closure in the future. These may include the following:

(a) Accountant's fees for the preparation of a closing reporting accountant's report.

(b) Staff redundancies, if applicable.

(c) Salaries of personnel to do the closure work.

(d) Destruction exercise for closed files.

(e) Where the firm has been paid to carry out certain work, but this has not been done, the firm may be responsible for the fees of any new solicitor employed by the client to do that work, including dealing with outstanding undertakings.

In a wind-up by file distribution (or where some of the files are not transferred to another firm), the following additional costs may be incurred:

(a) Circularising the current clients- secretarial, stationery and postage costs.

(b) Distribution of current files to clients, or new firms nominated by them.

(c) Distribution of clients' monies.

(d) Arrangements for storage of closed files which cannot be destroyed, which must be transferred to the control of a solicitor with a current practising certificate.

2.5 Appoint a nominee

All firms should appoint a nominee to be available to arrange that the work involved is carried out, should they, as partners or principal, become unavailable.

Ideally, a nominee should be in place from the date that a firm opens, so that if the partners or principal are not in a position to be personally involved in their firm's closure, for example because of illness, their nominee can take charge to make decisions and arrange for the work involved in closing the practice to be done.

Firms may enter into reciprocal arrangements with other firms to act as each other's nominee. However, it should be remembered that the duties being undertaken may be onerous.

Alternatively arrangements may be made with a firm to provide a professional service should the need arise with the cost of such a service budgeted for by the firm closing down.

It is important that the Law Society, a member of staff and a member of the solicitor's family should be informed of the identity of this nominee.

3

Pre-closure procedures

A firm ceasing practice should carry out the following procedures before the date of cessation.

3.1 Undertakings

A list of outstanding undertakings should be drawn up and firms should seek to ensure compliance with all outstanding undertakings given by the firm before the firm closes.

It should be noted that the partners/principals of a firm remain liable in conduct for undertakings, even after closure. If a solicitor wishes to remain in practice until all undertakings given by the firm have been complied with, they must continue to have a practising certificate and PII in place to complete such undertakings, even if they are not open for new business. In the absence of such measures, partners/principals of a firm may be directed by a court or by one of the regulatory committees of the Society to pay fees for any new firm to carry out outstanding legal work necessary to ensure compliance with any undertakings still outstanding after the firm closes.

3.2 Finalising work on files

Firms should seek to finalise as many files as possible before the firm closes.

3.3 Closing down client accounts

Firms should commence work on closing down client bank accounts before the date of cessation, with particular focus on dealing with any dormant balances. It should be noted that the firm should cease to hold, control, receive or pay client monies within 2 months of the date of cessation.

3.4 Notifying the Law Society

The firm should notify the Society in writing that they intend to cease practice and the intended date of cessation prior to the date of cessation, and any changes to this date of cessation should also be notified in writing to the Law Society.

The firm should also provide the Society with the partners'/principal's home addresses or other correspondence addresses for corresponding with the partners/principal in the future.

3.5 Notifying insurers

The firm must notify their insurer in writing that the firm intends to cease practice and the intended date of cessation prior to the date of cessation.

It should be noted that the professional indemnity insurance ("PII") cover in place at the time of cessation remains in place until the expiry date of the policy.

3.6 Notifying the Special Purpose Fund Manager

In the case of a firm ceasing practice that will require run-off cover, the firm must notify the Special Purpose Fund ("SPF") Manager that the firm intends to cease practice and the intended date of cessation by whichever is the earlier of the following:

(a) at least 60 days prior to ceasing practice; or

(b) at least 60 days prior to the expiry of the coverage period for the firm.

The firm may use the notice of closure form to notify the SPF Manager. This form is appended to the run-off rules and to these guidelines (Appendix 3). The use of this form is not compulsory and the same information provided in a different format will be acceptable.

The notification of closure must also include a copy of the firm's last proposal form and last insurance policy, together with details of any claims or notifications made during the indemnity period leading up to closure.

3.7 Additional information to be provided to SPF Manager

Within a reasonable time following the notification of closure, and before the date of cessation, the firm must provide confirmation to the SPF Manager that the firm is not aware of any other claims or circumstances which may give rise to future claims and the firm must continue to notify its insurers of any such claims or circumstances in the period until expiry of its policy.

The firm must report any matters to the SPF Manager which come to their attention with regard to claims, notifications or circumstances which may give rise to claims, following commencement of coverage of the firm by the Run-off Fund.

3.8 Terms and conditions of run-off cover

It should be noted that terms and conditions of the run-off cover as provided by the Run-off Fund will reflect the minimum terms and conditions for each subsequent indemnity period.

4

Closure procedures

A firm ceasing practice should carry out the following procedures from the date of cessation. In the case of file distribution, this may commence before the date of cessation.

4.1 Cease all legal services

(a) Files

From the date of cessation, no work may be carried out on any file, no matter how urgent. This includes answering Land Registry queries and, especially, certifying title. Once the firm has closed, even if a solicitor in the firm still has a current practising certificate, they cannot certify title in the name of the firm. A solicitor who does not have a practising certificate cannot certify title as a practising solicitor, even if the certificate is, as usual, backdated to the date of the closing of the sale, when the firm was open and the solicitor had a practising certificate.

(b) Client account

From the date of cessation the firm may not carry out any transactions on the client account, except paying clients money due to them.

4.2 Publish the fact of cessation

As an immediate measure, a notice may be put up at the firm's premises and, if the office is not being manned, a message may be put on the firm's answering machine.

The local Bar Association, local courts, town agent (if any) and any other third parties should be notified as necessary.

Alternative arrangements should be made for post and courier services.

4.3 Treatment of files

The work involved in the transfer or distribution of files must be arranged and carried out by the firm or by a nominee of the firm.

(a) General

The firm must divest itself of all files, current and closed, in all locations.

The firm may divest itself of the files by:

(i) selling or transferring the files to another firm; or

(ii) carrying out a wind-up exercise by way of file distribution; or

(iii) some files may be transferred to another firm and a wind up exercise carried out on the remainder of the files.

(b) Sale or transfer of files

Arrangements may be made to transfer all, or some, current files to another firm or firms.

The new firm should enter into any such agreement having checked on the insurance implications for their own firm and having carried out a proper due diligence exercise on all the files being taken, to assess the risk.

Where files are transferred, it will be necessary for the new firm to obtain confirmation of instructions from each client before proceeding to act on their behalf. If a client does not wish the new firm to act on their behalf, the file should be transferred to a solicitor nominated by the client, or to the client themselves in the absence of a nominated solicitor.

The Society must be informed in writing of the firms to which all, or batches of, files have been transferred.

(c) Winding-up: File distribution exercise

In the case of a wind-up, a file distribution exercise must be carried out as follows:

(i) All current clients must be contacted, by circular or otherwise, advising them to nominate a new firm to take their files and documents.

(ii) Where there are no undertakings on the file, the clients themselves can be given their files.

(iii) Records must be kept of the destination of all files.

(iv) It should be taken into account that clients may be very slow about taking up their files. Follow-up reminders/phone calls should be made to clients.

(d) Closed files

A destruction exercise can be carried out in accordance with the recommended criteria in the Society's practice note ("Retention or Destruction of Files and Other Papers and Electronic Storage" – Gazette, April 2005), which is appended to these guidelines (Appendix 4).

(e) Completing the file distribution exercise

After a reasonable period has elapsed (not longer than six months) arrangements must be made for the partners/principal to divest themselves of the remainder of the files, whether current or closed, deeds, wills and all practice documents, whether held manually or electronically.

This can be done by transferring the files to another firm on a "storage only" basis. The new firm will then be in control of the files but only on a storage basis. If clients seek their files, the new firm will locate their file for them. The new firm must be informed that decisions to be made in the future relating to those files will be for the new firm alone to make.

On completion of the file distribution exercise, the firm should certify to the Society that the file distribution exercise has been completed in accordance with these guidelines, and that the partners/principal has ceased to hold or control any practice documents.

(f) Access to files

Access may be needed to files in future, for example, the partners/principal may need to deal with Revenue or PII matters. It should be ensured when transferring files, whether all or some files, individually or on a "storage only" basis, that arrangements are made for the retiring partners/principal to have access to these files in the future.

If this is not done, it may be necessary in the future for the partners/principal affected to proceed for an Order of Discovery against the firm or individual who holds the relevant file in the event that that solicitor is sued on foot of a claim in relation to legal services provided.

4.4 Wills

Client may take up their wills individually. If this does not occur, it is good practice in appropriate local scenarios to transfer all the wills to one local firm and circularise the local firms to inform them that this has been done.

4.5 Undertakings

The firm's undertaking register, or all individual files, must be reviewed to identify all outstanding undertakings. It should be noted that the partners/principal of a firm remain liable in conduct for undertakings and may be directed by a court or by one of the regulatory committees of the Law Society to pay fees to any new firm to carry out outstanding legal work necessary to ensure compliance with the undertaking.

If the files of clients on whose behalf undertakings have been given, which are still outstanding, are transferred to another firm, the recipient of the undertaking must be notified of the closure and informed of the identity of the client's new firm. The new firm will not be responsible for the undertaking but can make new arrangements with the lender or other recipient. The partners/principal of the ceasing firm may be required by the SPF Manager to present an estimate from the client's new solicitor, as selected by the client, and show evidence that these funds will be available to be paid by the partners/principal of the ceasing firm on completion of the work. In due course, if the file is not taken up, the recipient should also be informed.

In both cases, if the recipient of the undertaking is a lender, the lender can be sent the deeds, even if there is work outstanding. Alternatively, the lender has the opportunity of calling for the deeds on foot of the equitable interest arising because of the giving of the undertaking.

A list of all outstanding undertakings must be retained. In the interests of the recipients of the undertakings, and in the interests of the partners/principal themselves, these undertakings must be reviewed on an ongoing basis, until letters of release have been received in all cases. This may not be achieved until a new firm has done any necessary outstanding work to allow compliance with the undertaking.

4.6 Client monies and bank accounts

If the practice is being sold and a balance remains on the client account, this amount should be transferred to the purchasing firm. The purchasing firm should ensure that the amount agrees with the cash position in the client account. The purchasing firm should also be given the relevant ledger cards to enable the ownership of the clients' funds to be identified. The purchasing firm will then be responsible for accounting to the clients and to the Law Society for the clients' monies.

When a firm ceases practice, the firm must take immediate action to close the client account or accounts and office account or accounts of the practice. Monies held in the client account should be paid back to the clients concerned or to the firms appointed by clients to act on their behalf. Ideally, these monies should be paid out close to or on the date the firm ceases practice. The firm or its partners or principal should cease to receive, hold, control and pay client monies within two months of the date of cessation.

The firm must take all necessary and reasonable steps to trace the clients, including advertising if appropriate.

4.7 Closing reporting accountants' report

In accordance with the provisions of Regulation 26(2) of the Solicitors Accounts Regulations, 2001 (S.I. No.421 of 2001), where a practice is being wound up, the partners/principal are required to file a closing reporting accountant's report from the date of the last annual reporting accountant's report for the practice, to the date at which the practice ceased to receive, hold, control and pay client monies (i.e. – the date at which the balances in the client bank accounts go to zero as per the bank statements).

This report must be filed within two months of the date of cessation of the practice.

The accounting period covered by the closing report must not exceed a 12 month period. The partners/principal must file any annual reporting accountant's reports for financial periods ending before the date of cessation of the practice.

Any application to combine the annual and closing reporting accountant's reports must be made in writing to the Society before the date of cessation, and written permission granted by the Society.

Closing reports which show balances remaining in the client bank accounts will not be accepted by the Society.

Appendix 1: Practice note - Planning for emergencies in a sole practitioner's/principal's firm

A sole practitioner / principal who is planning prudently for the future of his / her firm needs to make a will and also to execute three deeds, as set out below.

- Agreement for Management;
- Power of Attorney;
- Enduring Power of Attorney.

The will obviously will cover the situation where the solicitor dies in practice. The three deeds are needed to cover eventualities during the solicitor's life that might prohibit him / her from practising.

Will
It goes without saying that all sole practitioners / principals should make a will appointing a solicitor as one of their executors to deal with the disposal of the practice after their death.

Solicitors should be aware that, with regard to the period between a solicitor's death and the issue of the grant, the Solicitors Acts provide that a solicitor may be appointed to the practice with the consent of the Law Society, on a temporary basis, pending the issue of a Grant of Probate or Administration. However, non-legal family members might not have the experience or expertise to recruit a suitable solicitor without the assistance of a solicitor executor.

Suggested clauses for a solicitor's will, were published in the October, 2005 Gazette, p29, available at www.lawsociety.ie/Gazette/oct05.pdf.

Agreement for Management – to be used if the Solicitor is likely to return to practise

In this scenario the practitioner / principal continues to hold a current practising certificate and continues to be responsible for all matters relating to the firm.

A precedent is offered below. As with any precedent it can be amended freely to suit individual circumstances. At a minimum, it will operate as a useful checklist for matters that may need attention.

The agreement is a simple agreement for management services. Under this agreement, there is no question of the manager having power to sell or wind up the practice. The agreement would cover temporary absences from the office, where the solicitor is likely to return to the practice and resume as sole practitioner / principal.

This Agreement would cover illnesses, both physical and mental - for instance long stays in a general hospital, or long stays in a mental hospital recovering from, for example, depression, alcoholism, and so on. It would not cover a situation where the solicitor had permanently lost mental capacity. It would also cover unexplained absences or abandonment. However, solicitors are reminded that reckless abandonment may have serious repercussions in terms of regulatory action being taken by the Law Society against the solicitor or negligence actions being taken by clients who suffer a loss.

The agreement, suitably amended, could also be used by sole practitioners / principals who are going on maternity leave. For instance, the manager might be an assistant solicitor in the firm who is asked to take charge during the maternity leave period.

In most circumstances it will not be difficult to trigger the commencement of the agreement. However, it is recognised that there are some situations where it would be difficult to do so.

The Solicitors Acts provide that the High Court may appoint another solicitor to carry on a practice in the event of the incapacity or bankruptcy of a sole practitioner or the abandonment by a sole practitioner of his / her practice. However, this is an expensive and cumbersome alternative to having a detailed management agreement in place, which has been agreed by both the solicitor and the manager and which reflects the wishes of both.

Power of Attorney – to be used if the solicitor will not, or is unlikely to return to practice in his / her former role

The Power of Attorney will be used only if the practice is to be sold, to give the Attorney the necessary powers to do this. A standard deed can be used.

Without a Power of Attorney the practice cannot be sold by another solicitor. The power could be exercised where the solicitor is compos mentis but too ill to attend to, or does not wish to attend to, business affairs. In this scenario, the sole practitioner / principal might or might not hold a current practising certificate.

Again, the sole practitioner / principal will continue to be responsible for all matters relating to the practice.

It is recommended that the powers given in this deed are limited to matters relating to the sale of the practice. While the named attorney might also be the named manager in an agreement for management, the management arrangement is best dealt with separately in the detailed Agreement for Management.

Enduring Power of Attorney – to be used if the solicitor is not compos mentis and will not, or is unlikely to return, to practise

In this scenario, the presumption would be that the solicitor is no longer in practice and no longer compos mentis. The Enduring Power of Attorney would be used to sell the practice and to do any acts necessary to facilitate this.

The standard Law Society precedent can be used. This can be accessed on the members' area of the Law Society website www.lawsociety.ie

Who should be selected to be the Executor / Manager / Attorney?

Many solicitors may decide to have a reciprocal arrangement with another sole practitioner and this may be appropriate for them. However, it should be remembered that the duties being undertaken may be onerous. In some situations, a better alternative would be to make an arrangement with a medium to large firm to give a professional service should the need arise. The cost of doing this would have to be taken into account.

The solicitor selected should have sufficient experience and time to manage the practice, as well as continuing with his / her existing commitments.

Remuneration for Manager

The precedent Agreement for Management below sets out a formula for remuneration which is to be an average hourly rate that an assistant solicitor of ten year's standing would be paid. Solicitors might wish to negotiate a different formula. However, this formula is suggested in the context of a reciprocal arrangement being made between two solicitor friends / colleagues.

Budgeting for the New Situation

It is clear that if a sole practitioner cannot attend at his / her offices, there may be additional expenses incurred. Solicitors should be aware that not only do they need to plan for the emergencies, but they also need to budget for them. For instance, if there is a decision to wind up the practice, rather than sell it, this can be a very expensive exercise. It is labour intensive, and significant costs may have to be paid. Files that can be destroyed may have to be destroyed professionally. Another solicitor's firm may have to be paid to take all the files not distributed to clients.

In situations where a locum solicitor will be employed, this too is an additional cost. Locum solicitors are expensive to employ and are unlikely to bring in the level of fees that the solicitor himself / herself would have brought in, so that there will be less money than usual available to pay for overheads.

Insurance Policies

Solicitors could consult with their brokers to check out whether an income protection insurance (known as permanent health) policy or Keyman insurance policy should be put in place as part of the emergency plan. Some premiums may be tax deductible.

Inform the Law Society, a member of staff and a member of the family

It is important that the Law Society, a member of staff and a member of the solicitor's family should be informed of the arrangements that a solicitor has made for emergencies.

As all solicitors know, making a will and not telling anyone about it can prove to have been a futile exercise, if the will is never found after a person's death. Likewise, if no-one is aware of the arrangements that have been put in place for emergencies, there will be needless upset and inconvenience to all concerned if an emergency does occur.

Objectives

The objective of having a plan for emergencies is to minimise the disruption to clients' affairs. The position of staff will also be secured. It is also to ensure that the practice can continue, if this is what the solicitor and/or his family wish. However, if the wish is that the practice be sold, then the powers are in place to do so.

In the event that there is a vacuum, then it is likely that the Law Society will have to become involved and the only option may be for the Society to require that the firm cease trading. It would then be closed and the clients asked to nominate new solicitors. This might not be in accordance with what the solicitor would have wished, particularly if the likelihood is that he/she will return to practice. In addition, it is likely that all expenses incurred by the Society in the exercise of its statutory duty, including the salaries of personnel involved in carrying out the function, will be charged to the solicitor or his estate.

Authority to Operate Bank Account

There are some situations where the full emergency plan would not need to be triggered, but the emergency might be met by having an authority in place simply to operate the firm's bank accounts.

Click on the link below for a copy of the AGREEMENT PROVIDING FOR THE TEMPORARY MANAGEMENT OF A SOLICITOR'S FIRM DURING THE INCAPACITY OF A SOLE PRACTITIONER/PRINCIPAL

- PDF Version
- Word Version

Appendix 2: Wind-down plan

Firms are recommended to have a written wind-down plan in place in the event that the decision is made to voluntarily close the firm in the future. Anne Neary Consultants and Outsource assisted the Law Society in the preparation of this wind-down plan.

Any wind-down plan put in place should be periodically reviewed and updated by the firm. The wind-down plan should be in accordance with the Society's close of practice guidelines and should also contain the following elements:

1. Nominee of the firm

The name and full contact details of an appointed nominee of the firm should be included in the wind-down plan. The nominee appointed by the firm is to be available to arrange that the work involved in winding down, selling or transfer of the firm will be carried out should the partners/principal of the firm be unable, for whatever reason, to carry out this work. Details of the arrangement with the nominee, including payment if required, should also be included.

2. File procedures

Procedures in relation to the sale, transfer, storage or disposal of files following cessation of the firm should be set out in writing in accordance with the Society's close of practice guidelines.

3. Funding plans

Plans to fund the wind-down should be prepared to include paying for:

(a) Closing reporting accountant's report.

(b) Staff redundancies, if applicable.

(c) Salaries of personnel to do the closure work.

(d) Destruction exercise for closed files.

(e) Where the firm has been paid to carry out certain work, but this has not been done, the firm may be responsible for the fees of any new solicitor employed by the client to do that work, including dealing with outstanding undertakings.

In a wind-up by file distribution (or where some of the files are not transferred to another firm), the following additional costs may be incurred and should be including in the funding plans:

(a) Circularising the current clients- secretarial, stationery and postage costs.

(b) Distribution of current files to clients, or new firms nominated by them.

(c) Distribution of clients' monies.

(d) Arrangements for storage of closed files which cannot be destroyed, which must be transferred to the control of a solicitor with a current practising certificate.

4. Financial information

The following documentation should be included in the wind-down plan and updated as necessary:

(a) Copies of audited accounts for the last 3 years.

(b) Details of all office overdrafts, term loans, leasing agreements and any other financial data.

(c) Copy of the most recent Law Society investigating accountant's report.

(d) A statement confirming tax affairs are up to date, including PAYE, PRSI, VAT, corporation tax (if applicable) and copies of final tax returns.

(e) Banking protocols, including a statement of how bank accounts are to be managed.

(f) A list of all bank accounts including client accounts, office account, savings accounts and deposit accounts.

(g) Information on the location and contents of office safe deposit boxes.

(h) Procedures to manage funds held for uncontactable clients

(i) Procedures to cancel subscriptions and direct debits.

5. Premises disposal/terminating leases

Plans in relation to the disposal of the firm's premises should include:

(a) Details with regard to the disposal of office premises and office equipment.

(b) Plans with regard to keys to the premises, interior locked file cabinets, offices and safes.

(c) Plans with regard to branch offices.

(d) Payment to date of closure of rates or disposal of the premises, insurance, waste and water charges.

6. IT, computers and digital information

Details in relation to the management and disposal of computing equipment, including the management and disposal of confidential information stored in a digital format should include the following:

(a) An inventory of all electronic equipment used with regard to the practice.

(b) Evidence of compliance with data protection legislation if relevant

(c) Plan for dealing with client confidential information on all computers, servers, laptops, scanners, photocopiers, memory keys and cloud servers.

(d) Plan to transfer digital information to any successor firm with regard to files being transferred.

(e) Plan to remove information from computers.

(f) Plan with regard to client information contained on all mobile phones, including staff mobiles.

(g) Plan for dismantling website.

(h) Plan in relation to back-up discs and tapes.

(i) Disposal arrangements in relation to computers and equipment.

(j) Plan in relation to managing computer passwords.

(k) Plan in relation to managing calendars including the firm's shared diary and personal calendars.

7. Staff

The plan to manage staff in a wind-down situation should deal with the following:

(a) Staff redundancies.

(b) Transfer of trainees.

(c) Pensions.

(d) Contracts of employment.

8. Insurance policies

Details in relation to the management of all insurance policies should be included and deal with the following:

(a) PII.

(b) Employer's liability.

(c) Premises insurance.

(d) Life and disability.

(e) Employees' health insurance.

9. Correspondence arrangements

Arrangements in relation to the management of correspondence following the winding down of the firm should include collection and forwarding arrangements for post, emails, faxes and couriers.

10. Client notification procedures

Procedures relating to contacting and notifying clients in the circumstances of a wind-down should include the following:

(a) Preparation of a current client list with contact details.

(b) Draft notification letter to clients.

(c) Plan to obtain client consents to file transfers, if required.

(d) Plan to deal with files where clients cannot be contacted.

11. Wills procedures

Procedures in relation to managing wills including a wills register.

12. Deeds procedures

Procedures in relation to managing deeds should including the following:

(a) A copy of the deeds register.

(b) Plan to return deeds to clients.

(c) Plan to transfer deeds to another firm of solicitors.

(d) Where clients cannot be contacted, a plan to transfer deeds to another solicitor on a storage-only basis.

13. Solicitors accounts regulations compliance procedures

Plan to produce the following in the event of a wind-down:

(a) Up to date bank account reconciliations.

(b) Up to date client balancing statements.

(c) Client account closing procedures including reducing client account balances to zero.

(d) Client tracing procedures for distributing client balances.

(e) Plan for preparation of closing reporting accountant's report.

(f) Contact details of firm's accountant.

14. Collection of costs and outlay procedure

Procedure with regard to billing and collecting costs and outlays in the event of a wind-down of the firm.

15. Undertakings procedures

Plan to deal with undertakings, including discharge of all outstanding undertakings, in accordance with the Society's close of practice guidelines.

16. Critical dates procedure

Procedures with regard to the management of critical dates should including the following:

(a) Critical dates register.

(b) Procedures in relation to clients whose files have critical dates.

(c) Plan to deal with critical dates in letters of disengagement.

(d) Plan to ensure all statutory deadlines are complied with.

17. Complaints procedures

Procedures to deal with any outstanding complaints currently before the Society's regulatory committees, the Disciplinary Tribunal or the High Court.

18. PII and ongoing claims procedures

Procedures to resolve any outstanding claims at the date of cessation to include:

(a) Commitment to cooperate with PI insurers, the SPF Manager and the Society until all outstanding claims and notifications have been resolved.

(b) Copy of the most recent claims history for the last 10 years.

19. Minimum common risk management standard

Plans to meet the provisions of the minimum common risk management standard.

Appendix 3: Notice of closure form

Dear Sirs

Pursuant to Regulation 8(a) of the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011 (the "**Regulations**") , we hereby give notice of our intention to cease practice on [*insert date*].

We hereby confirm that this notice is given at least 60 days prior to the earliest to occur of the following:

(a) the cessation of the firm's practice; or

(b) the expiry of the policy of professional indemnity insurance or ARP coverage held by the firm.

We further confirm that no person who is a principal of the firm at the time it ceases practice shall carry on a practice which is largely similar to the practice of the firm or which has succeeded the practice of the firm such that it could be treated as a phoenix firm pursuant to Regulation 3(m) of the Regulations.

We enclose with this notice the firm's most recently completed proposal form for professional indemnity insurance and most recent policy of professional indemnity insurance.

Yours faithfully

Technology Committee

The two key functions of the Technology Committee of the Law Society of Ireland are to monitor developments in technology which are relevant to the legal profession, and to promote the use of technology as a business resource within the profession. In addition, the Committee provides assistance and advice to individual members on a one to one basis throughout the year. This article is one of a series of articles posted on the Technology Committee section of the Law Society website

RETENTION OR DESTRUCTION OF FILES

AND OTHER PAPERS AND ELECTRONIC STORAGE

This note provides general guidance for solicitors on the retention and destruction of client files and documents. The note reviews the position concerning adequate periods of retention following the completion of a transaction on behalf of a client and the effective closing of the file.

It is suggested that the conclusion of a transaction occurs when all relevant details are completed including appropriate filing or registration requirements, payment by the client of all appropriate fees and costs and when all appropriate materials and documents have been returned to the client.

This note offers general guidance but may not be suitable for particular situations. It is always a matter for individual solicitors to make their own professional judgement with regard to ongoing retention of files and documents following the expiry of the statutory periods for retention.

Solicitors should be aware that a file belongs to the client once the solicitors costs and outlays have been paid, although there are certain limitations on what the client will be entitled to. At the start of a transaction it may be appropriate to explain to a client the retention policy that you operate for closed files. A solicitor is not expected to retain a file indefinitely._

This note relates to the retention and storage of paper files (i.e. documents, papers, correspondence and other materials which remain in the possession of a solicitor following the conclusion of a transaction) and the retention and storage of such files in electronic format. Clearly, there is a need to retain original executed agreements, deeds and other engrossments on an ongoing basis and such agreements and deeds are not dealt with in this note.

The retention and storage of paper files pose a number of problems for solicitors. These include the cost and management of physical storage space, security and conservation issues, difficulties in identification and location of files and identification of files suitable for destruction. Accordingly, this note also provides guidance on the electronic storage of client files and documents.

GENERAL BACKGROUND

The Law Society last issued a practice note on recommended file destruction and retention policies in 1996. This note offers guidance in relation to the retention or destruction of files and other papers taking note of other changes in regulatory requirements in the interim period.

The *Guide to Professional Conduct of Solicitors in Ireland Law Society* (2nd Edition 2002) states at 9.13 “In order to protect the interests of clients who may be sued by third parties and also to protect the interests of the solicitors’ firm which may be sued by former clients or by third parties, a solicitor should ensure that all files, documents and other records are retained for appropriate periods.” The reference to ‘appropriate periods’ is to appropriate periods of limitation for the issue of proceedings.

NOTE:
Because a court may grant a renewal of a summons for one year and thereafter, in certain circumstances, for a further six months, solicitors may wish to add 18 months to the relevant retention periods.

MANDATORY PERIODS FOR RETENTION

Purpose	Category of Files or other records	Period not less than	Statutory or regulatory reference
Protection of Solicitor – period of limitation within which clients can bring proceedings relating to the solicitor/client contract. Availability of the file for the solicitor's professional indemnity insurers	All files except as below	6 years	Statute of Limitations Act, 1957, as amended, and other relevant legislation
Protection of the client- Periods of limitation within which the client can be sued by third parties arising out of a transaction	All files except as below	6 years	Statute of Limitations Act, 1957, as amended, and other relevant legislation
Protection of solicitor and client	Conveyancing files	12 years	Statute of Limitations Act, 1957 for title matters
Protection of solicitor and client. Various periods of limitation	Files of infant	Relevant period of limitation after child has reached majority	Statute of Limitations Act, 1957, as amended, and other relevant legislation
Protection of solicitor and client	Files of mentally incapacitated persons	Indefinite	Various
Protection of solicitor, executors and beneficiaries	Probate files	12 years but where trust – see below "Trust files"	Various
Protection of solicitor, client, trustees and beneficiaries	Trust files	The lifetime of the trust plus 12 years	Various
Protection of solicitor and testator	Notes relating to drafting of will	Indefinite	Various
Law Society investigation of complaints of inadequate services or excessive fees	All files	5 years	S. 8 and S. 9 Solicitors (Amendment) Act, 1994
Compliance with accounts regulations	All files – the file forms part of accounts records	6 years	Accounts Regulations, 2001 S.I. 421 of 2001
Compliance with accounts regulations	Accounts records	6 years	Regulation 20 (2) Solicitors Accounts Regulations 2001 S.I. 421 of 2001
Compliance with anti-money laundering legislation	(1) Documentation evidencing the identity of clients (2) Original documents or admissible copies of transactions	5 years	Criminal Justice Act, 1994 and Criminal Justice Act (Section 32) Regulations 2003 S.I. 242 of 2003
Compliance with revenue and tax law	All files	6 years	Various
Compliance with VAT regulations	Files of persons with a taxable interest in land	Period of taxable interest plus 6 years	Section 16 VAT Act, 1972 as amended by Section 121 Finance Act, 2003

STATUTE OF LIMITATION REQUIREMENTS (NOT LESS THAN APPROPRIATE LIMITATION PERIOD)
It is recommended that files should be retained for at least the duration of the appropriate limitation period as set out for specific actions under the Statutes of Limitation 1957 (as amended). A list of the appropriate limitation periods is set out in each annual edition of the Law Directory.

GENERAL MATTERS (NOT LESS THAN 6 YEARS)
Subject to any other legislative or regulatory requirements all other files need only be retained for 6 years. If a solicitor continues to act on behalf of a client for a period longer than 6 years, some solicitors like to retain all the files of that client.

CONVEYANCING FILES (NOT LESS THAN12 YEARS)
Most solicitors retain conveyancing files for 12 years, taking the view that adverse possession would sort out any difficulties which might necessitate reference to the sale or purchase file at a later date. However, it is also valid to argue that a vendor's file need not be retained for this period, because the purchaser's solicitor would have had the opportunity of full investigation of title and will be precluded from raising queries post completion, except in cases of fraud or misrepresentation.

INFANT CASES (AS APPROPRIATE)
As time does not begin to run against infants until their majority, infant files must be identified and retained for the appropriate period.

MENTALLY INCAPACITATED PERSONS (INDEFINITE)
A solicitor cannot accept instructions from a mentally incapacitated person. However, occasionally, following the completion of cases there may be a suggestion by third parties that instructions should not have been accepted. In any such case, the file should be retained indefinitely.

PROBATE FILES
Prior wills should be kept in the probate file and destroyed when the file itself is being destroyed.

DRAFTING OF WILLS (INDEFINITE)
When a solicitor drafts a will for a client the solicitor should consider whether the file should be retained with the original will and then be retained indefinitely.

INVESTIGATION OF COMPLAINTS (NOT LESS THAN 5 YEARS)
The Solicitors (Amendment) Act, 1994 provides that the Law Society may not investigate complaints of inadequate services or excessive fees which relate to matters arising more than five years previously. Files must be retained for this period.

SOLICITORS ACCOUNTS REGULATIONS (NOT LESS THAN 6 YEARS)
Regulation 20 of the Solicitors Accounts Regulations 2001 (SI 421/2001) sets out the minimum accounting records which a solicitor must maintain and keep in connection with his or her practice. In addition, the regulation requires that a solicitor must retain these records for at least six years. The regulations also require that the original of each paid cheque drawn on each client account must be retained (ie as opposed to a copy cheque). The regulations would indicate that the original of each paid cheque together with the corresponding cheque stubs or requisition dockets are to be retained. This requirement would appear to preclude the storage of these items in electronic format at present.

ANTI-MONEY LAUNDERING REQUIREMENTS (NOT LESS THAN 5 YEARS)
The provisions of the Criminal Justice Act 1994 (Section 32) Regulations 2003 (SI 242/2003) extend certain anti-money laundering requirements to solicitors. Solicitors are now designated bodies, for the purposes of Section 32 of the Criminal Justice Act 1994 and are required to satisfy themselves as to the identity of any new client. Under the requirements of the legislation, records evidencing the identity of a client should be retained for a period of five years after the relationship of the client has ended. In addition, the original documents, or admissible copies, relating to the relevant transaction should be retained for a period of at least five years following completion of the transaction. Section 32(9) of the 1994 Act states:-

"Where a designated body identifies a person for the purposes of this section, it shall retain the following for use as evidence in any investigation into money laundering or any other offence,

(a) in the case of the identification of a customer or proposed customer, a copy of all materials used to identify the person concerned for a period of at least 5 years after the relationship with the person has ended,

(b) in the case of transactions, the original documents or copies admissible in legal proceedings relating to the relevant transaction for a period of at least 5 years following the execution of the transaction."

REVENUE AND TAX REQUIREMENTS (NOT LESS THAN 6 YEARS)

A general obligation to keep certain records for tax purposes is imposed by Section 886 of the Taxes Consolidation Act, 1997. The section requires that sufficient records must be kept as will enable full tax returns to be made and does not qualify the period for which they must be kept. While the definition of records is specifically related to accounts and books of accounts etc, certain other supporting documents must be retained by the person obliged to keep the records for six years after the completion of the transaction to which they relate. It appears that linking documents and returns do not have to be retained where an Inspector notifies the person concerned that retention is not required.

Section 886 of the Taxes Consolidation Act allows for the records to be kept in any electronic, photographic or other process approved of by the Revenue Commissioners.

VAT LEGISLATION

Section 16 of the VAT Act, 1972, as amended by Section 121 of the Finance Act, 2003 requires records appropriate to VAT payments to be kept for a period of six years from the date of the latest transaction to which the records, or any of the other documents specified, relate. Accordingly where solicitors act for a client in the acquisition of an interest in leasehold or freehold property that is subject to VAT, files relating to the acquisition or re-development of the property and the treatment of VAT should be retained as necessary.

DATA PROTECTION

Section 2(1)(c) of the Data Protection Act, 1998, as amended by the Data Protection (Amendment) Act, 2003 provides that 'personal data' must only have been obtained for one or more specified, explicit and legitimate purposes. It also provides that personal data shall not be kept for longer than is necessary for that purpose or those purposes. A client file will probably contain 'personal data' within the meaning of the 1988 Act (i.e. personal data in processible form). Under the provisions of the legislation, it would appear that if the data is being retained for a "legitimate purpose" (for example to comply with a regulatory, statutory or some other valid requirement) then a solicitor may retain data beyond the closing of the client file.

COMPANIES ACTS REQUIREMENTS

There are a number of requirements imposed under the Companies Acts 1963 – 2003 relating to the retention of company books and records. These requirements (for example S.203 of the Companies Act, 1990) are imposed on the company itself and are not considered directly relevant to this guidance note.

DESTRUCTION OF FILES

When the relevant statutory or regulatory periods for retention or periods of limitation have elapsed and where the solicitor is satisfied that there is no further purpose in retaining a client file or documentation, he or she may wish to destroy the contents of a file. The decision as to whether or not to destroy the contents of a file is a matter of judgement for each individual solicitor. The decision should be taken with particular reference to the nature of the transactions conducted in the file and with due regard to the possibility of any further need to access or reproduce material from the file.

CONFIDENTIALITY

In arranging for the destruction of a file (whether in paper or electronic format) solicitors are reminded of the need to preserve client confidentiality. Old paper files should be shredded in a manner which will completely obliterate their content. Any such destruction should take place under the supervision of the solicitor. A number of commercial firms provide destruction services. Care should also be taken to dispose of electronically stored material in a manner which preserves client confidentiality.

ELECTRONIC STORAGE
STORAGE IN ELECTRONIC FORMAT

In all situations where documentation is being retained or stored in electronic storage format it should be retained at a minimum for the same period(s) as would apply to the paper version. Where documentation is properly stored in an electronic format (and subject to any specific statutory or regulatory limitations on storage or retention in electronic format), the paper version (if one existed) need not be retained.

The three key issues affecting electronic storage are:

- permanency or durability of the format;
- accessibility of the format;
- security of the format.

The most likely electronic storage medium that will be considered for archival storage is on CD ROM. The issues regarding durability, accessibility and security will also apply to other electronic storage media.

The advice of systems providers should be taken on the ongoing durability of the particular CD ROM writer and recording system being used. Solicitors should consult with their suppliers on both the guaranteed and proven maximum period of storage applicable to CD ROM (or other electronic storage medium). The electronic storage medium must be capable of storing the documentation in a durable, accessible manner for as long as the statutory or regulatory periods require.

Solicitors should confirm with their suppliers that

it will be possible to export or reproduce onto paper the content of any electronically stored material.

Solicitors are also advised to consult with their insurers on the acceptability of electronic storage of client files and documents in the event of a claim against the solicitor.

Where material is being stored electronically it should be in an open format so that its future availability and accessibility will not be compromised. For example a standard open format would be *Adobe Acrobat pdf*. Similarly, where material generated is in a text processing package (ie Word or Wordperfect) consideration should be given to a backup of the material in RTF or another standard open format. This will prevent any difficulties in accessing the material with future versions of a proprietary text processing package. In all situations, solicitors should consult with their suppliers to ensure that material is being stored in an open and accessible format or that it can be converted to such for future accessibility.

Material in electronic storage format should also be secured and safeguarded against destruction or theft in the same way as materials stored in paper format. This is particularly relevant to the storage of materials on CD ROM. Material in an electronic storage format including CD ROM should be stored in a secure physical environment to ensure protection against fire, theft, destruction, etc. CD ROMs should be secured to avoid any accidental erasure or destruction. It is recommended that a backup copy be taken of any material stored on CD ROM.

Where material is stored electronically it should be numbered and indexed in such a way as to be as easily accessible as any similar paper formatted material. For example, it may be prudent to allocate individual folders to specific files when recording onto a CD ROM or similar device.

EVIDENTIARY ISSUES AND ELECTRONIC MATERIALS

Certain provisions of the Electronic Commerce Act, 2000 remove evidentiary distinctions between paper and electronic records. For example, Section 12 provides (subject to other statutory provisions) that a person who is required or permitted to give information in writing may give the information in electronic form, whether as an electronic communication or otherwise. Section 9 of the Act specifically provides that information is not to be denied legal effect or enforceability solely on the grounds that it is wholly or partly in electronic form whether as an electronic communication or otherwise. Sections 17 and 18 of the Act provide that if a person is required or permitted to present or retain or record information in its original form then, subject to certain provisions, the information may also be presented etc. as the case may be, in electronic form. The conditions relate to the integrity and intelligibility of the material retained in electronic form.

Further note should be taken of Section 5 of the Criminal Evidence Act, 1992 regarding the admissibility of evidence in criminal proceedings. Section 5 (1) (c) provides that computerised information can be reproduced in permanent legible form and admitted in evidence

Technology Committee
Guidance and Ethics Committee

*** This practice note can also be downloaded from the members' area of the Law Society website at www.lawsociety.ie.**

DISCLAIMER

The views expressed above are personal to the Writer who is not an IT professional. These points are developed borne of the Writer's own personal experience. When purchasing any software the advice of an appropriate IT professional should be sought.

Law Society of Ireland

Appendix 4

Minimum common risk management standard

Law Society of Ireland

MINIMUM COMMON RISK MANAGEMENT STANDARD

Law Society of Ireland

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Introduction

The purpose of the Run-off Fund ("ROF") is to provide run-off cover to firms that meet the necessary criteria. Firms with succeeding practices cannot avail of run-off cover through the ROF.

Firms obtaining run-off cover through the ROF will not be required to bear any additional self-insured excesses for run-off cover provided that they meet the criteria as laid out in Regulation 8(f) of the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011 [S.I. No.409 of 2011], one of which is the requirement to meet a minimum common risk management standard as assessed by a risk management audit.

The minimum common risk management standard is defined in the regulations to mean "*the minimum common risk management standard or any equivalent by whatever name called published by the Law Society (in terms approved by the PII[1] Committee) from time to time or if none is published or in force then as shall be determined by the SPF[2] management committee"*. The minimum common risk management standard, as set out in this document, was approved by the PII Committee on 23rd January 2012.

Anne Neary Consultants and Outsource collaborated, with and at the request of the Law Society, to contribute to the design of the minimum common risk management standard required by the regulations as applicable to firms being provided with run off cover. The standard set out in this document is only a minimum standard and all firms are encouraged to aim for higher standards as soon as practically achievable.

The purpose of the minimum common risk management standard is to incentivise minimum acceptable risk management practices through establishing the risk posed by any firm to the ROF on a pass/fail basis by measuring firms against clear and transparent criteria through means of a risk management audit. The risk management audit will be undertaken using consistent reporting formats and evaluation criteria ensuring consistent assessment regardless of which auditor carries out the audit.

The audit will consist of a review of the systems, policies and procedures in place in the firm historically and a forensic review of a sample of the firm's open and closed files and undertakings.

The minimum common risk management standard for firms going into run-off has five basic requirements:

1. That a firm has had at least a formal commitment to good practice in the operation of its business.

2. That appropriate exit procedures have been put in place to deal with the orderly wind-down of the firm.

3. That the firm had collated its policies and procedures into an audit manual (or equivalent document or series of documents) which contains at a minimum the basic procedures set out below.

4. That the firm complied with any outstanding undertakings or has made alternative arrangements in accordance with the close of practice guidelines.

5. That the management and supervision of the firm has been competent and effective.

Where a firm fails to pass the audit, it may apply for a re-audit at its own expense. Where a firm does not pass the audit, an additional self insured excess as determined by the SPF manager in accordance with the run-off cover rules shall apply to that firm's run-off cover.

Practice notes and other documents which may be of assistance with regard to certain criteria have been appended to this document for information purposes only.

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[1] Professional Indemnity Insurance ("PII")
[2] Special Purpose Fund ("SPF")

The criteria for the minimum common risk management standard are as follows:

1. Undertakings

(a) Undertakings procedures – *Should explain the terms on which the firm gives or receives undertakings, including who is authorised to give undertakings, best practice wordings and how undertakings are monitored.*

(b) Undertakings register[3] - *A record of all undertakings given and received.*

2. Critical dates

(a) Critical dates procedures – *Should explain what dates are noted, how they are noted and if specific critical dates for each type of work or generic dates are in place.*

(b) Critical dates register[4] - *List of critical dates and the procedures in place to ensure such critical dates are not missed.*

3. Other registers

(a) Wills register.

(b) Client complaints register[5] - *Should contain details of all client complaints, based on the firm's complaints policy.*

(c) Deeds register.

4. Engagement procedures[6]

(a) Core competencies and services of the firm – *Should specify exactly what areas the firm advises on and areas the firm would never advise on.*

(b) Limitation of liability procedures[7] - *Should include confirmation that adequate wording regarding limitation of liability has been incorporated into letters of engagement.*

(c) Money laundering requirements[8] - *Should include confirmation of how the firm is complying with these requirements, the details of the firm's designated money laundering reporting officer and the location of documents pertaining to money laundering.*

(d) Section 68 compliance procedures[9] - *Should include evidence of how the firm complies with Section 68.*

[3] See Appendix 1 – "*How to set up an undertakings policy"*
[4] See Appendix 2 – "*How to manage critical dates"*
[5] See Appendix 3 – "*How to avoid clients complaining to the Law Society"*
[6] See Appendix 4 – *"Solicitors' terms and conditions of engagement"*
[7] See Appendix 5 – *"Limitation of a solicitor's liability*
[8] See Appendix 6 – *"Checklist of 'actions' recommended to ensure compliance with AML obligations"*
[9] See Appendix 7 – *"Dos and don'ts of S68"*

(e) Conflict of interest procedures – *Procedures in place to ensure that no such conflicts arise, including identification and management of conflicts and potential conflicts between clients and between the firm and its clients.*

(f) Disengagement procedures – *Policy or letter setting out the circumstances in which the firm would have to disengage from a client.*

(g) Non-engagement procedures – *Policy or letter setting out the circumstances in which the firm would not take instructions from a client.*

5. File management procedures

(a) File opening: risk assessment procedures – *Procedures to ensure that money laundering, credit-worthiness and conflict of interest checks are carried out along with a confirmation that the matter is within the competence of the firm, and an assessment of risk involved in the work including matters such as value, complexity, innovation, transferred file, restricted role, etc. Standard file opening forms should be used and allocation controls should be in place.*

(b) List of current files.

(c) List of closed files.

(d) File maintenance procedures including:
- post opening procedures;
- email procedures;
- evidence of instructions;
- attendances procedures;
- file progress procedures; and
- precedent bank procedures.

(e) File closing procedures – *Procedures in place to ensure that all matters have been addressed at file closing stage.*

6. File reviews

This should include information on the systems for reviewing each fee earner's own files on a regular basis and a regular file peer review system using a standard checklist. Sole practitioners should explain the arrangements they have in place to deal with file reviews.

(a) Current file review – *For fee earner's own files, confirmation that regular reviews are carried out and how these are noted on the file. Information on whether peer reviews are carried out should be included and, if so, an explanation of the process.*

(b) File review procedures – *Should include information on the frequency of file reviews and criteria used for such reviews.*

7. Financial management[10]

(a) Management of client balances – *Confirmation that client balances are circulated regularly to all fee earners to ensure that they are accurate, that small balances are written off and that old balances are reviewed to ensure they are valid.*

[10] See Appendix 8 – *"Top tips for managing accounts"*

(b) Financial records recorded on files – *Confirmation that client accounting balances are kept up to date.*

(c) Solicitors' accounts regulations – *Should include confirmation that the firm is compliant with the solicitors' accounts regulations. Information on any issues disclosed in the most recent reporting accountant's report or investigating accountant's report should be listed, together with steps taken to rectify these matters. Information on any current regulatory or disciplinary process in which the firm is involved pertaining to solicitors' accounts regulations should be included.*

(d) Accounting procedures – *Confirmation that the firm has clearly laid out policies and procedures for managing its accounting function and the qualifications and experience of the person responsible for administering such accounts.*

8. Claims history and regulatory compliance

(a) Claims procedures – *Procedures carried out by the firm in the event of a claim or circumstances that could give rise to a claim.*

(b) Claims history register – *Register containing full details of all claims and notifications. Should also confirm the frequency with which this register is reviewed.*

(c) Regulatory history – *Should list all regulatory matters, confirm that all regulatory matters are up to date, including compliance with all obligations under the relevant regulations and acts, and include evidence that reporting accountants' reports are filed on time.*

9. Run-off procedures (orderly wind-down)

(a) Procedures to implement Law Society's close of practice guidelines including, but not limited to:
- dealing with outstanding undertakings;
- notification requirements;
- dealing with client files (including sale, transfer, destruction and/or storage procedures);
- disbursement of client monies;
- closing firm's bank accounts;
- filing a closing reporting accountant's report;
- dealing with wills; and
- communicating with clients.

(b) Certification from the partners/principals that:
- a full file review of all files, current and closed, has been carried out, and verification of the quality of that review to ensure high standards;
- confirmation that registers are accurate, comprehensive and up to date; and
- all outstanding administrative work is scheduled.

(c) Solicitors accounts regulations compliance procedures including:
- up to date bank account reconciliations;
- up to date client balancing statement;
- reduce client account balances to zero;
- reduce office account balances to zero; and
- file the closing reporting accountant's report.

Appendix 1: Practice note – How to set up an undertakings policy

From the perspective of good management and in particular in an endeavour to reduce risk and minimise insurance costs, it is generally recognised that all legal firms should maintain and have available for inspection (by the appropriate persons) a detailed register of all undertakings given by the firm. This register should include not only financial undertakings but any undertaking which involves the firm in, either a financial liability and/or an obligation to do something, either for another firm of solicitors, bank or other third party. It should also be remembered that accountable trust receipts are also classified as undertakings.

A template undertakings register can be downloaded from the new 'Practice and Risk Management' section in the members' area of the Society's website. Simply login to the members' area, select 'Best Practice and Guidance' and then visit 'Practice and Risk Management'. The template is not written in stone but contains most of the desirable elements, which give the firm and principals an overview of the undertakings outstanding at any particular time.

It should also be remembered that it is desirable to have a clear and defined office policy on the giving or accepting of undertakings. In giving any undertaking the person or persons authorised to issue said undertaking must be satisfied that the firm is in a position to comply unreservedly with the undertaking within a reasonable time. Again, in accepting an undertaking the person authorised to do so, on behalf of the firm, must be satisfied that the firm or person giving the undertaking is in a position to comply with same.

It is fairly obvious that the register should contain the name of the fee earner, the name of the client, the file reference or number, the date of the undertaking and to whom the undertaking is given. It would also be appropriate, however, to have a column dealing with the sanction for the undertaking. No undertaking should be given on behalf of the firm without the prior approval of the managing partner or, in the case of a one man practice, the principal of the firm. It is for this reason there is a column giving the date of prior approval of the managing partner for the undertaking. Once prior approval has been obtained, a sticker should be placed on the cover of the file indicating that there is an outstanding undertaking. The sticker should also contain sufficient space to sign off on this liability once the undertaking has been discharged. To make it even clearer that there is an undertaking on the file it would also be a good idea to have the undertaking colour coded.

Where financial undertakings are involved the value of the financial liability should also be ascertained if at all possible. Obviously this should be done with the advice of the managing partner at the time of approval of the undertaking. It is also advisable, particularly with financial undertakings, to have a note of same inserted in the client ledger since this can act as a reminder when payments are being made from the client account.

It will also be observed that there is a review date for undertakings. Obviously this is a matter for each individual firm but it would be good practice in the case of any undertakings that the fee earner report on the status of the undertaking to the managing partner on a monthly basis.

Finally, there is a column setting out the date of final review by the managing partner. This is the date on which the fee earner would present evidence of discharge of the undertaking to the managing partner and he would sign off on the file. The sticker on the file should then be endorsed and signed off by the managing partner. The file should then be retained in the office in the normal way and archived when all matters have been completed in addition to the discharge of the undertaking.

Appendix 2: Practice note – How to manage critical dates

Professional indemnity insurance companies have identified a key area of risk management to be a critical dates register.

Firms who allow deadlines to be missed and cases to be statute barred are bad risks. Insurance premiums will reflect this unless proper procedures are put in place to avoid it.

What a critical dates register consists of will depend on the nature of the work being carried out by the solicitor. It may include statute of limitation dates, closing dates, dates when tax may be due or payable. These dates may include dates for filing of documents, serving of documents, serving notice of appeals etc.

The first and most important step is to identify the critical dates for the particular type of work you are undertaking. The Society's Law Directory contains a useful compendium of relevant limitation dates, and so it is important to identify the particular critical date or dates, for the type of work you are undertaking.

Having identified the critical dates for the type of work you are involved in it is then vital that critical dates are managed with a proper controlled system.

The most basic critical dates register consists of a solicitors' diary, to keep track of critical dates, but it is far better to have a computer based calendar, where such critical dates can be monitored and implemented by others if necessary and data will not be lost presuming proper backup procedures are in place.

Each file should have a sheet with the relevant critical dates and should be completed as the file progresses.

In larger firms, a firm wide master calendar should be implemented and monitored.

Proper maintenance procedures are critical so as to ensure the integrity of the critical dates register. Procedures should be documented in writing, and the entire process monitored to ensure that deadlines are entered into the calendar and that regular reminders appear, and advance warnings given of critical dates.

It is also important that the client understands the critical dates involved, so that the client understands what action must be taken, in advance of a critical date.

As part of the monitoring process, firms should put in place a system whereby upcoming critical dates are identified with fee earners where there is an opportunity to identify particular risks and cases are managed so as to ensure critical dates are not missed, or indeed to identify fee earners who may have a lack of understanding of the critical dates involved.

You need to decide:-

- The critical dates
- The procedure for entering the critical dates
- Responsibility for maintaining the register
- Reviews and by whom
- Cross checking against physical file to ensure register is up to date and accurate.
- Procedures for monitoring while a fee earner may be absent

Templates for monitoring personal critical dates for personal injury cases and probate matters can be can be downloaded from the new 'Practice and Risk Management' section in the members' area of the Society's website. Simply login to the members' area, select 'Best Practice and Guidance' and then visit 'Practice and Risk Management'.

Appendix 3: Practice note – How to avoid clients complaining to the Law Society

At the risk of over-simplification, here are some simple steps which will certainly lessen your chances of having a complaint made against you.

1. At the outset of a transaction, set out clearly in writing what you are going to do for your client and who is going to do it. It may seem perfectly obvious to you, but your client may have a totally different perception of what you are going to provide.

2. In compliance with Section 68 of the *Solicitors (Amendment) Act, 1994*, send out a letter setting out the basis of your charge. If you are charging an hourly rate, let your client know when the clock is running by sending out timely interim bills.

3. Send your client copies of all relevant correspondence – both the letters that you are writing and the letters that you receive.

4. Don't be afraid of giving your client something to do. Often your client will get a better response directly from a Government department or agency when there is a delay in obtaining a particular document.

5. Let your client know as soon as there is a problem, and tell him how you are dealing with it.

Lack of communication with the client remains the single most common cause of complaints to the Law Society – and potentially the easiest to cure.

The Guidance and Ethics Committee was asked to prepare a precedent document setting out a solicitor's general terms and conditions of engagement. The precedent set out below is published for the assistance of solicitors. A precedent letter of disengagement is also attached.

The business of solicitors' firms is to sell legal services. As with any business, the owners hope that members of the public who come to do business with the firm will have a good experience and a satisfactory result, so that they will recommend the firm to others and the business will thrive. This is more likely to happen if both parties are clear about the service that is being offered.

Often when difficulties arise between a solicitor and a client, this may be because there is a gap between the client's expectations of the level of service that was to be provided by the solicitor and the solicitor's intentions in that regard.

Objective

A letter of engagement formally sets out the terms and conditions on which the solicitor's firm will carry out work for the client. It should define the relationship between the client and the solicitor and will then form the basis of the contract between them.

It is important that the client is clear about the role of the solicitor – what it includes as well as what it excludes – and that there is agreement between the solicitor and the client as to the extent of the solicitor's duties. It may be obvious to the solicitor, but if a client has not dealt with a solicitor before, they may simply not know what to expect.

The letter of engagement helps ensure that there is no gap between the client's expectations of service and the reality of what is being offered. For instance, the client may expect a lot of contact with the solicitor, including frequent consultations and phone calls. The solicitor may intend to have much less contact because he/she knows from experience that that is all that is necessary.

The client may expect a result that the solicitor is unlikely to achieve. It is important that the solicitor deals with the client's expectations and ensures that the client has a realistic view of the possible outcomes.

Protection of the solicitor

It is also helpful to view the letter of engagement as a protection for the solicitor, in addition to being helpful for the client. In terms of potential negligence actions, a letter of engagement is a useful risk management tool, because it cuts down on misunderstandings. The reality is that when the solicitor does not achieve the client's unrealistic expectations, the disappointed client may subsequently take action against the solicitor.

The letter of engagement also helps cut down on the potential for complaints to the Law Society but, in the event of a complaint, it may provide significant protection for the solicitor.

The letter of engagement helps the solicitor address his/her own expectations in relation to the matter being taken on. Solicitors are sometimes their own worst enemies, because at the beginning of a case they may promise to do too much for the client. They have unrealistic expectations of what they can do. They may rashly undertake to achieve all the client's wishes. It is useful to consider, for instance, that most conveyancing cases seem straightforward when they commence, but few have been so when viewed at completion.

Unfair terms

It is illegal to issue contracts with unfair terms. If action is taken against the solicitor as a result of unfair terms in the contract, this will only result in problems for the solicitor.

Style of letter

All letters of engagement should be in plain language and be capable of being easily understood by the client. The precedent that is offered here is a simple statement of the terms and conditions on which business will be done by a firm.

Various approaches can be taken by a solicitor on the issue of whether the letter of engagement should be a stand-alone letter. This is a matter of choice for the individual solicitor. Some solicitors will also want to incorporate confirmation of the client's instructions in the particular case and to set out the steps that the solicitor will take immediately in that case. Some solicitors will wish to include their section 68 information in the same letter. (Precedents for section 68 letters have already been published by the Law Society and are available on the website.)

Other solicitors will prefer to have three separate letters:

- Firstly, they will issue the letter of engagement. This will be sent prior to confirming that the case is actually being taken on.
- Once it has been agreed in principle that the firm is interested in taking on the case – subject to the actual charges, an estimate of the charges, or the basis of charges being agreed – the section 68 letter will follow.
- Only then will the third letter be sent, which will be the first letter that deals substantively with the particular case.

Another option for a firm, rather than writing an actual letter, would be to incorporate the terms and conditions material into a printed pamphlet or brochure with the firm's logo. If this option is taken, it would be important that there are procedures in place to ensure that in every case it can be proved at a later date that the brochure was sent to the client.

In all cases, the solicitor should take appropriate steps to try to ensure that the client understands the terms and conditions set out. The amount of explanation necessary will vary, depending on factors such as the client's level of literacy, general vulnerability or lack of business acumen.

Topics to be covered
The headings that have been included in the precedent below were, in the opinion of the committee, the most important ones. However, the list is not exhaustive, and there are other issues that solicitors may wish to cover. A balance must be struck between ensuring that the letter is comprehensive, but that it is not so long that the client is discouraged from reading it.

Managing expectations – precedent clauses
The committee includes below some suggestions for clauses that might be used in the letter of engagement or in the first substantive letter to the client. The issues that are addressed for the various areas of practice are often misunderstood by clients and are an unnecessary cause of upset for them, but are also matters that may result in unjustified criticism of the solicitor.

Letter of disengagement
At the end of every case, a solicitor should write to the client to confirm that at that point the matter that has been dealt with on behalf of the client is at an end.

Letters of disengagement are even less commonly used by solicitors than letters of engagement. However, writing such a letter is sometimes very important for the solicitor's own protection. If, during the course of dealing with a particular matter for a client, a solicitor comes to the view that he/she should cease acting for a particular client, it is important to write to the client to say so. The committee offers below a precedent of a formal letter of disengagement. Once written, the solicitor is protected from further ongoing risk in relation to that particular case. If this is not done, the solicitor may find him/herself in a situation where no action was taken on the basis that the solicitor had no instructions but in fact the risk continued to be carried, and in due course the solicitor may be judged to have liability in relation to the particular matter.

This article and precedent can also be accessed on the Law Society website at www.lawsociety.ie Guidelines and precedents for solicitors representing claimants making applications to the Personal Injuries Assessment Board (PIAB) are also available on the website.

Copies of the money-laundering leaflet referred to in the letter are available for purchase from the Law Society. The leaflet can also be accessed on the Law Society's website.

Guidance and Ethics Committee

PRECEDENT LETTER OF ENGAGEMENT

Terms and conditions

AB Solicitors

[*Date*]

Dear [*client's name*],

You have asked us to act as your solicitor in relation to [*description of case*]. This letter explains our terms and conditions while we are working for you. It is important, to prevent any misunderstandings at a later stage, that you know what to expect and understand what our service involves. Please read the following terms and conditions carefully. We will be happy to answer any questions you may have.

1. Discussing your expectations
We will discuss your expectations and tell you whether we think they are realistic. It is important to us that you understand at all times what is happening in your case. To help prevent any confusion or stress on your part, we will give you general information and explain any procedures regarding your case as it progresses.

2. Instructing your solicitor
It is important that you give us clear and accurate instructions from the very beginning and when you get any new information as the case develops. We will do our best to carry out the agreed instructions and to give you a confidential and friendly service.

When we receive your instructions, we will explain your legal options to you. If there is anything you do not understand, please tell us right away so that we can answer your questions. We will then agree with you the actions to be taken.

3. Updating your instructions
We may need to update your instructions from time to time, for example, if:

- New issues or information arise,
- Events take an unexpected turn,
- We need more information from you, or
- Fees or expenses have not been paid.

It is important that you give us instructions when they are needed. If you fail to do this, we cannot make progress. This may affect the outcome and, in some cases, may mean we have no choice but to stop acting for you.

4. Acting on your behalf
When you give us instructions, we assume that you are giving us permission to take various actions on your behalf. For instance, our role as your solicitor may involve:

- Making a repayment to a bank or building society for you,
- Holding information for our records, including 'sensitive data', such as your Personal Public Service (PPS) number or medical reports,
- Making a claim for personal injuries under the terms of the Personal Injuries Assessment Board (PIAB),
- Employing barristers and other experts, such as doctors and engineers, on your behalf,
- Obtaining information from third parties to help us with your case, without seeking your permission in advance, and

- Using information technology (IT), including email, to guarantee the best quality and most efficient service.

Important:
- If you instruct us to repay money on your behalf, you cannot change these instructions later, if we have given a professional promise to others to do so.
- We will hold any money we receive on your behalf strictly in line with the *Solicitors' Accounts Regulations*.
- We will only use any personal or 'sensitive' information to help your case.
- We will only employ experts with your permission. We will select professionals who we believe to be competent, but we are not responsible for the negligence of anyone we employ on your behalf.

5. Cost of services
At the beginning of your case, as required by law, we will give you information, in writing, about our fees and other expenses that may be incurred. If we fail to agree the fees for our services with you, we will not act on your behalf.

If we agree to charge you based on the time spent on your case, remember that there will be a charge for all tasks carried out on your behalf, including letter writing, phone calls and so on. We will tell you if we believe that you, the client, could appropriately carry out some of the tasks.

The law allows us to keep a client's file as security for any costs until we have been paid for our services. We will issue our bill of costs to you without delay.

6. Timescale of case
We will estimate how long your case is likely to continue, including, as your case proceeds, what stage we have reached and what and when the next steps will be. This will save you having to inquire about your case. If any event occurs that will delay your case, we will let you know and give you our best estimate of a new timescale.

Please note that time limits may apply in the following two situations, so please make sure that we have all the correct information in good time to take any necessary actions:

- Litigation cases – certain actions must be taken by you or by us within a particular period or else your case will fail.

- Actions under the *Civil Liability and Courts Act 2004* – if you are making a claim under this act, you must write a letter outlining the details of your claim within two months of the date of the accident. Failing to do this may have a bad impact on your case and may also lead the court to award you only part, or none, of your costs.

7. Legal requirements
Under anti-money laundering regulations, we need to be sure of your identity and source of assets before we can take on your case.
- **Identity** – you will need to give us evidence of your identity, such as your driving licence or passport, even if we already know you. We will also need you to give us a document showing your permanent address, for example an ESB or telephone bill or a bank statement.
- **Source of assets** – any funds or property that you ask us to deal with must have been legally obtained. If we become aware or suspect that these assets come from an illegal source, we must notify the Gardaí and the Revenue Commissioners without telling you, except in limited circumstances. We will immediately stop acting for you if we have to report illegal assets.

Even when we are not obliged to report to the authorities, we cannot transfer any assets or property funded by the proceeds of crime. This includes funds that have not been declared for tax purposes or that have been obtained by false means. In this situation, you would have to legalise your position before we could act on your behalf.

For more information, see the enclosed copy of the Law Society leaflet *Money Laundering: Your Solicitor and You*.

8. Obtaining your file
Once you pay us for our services, and provided that we have done everything we promised to do, you can take your original file. We are entitled to copy this file to comply with solicitors' regulations. Usually we keep a client's file for at least six years and then destroy it. However, we never destroy deeds and wills.

If you need your file or information from the file, we can send this to you. We will charge you a fee for this service, based on the current rates at the time of your request.

9. Making a complaint
Good communication between us will guarantee the best possible outcome. If you wish to make a complaint about any aspect of our service, however, please send it in writing to us and we will review your file without delay. We will then send you a written reply to any requests for information, advising you of any actions that we will be taking in relation to your case.

10. Transferring to another solicitor
We hope to reach a successful result on your behalf. But if you decide for any reason to transfer to another solicitor's firm, we will require payment for any work done up to that point.

This requirement includes certain litigation cases, even if we might have agreed to seek a fee only if your case was successful. If you change to another solicitor, this agreement automatically ends and we will require payment for the work we have actually done.

11. Professional insurance
We confirm that we have the appropriate level of professional insurance in place, as required by law.

12. Acceptance clause
When we agree our fees or the basis of our charges with you, the terms and conditions described here will come into effect. Please note that we do not claim to have any particular expertise outside of a solicitor's general expertise.

We look forward to working with you and to bringing your case to a satisfactory conclusion. Once again, if you have any further questions, please contact us. We enclose a glossary of terms, which you may find useful.

Signed: ____________
AB Solicitors

GLOSSARY OF TERMS

Anti-money-laundering regulations – a set of laws aimed at preventing and detecting money laundering by encouraging businesses to 'know the customer' before entering a business relationship with them. See 'money laundering'.

Civil law – an area of law concerned with settling disputes between individuals or groups to establish or enforce private rights.

Client – a person or group receiving the services of a professional, in this case the services of a solicitor.

Estate – the total assets of a person who is deceased.

Executor – a person who is named in a person's will to manage their estate.

File – all legal documents relating to a client's case, including any letters or emails.

Letter of disengagement – a letter informing a client that the solicitor is no longer acting for them.

Letter of engagement – a letter confirming that the solicitor is willing to act for the client and outlining the terms and conditions of business.

Money laundering – illegally hiding the true origin and ownership of the proceeds of a person's or group's activities.

Negligence – failure to exercise the care toward others that would reasonably be expected in the same circumstances or taking action that a reasonable person would not take, both of which causing loss or damage.

Personal injuries claim – a case in which a person claims to have been harmed by the action or inaction of another person or an organisation.

Property Registration Authority – a state body set up in 2006 that manages and controls the Registry of Deeds and Land Registry and promotes the registration of land ownership.

Title – ownership.

OPTIONAL CLAUSES TO INCLUDE IN LETTER OF ENGAGEMENT

1. Litigation case
A litigation case is one in which a person or group makes a complaint against another in court to enforce their rights. These cases aim to find a remedy, such as compensation, between the parties involved in the disagreement. The remedy may be decided by an agreement or a court order. You may have to accept, or the court may decide, less compensation than you had originally hoped for.

Often, the person you are complaining about will not cooperate and will constantly raise difficulties. As your solicitor, we will try to overcome these difficulties as much as possible.

Litigation cases always involve a financial risk for the person involved. We will tell you if the possible benefit of taking a case is worth the time and money involved. We will also discuss with you the risks involved in any action being taken, including the risk that you could lose the case.

2. Family law case
A family law case involves a dispute between family members, often between a husband and wife or between partners. In family law disputes, relations between each side can be difficult and traumatic. Our role is to help by advising you on the legal aspects of your case and by progressing the matter. Often, at the end of a family law case, neither side is completely satisfied with the outcome. We will try to make sure that any decisions are fair to you and are in the interests of your children, if any.

We advise all our family law clients to make every effort during the dispute to agree practical arrangements concerning their children with their spouse or partner and to avoid rows. This will allow everyone involved in the case to focus on the main long-term issues that need to be settled.

3. Conveyancing case
Conveyancing involves the legal steps to buy or sell a property. When acting for the buyer, we will investigate thoroughly the property's title (ownership), raising all necessary questions with the solicitor acting for the seller. If we are not satisfied with the answers to our questions, or with any other aspect of the sale, we may advise you not to buy the particular property. When acting for the seller, we prepare all of the documents needed by the buyer's solicitor.

In any property transaction, our job is to transfer the legal title from the seller to the buyer. Other matters may include planning issues or drawing or checking maps. You may be able to deal with these issues yourself or with the help of an architect or other professional.

When you sign a contract for the sale or purchase of a property, we will give you a date for when the sale should be closed and the keys handed over. However, unavoidable delays often arise and the sale may not close on that date. We will be able to advise you of an exact completion date closer to the date stated in the contract so that you can make the final arrangements.

If you are purchasing a property, you will need to supply funds to pay stamp duty, if it is required, and, in all cases, to pay Property Registration Authority (PRA) fees to register your property. You must pay these amounts before the sale is completed. If you are getting a loan from a bank or building society, they will not issue the loan cheque unless we give them our professional promise to stamp and register your deeds after the sale closes. We cannot promise this unless we already have the funds needed.

4. Probate case
Probate is a legal process involving the transfer of the legal title of a property from the estate of a deceased person. Usually, the person's will appoints an executor to deal with their estate when the time comes. The first step that you, the executor, must take is to give the Revenue Commissioners details of all of the estate's assets, including the value of each asset mentioned in the will. In many cases, the Revenue Commissioners will only accept a professional valuation, for instance, by an estate agent. This valuation will result in an extra cost, but we can only proceed with your business when we receive it.

You may also need to employ professional advisors if the deceased person's estate involves a lot of tax issues. Once again, this will involve an extra cost, but these issues may need to be resolved for us to continue with your case.

PRECEDENT LETTER OF DISENGAGEMENT

AB Solicitors

[*Date*]

Dear [*name of client*],

We refer to the matter of [*description of case*], which we have been handling for you.

1. Review of your instructions
[Solicitor should select relevant option]
As we do not have the necessary instructions to continue with your case… *or*
As you are not happy to continue based on the advice we have given you… *or*
Due to circumstances that have arisen…

…we are now formally letting you know that we will no longer be acting for you and that we are now closing your file.

2. Our bill
We will shortly send you a bill for our legal fees and for any other expenses that we incurred when handling your case.

3. Your file
Once you have paid us for our services and we have done everything we promised to do, you can take your original file. We are entitled to copy this file to comply with solicitors' regulations. Usually we keep a client's file for at least six years and then destroy it. However, we never destroy deeds and wills.

If you need your file, or information from the file, we can send this to you. We will charge you a fee for this service, based on the current rates at the time of your request.

If you have any further questions about this, please contact us.

Signed: ____________
AB Solicitors

Appendix 5: Practice note – Limitation of a solicitor's liability

The law relating to the possibility of limiting the liability of a solicitor has changed with the introduction of the *Civil Law (Miscellaneous Provisions) Act 2008*. Section 44 of the act, which came into force on 20 July 2008, amended the *Solicitors (Amendment) Act 1994* so as to permit a solicitor to limit his liability by contract, and repealed the existing prohibition on such a limitation, which was contained in the *Attorney and Solicitors Act 1870*.

Under the new law, a limitation of liability is permitted in contracts between:

a) A solicitor and client,

b) A partner, clerk or servant of the solicitor and the client, and

c) A former partner, clerk or servant of the solicitor and the client.

A solicitor may now, by contract, limit his liability to a client to "an amount specified or referred to" in the contract with the client. That amount must not be less than the minimum level of professional indemnity insurance cover required by the *Solicitors (Amendment) Act 1994* and associated regulations; this is currently €2,500,000[11]. In the event that the amount specified or referred to in the contract is less than that minimum level of cover, the act operates to increase the limitation up to that level.

The new act expressly preserves the client's rights as a consumer under section 30 of the *Sale of Goods and Supply of Services Act 1980* (as amended) and also his rights under regulation 6 of the *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995*, which prevents a consumer being bound to a contract containing an unfair term (that is, a clause that causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer, taking into account the nature of the services for which the contract was concluded).

In light of section 44, a solicitor may consider including in any letter of engagement a provision limiting his liability, such as the following:

"Limitation of our liability

Our liability (and that of our present and former partners and employees) to you arising out of, or in connection with, our engagement (whether for breach of contract or of statutory duty, negligence, or otherwise) will be limited to [the higher of

(a) the minimum amount of the professional indemnity insurance cover from time to time required to be maintained by us under applicable law; or

(b) €[ ]].*

Nothing in this letter shall limit our liability to you:

(a) for fraud or fraudulent concealment ;or

(b) to the extent that under any applicable law liability may not be limited."

**Insert amount.*

(Practitioners should note that the Guidance and Ethics Committee published a precedent letter of engagement in May 2008, prior to the coming into force of the new act.)

[11] This has now changed to €1,500,000

Appendix 6: Practice note – Checklist of 'actions' recommended to ensure compliance with AML obligations

1. Read the AML Guidance Notes (available for download at http://www.lawsociety.ie/Pages/Members-Advice-Guidance-and-Policy-CMS/Anti-Money-Laundering/)

2. Read the relevant legislation (links in the Guidance Notes or download in full from the AML web area).

3. Appoint an MLRO (see paras 8.38– 8.42 of the Guidance Notes).

4. Appoint a Compliance Officer (see para 10.16).

5. Review your Letter of Engagement and ensure that it makes reference to your anti-money-laundering obligations.

6. Assess your firm's risk profile (see paras 4.13 – 4.21).

7. Conduct a risk assessment (see paras 4.22 – 4.30).

8. Draft a formal written policy and procedure document to contain guiding principles and the firm's risk mitigation approach (see para 4.33) and to cover the following:-
    - Risk Assessment & Risk Management (see paras 4.1 – 4.32)
    - Internal Controls & Compliance Management (see paras 10.3 – 10.10)
    - Client Due Diligence (see paras 5.2 – 5.74)
    - Identification & Verification (see paras 6.1 – 6.50)
    - Third-party Reliance (see paras 7.1 – 7.19)
    - Record-keeping (see paras 11.1 – 11.23)
    - Reporting and Tipping Off (see paras 8.1 – 8.58)
    - Training (see paras 12.1 – 12.23)
    - Policy for dealing with directions, orders and authorisations from Gardaí (see paras 14.10).

9. Communicate the policy and procedures to all relevant staff.

10. Organise training.

Appendix 7: Practice note – Dos and don'ts of S68

Section 68(1) – information in writing about legal charges

Do:

- Recognise that all clients need to budget for all expenditure in relation to their legal business.
- Recognise that strict compliance with all aspects of s68 protects both consumers and solicitors and manages the client's expectations.
- In all cases, give the client information in writing in relation to legal charges that will be incurred in their case or transaction.
- Explain that charges include fees and any money that will be paid to another person or organisation on their behalf.
- Always include information in relation to VAT.
- Give the actual amount, if this is practical and possible:
  - If this is not practical and possible, give an estimate,
  - If this is not practical and possible, give the basis of charge,
  - If the basis of charge is being used, give the client details of how they will be charged in their particular case,
  - If time is the basis of charge, time records must be maintained and must be available for inspection in the event of a dispute.
- Inform the client if you intend asking for money up front, or for the discharge of costs and/or outlays at intervals, prior to the conclusion of the case or transaction.
- Check out the precedent s68 letters on the members' area of the Law Society website, www.lawsociety.ie.
- Check out the Law Society client information leaflet Information in Relation to Legal Charges in the public area of the Law Society website.
- Use the client leaflet in conjunction with an appropriate s68 letter to the client, so that the client receives all the information as required by the legislation.
- Purchase stocks of the client information leaflet from the Law Society (100 per pack, price €21.57 plus €8.50 p&p – contact Esther McCormack at the Law Society).
- Always include a clause allowing for a revised s68 letter if unforeseen complexities arise.
- Diary the s68 letter for review at regular intervals during the case or transaction, to check if unforeseen complexities mean that the first letter is no longer correct.
- Issue a revised s68 if the first letter is no longer correct.
- Be aware that failure to issue a revised letter, when this should have been done, is viewed as coming within the definition of "inadequate professional services" in terms of conduct.

A signed copy of an up-to-date s68 letter is the solicitor's best defence in the event of a complaint. Even though a s68 letter may have been sent, in the event of a dispute, it may be difficult to prove that the client received it, if a signed copy is not on file. Maintain your files in a way that makes compliance with s68(1) easy to check in the event of a Law Society accounts regulation inspection or of a complaint being made to the Law Society.

Section 68(3), (4), and (5) – dealing with the client's award or settlement

Do:

- Ask the client if they are agreeable to any outstanding costs being deducted from their award or settlement.
- Get the client's written authority to make the deduction.
- Explain that any monies that the solicitor, with the client's authority, formally undertook to pay to another party out of the proceeds of sale must be paid out, even if the client changes their mind when the award or settlement comes in.

Don't:

- Don't make a unilateral deduction from the client's award or settlement in a litigation or other contentious matter without the client's written consent.

Section 68(6) and s68(2) – litigation or bills for other contentious matters

Do:

- Charge a professional fee that is reasonable, and state it separately in the bill.
- State the charges for general expenses, such as stationery or postage.
- State the charges for people or organisations such as government agencies or experts.
- State the VAT.
- Give a summary of the legal work done for the client.
- Give the total amount of money, if any, recovered from the other side.
- Give details of any charges recovered from the other side.

Don't:

- Don't state the professional fee as a percentage of any award or settlement, except in debt collection cases.

S68(8) – disputes about bills

Do:

- Answer any questions the client may have.
- Discuss the matter with the client and try to resolve all issues.
- If the matter is not resolved, write to the client explaining their right to have the bill taxed or to make a complaint to the Law Society.

Effective office systems
Have a good office system in place, whether manual or electronic, which will trigger compliance with all parts of s68 automatically.

Appendix 8: Practice note – Top tips for managing accounts

Accounting Systems

Install an accounting system specifically designed for a solicitor's practice, preferably with capacity to include a case management system. Keep the books of account up to date at all times. Understand the books of account, in particular the significance of a client ledger debit balance and an office ledger credit balance.

Lodgements to the client accounts

Ensure clients' moneys are lodged to the client account without delay. Moneys other than client moneys, in particular solicitors own moneys should not be lodged to the client account. Ensure mixed moneys received in respect of fees, disbursed outlays and undisbursed outlays are lodged to the client account and then transferred to office account as appropriate. Control the receipt of client moneys from clients by members of staff by the issuance of duplicate pre-numbered receipts.

Withdrawals from the client accounts

Do not write cheques on the client account without checking the up-to-date client and office ledger accounts of the client concerned, to avoid making an overpayment to or on behalf of a client. Do not draw client account cheques against uncleared third party cheques.

Control the issuance of cheques made payable to banks. Ensure the payee details on the cheque include the name of the payee or other person who is to be credited with such payment.

Ensure bills of costs are issued to clients in advance of drawing down fees from the client account. Ensure moneys to which the solicitor is beneficially entitled are withdrawn from the client account within 3 months of the completion of a matter. Do not discharge personal or office expenditure from the client account. Pay all moneys received in respect of professional fees into client and office account as appropriate.

Balancing exercises

Ensure balancing statements, in particular bank reconciliation statements, client ledger control accounts and listings of client and office ledger balances are prepared and reviewed at regular intervals, preferably on a monthly basis. Investigate listings of client ledger balances regularly for, and deal with, long outstanding balances representing undischarged outlay, stamp duty, registration fees, and undrawn fees.

Cheques signatories

Control the number of cheque signatories on the client, trust and office accounts. Impose limits on the amount a sole signatory can withdraw. Obtain returned paid cheques and where there are multiple cheque signatories in the practice, ensure the detail on the cheque corresponds with the record per the books of account.

Estates

Ensure accounting records are maintained and kept up to date for all estates. Keep a register of all bank accounts, in particular controlled trust accounts relating to estates.

Undertakings

Maintain a formal record of undertakings to ensure that outstanding undertakings can be identified and followed up. Obtain stamp duty and registration fees from clients at the earliest opportunity to avoid problems complying with undertakings.

Documentation

Retain such relevant supporting documentation on the files as will enable client moneys handled and dealt with to be duly recorded and the entries relevant thereto in the books of account to be appropriately vouched. In particular, retain sufficient documentation on file to demonstrate due compliance with Section 68 of the Solicitors Amendment Act 1994.

Law Society of Ireland

Appendix 5

Notice of closure form

SCHEDULE 1

Notice of Closure Form

Dear Sirs

Pursuant to Regulation 8(a) of the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011 (the “**Regulations**”) , we hereby give notice of our intention to cease practice on [*insert date*].

We hereby confirm that this notice is given at least 60 days prior to the earliest to occur of the following:

(a) the cessation of the firm’s practice; or

(b) the expiry of the policy of professional indemnity insurance or ARP coverage held by the firm.

We further confirm that no person who is a principal of the firm at the time it ceases practice shall carry on a practice which is largely similar to the practice of the firm or which has succeeded the practice of the firm such that it could be treated as a phoenix firm pursuant to Regulation 3(m) of the Regulations.

We enclose with this notice the firm’s most recently completed proposal form for professional indemnity insurance and most recent policy of professional indemnity insurance.

Yours faithfully

Law Society of Ireland

Appendix 6

Run-off policy

THE RUN OFF POLICY

RUN-OFF POLICY

Indemnity Period 2011/2012

1. **INTERPRETATION**

1.1 In this contract, the following expressions shall have the following meanings:

"**1995 Act**" means the Consumer Credit Act 1995 (as amended);

"**1997 Act**" means the Central Bank Act 1997 (as amended);

"Additional Self Insured Excess" has the meaning ascribed to it in clause 5.1;

"Amount Insured" means the aggregate limit of liability of the Insurer pursuant to this contract as set out in clause 3.1;

"Circumstance" means an incident, fact, occurrence, matter, act or omission that may give rise to a Claim in the context of civil liability;

"Claim" means a request or demand for, or an assertion of a right to, or an intimation of an intention to seek:

(a) civil compensation of any nature;

(b) civil damages of any nature; or

(c) any award to be made pursuant to the provisions of the Solicitors Acts 1954 to 2008 for compensation or restitution to clients or any other obligations that may be imposed on solicitors to compensate or make restitution to clients by statute from time to time;

but for the avoidance of doubt, the term **"Claim"** does not include any claim for payment of costs incurred by an Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in paragraph (c) of this definition where the Coverage excludes the Insurer's liability to indemnify the Insured in respect of such costs;

"Claimant" means a person or entity that has made or may make a Claim (including a Claim for contribution or indemnity);

"**Commercial Property Regulations**" means the Solicitors (Professional Practice, Conduct and Discipline – Commercial Property Transactions) Regulations 2010;

"**Coverage"** means this arrangement for indemnification;

"**Coverage Period**" means the period for which this Coverage affords cover as set out in clause 6.10;

"Defence Costs" mean legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the consent of the Insurer in relation to a Claim including without limitation the costs of:

(a) defending any proceedings; or

(b) conducting any proceedings for indemnity, contribution or recovery; or

(c) investigating, reducing, avoiding or compromising any actual or potential Claim;

but the term **"Defence Costs"** does not include:

(i) any internal overhead expenses of the Insured or the Insurer or the cost of any Insured's time, or

(ii) any costs incurred by an Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in paragraph (c) under the definition of "Claim" where the Coverage excludes the Insurer's liability to indemnify the Insured in respect of such costs;

"**Direction**" shall have the meaning ascribed to it in clause 9.3;

"Employee" means any person, other than a Principal, employed or otherwise engaged in the Firm's Practice, including, without limitation, solicitors, registered lawyers, other lawyers, trainee solicitors, consultants, associates, locum staff members, persons seconded to work in the Firm's Practice or persons seconded by the Firm to work elsewhere, office and clerical staff or otherwise;

"Financial Institution" means any of the following:

(a) a credit institution as defined in section 2(1) of the 1995 Act;

(b) a credit institution that is the holder of an authorisation for the purposes of Article 4(1) of Directive 2006/48/EC;

(c) a retail credit firm authorised pursuant to section 31 of the 1997 Act;

(d) a home reversion firm authorised pursuant to section 31 of the 1997 Act;

(e) any other party that engages on a professional basis in the business of providing financial accommodation of any nature to another person;

(f) any assignee of debt from an entity that has been engaged in the business of providing financial accommodation of any nature to another person, including without limitation, NAMA,

but, for the avoidance of doubt, does not include a Minister of the Government in the exercise of the functions, powers or duties of his office;

"Firm" means:

(a) the Partnership (as constituted as at the commencement of the Coverage Period) which, or sole practitioner who, contracted with the Insurer to provide the Coverage, and

(b) the Partnership referred to in paragraph (a) as constituted from time to time, whether prior to or during the Coverage Period;

"Firm's Practice" means the practice carried on by the Firm, and includes the business of any trustee, nominee, service or administration company owned by the Principals of the Insured;

"**Indemnity Period**" means the period of one (1) year starting on 1 December 2011;

"Insured" means:

(a) the Firm;

(b) each trustee, nominee, service or administration company owned by the Firm and/or the Principals of the Firm from time to time;

(c) each director, officer or employee of any such company as is referred to in paragraph (b) above from time to time;

(d) each Principal or former Principal of the Firm from time to time;

(e) each Employee or former Employee of the Firm from time to time; or

(f) the estate or legal personal representatives of any deceased former Principal or Employee of the Firm.

"Insurer" means the insurers participating in the Special Purpose Fund in respect of the Indemnity Period;

"**Investment Advice**" has the meaning ascribed to such term in the Regulations;

"**Investment Business Service**" has the meaning ascribed to such term in the Regulations;

"**Law Society"** means the Law Society of Ireland;

"Legal Services" means services of a legal or financial nature and includes any part of such services, and for the avoidance of doubt, includes (without limitation):

(a) any Investment Business Services or Investment Advice provided by a Firm;

(b) acting as personal representative or trustee;

(c) acting as notary public;

(d) acting as commissioner for oaths;

(e) acting as liquidator or receiver;

(f) acting as company secretary;

(g) acting as director of any company owned by the Principals of a Firm that provides trustee, nominee, administration or other services;

(h) acting as arbitrator or mediator; and

(i) acting on a pro bono basis.

"**Minimum Terms and Conditions**" has the meaning ascribed thereto in the Regulations;

"NAMA" means the National Asset Management Agency;

"Operative Date" means 1 December 2011;

"Partner" means a partner in the Firm;

"Partnership" means an unincorporated firm;

"Phoenix Firm" has the meaning ascribed to such term in the Regulations;

"PII Committee" means the professional indemnity insurance committee constituted under the Regulations;

"Practice" means a business (which term includes any gainful occupation) or any part thereof consisting of the provision of Legal Services from an establishment in the State and where

such Legal Services (as they involve the provision of legal advice) relate to the law of the State (including European Union law as it forms part of the law of the State);

"Preceding Practice" means each practice to which the Firm's Practice is a Succeeding Practice;

"**Principal**" means:

(a) the sole practitioner of the Firm and includes a sole practitioner who employs or employed one (1) or more solicitors or registered lawyers; and

(b) every Partner of the Firm and every person held out as a Partner of a Firm where the Firm carries on business as a Partnership during the Indemnity Period;

"**Qualifying Insurance"** has the meaning ascribed to it in the Regulations;

"**Regulations**" mean the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011, as the same may be amended from time to time;

"ROF" means the run-off fund;

"ROF Eligibility Criteria" has the meaning ascribed to it in the Regulations;

"Run-off Cover" has the meaning ascribed to it in the Regulations;

"Run-off Cover Rules" has the meaning ascribed to it in the Regulations;

"Self-Insured Excess" means the aggregate amount of the Standard Self Insured Excess and any Additional Self Insured Excess which the Insured is required by the terms of this contract to pay to the Claimant in the event of a Claim;

"SPF Manager" means any person (including any body corporate, partnership or unincorporated body) from time to time appointed by the PII committee to manage the Special Purpose Fund, and includes any replacement to such a person appointed from time to time;

"Special Purpose Fund" has the meaning ascribed thereto in the Regulations;

"Standard Self Insured Excess" has the meaning ascribed to it in clause 5.1;

"**Succeeding Practice**" means a Practice that satisfies any one (1) or more of the following conditions in relation to another Practice (such other practice being a Preceding Practice for these purposes)

(a) it is expressly held out as being a successor to the practice or part thereof of the Preceding Practice; or

(b) it is conducted by a Partnership that has a majority of Principals that are identical to those persons that were Principals of any partnership that conducted the Preceding Practice; or

(c) it is conducted by a sole practitioner who was the sole practitioner conducting the Preceding Practice; or

(d) it is conducted by a Partnership in which the sole practitioner conducting the Preceding Practice is a partner and where no other person has been held out as a successor to the Preceding Practice; or

(e) the Partnership which, or sole practitioner who, conducts the practice has assumed the liabilities of the Preceding Practice;

but notwithstanding the foregoing a practice shall not be treated as a Succeeding Practice for the purposes of this contract pursuant to paragraphs (b), (c), (d) or (e) if another practice is or was held out by the owner of that other practice as the Succeeding Practice;

"Working Day" means every day, not including a Saturday, Sunday or public holiday, on which banks generally are open for the transaction of normal banking business in the State.

1.2 In this contract, unless the context otherwise requires:

(a) words and expressions shall have the same meaning and shall be construed consistently with the same words and expressions in the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011;

(b) the Interpretation Act 2005 shall apply for the purpose of interpreting this contract as it applies to the interpretation of an act of the Oireachtas, except insofar as it may be inconsistent with the Solicitors Acts 1954 to 2008, the Regulations or with this contract;

(c) a reference to any directive, statute, statutory provision, statutory instrument or other similar instrument includes:

(i) any subordinate legislation made under it, and

(ii) any provision which it has superseded or re enacted (with or without modification) or amended, and any provision superseding it or re enacting it (with or without modification) or amending it either before, at or after the date of commencement of this contract;

(d) the singular includes the plural, and vice versa;

(e) words denoting any gender include all genders and words denoting the singular include the plural and vice versa;

(f) any reference to a person shall be construed as a reference to any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two (2) or more of the foregoing;

(g) references to a "company" include any body corporate;

(h) headings are inserted for convenience only and shall not affect the interpretation of this contract; and

(i) references to awareness of the Insured shall be limited to the actual knowledge of a Principal of the Firm, or any solicitor or registered lawyer employed by the Firm.

2. SCOPE OF COVER

2.1 The Insured

The persons insured under this Coverage include all those persons and entities which are set out in clause 1 of this contract under the definition of "**Insured**".

2.2 Civil Liability

The Insurer will indemnify each Insured against civil liability incurred by an Insured arising from any provision of Legal Services prior to the cessation of the Firm's Practice provided that:

2.2.1 a Claim in respect of such civil liability is

2.2.2 first made against the Insured during the Coverage Period; and

2.2.3 notified to the Insurer during the Coverage Period or within three (3) Working Days immediately following the end of the Coverage Period; or

2.2.4 a Claim in respect of such liability is first made during or after the Coverage Period and:

(a) arises from Circumstances first notified to the Insurer during the Coverage Period; or

(b) arises from Circumstances first notified to the Insurer within three (3) Working Days immediately following the end of the Coverage Period provided that the Insured was aware of the Circumstances during the Coverage Period.

2.3 **Defence Costs**

The Insurer will indemnify the Insured against Defence Costs in relation to:

2.3.1 any Claim referred to in clauses 2.2 and 2.4; and

2.3.2 any Circumstance referred to in clauses 2.2 and 2.4;

and such Defence Costs will be met by the Insurer as and when they are determined, due and payable.

2.4 **Preceding Practice**

2.4.1 The Insurer will indemnify each Insured against civil liability to the extent that such liability arises from any provision of Legal Services in connection with a Preceding Practice where such services were provided prior to the cessation of the Firm's Practice, provided that

(a) a Claim in respect of such liability is:

(i) first made against an Insured during the Coverage Period; and

(ii) notified to the Insurer during the Coverage Period or within three (3) Working Days immediately following the end of the Coverage Period; or

(b) a Claim in respect of such liability is first made during or after the Coverage Period and

(i) arises from Circumstances first notified to the Insurer during the Coverage Period; or

(ii) arises from Circumstances first notified to the Insurer within three (3) Working Days immediately following the end of the Coverage Period provided that the Insured was aware of such circumstances during the Coverage Period.

2.4.2 The cover contemplated in this clause 2.4 includes:

(a) each Partnership or sole practitioner who carried on the Preceding Practice;

(b) each trustee, nominee, service or administration company owned by the persons referred to in paragraph (a) from time to time;

(c) each director or officer of any such company as is referred to in paragraph (b) above from time to time;

(d) each Principal and former Principal of any Partnership referred to in paragraph (a);

(e) each Employee and former Employee of any Partnership or sole practitioner or company referred to in paragraph (a) and (b); and

(f) the estate or legal personal representatives of any person referred to in this clause 2.4.2 who is deceased or legally incapacitated.

3. LIMIT OF INSURANCE COVER

3.1 Limit of liability for Claims

3.1.1 The Insurer's liability for Claims in the Indemnity Period shall be limited to an aggregate amount of €1,500,000 (one million five hundred thousand euro). This is not a limit on each underwriter but the maximum liability of all underwriters taken together.

3.1.2 If a Claim is made that would otherwise exceed the limit of liability established by clause 3.1.1, whether on its own or in aggregate with prior or concurrent Claims, the Insurer will be liable only for the amount of such Claim that does not exceed the limit.

3.2 Cover for Defence Costs

The limit on the Amount Insured set out in clause 3.1.1 does not apply to Defence Costs.

3.3 Proportionate liability for Defence Costs

Notwithstanding clause 3.2, liability for Defence Costs in relation to a Claim that exceeds the Amount Insured is limited to the proportion of such Defence Costs that the Amount Insured bears to the total amount paid or payable to dispose of the Claim.

3.4 No retrospective dates

The Coverage shall not exclude or limit the liability of the Insurer in respect of Claims arising from incidents, occurrences, facts, matters, acts and/or omissions that occurred prior to the commencement of this contract.

3.5 No other limits

The Coverage does not apply any monetary exclusions or limits except as provided for by clauses 3.1 and 3.3. For the avoidance of doubt, this clause 3.5 shall not be construed to prevent an Insured and the SPF manager (on behalf of the Insurer) from agreeing that the cover shall provide for a Self-Insured Excess.

4. PREMIUM

No premium shall be payable by an ROF Eligible Firm for Run-off Cover.

5. SELF-INSURED EXCESS

5.1 Self Insured Excess

The Self Insured Excess applicable to the Coverage shall comprise of the following:

5.1.1 a self insured excess equal to the self insured excess applicable to the Qualifying Insurance held by the Firm at the time it ceased practice as set out in Schedule 1 (the "**Standard Self Insured Excess**");

5.1.2 an additional self insured excess (if any) as determined by the SPF Manager (for and on behalf of the Insurer) in accordance with the run-off rules as set out in Schedule 1 (the "**Additional Self Insured Excess**").

The Insured will bear the first amount of each and every Claim up to the amount of the Self-Insured Excess.

5.2 **Effect of Self-Insured Excess**

5.2.1 The Self-Insured Excess does not reduce or limit the Amount Insured.

5.2.2 The Self-Insured Excess does not apply to Defence Costs.

5.3 **Payment of Self-Insured Excess to Claimant**

In the event that an amount which is within the Self-Insured Excess is not paid by an Insured to a Claimant within 30 (thirty) Working Days of its becoming due, the Insurer must redress the default on the part of the Insured and make payment thereof to the Claimant provided that in such circumstances the total aggregate liability of the Insurer in respect of Claims and in respect of any amount within the Self-Insured Excess required to be paid by the Insurer in accordance with this clause 5.3 shall not exceed €1,500,000. The Insurer shall be entitled to recover any amount paid which is within the Self-Insured Excess from the Insured.

5.4 **Financial Institutions**

The Insurer shall not be required to pay any amount that is within the Additional Self-Insured Excess in respect of claims made by Financial Institutions.

5.5 **One Claim**

All Claims against any one or more Insured arising from the same act or omission or from one series of related acts or omissions will be regarded as one Claim for the purposes of the Self-Insured Excess.

6. **SPECIAL CONDITIONS**

6.1 **No cancellation**

6.1.1 Subject to clause 6.2, this contract cannot be cancelled unless:

(a) the Firm has obtained replacement Qualifying Insurance in accordance with the Minimum Terms and Conditions in force on the date of cancellation of this contract;

(b) the Qualified Insurer or Qualified Insurers under the replacement Qualifying Insurance have confirmed in writing to the Firm and to the SPF Manager that they are providing qualifying insurance on the basis that the Firms Practice is to be treated as a continuation of the Firm's Practice prior to the cessation thereof and that accordingly they will be liable for any Claims against the Firm arising from matters that occurred prior to the cessation; and

(c) the Qualified Insurer or Qualified Insurers under the replacement Qualifying Insurance have provided any required confirmations of coverage to the Law Society; or

(d) the Firm ceases to be a ROF Eligible Firm.

6.1.2 Cancellation of this contract shall not prejudice the accrued rights and obligations of the Insurer and the Insured under this contract prior to the date of cancellation.

6.2 **Phoenix Firms**

6.2.1 The SPF Manager may cancel this contract forthwith where, pursuant to Regulation 3(m) of the Regulations, the PII Committee decides to treat another firm as a Phoenix Firm to the Firm.

6.2.2 The SPF Manager shall honour and discharge any amount due and owing in respect of any Claim or Circumstance notified to the SPF Manager within the period from the commencement of this contract until its cancellation by the SPF Manager pursuant to clause 6.2.1 but the SPF Manager shall be entitled to recover any amount so paid from the Firm or from those persons who were Principals of the Firm immediately prior to the date it ceased practice.

6.3 **No avoidance or repudiation**

The Insurer is not entitled to avoid or repudiate this contract on any grounds whatsoever including, without limitation, where there has been non-disclosure or misrepresentation by the Insured, whether such non-disclosure or misrepresentation is or is alleged to be innocent, negligent or fraudulent.

6.4 **Rights of Insurer**

In any situation where the Insurer becomes aware that there has been fraudulent non-disclosure or fraudulent misrepresentation to the Insurer in connection with the placement or renewal of the Coverage, the Insurer may refer the conduct of any relevant Principal of the Firm to the Law Society to permit the Law Society to take action against that Principal under the Solicitors Acts 1954 to 2008 or otherwise.

6.5 **No set off**

Any indemnity amount payable to the Insured by the Insurer under this contract must be paid only to the relevant Claimant or as the Claimant may direct. The Insurer is not entitled to set off against any such indemnity amount any payment owing to the Insurer by the Insured.

6.6 **No other policy to bar recovery**

Subject to clause 7.4, rights of recovery available to the Insured under a policy of insurance will not bar recovery in respect of any Claim under this contract.

6.7 **Notification of Claims**

The Insured shall report or notify any Claim or Circumstance required to be reported or notified pursuant to this contract to the SPF Manager (acting on behalf of the Insurer) as soon as is reasonably practicable after becoming aware of such a Claim or Circumstance.

Every Principal of the Insured shall be responsible for ensuring that the Insured makes any notifications or reports required pursuant to this contract.

6.8 **Additional Information**

The Firm shall provide to the SPF Manager such information as the SPF Manager may from time to time in its discretion reasonably require to deal efficiently and effectively with the Firm's membership of the Run-Off Fund.

6.9 **No denial or reduction**

Subject to clause 2.2, the Insurer shall not on any grounds whatsoever, including but not limited to the following:

6.9.1 any failure to notify a Claim or Circumstance within a prescribed period; or

6.9.2 any breach of any term or condition of this contract;

be entitled to reduce or deny its liability under this contract, except in circumstances where a prescribed exclusion contemplated by clause 7 applies.

6.10 **Coverage Period**

The Coverage Period shall commence on the expiry of the Qualifying Insurance held by the Firm on the date it ceases practice and shall continue until the end of the Indemnity Period unless otherwise cancelled in accordance with the terms of this contract.

6.11 **Contesting Liability**

The Insured shall not be required against its wish to contest the issue of liability in any legal or arbitration proceedings arising from any Claim unless a solicitor or a member of the Irish Bar (as mutually agreed upon between the Insured and the SPF Manager (acting on behalf of the Insurer), or failing agreement, to be appointed by the Chairman of the Bar Council of Ireland) shall advise that such proceedings or arbitration should be contested.

7. **EXCLUSIONS**

7.1 **No other exclusions**

The liability of the Insurer under this contract shall not be excluded or limited on any basis whatsoever save where and to the extent that any Claim or related Defence Cost is proved to have arisen from one (1) or a number of the matters set out in this clause 7.

7.2 **Death or bodily injury**

The Insurer is not liable to indemnify any Insured for causing death or bodily injury save that the Insurer is liable for psychological injury or emotional distress (including but not limited to stress-related claims).

7.3 **Property**

The Insurer is not liable to indemnify for any act or omission of any Insured which results in or contributes to damage to, or destruction or physical loss of any property of any kind whatsoever, other than property in the care, custody or control of any Insured in connection with the Firm's Practice and not occupied or used in the course of the Firm's Practice, unless such liability is occasioned by the Insured being in breach of professional duty in the performance of or failure to perform Legal Services.

7.4 **Previous cover**

The Insurer is not liable to indemnify any Insured in respect of claims where another professional indemnity insurance contract for a period earlier than the Coverage Period entitles the Insured to be indemnified in respect of the same Claim. Save as specified in this clause 7.4, the Coverage shall comply with clause 6.6.

7.5 **Fraud or dishonesty**

The Insurer is not liable to indemnify any Insured to the extent that any civil liability or related Defence Costs arise from the dishonesty of or a fraudulent act or omission committed or condoned by any Insured.

7.6 **Trading debts**

The Insurer is not liable to indemnify any Insured against any trading loss or personal debt incurred by the Insured.

7.7 **Partnership Agreement**

The Insurer is not liable to indemnify any Insured against any actual or alleged breach or other relief in respect of disputes relating to the membership of and rights and obligations relating to membership of the Firm or disputes relating to or arising out of the partnership agreement between any two (2) or more persons comprising or formerly comprising the Firm.

7.8 **Solicitors Acts**

Save as specifically provided in this clause, the Insurer is not liable to indemnify any Insured against any loss occurring as a result of any process or proceedings brought against the Insured by or on behalf of the Law Society or any other person so entitled to ensure compliance with, or consequent on the breach (or alleged breach), by the Insured, of any provisions of the Solicitors Acts 1954 to 2008 or any regulations made thereunder or in respect of misconduct (including, for the avoidance of doubt, any costs incurred by an Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in sub-clause (c) of the definition of **"Claim"**). However, the Insurer will indemnify each Insured for any awards made under the provisions of the Solicitors Acts 1954 to 2008 for compensation or restitution to clients or any other obligations that may be imposed on solicitors or registered lawyers by statute from time to time to compensate or make restitution to clients.

7.9 **Insured acting as their own lawyer**

The Insurer is not liable to indemnify any Insured against any liability arising in respect of a transaction where the Insured has acted as his or her own lawyer save and except where another solicitor or registered lawyer in the Firm has bona fide acted at arm's length for the Insured concerned in respect of any such transaction or where the Claim is by a bona fide third party in respect of such transaction.

7.10 **Claims/Exposure to risk outside Ireland**

The Insurer is not liable to indemnify any Insured against any loss occurring or any liability arising in connection with:

7.10.1 any part of the Firm's Practice carried on from offices of the Firm located outside the Republic of Ireland; or

7.10.2 any advice given or action taken or omitted to be taken by the Insured in relation to any law other than the law of the Republic of Ireland (for this purpose the law of the Republic of Ireland includes European Union law where the same forms part of the law of the Republic of Ireland).

7.11 **Employment**

The Insurer is not liable to indemnify any Insured against any Claim or Circumstance arising out of:

7.11.1 a wrongful dismissal; or

7.11.2 any other alleged or actual breach, or any other relief in respect of any contract of employment (including but not limited to a stress-related claim brought by an Employee against the Firm where such claim arises out of the employment relationship between that Employee and the Firm) where such dismissal or breach is alleged or such relief is sought against the Insured.

7.12 **Contracts**

The Insurer is not liable to indemnify any Insured against:

7.12.1 wrongful termination by the Insured of; or

7.12.2 any other actual or alleged breach by the Insured of; or

7.12.3 any other relief claimed against the Insured in respect of;

any contract for supply to or use by the Insured of services and/or materials and/or equipment and/or other goods.

7.13 **Directors' liability**

The Insurer is not liable to indemnify any natural person in their capacity as a director or officer of a company, other than an administration, nominee, service or trustee company in respect of which coverage is otherwise required to be extended pursuant to this contract, except that:

7.13.1 this contract shall cover any liability of that person which arises from a breach of duty in the performance of or failure to perform Legal Services; and

7.13.2 this contract shall cover each Insured against any vicarious or joint liability.

7.14 **War, Terror, Asbestos, Radiation**

The Insurer is not liable to indemnify any Insured in respect of losses directly or indirectly caused by:

7.14.1 war, riot, civil commotion and other hostilities;

7.14.2 terrorism;

7.14.3 asbestos or any actual or alleged asbestos related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos; or

7.14.4 ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or from the radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof

provided that in each case any such exclusion or endorsement does not exclude or limit any liability of the Insurer to indemnify the Insured against civil liability or related Defence Costs arising from any actual or alleged breach of duty in the performance of (or failure to perform) Legal Services or failure to discharge or fulfil any duty incidental to the Firm's Practice.

7.15 **Undertakings to Financial Institutions in respect of Commercial Property Transactions**

Certain capitalised terms in this clause are defined in clause 8.16.

7.15.1 Undertakings to Financial Institutions in respect of Commercial Property Transactions before 1 December 2009

The Insurer is not liable to indemnify any insured in respect of Claims arising directly or indirectly as a result of the provision by the Insured of a Relevant Undertaking in the course of a Commercial Property Transaction, before 1 December 2009, to a Financial Institution or to any director, officer, employee, agent or advisor of a Financial Institution, where:

(a) the Relevant Undertaking was given by the Insured (acting either for a client borrower alone, or for a client borrower and a Financial Institution jointly) in connection with the provision by the relevant Financial Institution of financial accommodation to the Insured's client to permit that client to effect the relevant Commercial Property Transaction; and

(b) such Claims are made by a Financial Institution; and

(c) to the extent that the Insurer can demonstrate any civil liability or related Defence Costs arise from any dishonest, fraudulent, criminal or malicious act or omission by that Insured, or any acts or omissions which were done by that Insured knowing them to be wrongful.

For the avoidance of doubt, nothing in this clause 7.15.1 shall be construed to permit liability to be excluded in circumstances where any Relevant Undertaking is provided to a Financial Institution in the course of the Insured's sole representation of that Financial Institution as the Insured's own client

7.15.2 Undertakings to Financial Institutions in respect of Commercial Property Transactions on or after 1 December 2009 but before 1 December 2010

The Insurer is not liable to indemnify any Insured in respect of Claims arising directly or indirectly as a result of the provision by the Insured of a Relevant Undertaking in the course of a Commercial Property Transaction, on or after 1 December 2009, to a Financial Institution or to any director, officer, employee, agent or advisor of a Financial Institution, where the Relevant Undertaking was given by the Insured (acting either for a client borrower alone, or for a client borrower and a Financial Institution jointly) in connection with the provision by the relevant Financial Institution of financial accommodation to that Insured's client to permit that client to effect the relevant Commercial Property Transaction.

For the avoidance of doubt nothing in this clause 7.15.2 shall be construed to permit liability to be excluded in circumstances where any Relevant Undertaking is provided to a Financial Institution in the course of the Insured's sole representation of that Financial Institution as the Insured's own client.

7.15.3 Undertakings in breach of the Commercial Property Regulations on or after 1 December 2010

The Insurer is not liable to indemnify any Insured in respect of Claims arising directly or indirectly as a result of any Insured acting in breach of the Commercial Property Regulations.

7.16 **Interpretation of Clause 7.15**

For the purposes of clause 7.15 the following terms have the following meanings:

"Accountable Trust Receipt" has the meaning ascribed thereto in the Commercial Property Regulations;

"Certificate of Title" has the meaning ascribed thereto in the Commercial Property Regulations;

"Commercial Development" has the meaning ascribed thereto in the Commercial Property Regulations;

"Commercial Property Transaction" has the meaning ascribed thereto in the Commercial Property Regulations;

"Relevant Person" has the meaning ascribed thereto in the Commercial Property Regulations;

"Relevant Undertaking" has the meaning ascribed thereto in the Commercial Property Regulations;

"Representative" has the meaning ascribed thereto in the Commercial Property Regulations;

"Residential Property" has the meaning ascribed to such term in the Commercial Property Regulations;

"Residential Property Transaction" has the meaning ascribed thereto in the Commercial Property Regulations;

"Solicitor" has the meaning assigned to it in Section 3 of the Solicitors (Amendment) Act, 1994 and includes two (2) or more Solicitors acting in partnership or association; and

"Undertaking" has the meaning ascribed to such term in the Commercial Property Regulations.

7.17 **Misrepresentation and Non-Disclosure**

The Insurer is not liable to indemnify the Insured in respect of any Claim by a Financial Institution in circumstances where the Insurer can demonstrate (and for the avoidance of doubt, the burden of proof in this regard shall rest with the Insurer) that any Insured was guilty of any material misrepresentation or material non-disclosure in placing the Coverage, save that liability shall not be excluded on the grounds of innocent misrepresentation or innocent non-disclosure on the part of the Insured. For the avoidance of doubt, the effect of this clause 7.17 shall be that no such Claims shall be valid as against the Insurer.

8. GENERAL CONDITIONS

In the event of any inconsistency between the general conditions in this clause 8 and the special conditions set out at clause 6, the special conditions will prevail.

8.1 **Reimbursement**

8.1.1 Any Insured who committed or condoned an innocent or negligent non-disclosure or misrepresentation or other innocent or negligent breach of the terms and conditions of this contract will reimburse the Insurer to the extent that is just and equitable, having regard to the prejudice caused to the Insurer's interests by such non-disclosure, misrepresentation or breach, provided that no Insured shall be required to make any such reimbursement to the extent that any such breach of the terms or conditions of this contract was in order to comply with any applicable rules or codes laid down from time to time by the Law Society.

8.1.2 Any Insured who committed or condoned a dishonest or fraudulent non-disclosure or misrepresentation or other dishonest or fraudulent breach of the terms and conditions of this contract will be required to indemnify the Insurer in full in respect of any sums paid by it in or in connection with the discharge of any Claim.

8.1.3 No non-disclosure, misrepresentation, breach, dishonesty, act or omission will be imputed to a company unless it was committed or condoned by, in the case of a company, all directors and officers of that company.

8.1.4 Any right of reimbursement contemplated by this clause 8.1 against any Employee, each former Employee, and each person who becomes an Employee of the Firm during the Coverage Period, or their personal representatives, is limited to the extent that is just and equitable having regard to the prejudice caused to the Insurer's interests by that person having committed or condoned (whether knowingly or recklessly) dishonesty or any fraudulent act or omission.

8.2 **Reimbursement of Defence Costs**

Each Insured will reimburse the Insurer for Defence Costs advanced on that Insured's behalf that the Insurer is not ultimately liable to pay.

8.3 **Reimbursement of the Self-Insured Excess**

Those persons who are Principals of the Firm at any time during the Coverage Period will reimburse the Insurer for any Self-Insured Excess paid by the Insurer on an Insured's behalf.

8.4 **Reimbursement of monies paid pending dispute resolution**

Each Insured will reimburse the Insurer following resolution of any coverage dispute for any amount paid by the Insurer on that Insured's behalf that, on the basis of the resolution of the dispute, the Insurer is not ultimately liable to pay.

8.5 **Claims Reports**

The Insurer will provide a report (a "**Claims Report**") to the Firm within a reasonable time from receiving a request to do so, setting out (as applicable), as at the date specified in the Claims Report:

8.5.1 a summary of each Claim of which the Insurer is aware made against the Firm under this contract;

8.5.2 the amount reserved by the Insurer against each Claim;

8.5.3 the basis on which each such amount is calculated (for example, whether the figure represents a loss actually incurred, an estimate of probable maximum loss, or any other basis of reserving);

8.5.4 whether or not each such amount includes Defence Costs;

8.5.5 whether each such amount includes or is in excess of the amount of any excess or deductible that may apply in relation to such Claim, and the amount of any such excess or deductible; and

8.5.6 any amounts paid out in relation to each Claim, in each case indicating whether such sums include any excess or deductible due from but not paid by the Firm.

In providing Claims Reports, the Insurer shall use its reasonable endeavours to provide all of the information set out in this clause 8.5, but shall not be required to provide any part of that information to the extent that doing so would not be reasonably practicable having regard to the manner in which Claims information is stored on the computer systems of the Insurer.

9. **DISPUTE RESOLUTION**

9.1 **Arbitration**

All disputes and differences arising under or in connection with this contract shall be referred to the decision of a sole arbitrator to be agreed between the parties or, failing agreement between the parties within 14 (fourteen) days of either party having made a request in writing to the other party to concur in the appointment of an arbitrator, a person to be nominated by

the Chairman for the time being (or failing the Chairman any other member of the Committee) of the Chartered Institute of Arbitrators (Irish Branch) upon the application of either party.

Every or any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2010 or any act or statutory provision amending same and shall be an arbitration conducted in Dublin, Ireland in the English language and governed by the Arbitration Act 2010.

9.2 **Related Disputes**

Any dispute between the Insured and the Insurer as to any Claim or Circumstance under the Coverage shall be heard and determined in conjunction with any other related dispute between any insured party and that party's insurer.

9.3 **Conduct of Claims**

Pending the resolution of any coverage dispute and without prejudice to any issue in dispute, the Insurer shall if so directed by the Law Society conduct any Claim against the Insured, advance Defence Costs to the Insured and if appropriate compromise and/or pay any Claim against the Insured, such a direction by the Law Society to be known as a Direction. The Society may make such a Direction if it is satisfied, in its absolute discretion, that:

9.3.1 the party requesting the Direction has taken all reasonable steps to resolve the dispute with the other party;

9.3.2 there is a reasonable prospect that the coverage dispute will be resolved or determined in the Insured's favour; and

9.3.3 it is fair and equitable in all the circumstances for such Direction to be given.

The Insured shall be required to afford reasonable co-operation to the Insurer in relation to the handling of any Claim against the Insured, subject to the Insurer agreeing to meet the Insured's reasonable costs of such co-operation, and the Insurer shall be entitled to recover from the Insured by way of damages a sum equal to the Insurer's loss arising from or connected with the Insured's failure to co-operate.

For the avoidance of doubt, the Insurer shall not refuse to pay any Claim, or cancel, terminate or avoid the Coverage, due to the Insured's failure to co-operate.

SCHEDULE 1

Insured:

Coverage Period:

Excesses:

Premium:

Law Society of Ireland

Appendix 7

ARP run-off policy

THE ARP RUN-OFF POLICY

ARP RUN-OFF POLICY

Indemnity Period 2011/2012

1. **INTERPRETATION**

1.1 In this contract, the following expressions shall have the following meanings:

"**1995 Act**" means the Consumer Credit Act 1995 (as amended);

"**1997 Act**" means the Central Bank Act 1997 (as amended);

"Additional Self Insured Excess" has the meaning ascribed to it in clause 5.1;

"Amount Insured" means the aggregate limit of liability of the Insurer pursuant to this contract as set out in clause 3.1;

"ARP" means the Assigned Risks Pool;

"ARP Eligible Firm" has the meaning ascribed to it in the Regulations;

"Assigned Risks Pool" has the meaning ascribed to it in the Regulations;

"Circumstance" means an incident, fact, occurrence, matter, act or omission that may give rise to a Claim in the context of civil liability;

"Claim" means a request or demand for, or an assertion of a right to, or an intimation of an intention to seek:

(a) civil compensation of any nature;

(b) civil damages of any nature; or

(c) any award to be made pursuant to the provisions of the Solicitors Acts 1954 to 2008 for compensation or restitution to clients or any other obligations that may be imposed on solicitors to compensate or make restitution to clients by statute from time to time;

but for the avoidance of doubt, the term **"Claim"** does not include any claim for payment of costs incurred by an Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in paragraph (c) of this definition where the Coverage excludes the Insurer's liability to indemnify the Insured in respect of such costs;

"Claimant" means a person or entity that has made or may make a Claim (including a Claim for contribution or indemnity);

"**Coverage"** means this arrangement for indemnification;

"Coverage Period" means the period for which this Coverage affords cover as set out in clause 6.10;

"Defence Costs" mean legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the consent of the Insurer in relation to a Claim including without limitation the costs of:

(a) defending any proceedings; or

(b) conducting any proceedings for indemnity, contribution or recovery; or

(c) investigating, reducing, avoiding or compromising any actual or potential Claim;

but the term **“Defence Costs”** does not include:

(i) any internal overhead expenses of the Insured or the Insurer or the cost of any Insured’s time, or

(ii) any costs incurred by an Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in paragraph (c) under the definition of “Claim” where the Coverage excludes the Insurer’s liability to indemnify the Insured in respect of such costs;

“**Direction**” shall have the meaning ascribed to it in clause 9.3;

“Employee” means any person, other than a Principal, employed or otherwise engaged in the Firm’s Practice, including, without limitation, solicitors, registered lawyers, other lawyers, trainee solicitors, consultants, associates, locum staff members, persons seconded to work in the Firm’s Practice or persons seconded by the Firm to work elsewhere, office and clerical staff or otherwise;

“Financial Institution” means any of the following:

(a) a credit institution as defined in section 2(1) of the 1995 Act;

(b) a credit institution that is the holder of an authorisation for the purposes of Article 4(1) of Directive 2006/48/EC;

(c) a retail credit firm authorised pursuant to section 31 of the 1997 Act;

(d) a home reversion firm authorised pursuant to section 31 of the 1997 Act;

(e) any other party that engages on a professional basis in the business of providing financial accommodation of any nature to another person;

(f) any assignee of debt from an entity that has been engaged in the business of providing financial accommodation of any nature to another person, including without limitation, NAMA,

but, for the avoidance of doubt, does not include a Minister of the Government in the exercise of the functions, powers or duties of his office;

“Firm” means:

(a) the Partnership (as constituted as at the commencement of the Coverage Period) which, or sole practitioner who, contracted with the Insurer to provide the Coverage, and

(b) the Partnership referred to in paragraph (a) as constituted from time to time, whether prior to or during the Coverage Period;

“Firm’s Practice” means the practice carried on by the Firm, and includes the business of any trustee, nominee, service or administration company owned by the Principals of the Insured;

“**Indemnity Period**” means the period of one (1) year starting on 1 December 2011;

“Insured” means:

(a) the Firm;

(b) each trustee, nominee, service or administration company owned by the Firm and/or the Principals of the Firm from time to time;

(c) each director, officer or employee of any such company as is referred to in paragraph (b) above from time to time;

(d) each Principal or former Principal of the Firm from time to time;

(e) each Employee or former Employee of the Firm from time to time; or

(f) the estate or legal personal representatives of any deceased former Principal or Employee of the Firm.

"Insurer" means the insurers participating in the Special Purpose Fund in respect of the Indemnity Period;

"**Investment Advice**" has the meaning ascribed to such term in the Regulations;

"**Investment Business Service**" has the meaning ascribed to such term in the Regulations;

"**Law Society"** means the Law Society of Ireland;

"Legal Services" means services of a legal or financial nature and includes any part of such services, and for the avoidance of doubt, includes (without limitation):

(a) any Investment Business Services or Investment Advice provided by a Firm;

(b) acting as personal representative or trustee;

(c) acting as notary public;

(d) acting as commissioner for oaths;

(e) acting as liquidator or receiver;

(f) acting as company secretary;

(g) acting as director of any company owned by the Principals of a Firm that provides trustee, nominee, administration or other services;

(h) acting as arbitrator or mediator; and

(i) acting on a pro bono basis.

"**Minimum Terms and Conditions**" has the meaning ascribed thereto in the Regulations;

"NAMA" means the National Asset Management Agency;

"Operative Date" means 1 December 2011;

"Partner" means a partner in the Firm;

"Partnership" means an unincorporated firm;

"Phoenix Firm" has the meaning ascribed to such term in the Regulations;

"**PII Committee"** means the professional indemnity insurance committee constituted under the Regulations;

"Practice" means a business (which term includes any gainful occupation) or any part thereof consisting of the provision of Legal Services from an establishment in the State and where

such Legal Services (as they involve the provision of legal advice) relate to the law of the State (including European Union law as it forms part of the law of the State);

"Preceding Practice" means each practice to which the Firm's Practice is a Succeeding Practice;

"**Principal**" means:

(a) the sole practitioner of the Firm and includes a sole practitioner who employs or employed one (1) or more solicitors or registered lawyers; and

(b) every Partner of the Firm and every person held out as a Partner of a Firm where the Firm carries on business as a Partnership during the Indemnity Period;

"Qualifying Insurance" has the meaning ascribed to it in the Regulations;

"**Regulations**" mean the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011, as the same may be amended from time to time;

"Run-off Cover" has the meaning ascribed to it in the Regulations;

"Run-off Cover Rules" has the meaning ascribed to it in the Regulations;

"Self-Insured Excess" means the aggregate amount of the Standard Self Insured Excess and any Additional Self Insured Excess which the Insured is required by the terms of this contract to pay to the Claimant in the event of a Claim;

"SPF Manager" means any person (including any body corporate, partnership or unincorporated body) from time to time appointed by the PII committee to manage the Special Purpose Fund, and includes any replacement to such a person appointed from time to time;

"Special Purpose Fund" has the meaning ascribed thereto in the Regulations;

"Standard Self Insured Excess" has the meaning ascribed to it in clause 5.1;

"**Succeeding Practice**" means a Practice that satisfies any one (1) or more of the following conditions in relation to another Practice (such other practice being a Preceding Practice for these purposes):

(a) it is expressly held out as being a successor to the practice or part thereof of the Preceding Practice; or

(b) it is conducted by a Partnership that has a majority of Principals that are identical to those persons that were Principals of any partnership that conducted the Preceding Practice; or

(c) it is conducted by a sole practitioner who was the sole practitioner conducting the Preceding Practice; or

(d) it is conducted by a Partnership in which the sole practitioner conducting the Preceding Practice is a partner and where no other person has been held out as a successor to the Preceding Practice; or

(e) the Partnership which, or sole practitioner who, conducts the practice has assumed the liabilities of the Preceding Practice;

but notwithstanding the foregoing a practice shall not be treated as a Succeeding Practice for the purposes of this contract pursuant to paragraphs (b), (c), (d) or (e) if another practice is or was held out by the owner of that other practice as the Succeeding Practice;

"**Working Day**" means every day, not including a Saturday, Sunday or public holiday, on which banks generally are open for the transaction of normal banking business in the State.

1.2 In this contract, unless the context otherwise requires:

1.2.1 words and expressions shall have the same meaning and shall be construed consistently with the same words and expressions in the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011;

1.2.2 the Interpretation Act 2005 shall apply for the purpose of interpreting this contract as it applies to the interpretation of an act of the Oireachtas, except insofar as it may be inconsistent with the Solicitors Acts 1954 to 2008, the Regulations or with this contract;

1.2.3 a reference to any directive, statute, statutory provision, statutory instrument or other similar instrument includes:

(a) any subordinate legislation made under it, and

(b) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it either before, at or after the date of commencement of this contract;

(c) the singular includes the plural, and vice versa;

(d) words denoting any gender include all genders and words denoting the singular include the plural and vice versa;

(e) any reference to a person shall be construed as a reference to any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two (2) or more of the foregoing;

(f) references to a "company" include any body corporate;

(g) headings are inserted for convenience only and shall not affect the interpretation of this contract; and

(h) references to awareness of the Insured shall be limited to the actual knowledge of a Principal of the Firm, or any solicitor or registered lawyer employed by the Firm.

2. SCOPE OF COVER

2.1 The Insured

The persons insured under this Coverage include all those persons and entities which are set out in clause 1 of this contract under the definition of "**Insured**".

2.2 Civil Liability

The Insurer will indemnify each Insured against civil liability incurred by an Insured arising from any provision of Legal Services prior to the cessation of the Firm's Practice provided that:

(a) a Claim in respect of such civil liability is

(i) first made against the Insured during the Coverage Period; and

(ii) notified to the Insurer during the Coverage Period or within three (3) Working Days immediately following the end of the Coverage Period; or

(b) a Claim in respect of such liability is first made during or after the Coverage Period and:

(i) arises from Circumstances first notified to the Insurer during the Coverage Period; or

(ii) arises from Circumstances first notified to the Insurer within three (3) Working Days immediately following the end of the Coverage Period provided that the Insured was aware of the Circumstances during the Coverage Period.

2.3 **Defence Costs**

The Insurer will indemnify the Insured against Defence Costs in relation to:

(a) any Claim referred to in clauses 2.2 and 2.4; and

(b) any Circumstance referred to in clauses 2.2 and 2.4;

and such Defence Costs will be met by the Insurer as and when they are determined, due and payable.

2.4 **Preceding Practice**

2.4.1 The Insurer will indemnify each Insured against civil liability to the extent that such liability arises from any provision of Legal Services in connection with a Preceding Practice where such services were provided prior to the cessation of the Firm's Practice, provided that

(a) a Claim in respect of such liability is:

(i) first made against an Insured during the Coverage Period; and

(ii) notified to the Insurer during the Coverage Period or within three (3) Working Days immediately following the end of the Coverage Period; or

(b) a Claim in respect of such liability is first made during or after the Coverage Period and

(i) arises from Circumstances first notified to the Insurer during the Coverage Period; or

(ii) arises from Circumstances first notified to the Insurer within three (3) Working Days immediately following the end of the Coverage Period provided that the Insured was aware of such circumstances during the Coverage Period.

2.4.2 The cover contemplated in this clause 2.4 includes:

(a) each Partnership or sole practitioner who carried on the Preceding Practice;

(b) each trustee, nominee, service or administration company owned by the persons referred to in paragraph (a) from time to time;

(c) each director or officer of any such company as is referred to in paragraph (b) above from time to time;

(d) each Principal and former Principal of any Partnership referred to in paragraph (a);

(e) each Employee and former Employee of any Partnership or sole practitioner or company referred to in paragraph (a) and (b); and

(f) the estate or legal personal representatives of any person referred to in this clause 2.4.2 who is deceased or legally incapacitated.

3. LIMIT OF INSURANCE COVER

3.1 Limit of liability for Claims

3.1.1 The Insurer's liability for Claims in the Indemnity Period shall be limited to an aggregate amount of €1,500,000 (one million five hundred thousand euro). This is not a limit on each underwriter but the maximum liability of all underwriters taken together.

3.1.2 If a Claim is made that would otherwise exceed the limit of liability established by clause 3.1.1, whether on its own or in aggregate with prior or concurrent Claims, the Insurer will be liable only for the amount of such Claim that does not exceed the limit.

3.2 Cover for Defence Costs

The limit on the Amount Insured set out in clause 3.1.1 does not apply to Defence Costs.

3.3 Proportionate liability for Defence Costs

Notwithstanding clause 3.2, liability for Defence Costs in relation to a Claim that exceeds the Amount Insured is limited to the proportion of such Defence Costs that the Amount Insured bears to the total amount paid or payable to dispose of the Claim.

3.4 No retrospective dates

The Coverage shall not exclude or limit the liability of the Insurer in respect of Claims arising from incidents, occurrences, facts, matters, acts and/or omissions that occurred prior to the commencement of this contract.

3.5 No other limits

The Coverage does not apply any monetary exclusions or limits except as provided for by clauses 3.1 and 3.3. For the avoidance of doubt, this clause 3.5 shall not be construed to prevent an Insured and the SPF manager (on behalf of the Insurer) from agreeing that the cover shall provide for a Self-Insured Excess.

4. PREMIUM

No premium shall be payable by an ARP Run-off Eligible Firm for Run-off Cover.

5. SELF-INSURED EXCESS

5.1 Self-Insured Excess

The Self Insured Excess applicable to the Coverage shall comprise of the following:

5.1.2 a self insured excess equal to the self insured excess applicable to ARP coverage held by the ARP Run-off Eligible Firm immediately prior to its entry into the ARP Run-off as set out in Schedule 1 (the "**Standard Self Insured Excess**"); and

5.1.3 an additional self insured excess (if any) as determined by the SPF Manager (for and on behalf of the Insurer) in accordance with the run-off rules as set out in Schedule 1 (the "**Additional Self Insured Excess**").

The Insured will bear the first amount of each and every Claim up to the amount of the Self-Insured Excess.

5.2 **Effect of Self-Insured Excess**

5.2.1 The Self-Insured Excess does not reduce or limit the Amount Insured.

5.2.2 The Self-Insured Excess does not apply to Defence Costs.

5.3 **Payment of Self-Insured Excess to Claimant**

In the event that an amount which is within the Self-Insured Excess is not paid by an Insured to a Claimant within 30 (thirty) Working Days of its becoming due, the Insurer must redress the default on the part of the Insured and make payment thereof to the Claimant provided that in such circumstances the total aggregate liability of the Insurer in respect of Claims and in respect of any amount within the Self-Insured Excess required to be paid by the Insurer in accordance with this clause 5.3 shall not exceed €1,500,000. The Insurer shall be entitled to recover any amount paid which is within the Self-Insured Excess from the Insured.

5.4 **One Claim**

All Claims against any one or more Insured arising from the same act or omission or from one series of related acts or omissions will be regarded as one Claim for the purposes of the Self-Insured Excess.

6. **SPECIAL CONDITIONS**

6.1 **No cancellation**

6.1.1 Subject to clause 6.2, this contract cannot be cancelled unless:

(a) the Firm has obtained replacement Qualifying Insurance in accordance with the Minimum Terms and Conditions in force on the date of cancellation of this contract;

(b) the Qualified Insurer or Qualified Insurers under the replacement Qualifying Insurance have confirmed in writing to the Firm and to the SPF Manager that they are providing Qualifying Insurance on the basis that the Firm's Practice is to be treated as a continuation of the Firm's Practice prior to the cessation thereof and that accordingly they will be liable for any Claims against the Firm arising from matters that occurred prior to the cessation; and

(c) the Qualified Insurer or Qualified Insurers under the replacement Qualifying Insurance have provided any required confirmations of coverage to the Law Society; or

(d) the Firm ceases to be an ARP Run-off Eligible Firm.

6.1.2 Cancellation of this contract shall not prejudice the rights and obligations of the Insurer and the Insured accrued under this contract prior to the date of cancellation.

6.2 **Phoenix Firms**

6.2.1 The SPF Manager may cancel this contract forthwith where, pursuant to Regulation 3(m) of the Regulations, the PII Committee decides to treat another firm as a Phoenix Firm to the Firm.

6.2.2 The SPF Manager shall honour and discharge any amount due and owing in respect of any Claim or Circumstance notified to the SPF Manager within the period from the commencement of this contract until its cancellation by the SPF Manager pursuant to clause 6.2.1 but the SPF Manager shall be entitled to recover any amount so paid from the Firm or from those persons who were Principals of the Firm immediately prior to the date it ceased practice.

6.3 **No avoidance or repudiation**

The Insurer is not entitled to avoid or repudiate this contract on any grounds whatsoever including, without limitation, where there has been non-disclosure or misrepresentation by the Insured, whether such non-disclosure or misrepresentation is or is alleged to be innocent, negligent or fraudulent.

6.4 **Rights of Insurer**

In any situation where the Insurer becomes aware that there has been fraudulent non-disclosure or fraudulent misrepresentation to the Insurer in connection with the placement or renewal of the Coverage, the Insurer may refer the conduct of any relevant Principal of the Firm to the Law Society to permit the Law Society to take action against that Principal under the Solicitors Acts 1954 to 2008 or otherwise.

6.5 **No set off**

Any indemnity amount payable to the Insured by the Insurer under this contract must be paid only to the relevant Claimant or as the Claimant may direct. The Insurer is not entitled to set off against any such indemnity amount any payment owing to the Insurer by the Insured.

6.6 **No other policy to bar recovery**

Subject to clause 7.4, rights of recovery available to the Insured under a policy of insurance will not bar recovery in respect of any Claim under this contract.

6.7 **Notification of Claims**

The Insured shall report or notify any Claim or Circumstance required to be reported or notified pursuant to this contract to the SPF Manager (acting on behalf of the Insurer) as soon as is reasonably practicable after becoming aware of such a Claim or Circumstance.

Every Principal of the Insured shall be responsible for ensuring that the Insured makes any notifications or reports required pursuant to this contract.

6.8 **Additional information**

The Firm shall provide to the SPF Manager such information as the SPF Manager may from time to time in its discretion reasonably require to deal efficiently and effectively with the Firm's membership of the Run-Off Fund.

6.9 **No denial or reduction**

Subject to clause 2.2, the Insurer shall not on any grounds whatsoever, including but not limited to the following:

6.9.1 any failure to notify a Claim or Circumstance within a prescribed period; or

6.9.2 any breach of any term or condition of this contract;

be entitled to reduce or deny its liability under this contract, except in circumstances where a prescribed exclusion contemplated by clause 7 applies.

6.10 **Coverage Period**

The Coverage Period shall commence on the expiry of the ARP Coverage held by the Firm on the date it ceases practice and shall continue until the end of the Indemnity Period unless otherwise cancelled in accordance with the terms of this contract.

6.11 **Contesting Liability**

The Insured shall not be required against its wish to contest the issue of liability in any legal or arbitration proceedings arising from any Claim unless a solicitor or a member of the Irish Bar (as mutually agreed upon between the Insured and the SPF Manager (acting on behalf of the Insurer), or failing agreement, to be appointed by the Chairman of the Bar Council of Ireland) shall advise that such proceedings or arbitration should be contested.

7. EXCLUSIONS

7.1 **No other exclusions**

The liability of the Insurer under this contract shall not be excluded or limited on any basis whatsoever save where and to the extent that any Claim or related Defence Cost is proved to have arisen from one (1) or a number of the matters set out in this clause 7.

7.2 **Death or bodily injury**

The Insurer is not liable to indemnify any Insured for causing death or bodily injury save that the Insurer is liable for psychological injury or emotional distress (including but not limited to stress-related claims).

7.3 **Property**

The Insurer is not liable to indemnify for any act or omission of any Insured which results in or contributes to damage to, or destruction or physical loss of any property of any kind whatsoever, other than property in the care, custody or control of any Insured in connection with the Firm's Practice and not occupied or used in the course of the Firm's Practice, unless such liability is occasioned by the Insured being in breach of professional duty in the performance of or failure to perform Legal Services.

7.4 **Previous cover**

The Insurer is not liable to indemnify any Insured in respect of claims where another professional indemnity insurance contract for a period earlier than the Coverage Period entitles the Insured to be indemnified in respect of the same Claim. Save as specified in this clause 7.4, the Coverage shall comply with clause 6.6.

7.5 **Fraud or dishonesty**

The Insurer is not liable to indemnify any Insured to the extent that any civil liability or related Defence Costs arise from the dishonesty of or a fraudulent act or omission committed or condoned by any Insured.

7.6 **Trading debts**

The Insurer is not liable to indemnify any Insured against any trading loss or personal debt incurred by the Insured.

7.7 **Partnership Agreement**

The Insurer is not liable to indemnify any Insured against any actual or alleged breach or other relief in respect of disputes relating to the membership of and rights and obligations relating to membership of the Firm or disputes relating to or arising out of the partnership agreement between any two (2) or more persons comprising or formerly comprising the Firm.

7.8 **Solicitors Acts**

Save as specifically provided in this clause, the Insurer is not liable to indemnify any Insured against any loss occurring as a result of any process or proceedings brought against the Insured by or on behalf of the Law Society or any other person so entitled to ensure compliance with, or consequent on the breach (or alleged breach) by the Insured of any provisions of the Solicitors Acts 1954 to 2008 or any regulations made thereunder or in respect of misconduct (including, for the avoidance of doubt, any costs incurred by an Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in sub-clause (c) of the definition of "Claim"). However, the Insurer will indemnify each Insured for any awards made under the provisions of the Solicitors Acts 1954 to 2008 for compensation or restitution to clients or any other obligations that may be imposed on solicitors or registered lawyers by statute from time to time to compensate or make restitution to clients.

7.9 **Insured acting as their own lawyer**

The Insurer is not liable to indemnify any Insured against any liability arising in respect of a transaction where the Insured has acted as his or her own lawyer save and except where another solicitor or registered lawyer in the Firm has bona fide acted at arm's length for the Insured concerned in respect of any such transaction or where the Claim is by a bona fide third party in respect of such transaction.

7.10 **Claims/Exposure to risk outside Ireland**

The Insurer is not liable to indemnify any Insured against any loss occurring or any liability arising in connection with:

7.10.1 any part of the Firm's Practice carried on from offices of the Firm located outside the Republic of Ireland; or

7.10.2 any advice given or action taken or omitted to be taken by the Insured in relation to any law other than the law of the Republic of Ireland (for this purpose the law of the Republic of Ireland includes European Union law where the same forms part of the law of the Republic of Ireland).

7.11 **Employment**

The Insurer is not liable to indemnify any Insured against any Claim or Circumstance arising out of:

7.11.1 a wrongful dismissal; or

7.11.2 any other alleged or actual breach, or any other relief in respect of any contract of employment (including but not limited to a stress-related claim brought by an Employee against the Firm where such claim arises out of the employment relationship between that Employee and the Firm) where such dismissal or breach is alleged or such relief is sought against the Insured.

7.12 **Contracts**

The Insurer is not liable to indemnify any Insured against:

7.12.1 wrongful termination by the Insured of; or

7.12.2 any other actual or alleged breach by the Insured of; or

7.12.3 any other relief claimed against the Insured in respect of;

any contract for supply to or use by the Insured of services and/or materials and/or equipment and/or other goods.

7.13 **Directors' liability**

The Insurer is not liable to indemnify any natural person in their capacity as a director or officer of a company, other than an administration, nominee, service or trustee company in respect of which coverage is otherwise required to be extended pursuant to this contract, except that:

7.13.1 this contract shall cover any liability of that person which arises from a breach of duty in the performance of or failure to perform Legal Services; and

7.13.2 this contract shall cover each Insured against any vicarious or joint liability.

7.14 **War, Terror, Asbestos, Radiation**

The Insurer is not liable to indemnify any Insured in respect of losses directly or indirectly caused by:

7.14.1 war, riot, civil commotion and other hostilities;

7.14.2 terrorism;

7.14.3 asbestos or any actual or alleged asbestos related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos; or

7.14.4 ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or from the radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof

provided that in each case any such exclusion or endorsement does not exclude or limit any liability of the Insurer to indemnify the Insured against civil liability or related Defence Costs arising from any actual or alleged breach of duty in the performance of (or failure to perform) Legal Services or failure to discharge or fulfil any duty incidental to the Firm's Practice.

7.15 **Financial Institutions**

The Insurer is not liable to indemnify any Insured in respect of Claims made by Financial Institutions (regardless of whether the Financial Institution is a client of the Firm).

8. **GENERAL CONDITIONS**

In the event of any inconsistency between the general conditions in this clause 8 and the special conditions set out at clause 6, the special conditions will prevail.

8.1 **Reimbursement**

8.1.1 Any Insured who committed or condoned an innocent or negligent non-disclosure or misrepresentation or other innocent or negligent breach of the terms and conditions of this contract will reimburse the Insurer to the extent that is just and equitable, having regard to the prejudice caused to the Insurer's interests by such non-disclosure, misrepresentation or breach, provided that no Insured shall be required to make any such reimbursement to the extent that any such breach of the terms or conditions of this contract was in order to comply with any applicable rules or codes laid down from time to time by the Law Society.

8.1.2 Any Insured who committed or condoned a dishonest or fraudulent non-disclosure or misrepresentation or other dishonest or fraudulent breach of the terms and conditions of this contract will be required to indemnify the Insurer in full in respect of any sums paid by it in or in connection with the discharge of any Claim.

8.1.3 No non-disclosure, misrepresentation, breach, dishonesty, act or omission will be imputed to a company unless it was committed or condoned by, in the case of a company, all directors and officers of that company.

8.1.4 Any right of reimbursement contemplated by this clause 8.1 against any Employee, each former Employee, and each person who becomes an Employee of the Firm during the Coverage Period, or their personal representatives, is limited to the extent that is just and equitable having regard to the prejudice caused to the Insurer's interests by that person having committed or condoned (whether knowingly or recklessly) dishonesty or any fraudulent act or omission.

8.2 **Reimbursement of Defence Costs**

Each Insured will reimburse the Insurer for Defence Costs advanced on that Insured's behalf that the Insurer is not ultimately liable to pay.

8.3 **Reimbursement of the Self-Insured Excess**

Those persons who are Principals of the Firm at any time during the Coverage Period will reimburse the Insurer for any Self-Insured Excess paid by the Insurer on an Insured's behalf.

8.4 **Reimbursement of monies paid pending dispute resolution**

Each Insured will reimburse the Insurer following resolution of any coverage dispute for any amount paid by the Insurer on that Insured's behalf that, on the basis of the resolution of the dispute, the Insurer is not ultimately liable to pay.

8.5 **Claims Reports**

The Insurer will provide a report (a "**Claims Report**") to the Firm within a reasonable time from receiving a request to do so, setting out (as applicable), as at the date specified in the Claims Report:

8.5.1 a summary of each Claim of which the Insurer is aware made against the Firm under this contract;

8.5.2 the amount reserved by the Insurer against each Claim;

8.5.3 the basis on which each such amount is calculated (for example, whether the figure represents a loss actually incurred, an estimate of probable maximum loss, or any other basis of reserving);

8.5.4 whether or not each such amount includes Defence Costs;

8.5.5 whether each such amount includes or is in excess of the amount of any excess or deductible that may apply in relation to such Claim, and the amount of any such excess or deductible; and

8.5.6 any amounts paid out in relation to each Claim, in each case indicating whether such sums include any excess or deductible due from but not paid by the Firm.

In providing Claims Reports, the Insurer shall use its reasonable endeavours to provide all of the information set out in this clause 8.5, but shall not be required to provide any part of that information to the extent that doing so would not be reasonably practicable having regard to the manner in which Claims information is stored on the computer systems of the Insurer.

9. DISPUTE RESOLUTION

9.1 Arbitration

All disputes and differences arising under or in connection with this contract shall be referred to the decision of a sole arbitrator to be agreed between the parties or, failing agreement between the parties within 14 (fourteen) days of either party having made a request in writing to the other party to concur in the appointment of an arbitrator, a person to be nominated by the Chairman for the time being (or failing the Chairman any other member of the Committee) of the Chartered Institute of Arbitrators (Irish Branch) upon the application of either party.

Every or any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2010 or any act or statutory provision amending same and shall be an arbitration conducted in Dublin, Ireland in the English language and governed by the Arbitration Act 2010.

9.2 Related Disputes

Any dispute between the Insured and the Insurer as to any Claim or Circumstance under the Coverage shall be heard and determined in conjunction with any other related dispute between any insured party and that party's insurer.

9.3 Conduct of Claims

Pending the resolution of any coverage dispute and without prejudice to any issue in dispute, the Insurer shall if so directed by the Law Society conduct any Claim against the Insured, advance Defence Costs to the Insured and if appropriate compromise and/or pay any Claim against the Insured, such a direction by the Law Society to be known as a Direction. The Society may make such a Direction if it is satisfied, in its absolute discretion, that:

9.3.1 the party requesting the Direction has taken all reasonable steps to resolve the dispute with the other party;

9.3.2 there is a reasonable prospect that the coverage dispute will be resolved or determined in the Insured's favour; and

9.3.3 it is fair and equitable in all the circumstances for such Direction to be given.

The Insured shall be required to afford reasonable co-operation to the Insurer in relation to the handling of any Claim against the Insured, subject to the Insurer agreeing to meet the Insured's reasonable costs of such co-operation, and the Insurer shall be entitled to recover from the Insured by way of damages a sum equal to the Insurer's loss arising from or connected with the Insured's failure to co-operate.

For the avoidance of doubt, the Insurer shall not refuse to pay any claim, or cancel, terminate or avoid the Coverage, due to the Insured's failure to co-operate.

Schedule 1

Insured:

Coverage Period:

Standard Self Insured Excess:

Additional Self Insured Excess: