

LAW SOCIETY SUBMISSION



Section 118 Legal Services Regulation Act 2015 – Legal Partnerships

LEGAL SERVICES REGULATORY AUTHORITY

16 MARCH 2017

ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

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1. Introduction

- 1.1. The purpose of this submission from the Law Society of Ireland is to respond to the invitation from the Legal Services Regulatory Authority (“the Authority”) for submissions in relation to the regulation, monitoring and operation of legal partnerships as part of their initial public consultation on the matter in accordance with section 118 of the Legal Services Regulation Act 2015 (“the Act”).
- 1.2. Legal partnerships are a new form of legal services business structure proposed under the Act. They are defined as:

“..a partnership formed under the law of the State by written agreement, by two or more legal practitioners, at least one of whom is a practising barrister, for the purpose of providing legal services.”
- 1.3. As such, the new business structure proposed comprises partnerships of barristers and barristers, or solicitors and barristers.
- 1.4. As the Law Society is the representative and regulatory body for solicitors in Ireland, the Society’s comments in this submission will be limited to solicitor-barrister legal partnerships. As such, all references to “legal partnerships” in this submission should be read as a reference only to solicitor-barrister legal partnerships, not barrister-barrister legal partnerships.
- 1.5. Responses to some of the queries raised in the public consultation notice have been amalgamated together, in particular in relation to regulatory matters, for clarity.

2. Executive Summary

- 2.1. The following submission sets out the Law Society's views in relation to the establishment and regulation of legal partnerships under the Act and recommendations in relation to same.
- 2.2. The submission covers a range of issues including benefits and risks for clients, ethical implications for legal practitioners in legal partnerships, regulation of legal partnerships and protection of consumers, provision of information to clients, complaints process for legal partnerships, register of legal partnerships, registration requirements for legal partnerships, consequences of breaches of the Act and regulations, and funding the regulation of legal partnerships.
- 2.3. With regard to regulation of legal partnerships and protection of consumers, the dual regulatory roles of the Authority and the Society in relation to solicitor-barrister legal partnerships will need to be kept in mind, in particular in relation to investigations of legal partnerships, introduction of a more robust saver for the Compensation Fund, dealing with risks associated with access by barristers to client monies, professional indemnity insurance issues, ensuring that inappropriate solicitors such as restricted, suspended or struck-off solicitors are not permitted to act as partners in legal partnerships, consideration of how distressed closures of legal partnerships will be dealt with, and amendments to the Solicitors Acts in relation to the prohibition on sharing fee income.
- 2.4. With regard to the provision of information to clients of legal partnerships, it is the view of the Society that legal partnerships should have the same requirements and obligations with regard to the provision of information to clients as are in place for solicitor firms, including information on legal costs and professional fees, complaints procedures, professional indemnity insurance, and the limited access of legal partnership clients to the Compensation Fund.
- 2.5. Similarly, it is the view of the Society that complaints against legal practitioners in legal partnerships should be treated the same as complaints against any other legal practitioners. Data sharing procedures on complaints against solicitors in legal partnerships between the Society and the Authority should be put in place.
- 2.6. The Society's recommendations with regard to the register of legal partnerships sets out the information that should be included in the register, together with introduction of reciprocal notification requirements between the Society, the Bar and the Authority in relation to information held on the register of legal partnerships, roll of solicitors, register of practising solicitors, and roll of practising barristers.
- 2.7. This submission sets out in-depth recommendations with regard to registration requirements for legal practitioners in relation to commencement notifications, cessation notifications, notification of specified regulatory changes, and annual updating of information.
- 2.8. Commencement recommendations cover issues such as time limits for notification of commencement, permission to commence, power to refuse permission to commence,

good standing of legal practitioner partners, information to be provided, professional indemnity insurance, professional names, professional notepaper and website, contact and emergency information, and legal partnership identifier numbers.

- 2.9. Cessation recommendations cover issues such as time limits for cessation notifications, insurance run-off cover, succeeding practices, types of cessation, post-closure contact details, client files, client monies, and closing accountants' reports.
- 2.10. It is the Society's view that regulation of legal partnerships should be by way of regulation of the individual legal practitioners, rather than by entity, to ensure that consequences of breaches of the Act or regulations cannot be avoided by simply closing down the legal partnership, or allowing the legal partnership to continue if taken over by another legal practitioner. Breaches of notification requirements could be dealt with by way of fines to be paid to the Authority. It should be made clear that the partners of legal partnerships are jointly and severally liable.
- 2.11. With regard to funding the regulation of legal partnerships, the Society proposes a structure similar to that in place for funding the Authority and the Legal Practitioners Disciplinary Tribunal, with any fees recovered by the Authority from legal partnerships to be offset against the levy.
- 2.12. The Society views this document as an initial submission in relation to legal partnerships, and looks forward to further discussions with the Authority on same.
- 2.13. The recommendations of the Society in relation to solicitor-barrister legal partnerships are as follows:

Recommendation 1 – Harmonisation of regulations and professional codes

It is the recommendation of the Society that regulations and professional codes of solicitors, solicitor firms and solicitor-barrister legal partnerships be harmonized between the Society and the Authority to ensure the same regulatory standards apply for the protection of the public.

Recommendation 2 – Investigation of legal partnerships

It is the recommendation of the Society that measures be put in place to ensure that the Society has the same primary functions of investigation and enforcement in relation to financial regulation matters, and all required investigative powers to inspect documentation and accounts under the Solicitors Acts for solicitor-barrister legal partnerships as exist for solicitor firms.

Recommendation 3 – Reporting accountants’ reports

It is the recommendation of the Society that measures be put in place to ensure that solicitor-barrister legal partnerships are required to meet the same annual reporting accountant report requirements as exist for solicitor firms under the solicitors accounts regulations.

Recommendation 4 – Saver for the Compensation Fund

It is the strong recommendation of the Society that further clarifying language be put in place in regulations pertaining to solicitor-barrister legal partnerships, and any future amendments to the Act, to ensure that access to the Compensation Fund will be strictly limited to losses suffered by clients of legal partnerships by reason of dishonesty by a solicitor in a legal partnership, and there will be no access to the Compensation Fund for dishonesty by non-solicitors in the legal partnership.

Recommendation 5 – Compensation Fund information for clients

It is the recommendation of the Society that measures be put in place to ensure that clients of solicitor-barrister legal partnerships are made fully aware of the limitations on their access to the Compensation Fund.

Recommendation 6 – Access to client monies by barristers

It is the recommendation of the Society that consideration be given to the introduction of protection mechanisms for clients monies in solicitor-barrister legal partnerships in relation to access to client monies, including only permitting practising solicitors to act as signatories of client bank accounts and authorised individuals on internet banking, and that barristers be legally precluded from receiving client monies or from giving or joining in giving any instruction whatsoever with respect to client monies, with any such receipt or instruction being deemed as null and void and not binding on any other partner in the legal partnership.

Recommendation 7 – Replacement of misappropriated client monies

It is the recommendation of the Society that measures be put in place to compel barrister partners of solicitor-barrister legal partnerships to replace any monies misappropriated by any partner or employee of the legal partnership, and make good any deficits on the client account, in line with similar requirements already in place for solicitors.

Recommendation 8 – Professional indemnity insurance

It is the recommendation of the Society that solicitor-barrister legal partnerships be required to meet the same PII requirements, including minimum level of cover and minimum terms and conditions, as exist for solicitor firms.

Recommendation 9 – Further discussions regarding professional indemnity insurance

It is the recommendation of the Society that further discussions take place between the Society and the Authority in relation to the implications of legal partnerships for current PII regulations, and access to the Assigned Risks Pool and Run-off Fund.

Recommendation 10 – Practising certificate conditions

It is the recommendation of the Society that measures be put in place to ensure that existing practising certificate conditions, in particular those restricting certain solicitors from acting as principals or partners in solicitor firms, also extend to solicitors in legal partnerships.

Recommendation 11 – Data sharing regarding practising certificate conditions

It is the recommendation of the Society that robust data sharing procedures be put in place between the Society and the Authority in relation to practising certificate conditions.

Recommendation 12 – Suspended and struck-off solicitors

It is the recommendation of the Society that suspended and struck-off solicitors, as well as solicitors who have given an undertaking not to practise, be prohibited from acting as partners in solicitor-barrister legal partnerships. In addition, suspended and struck off solicitors should not be permitted to be employed by a legal partnership, or engage in any work in any capacity involving or in connection with the provision of legal services unless granted permission by the Society in accordance with section 63 of the Solicitors Act 1954 (as substituted by section 21 of the Solicitors (Amendment) Act 1994), and section 20 of the Solicitors (Amendment) Act 1994.

Recommendation 13 – Certificate of good standing

It is the recommendation of the Society that the Authority introduce a requirement for solicitor partners in prospective legal partnerships to provide a certificate of good standing from the Society before being permitted to open a legal partnership, or join an existing legal partnership.

Recommendation 14 – Distressed closures

It is the recommendation of the Society that consideration be given as to how distressed closures of legal partnerships will be dealt with.

Recommendation 15 – Prohibition on sharing fee income and rewarding non-solicitors for introduction of business

It is the recommendation of the Society that section 62 of the Solicitors Act 1954 be amended to facilitate the sharing of fee income between solicitors and barristers. The prohibition should remain in place with regard to sharing of fee income with non-solicitors, or rewarding non-solicitors for introduction of business.

Recommendation 16 – Provision of information to clients

It is the recommendation of the Society that solicitor-barrister legal partnerships should have the same requirements and obligations with regard to the provision of information to clients as are in place for solicitor firms, including information on legal costs and professional fees, complaints procedures, limited access to the Compensation Fund, and professional indemnity insurance.

Recommendation 17 – Complaints against legal partnerships

It is the recommendation of the Society that complaints against solicitors and barristers in legal partnerships should be dealt with in the same way as complaints against all other legal practitioners, with the complaint being attributed to the individual legal practitioner rather than the entity in which they work.

Recommendation 18 – Sharing of complaints data

It is the recommendation of the Society that robust data sharing procedures be put in place between the Authority and the Society with regard to complaints made against solicitors in legal partnerships, and any issues uncovered by the Authority in the process of handling such complaints which may indicate a risk to client monies held by legal partnerships.

Recommendation 19 – Information in the register of legal partnerships

It is the recommendation of the Society that the following information be included in the register of legal partnerships:

- 1 the full name of the legal partnership;
- 2 the place or places of business;
- 3 contact details including landline and mobile phone numbers, email and website address;
- 4 notified date of commencement;
- 5 notified date of cessation for closed legal partnerships;
- 6 current professional indemnity insurance details including insurer, date of commencement and cessation of the policy, policy number, broker details, and minimum level of cover;
- 7 names of current partners and commencement dates;
- 8 names of all legal practitioners in the partnership, including commencement dates, job titles and professional qualifications;
- 9 confirmation that legal practitioners in the partnership are all practising solicitors and/or barristers;
- 10 professional qualifications of partners;
- 11 historic data including previous names of the partnership, previous places of business, previous partners (including commencement and cessation dates), previous legal practitioner employees (including commencement and cessation dates), insurance details for previous indemnity periods, and details of any preceding or succeeding legal partnerships.

Recommendation 20 – Reciprocal notification requirement

It is the recommendation of the Society that a reciprocal notification requirement be established between the Authority, the Society and the Bar, requiring the Authority to notify the Society and the Bar of any amendments to the register of legal partnerships, and the Society and Bar being required to notify the Authority of any amendments to the roll of solicitors, register of practising solicitors, and roll of practising barristers where such legal practitioners are in legal partnerships.

Recommendation 21 – Time limit on commencement notification

It is the recommendation of the Society that legal partnerships be required to provide written confirmation of commencement no later than one month in advance of their proposed commencement date.

Recommendation 22 – Permission to commence

It is the recommendation of the Society that legal partnerships be prohibited from commencing providing legal services until such time as written permission to commence has been granted by the Authority, together with confirmation of inclusion in the register of legal partnerships

Recommendation 23 – Power to refuse permission to commence

It is the recommendation of the Society that the Authority seeks the express power to refuse a legal partnership permission to commence, and that a notification of commencement not be deemed to be received by the Authority until a properly completed notification form with all prescribed accompanying documentation, and full payment of fees (if applicable) are received by the Authority.

Recommendation 24 – Legal practitioners in good standing

It is the recommendation of the Society that partners in legal partnerships be required to provide a certificate of good standing from their respective professional bodies when applying to commence a legal partnership or join a legal partnership. Certificates of good standing should disclose that, as at the date of the certificate, the legal practitioner is in good standing in that a search of the records of the legal practitioner disclose no orders of findings of misconduct or reprimands to the discredit of the legal practitioner, and no restrictions exist on the legal practitioner's practising certificate that would prohibit them from acting as a partner in a legal partnership.

Recommendation 25 – Commencement information

It is the recommendation of the Society that all information to be included in the register of legal practitioners be required to be provided as part of the commencement notification by the legal partnership.

Recommendation 26 – Confirmation of professional indemnity insurance cover

It is the recommendation of the Society that legal partnerships be required to provide documentary evidence of their professional indemnity insurance, to include dates of commencement and cessation of the policy, participating insurer details, broker details, minimum level of cover, and confirmation that the insurance meets the prescribed minimum terms and conditions.

Recommendation 27 – Professional names

It is the recommendation of the Society that the Authority seek powers in relation to professional names of legal partnerships similar to those in place for solicitor firms under section 4(1) of the Solicitors (Professional Names/Notepaper) Regulations 1996 (S.I. No. 178 of 1996), and that the legal partnership is obliged to meet all prescribed requirements with regard to the approval of their professional name before commencement.

Recommendation 28 – Professional notepaper

It is the recommendation of the Society that the Authority seek powers in relation to professional notepaper of legal partnerships similar to those in place for solicitor firms under the Solicitors (Professional Names/Notepaper) Regulations 1996 (S.I. No. 178 of 1996), and that legal partnerships be required to provide a copy of their proposed headed notepaper to the Authority as part of their commencement notification, and such notepaper should meet the prescribed requirements.

Recommendation 29 – Professional websites

It is the recommendation of the Society that the Authority consider extending powers in relation to professional notepaper to include legal partnership websites, to ensure that the information contained therein meets prescribed professional standards.

Recommendation 30 – Contact and emergency information

It is the recommendation of the Society that specific information be required in the commencement notification with regard to how emergency closure situations will be dealt with by the partnerships, such as death of partners, abandonment of practice, and forced closure by the High Court. Contact information such as home addresses, phone numbers and emails of partners should be sought, as well as a nominated emergency legal practitioner contact who has agreed to assist with the wind-down of the legal partnership in the event of an emergency closure.

Recommendation 31 – Legal partnership number

It is the recommendation of the Society that each legal partnership be assigned a unique legal partnership reference number to act as a unique identifier of that specific legal partnership.

Recommendation 32 – Time limit for cessation notifications

It is the recommendation of the Society that legal partnerships be required to provide prior written notification of cessation to the Authority not less than one month before the date of cessation.

Recommendation 33 – Emergency closures

It is the recommendation of the Society that provision be built into the cessation regulations and professional codes for legal partnerships to deal with emergency closures, such as cessation due to the death or illness of a partner, appointment of a partner as a judge, or forced closure by order of the High Court.

Recommendation 34 – Run-off cover

It is the recommendation of the Society that consideration be given to the issue of run-off professional indemnity insurance cover for closed legal partnerships, and that a requirement to provide the Authority with information on same be included in the cessation notification.

Recommendation 35 – Succeeding practices

It is the recommendation of the Society that legal partnerships be required to include information on any succeeding practices to the closed legal partnership, together with information as to the reason for the cessation, and where partners will be working following cessation of the legal partnership, in the cessation notification to the Authority.

Recommendation 36 – Types of closures

It is the recommendation of the Society that consideration be given to different types of cessation notification and other requirements for different types of closures, including full cessations, mergers and take-overs.

Recommendation 37 – Post-closure contact details

It is the recommendation of the Society that partners of legal partnerships be required to provide post-closure contact details in the cessation notification to the Authority. Such details would be required for contact by the Authority, and also contact details which can be provided to third parties, such as clients, who wish to correspond with the partners following the date of cessation of the legal partnership.

Recommendation 38 – Client files and client monies

It is the recommendation of the Society that the Authority put prohibitions, and notification and managerial requirements in place on closed legal partnerships with regard to live and closed client files, as well as a prohibition on holding client monies, as currently exist for solicitor firms.

Recommendation 39 – Closing reporting accountants' reports

It is the recommendation of the Society that similar reporting requirements with regard to closing reporting accountants' reports be put in place for legal partnerships as currently exist for solicitor firms under the solicitors accounts regulations.

Recommendation 40 – Notification of specified regulatory changes

It is the recommendation of the Society that legal partnerships be required to provide the Authority with written notification of specified regulatory changes within 14 days of such change including the following:

- 1 change of partner, with details of cessation date of previous partner, commencement date of new partner, and all compliance and information documentation required in relation to the new partner;
- 2 change of professional name, with details of proposed commencement date of new name and application for approval by the Authority if required;
- 3 change of legal practitioner employees or consultants, with details of relevant commencement and cessation dates;
- 4 change of contact details, with new details included;
- 5 notification of disciplinary issues, such as orders of findings of misconduct against partners or employees of the legal partnership, or imposition of restrictions on the legal practitioners' practising certificates;
- 6 annual professional indemnity insurance notification, with details of commencement and cessation dates of policy, policy number, insurer, broker, minimum level of cover, and confirmation that the cover meets the prescribed minimum terms and conditions; and
- 7 notification of change of commencement requirements, if the legal partnership no longer meets the minimum commencement requirements prescribed by the Authority.

Recommendation 41 – Data capture

It is the recommendation of the Society that the Authority carry out an annual data capture process for legal partnerships to ensure the details in the register of legal partnerships is up to date.

Recommendation 42 – Annual approval application process

It is the recommendation of the Society that consideration be given as to whether an annual process should be introduced requiring legal partnerships to reapply on an annual basis for approval to practice.

Recommendation 43 – Consequences for breaches of the Act and regulations

It is the recommendation of the Society that:

- 1 legal partnerships should be regulated by individual legal practitioner, rather than by the legal partnership entity;
- 2 breaches of the Act and regulations by legal practitioners in legal partnerships should be treated the same as breaches by all other legal practitioners;
- 3 the Act should be amended to acknowledge that partners of legal partnerships are jointly and severally liable;
- 4 consideration should be given to dealing with failure by legal partnerships to meet notification requirements by way of fines to be paid to the Authority.

Recommendation 44 – Funding regulation of legal partnerships

It is the recommendation of the Society that the following funding structure be put in place (as provided for in section 95 of the Act) for the establishment and maintenance of the register of legal partnerships, as well as the ongoing regulation, monitoring and operation of legal partnerships as follows:

- 1 10% paid *pro rata* by the Bar of Ireland and non-Law Library barristers;
- 2 10% paid by the Law Society;
- 3 remaining 80% apportioned *pro rata* between the Law Society, Bar of Ireland and non-Law Library barristers in accordance with the number of solicitor and barristers registered as partners in legal partnerships in that year; and
- 4 any fees recovered by the Authority from legal partnerships should be offset against the levy sought for the regulation of legal partnerships from the professional bodies and non-Law Library barristers.

3. Regulation of legal partnerships and protection of consumers.

- 3.1. There are a number of factors that need to be taken into account when considering the regulatory structure to be put in place to ensure protection of clients of legal partnerships including dual regulation, investigations, Compensation Fund, risk to client monies, professional indemnity insurance, practising certificate conditions, suspended and struck off solicitors, practice closures, and prohibition on sharing of fee income.
- 3.2. Issues relating to complaints, commencement and cessation of legal partnerships will be covered later in this submission.

Dual regulation

- 3.3. While the Authority has the power under section 116 of the Act to make regulations regarding legal partnerships, regulations made by the Society in relation to solicitors equally apply to solicitor employees and solicitor partners in solicitor-barrister legal partnerships.
- 3.4. A similar structure currently exists for personal insolvency practitioners (“PIPs”). While the Insolvency Service of Ireland is the regulator for PIPs, solicitor PIPs also fall under the regulatory remit of the Law Society and are subject to all the same regulations and obligations as practitioners in solicitor firms.
- 3.5. As such, any regulations made by the Authority under section 116 in relation to legal partnerships should not be in conflict with regulations made by the Society in relation to solicitors and solicitor firms, in particular in relation to accounts regulations and professional indemnity insurance.
- 3.6. It will be important to ensure that regulations for solicitors, solicitor firms, and legal partnerships are harmonised so that legal partnerships (and their partners) have the same regulatory requirements and obligations as solicitor firms (and their principals), and that the regulatory standard that legal partnerships are subject to is no lower than that in place for solicitor firms to ensure maintenance of the current high level of public protection.
- 3.7. Consideration will also need to be given by the Society to the amendment of all existing solicitor regulations to ensure that all references to solicitor firms extend to legal partnerships.

Recommendation 1 – Harmonisation of regulations and professional codes

It is the recommendation of the Society that regulations and professional codes of solicitors, solicitor firms and solicitor-barrister legal partnerships be harmonized between the Society and the Authority to ensure the same regulatory standards apply for the protection of the public.

Investigations of legal partnerships

- 3.8. As solicitor partners of legal partnerships continue to be subject to regulation by the Society and constitute a risk to the Compensation Fund, the Society must have the same primary functions of investigation and enforcement in relation to the solicitors accounts regulations, and all investigative powers to inspect documentation and accounts under the Solicitors Acts for legal partnerships as exist for solicitor firms.
- 3.9. Legal partnerships will also be required to meet existing annual reporting accountant reports requirements as set out in the solicitors accounts regulations.

Recommendation 2 – Investigation of legal partnerships

It is the recommendation of the Society that measures be put in place to ensure that the Society has the same primary functions of investigation and enforcement in relation to financial regulation matters, and all required investigative powers to inspect documentation and accounts under the Solicitors Acts for solicitor-barrister legal partnerships as exist for solicitor firms.

Recommendation 3 – Reporting accountants' reports

It is the recommendation of the Society that measures be put in place to ensure that solicitor-barrister legal partnerships are required to meet the same annual reporting accountant report requirements as exist for solicitor firms under the solicitors accounts regulations.

Compensation Fund

- 3.10. The Law Society runs a statutory Compensation Fund (“the Fund”) to compensate clients of solicitors for losses they have suffered by reason of dishonesty of a solicitor. The solicitors’ profession is unique in this jurisdiction as it is the only profession with a fund of such magnitude that offers such a high level of public protection.
- 3.11. The Fund, which is paid for only by solicitors, remains within the remit of the Society together with the associated regulatory powers, subject to oversight by the Authority. The value of the Fund is significant in terms of public confidence and in terms of restitution to clients of solicitors. The Fund ensures that all clients of solicitors have recourse to compensation where loss arises as a result of the dishonesty of a solicitor, regardless of the size, location, or nature of the solicitor’s practice.
- 3.12. It is envisaged that clients of solicitor-barrister legal partnerships would have access to the Fund solely in relation to losses suffered by reason of dishonesty by a solicitor in a legal partnership. There would be no access to the Fund for dishonesty by non-solicitors in the legal partnership.

- 3.13. While section 113 of the Act sets out a saver for the Fund to ensure that the Fund is only obliged to consider claims arising from the dishonesty of a practising solicitor in a legal partnership, and is not obliged to consider claims arising from the dishonesty of non-solicitor partners or employees of the legal partnership, it continues to be the view of the Society that this saver is inadequate.
- 3.14. Areas of risk under the current legislation include the following:
- (a) Under section 113 of the Act, if a non-solicitor employee or barrister partner of a legal partnership misappropriates client monies, it should not be possible for the client to make a claim on the Compensation Fund. However the argument could be made that the solicitor partner in the legal partnerships should have had controls in place that prevent misappropriation of client monies and, as such, the client is entitled to make a claim on the Fund. This could lead to Compensation Fund being made liable for dishonesty by non-solicitors.
 - (b) The Act makes it clear that partners in multi-disciplinary practices will be jointly and severally liable, but is silent on the liability of partners in legal partnerships. If partners in legal partnerships are automatically jointly and severally liable under partnership law, then the argument may be made that the Fund should be made liable for providing compensation for loss suffered due to the dishonesty of the barrister partner or non-solicitor employee. Equally, if partners in legal partnership are not automatically jointly and severally liable under partnership law, absence of a definitive statement in the Act as to the liability of the partners could be argued to mean that it was intended that they be jointly and severally liable, and the Fund is left open to the same type of claim.
 - (c) There is a danger that, even if the solicitor partner has only the slightest involvement in a transaction that involves fraud, there could be an exposure on the Fund.
- 3.15. As such, it is the strong view of the Society that further clarifying language should be put in place in any regulations made by the Authority in relation to solicitor-barrister legal partnerships, and any proposals by the Authority for future amendments to primary legislation. The Society is happy to provide a more detailed submission on this matter in future.
- 3.16. Clients of solicitor firms are aware that they may make a claim on the Fund should they suffer loss due to the dishonesty of their solicitor. However, there is a distinct risk to clients of legal partnerships due to the lack of clarity as to the extent they are protected by the Fund, and in relation to what work carried out by the legal partnership.

Recommendation 4 – Saver for the Compensation Fund

It is the strong recommendation of the Society that further clarifying language be put in place in regulations pertaining to solicitor-barrister legal partnerships, and any future amendments to the Act, to ensure that access to the Compensation Fund will be strictly limited to losses suffered by clients of legal partnerships by reason of dishonesty by a solicitor in a legal partnership, and there will be no access to the Compensation Fund for dishonesty by non-solicitors in the legal partnership.

Recommendation 5 – Compensation Fund information for clients

It is the recommendation of the Society that measures be put in place to ensure that clients of solicitor-barrister legal partnerships are made fully aware of the limitations on their access to the Compensation Fund.

Risk to client monies

- 3.17. There is a concern surrounding access to client monies by barrister partners or employees of legal partnerships, particularly if the barrister is a signatory on the client bank accounts and is an authorised individual on internet banking.
- 3.18. Prohibiting legal partnerships from holding client monies would not, in the view of the Society, be an appropriate solution as such function goes to the heart of a number of key legal services offered by solicitors. If legal partnerships were unable to hold client monies, this would significantly reduce the range of legal services that they could offer.
- 3.19. Consideration could be given to only permitting practising solicitors in legal partnerships to act as signatories on client bank accounts and to act as authorised individuals on internet banking.
- 3.20. It should be noted that, currently, the Society permits non-solicitors to act as cheque signatories for the client accounts in solicitor firms.
- 3.21. Under the current accounts regulations, principals of solicitor firms are compelled to replace any misappropriated client monies or rectify any deficits in the client accounts. This requirement would also extend to solicitor partners of legal partnerships.
- 3.22. Consideration should be given to introducing a power to allow barrister partners of legal partnerships to also be compelled to replace any monies misappropriated by any partner or employee of the legal partnership and any deficits on the client account.

Recommendation 6 – Access to client monies by barristers

It is the recommendation of the Society that consideration be given to the introduction of protection mechanisms for clients monies in solicitor-barrister legal partnerships in relation to access to client monies, including only permitting practising solicitors to act as signatories of client bank accounts and authorised individuals on internet banking, and that barristers be legally precluded from receiving client monies or from giving or joining in giving any instruction whatsoever with respect to client monies, with any such receipt or instruction being deemed as null and void and not binding on any other partner in the legal partnership.

Recommendation 7 – Replacement of misappropriated client monies

It is the recommendation of the Society that measures be put in place to compel barrister partners of solicitor-barrister legal partnerships to replace any monies misappropriated by any partner or employee of the legal partnership, and make good any deficits on the client account, in line with similar requirements already in place for solicitors.

Professional indemnity insurance

- 3.23. The Authority has the power to make regulations in relation to professional indemnity insurance (“PII”) for legal partnerships under section 47 of the Act, other than in relation to practising solicitors in such partnerships. As such, the power of the Society in relation to PII regulations extends to solicitor-barrister legal partnerships.
- 3.24. It should be noted that solicitors’ PII cover is provided by solicitor firm, rather than by individual solicitor. As such, the Society’s PII requirements would extend to the entire solicitor-barrister legal partnership rather than just to the individual solicitor.
- 3.25. It is the view of the Society that legal partnerships should be required to meet the same PII requirements, including minimum level of cover and minimum terms and conditions, as solicitor firms to ensure the same level of protection for clients.
- 3.26. Further discussion between the Authority and the Society will need to take place in relation to the implications of legal partnerships for current PII regulations, and access to the Assigned Risks Pool (the insurer of last resort) and the Run-off Fund (provider of run-off insurance cover to ceased firms).

Recommendation 8 – Professional indemnity insurance

It is the recommendation of the Society that solicitor-barrister legal partnerships be required to meet the same PII requirements, including minimum level of cover and minimum terms and conditions, as exist for solicitor firms.

Recommendation 9 – Further discussions regarding professional indemnity insurance

It is the recommendation of the Society that further discussions take place between the Society and the Authority in relation to the implications of legal partnerships for current PII regulations, and access to the Assigned Risks Pool and Run-off Fund.

Practising certificate conditions (existing and new)

- 3.27. Under the Solicitors Acts, the Society and the High Court have the power to impose restrictions on solicitors' practising certificates by way of practising certificate conditions.
- 3.28. Existing practising certificate conditions which prohibit solicitors from acting as principals in solicitor firms, and similar such conditions, should also apply to solicitors acting as partners in legal partnerships.
- 3.29. New types of practising certificate conditions will need to be considered with regard to solicitors in legal partnerships.
- 3.30. Data sharing procedures will need to be put in place to ensure the free and timely sharing of relevant data to and from the Authority and Society in relation to practising certificate conditions to ensure that restrictions are upheld.

Recommendation 10 – Practising certificate conditions

It is the recommendation of the Society that measures be put in place to ensure that existing practising certificate conditions, in particular those restricting certain solicitors from acting as principals or partners in solicitor firms, also extend to solicitors in legal partnerships.

Recommendation 11 – Data sharing regarding practising certificate conditions

It is the recommendation of the Society that robust data sharing procedures be put in place between the Society and the Authority in relation to practising certificate conditions.

Suspended and struck-off solicitors

- 3.31. Suspended and struck-off solicitors, as well as solicitors who have given undertakings not to practise, are prohibited from acting as principals of solicitors' firms, providing legal services of any kind, or holding themselves out as solicitors.
- 3.32. They are also prohibited from engaging in any work in any capacity involving or in connection with the provision of legal services until granted permission by the Society.
- 3.33. In the interests of public protection, it is recommended that such restrictions also apply to solicitors in legal partnerships.
- 3.34. The Authority may also wish to consider a requirement for solicitor partners in prospective legal partnerships to provide a certificate of good standing from the Society before being permitted open to a legal partnership or join an existing legal partnership.

Recommendation 12 – Suspended and struck-off solicitors

It is the recommendation of the Society that suspended and struck-off solicitors, as well as solicitors who have given an undertaking not to practise, be prohibited from acting as partners in solicitor-barrister legal partnerships. In addition, suspended and struck off solicitors should not be permitted to be employed by a legal partnership, or engage in any work in any capacity involving or in connection with the provision of legal services unless granted permission by the Society in accordance with section 63 of the Solicitors Act 1954 (as substituted by section 21 of the Solicitors (Amendment) Act 1994), and section 20 of the Solicitors (Amendment) Act 1994.

Recommendation 13 – Certificate of good standing

It is the recommendation of the Society that the Authority introduce a requirement for solicitor partners in prospective legal partnerships to provide a certificate of good standing from the Society before being permitted to open a legal partnership, or join an existing legal partnership.

Distressed closures

- 3.35. The Society currently provides a voluntary file distribution service for distressed closures of solicitor firms, such as closure by High Court order or abandonment of firms.
- 3.36. Consideration will need to be given as to how distressed closures of legal partnerships will be dealt with.

Recommendation 14 – Distressed closures

It is the recommendation of the Society that consideration be given as to how distressed closures of legal partnerships will be dealt with.

Prohibition on sharing fee income

- 3.37. Under section 62 of the Solicitors Act 1954 there is a prohibition on sharing of fees with non-solicitors and rewarding non-solicitors for the introduction of business. The objective of the prohibition on the sharing of fee income is to ensure the proper, independent practice of the legal profession, free from undue influence.
- 3.38. This prohibition will need to be amended to facilitate the legal partnership business model.
- 3.39. Care should be taken to ensure that any amendment is limited solely to removing the prohibition to allow solicitors to share fees with barrister partners in legal partnerships. The prohibition should remain in place with regard to sharing of fees with all other non-solicitors.

Recommendation 15 – Prohibition on sharing fee income and rewarding non-solicitors for introduction of business

It is the recommendation of the Society that section 62 of the Solicitors Act 1954 be amended to facilitate the sharing of fee income between solicitors and barristers. The prohibition should remain in place with regard to sharing of fee income with non-solicitors, or rewarding non-solicitors for introduction of business.

4. Provision of information to clients

- 4.1. It is the view of the Society that legal partnerships should have the same requirements and obligations with regard to the provision of information to clients as are in place for solicitor firms. This includes information on legal costs and professional fees, complaints procedures, and PII.
- 4.2. As mentioned previously, clients of legal partnerships will have access to the Compensation Fund that is strictly limited to losses suffered due to dishonesty of a solicitor employee or the solicitor partner of the legal partnership, with no access due to losses suffered due to dishonesty of non-solicitor employees or partners of the legal partnership. As such, legal partnerships should be required to provide the client with detailed information on their limited access to the Compensation Fund.

Recommendation 16 – Provision of information to clients

It is the recommendation of the Society that solicitor-barrister legal partnerships should have the same requirements and obligations with regard to the provision of information to clients as are in place for solicitor firms, including information on legal costs and professional fees, complaints procedures, limited access to the Compensation Fund, and professional indemnity insurance.

5. Complaints process for legal partnerships

- 5.1. Under the current complaints process for solicitors under the remit of the Society, and the proposed future complaints process for all legal practitioners under the remit of the Authority, complaints are against individual legal practitioners rather than against the firm.
- 5.2. As such, it is the Society's view that complaints against solicitors and barristers in legal partnerships should be dealt with in the exact same way as complaints against legal practitioners who are not in legal partnerships, in that the complaint is against the individual legal practitioner rather than against the entity in which they work. Legal practitioners in legal partnerships should be held to the same standard as all other legal practitioners.
- 5.3. Data relating to complaints against solicitors form part of the risk profile for solicitor firms when the Society is determining its investigation schedule. As solicitor-barrister legal partnerships will continue to be under the remit of the Society with regard to accounts regulations, a robust data sharing procedure should be put in place between the Society and the Authority regarding complaints against solicitors in legal partnerships, and any issues uncovered in the process of the handling of such complaints which may indicate a risk to client monies held by legal partnerships.

Recommendation 17 – Complaints against legal partnerships

It is the recommendation of the Society that complaints against solicitors and barristers in legal partnerships should be dealt with in the same way as complaints against all other legal practitioners, with the complaint being attributed to the individual legal practitioner rather than the entity in which they work.

Recommendation 18 – Sharing of complaints data

It is the recommendation of the Society that robust data sharing procedures be put in place between the Authority and the Society with regard to complaints made against solicitors in legal partnerships, and any issues uncovered by the Authority in the process of handling such complaints which may indicate a risk to client monies held by legal partnerships.

6. Register of legal partnerships

- 6.1. Under section 117 of the Act, the Authority is required to maintain a register of legal partnerships as notified to the Authority, and remove the name of any legal partnerships that have notified the Authority of their cessation. The register must be available to the public for inspection free of charge. The legislation is silent on the information that should be included in this register.
- 6.2. Under section 104 of the Act, the legal partnership must provide the Authority with prior written notification that it will commence and notify the Authority that it has commenced. The Authority has the power to charge fees for these notifications.
- 6.3. The Society maintains a register of practising solicitors. The register of practising solicitors is a list of all solicitors who currently hold a practising certificate and contains the following information:
 - (a) the full name of the solicitor;
 - (b) the solicitor's place or places of business;
 - (c) the solicitor's date of admission to the roll of solicitors; and
 - (d) the details of the solicitor's PII.
- 6.4. The register of practising solicitors is available for inspection during office hours without payment by the public on application.
- 6.5. The Society also has online access to information on practising solicitors and live solicitor firms through the "Find a Firm" and "Find a Solicitor" search facilities at <https://www.lawsociety.ie/Find-a-Solicitor/Solicitor-Firm-Search/>
- 6.6. With regard to the relationship between the roll of solicitors, the register of practising solicitors, the roll of practising barristers, and the register of legal partnerships, it is the recommendation of the Society that a reciprocal notification requirement be set up between the Authority, the Society and the Bar, requiring the Authority to notify the Society and the Bar of any amendments to the register of legal partnerships, and the Society and the Bar being required to notify the Authority of any amendments to the roll of solicitors, register of practising solicitors, and roll of practising barristers where the legal practitioners are in legal partnerships.
- 6.7. With regard to the information that the register of legal partnerships should include, the Society would recommend the following:
 - (a) the full name of the legal partnership;
 - (b) the legal partnership's place or places of business;
 - (c) contact details for the partnership include phone, fax, mobile, email and website;
 - (d) the notified date of commencement of the legal partnership;
 - (e) for closed legal partnerships, the date of cessation of the partnership;
 - (f) the current details of the legal partnership's PII (which is updated on an annual basis) including insurer, date of commencement and cessation of the insurance, broker details, and minimum level of cover;

- (g) the names of the current partners of the legal partnership and their commencement dates as partners;
- (h) the names of all legal practitioners in the legal partnership, including their commencement dates, job titles and professional qualifications;
- (i) confirmation that the legal practitioner partners and legal practitioner staff are practising solicitors and/or barristers;
- (j) the professional qualifications of the current partners of the legal partnership;
- (k) historic data on the legal partnership such as previous names, previous places of business, previous partners (including commencement and cessation dates), previous legal practitioner employees (including commencement and cessation dates), previous insurance details, and details of any preceding or succeeding partnerships.

Recommendation 19 – Information in the register of legal partnerships

It is the recommendation of the Society that the following information be included in the register of legal partnerships:

- 1 the full name of the legal partnership;
- 2 the place or places of business;
- 3 contact details including landline and mobile phone numbers, email and website address;
- 4 notified date of commencement;
- 5 notified date of cessation for closed legal partnerships;
- 6 current professional indemnity insurance details including insurer, date of commencement and cessation of the policy, policy number, broker details, and minimum level of cover;
- 7 names of current partners and commencement dates;
- 8 names of all legal practitioners in the partnership, including commencement dates, job titles and professional qualifications;
- 9 confirmation that legal practitioners in the partnership are all practising solicitors and/or barristers;
- 10 professional qualifications of partners;
- 11 historic data including previous names of the partnership, previous places of business, previous partners (including commencement and cessation dates), previous legal practitioner employees (including commencement and cessation dates), insurance details for previous indemnity periods, and details of any preceding or succeeding legal partnerships.

Recommendation 20 – Reciprocal notification requirement

It is the recommendation of the Society that a reciprocal notification requirement be established between the Authority, the Society and the Bar, requiring the Authority to notify the Society and the Bar of any amendments to the register of legal partnerships, and the Society and Bar being required to notify the Authority of any amendments to the roll of solicitors, register of practising solicitors, and roll of practising barristers where such legal practitioners are in legal partnerships.

7. Registration requirements for legal partnerships

- 7.1. As mentioned previously, under section 104 of the Act, legal partnerships are required to provide prior written notification of commencement to the Authority, and notification of cessation. The Authority has the power to set out the form of the notification and the fee that may be prescribed.
- 7.2. Under section 105 of the Act, legal partnerships are prohibited from providing legal services unless they have PII in force which complies with regulations under section 47 of the Act (for barrister-only legal partnerships) or section 26 of the Solicitors (Amendment) Act 1994 (for solicitor-barrister legal partnerships).
- 7.3. As mentioned previously in this submission, solicitors' PII cover is provided to the firm, rather than to the individual solicitor. As such, the Society's PII requirements would extend to the entire solicitor-barrister legal partnership.
- 7.4. Section 116 of the Act sets out the Authority's regulation-making powers with regard to the operation and management of legal partnerships including the following:
 - (a) standards in the provision of legal services including professional and ethical conduct, client confidentiality, and the provision of information to the client on duties owed to the client by the practice;
 - (b) rights, duties and responsibilities of the practice in relation to client monies;
 - (c) management and control of the practice including meeting professional standards, systems of control including risk management and financial control, conflict of interest procedures, and compliance with the Act and regulations;
 - (d) maintenance of records;
 - (e) regulation of practice names;
 - (f) regulation of advertising.
- 7.5. With regard to registration requirements for legal partnerships arising from sections 104, 105 and 116, there are a number of areas that need to be considered including commencement, cessation, notifications of changes, and annual updating of information.

Commencement notifications

- 7.6. Under section 104 of the Act, the legal partnership is required to provide prior notification of commencement to the Authority. However there are a number of key powers and requirements not set out under primary legislation that should be considered by the Authority.

Timescale for prior notification of commencement

- 7.7. The notification requirement under section 104 of the Act does not include a timescale for the prior notification of commencement. This could cause significant administrative difficulties for the Authority.
- 7.8. For example, a legal partnership could send in a written notification with one day's notice to the Authority, requiring an immediate review and response from the Authority. This

may not be sufficient to carry out the necessary reviews and investigations to ensure that the application meets all required standards, and the Authority may not have the resources to provide an immediate response.

- 7.9. As such, it is the recommendation of the Society that legal partnerships be required to provide written notification of commencement no later than one month in advance of their proposed commencement date.

Recommendation 21 – Time limit on commencement notification

It is the recommendation of the Society that legal partnerships be required to provide written confirmation of commencement no later than one month in advance of their proposed commencement date.

Permission to commence

- 7.10. While the Act includes a requirement for prior written notification of commencement to the Authority, it does not require the Authority to provide written permission to the legal partnership to commence. As such, should the written notification be “lost in the post”, the legal partnership could commence providing legal services without the Authority being aware of same.
- 7.11. As such, it is the recommendation of the Society that legal partnerships be prohibited from commencing providing legal services until such time as written permission for them to do so, and confirmation that they have been included in the register of legal partnerships, is received from the Authority.

Recommendation 22 – Permission to commence

It is the recommendation of the Society that legal partnerships be prohibited from commencing providing legal services until such time as written permission to commence has been granted by the Authority, together with confirmation of inclusion in the register of legal partnerships

Refuse permission to commence

- 7.12. While the Act gives the Authority the power to prescribe the form and fee for the written notification of commencement, it does not give the Authority the power to refuse permission for the legal partnership to commence if the form of notification is not in compliance with the parameters set out by the Authority, and if the prescribed fees have not been paid in full.

- 7.13. Where a solicitor applies for a practising certificate to the Society, under the regulations an application is not deemed as being received by the Society until a properly completed application form and full payment of fees are received by the Society.
- 7.14. Similarly, it is the recommendation of the Society that a notification of commencement not be deemed to be received by the Authority until a properly completed notification form with all required accompanying documentation, and full payment of fees (if the Authority decides to charge fees for such notifications) are received by the Authority.

Recommendation 23 – Power to refuse permission to commence

It is the recommendation of the Society that the Authority seeks the express power to refuse a legal partnership permission to commence, and that a notification of commencement not be deemed to be received by the Authority until a properly completed notification form with all prescribed accompanying documentation, and full payment of fees (if applicable) are received by the Authority.

Good standing

- 7.15. Partners in the proposed legal partnership should be required to provide a certificate of good standing from their respective professional bodies confirming that as at the date of the certificate, the solicitor or barrister is in good standing in that a search of the disciplinary records of the legal practitioner disclose no orders of findings of misconduct or reprimands to the discredit of the legal practitioner, and no restrictions exist on the legal practitioners practising certificate that would prohibit them from acting as a partner in a legal partnership.

Recommendation 24 – Legal practitioners in good standing

It is the recommendation of the Society that partners in legal partnerships be required to provide a certificate of good standing from their respective professional bodies when applying to commence a legal partnership or join a legal partnership. Certificates of good standing should disclose that, as at the date of the certificate, the legal practitioner is in good standing in that a search of the records of the legal practitioner disclose no orders of findings of misconduct or reprimands to the discredit of the legal practitioner, and no restrictions exist on the legal practitioner's practising certificate that would prohibit them from acting as a partner in a legal partnership.

Commencement information

- 7.16. It is the recommendation of the Society that the information required for the register of legal partnerships as set out in paragraph 6.6 of this submission be required in the commencement notification.

Recommendation 25 – Commencement information

It is the recommendation of the Society that all information to be included in the register of legal practitioners be required to be provided as part of the commencement notification by the legal partnership.

PII documentation

- 7.17. Under section 105 of the Act, legal partnerships are required to have a compliant PII policy in place.
- 7.18. It is the recommendation of the Society that the legal partnership be required to provide documentary evidence of their PII from their insurer, including dates of commencement and cessation, participating insurer details¹, broker details, minimum level of cover, and confirmation that the cover meets the prescribed minimum terms and conditions.
- 7.19. It should be noted that the indemnity period for solicitor firms, with the exception of solicitors' firms with variable renewal dates, runs from 1 December to 30 November the following year. Brokers are required to providing confirmation of cover through the Society's online portal within 3 working days of 1 December annually. Any firm which fails to provide the required confirmation of cover in the required format will be subject to an application by the Society to the High Court to shut the firm down.
- 7.20. Further information on solicitor PII can be found on the Society's website at <https://www.lawsociety.ie/PII/> .

Recommendation 26 – Confirmation of professional indemnity insurance cover

It is the recommendation of the Society that legal partnerships be required to provide documentary evidence of their professional indemnity insurance, to include dates of commencement and cessation of the policy, participating insurer details, broker details, minimum level of cover, and confirmation that the insurance meets the prescribed minimum terms and conditions.

¹ Participating insurers are those insurers who have signed the Participating Insurers Agreement with the Law Society for that indemnity period. Only participating insurers are permitted to write mandatory PII for solicitor firms. Top-up cover (that is PII cover over and above the minimum terms and conditions) is not regulated.

Professional names

- 7.21. Solicitor firms are limited in the firm names that can be used without the permission of the Society. The firm names may only consist of the name, or one of the names, of the solicitors, or one or more of the present or former principals of the practice.
- 7.22. If the solicitor firm wishes to use any other name, prior permission of the Society is required, which is obtained by written application by the firm to the Society including the name sought and the reason for the name. This is then considered by the Regulation of Practice Committee, which committee deals *inter alia* with professional name matters.
- 7.23. The committee has the power to refuse a name application on the grounds that the name, in the opinion of the committee, could reasonably convey to solicitors and non-solicitors any of the following meanings:
- (a) a meaning likely to bring the solicitors' profession into disrepute, or which is in bad taste, or which reflects unfavourably on other solicitors;
 - (b) a meaning that the solicitor or firm of solicitors concerned has specialist knowledge in any area of law or practice superior to that of other solicitors;
 - (c) a meaning that the normal business of the solicitor or firm of solicitors concerned has more extensive geographical coverage than it actually has; and
 - (d) a meaning otherwise misleading to clients, potential clients or the wider public, or otherwise contrary to the public interest.
- 7.24. It is the recommendation of the Society that the Authority seek similar powers in relation to the professional names of legal partnerships and that the legal partnership is required to meet all requirements with regard to approval of their professional name before commencement.

Recommendation 27 – Professional names

It is the recommendation of the Society that the Authority seek powers in relation to professional names of legal partnerships similar to those in place for solicitor firms under section 4(1) of the Solicitors (Professional Names/Notepaper) Regulations 1996 (S.I. No. 178 of 1996), and that the legal partnership is obliged to meet all prescribed requirements with regard to the approval of their professional name before commencement.

Professional notepaper and website

- 7.25. The Society has the power to set out the information that must be contained, and the information prohibited, in the professional notepaper of solicitor firms.
- 7.26. As part of the commencement requirements for solicitor firms, the firm is required to provide a copy of their professional notepaper, which is reviewed for compliance.
- 7.27. It is the recommendation of the Society that the Authority seek similar powers in relation to professional notepaper.

- 7.28. Legal partnerships should be required to provide a copy of their proposed headed notepaper with their commencement notification, and such notepaper should meet the standards prescribed by the Authority.
- 7.29. Consideration may wish to be given to extending powers in relation to professional notepaper to include legal partnership websites, to ensure that the information contained therein meets the required professional standards.

Recommendation 28 – Professional notepaper

It is the recommendation of the Society that the Authority seek powers in relation to professional notepaper of legal partnerships similar to those in place for solicitor firms under the Solicitors (Professional Names/Notepaper) Regulations 1996 (S.I. No. 178 of 1996), and that legal partnerships be required to provide a copy of their proposed headed notepaper to the Authority as part of their commencement notification, and such notepaper should meet the prescribed requirements.

Recommendation 29 – Professional websites

It is the recommendation of the Society that the Authority consider extending powers in relation to professional notepaper to include legal partnership websites, to ensure that the information contained therein meets prescribed professional standards.

Contact and emergency information

- 7.30. It is the recommendation of the Society that specific information should be sought from legal partnerships to deal with situations of emergency closure, such as death of partners, abandonment of practice, or forced closure by the High Court.
- 7.31. Such information should include home addresses, phone numbers and emails for the partners, as well as an emergency legal practitioner contact who has agreed to assist with a wind-down of the legal partnership in the event of an emergency closure.

Recommendation 30 – Contact and emergency information

It is the recommendation of the Society that specific information be required in the commencement notification with regard to how emergency closure situations will be dealt with by the partnerships, such as death of partners, abandonment of practice, and forced closure by the High Court. Contact information such as home addresses, phone numbers and emails of partners should be sought, as well as a nominated emergency legal practitioner contact who has agreed to assist with the wind-down of the legal partnership in the event of an emergency closure.

Firm numbers

- 7.32. Every solicitor firm that opens is given a firm number, in the form of Fxxx, as a unique identifier for that firm.
- 7.33. Such identifier is used in all regulatory matters pertaining to the firm, including practising certificate applications, regulatory letters, investigations, committee cases, and cases before the Solicitors Disciplinary Tribunal and High Court.
- 7.34. Consideration should be given to the Authority assigning a unique legal partnership reference number to each legal partnership.

Recommendation 31 – Legal partnership number

It is the recommendation of the Society that each legal partnership be assigned a unique legal partnership reference number to act as a unique identifier of that specific legal partnership.

Cessation notifications

- 7.35. There are a number of matters that should be considered with regard to cessation notifications for legal partnerships under the Act including timescale for notification, client files, information and documentation to be provided in the notification, insurance run-off cover, and contact details.

Timescale for cessation notification

- 7.36. Under section 104(2) of the Act, the legal partnership is required to provide a written notification of cessation to the Authority.
- 7.37. However, unlike the commencement notification under section 104(1), the cessation notification is not required to be provided to the Authority in advance of the legal partnership ceasing to provide legal services.
- 7.38. This could result in legal partnerships being closed for months, or years, without the Authority being aware of same, and with the register of legal partnerships listing the legal partnership as live.
- 7.39. As such, it is the recommendation of the Society that legal partnerships be required to provide prior notification of cessation of not less than one month to the Authority.
- 7.40. Provision for emergency cessations, such as cessation due to death or illness of a partner, appointment of a partner as a judge or other such role, or forced closure due to High Court order, should be built into the requirements.

Recommendation 32 – Time limit for cessation notifications

It is the recommendation of the Society that legal partnerships be required to provide prior written notification of cessation to the Authority not less than one month before the date of cessation.

Recommendation 33 – Emergency closures

It is the recommendation of the Society that provision be built into the cessation regulations and professional codes for legal partnerships to deal with emergency closures, such as cessation due to the death or illness of a partner, appointment of a partner as a judge, or forced closure by order of the High Court.

Insurance run-off cover

- 7.41. Solicitor firms are automatically provided with run-off cover by the Run-off Fund upon cessation, provided that there is no succeeding practice. There is no fee for the insurance and cover remains in place for so long as the Run-off Fund exists.
- 7.42. The Run-off Fund is an insurance fund which provides run-off cover to closed firms and is paid for by the participating insurers in the market in accordance with their market share of solicitors' PII. The Run-off Fund is managed by the Special Purpose Fund Manager on behalf of the insurers, which manager is appointed by the Law Society.
- 7.43. Solicitor firms are required to give the Special Purpose Fund Manager 60 days prior notice of their date of cessation. Failure to do so affects the excesses to be paid by the principals of the solicitor firm and, in future, the level of cover available to the firm in run-off.
- 7.44. Consideration needs to be given to the provision of run-off cover for legal partnerships, and the provision of information on such run-off cover to the Authority as part of the cessation notification.

Recommendation 34 – Run-off cover

It is the recommendation of the Society that consideration be given to the issue of run-off professional indemnity insurance cover for closed legal partnerships, and that a requirement to provide the Authority with information on same be included in the cessation notification.

Succeeding practice

- 7.45. Where a legal partnership is ceasing, information should be provided to the Authority on whether a succeeding practice to the legal partnership exists, where the partners of the firm will be working following the cessation or if they will be non-practising, and the reason for the cessation of the legal partnership.
- 7.46. This captures information on any possible succeeding practices to the legal partnership, which is important with regard to client files and insurance requirements as well as data on the reasons for cessation of legal partnerships which will feed into policy decision making by the Authority on legal partnerships.

Recommendation 35 – Succeeding practices

It is the recommendation of the Society that legal partnerships be required to include information on any succeeding practices to the closed legal partnership, together with information as to the reason for the cessation, and where partners will be working following cessation of the legal partnership, in the cessation notification to the Authority.

Types of closure

- 7.47. Consideration needs to be given to the different cessation notification requirements for different types of closure of legal partnerships including full cessation, mergers and take-overs, as different cessation types have different information requirements.
- 7.48. For example, mergers of legal partnerships would actually constitute cessation of the two preceding legal partnerships, and commencement of the succeeding merged legal partnership.

Recommendation 36 – Types of closures

It is the recommendation of the Society that consideration be given to different types of cessation notification and other requirements for different types of closures, including full cessations, mergers and take-overs.

Post closure contact details

- 7.49. The partners of the legal partnership should be required to provide post-closure contact details, both for the Authority, and correspondence contact details which can be provided by the Authority to any third party, including clients, who wish to correspond with the partners following the cessation of the legal partnership.

7.50. Such details could include home address, phone, mobile phone, and email.

Recommendation 37 – Post-closure contact details

It is the recommendation of the Society that partners of legal partnerships be required to provide post-closure contact details in the cessation notification to the Authority. Such details would be required for contact by the Authority, and also contact details which can be provided to third parties, such as clients, who wish to correspond with the partners following the date of cessation of the legal partnership.

Client files

- 7.51. Solicitors who no longer hold practising certificates or have ceased practice are prohibited under any circumstances from retaining client files or other documentation, for instance in private storage or in their homes, unless the files are closed files and accessible by a practising solicitor.
- 7.52. Such solicitors are also prohibited from holding client monies.
- 7.53. Where a solicitor firm ceases, the principals are required to provide the Society with information in relation to the distribution of live and closed files, and to provide written confirmation that all live files have been forwarded to new solicitors nominated by the clients by a specified date.
- 7.54. Solicitors are required to return closed files to clients where appropriate, or hold same in storage. Any closed files in storage are required to be accessible by a practising solicitor. The purpose of this requirement is that, if a former client of the solicitor firm contacts the Society to ascertain the whereabouts of their file, the Society can direct the client to the practising solicitor who has access to the files in storage. The principals of the closed firm are required to provide the Society with written notification of the identity of the practising solicitor with access to their closed files, and the location of storage.
- 7.55. In the event that files are transferred to a practising solicitor, whether current files and/or closed files for storage only, it is required that the solicitor is aware that they solely have the decision making power in relation to the files, other than the power vested in the client as owner of the file.
- 7.56. All wills in respect of the closed firm are required to be transferred to another solicitor firm or returned to clients. Solicitors often inform their local bar association of their cessation from practice and inform them of arrangement being made in respect of wills. Such information should also be provided to the Society.
- 7.57. Specified requirements with regard to retention and destruction of client files are also in place.
- 7.58. It is the recommendation of the Society that the Authority put similar notification and management requirements in place for closed legal partnerships in relation to client files.

Recommendation 38 – Client files and client monies

It is the recommendation of the Society that the Authority put prohibitions, and notification and managerial requirements in place on closed legal partnerships with regard to live and closed client files, as well as a prohibition on holding client monies, as currently exist for solicitor firms.

Closing accountant's report

- 7.59. Solicitor firms that hold client monies are required to file an annual prescribed reporting accountant's report in relation to client monies held.
- 7.60. When a solicitor firm closes, it is required to file a closing reporting accountant's report to the date that they cease to receive, hold, control or pay client monies. This report is required to be filed with the Society within two months of the date of cessation of the firm.
- 7.61. It is the recommendation of the Society that similar reporting requirements be put in place as part of the cessation notification of legal partnerships.

Recommendation 39 – Closing reporting accountants' reports

It is the recommendation of the Society that similar reporting requirements with regard to closing reporting accountants' reports be put in place for legal partnerships as currently exist for solicitor firms under the solicitors accounts regulations.

Notification of specified regulatory changes

- 7.62. Solicitors are required under primary legislation to provide the Society with written notification of specific regulatory changes within 14 days of such change.
- 7.63. In order to ensure that the register of legal partnerships is kept up to date, and that the partners in the firm are in compliance with their requirements, a requirement should be introduced that prior written notification of specified regulatory changes should be made to the Authority in writing including the following:
 - (a) Change of partner – including details of the cessation date of the previous partner, the commencement date of the new partner, and all compliance and information documentation required in relation to the new partner, such as certificate of good standing.

- (b) Change of professional name – including proposed commencement date for the new name and application for approval if required.
- (c) Change of staff – change of details of any legal practitioner employees including relevant commencement and cessation dates.
- (d) Change of contact details – including address, email, fax, phone, mobile phone etc.
- (e) Notification of disciplinary issues – partners in the legal partnership should be required to immediately notify the Authority in writing if any orders of findings of misconduct have been made against them, or restrictions placed on their practising certificates.
- (f) Annual insurance notification – as insurance cover is provided for a set indemnity period, annual confirmation of PII cover should be provided similar to the mechanism set out above in relation to solicitor's PII.
- (g) Notification of change of commencement requirements – If at any point the legal partnership no longer meets the minimum commencement requirements as prescribed by the Authority, they should be required to immediately notify the Authority of same in writing.

Recommendation 40 – Notification of specified regulatory changes

It is the recommendation of the Society that legal partnerships be required to provide the Authority with written notification of specified regulatory changes within 14 days of such change including the following:

- 1 change of partner, with details of cessation date of previous partner, commencement date of new partner, and all compliance and information documentation required in relation to the new partner;
- 2 change of professional name, with details of proposed commencement date of new name and application for approval by the Authority if required;
- 3 change of legal practitioner employees or consultants, with details of relevant commencement and cessation dates;
- 4 change of contact details, with new details included;
- 5 notification of disciplinary issues, such as orders of findings of misconduct against partners or employees of the legal partnership, or imposition of restrictions on the legal practitioners' practising certificates;
- 6 annual professional indemnity insurance notification, with details of commencement and cessation dates of policy, policy number, insurer, broker, minimum level of cover, and confirmation that the cover meets the prescribed minimum terms and conditions; and
- 7 notification of change of commencement requirements, if the legal partnership no longer meets the minimum commencement requirements prescribed by the Authority.

Annual updating of information

- 7.64. The Society publishes a Law Directory on an annual basis which includes, among other matters, information on solicitor firms and practising solicitors.
- 7.65. The Society also has an online “Find a Solicitor” and “Find a Firm” search facility in relation to live firms and practising solicitors, which is updated on a daily basis.
- 7.66. In order to facilitate provision of accurate information to the public and profession on solicitors and solicitor firms, the Society has three main annual information capture drives, namely the Law Directory data capture, PII renewal and practising certificate renewal.
- 7.67. For the Law Directory data capture drive, the Society’s current information on firms and their solicitors are sent to solicitor firms in October annually. The firms are asked to provide the Society with any update on their information if the Society’s records are inaccurate or out of date.
- 7.68. With the PII renewal, all live firms are required to provide confirmation of PII cover through the Society’s online portal within 3 working days of 1 December. This provides a mechanism for capturing information on new firms or ceased firms who have failed to notify same to the Society.
- 7.69. With the practising certificate renewal, all practising solicitors are required to apply for their practising certificate on an annual basis on or before 1 February each year. This provides a mechanism for capturing up-to-date information on solicitors and their firms, including identifying any solicitors who are non-practising.
- 7.70. It is the recommendation of the Society that a similar annual data capture procedure is put in place by the Authority for legal partnerships.
- 7.71. Consideration could also be given as to whether legal partnerships should be required to reapply for approval to practice on an annual basis. It should be noted that this is not a requirement for solicitor firms.

Recommendation 41 – Data capture

It is the recommendation of the Society that the Authority carry out an annual data capture process for legal partnerships to ensure the details in the register of legal partnerships is up to date.

Recommendation 42 – Annual approval application process

It is the recommendation of the Society that consideration be given as to whether an annual process should be introduced requiring legal partnerships to reapply on an annual basis for approval to practice.

8. Consequences for breaches of the Act and regulations

- 8.1. With regard to breaches of the Act, and regulations made thereunder, by legal practitioners in legal partnerships, these should be treated the same as breaches by legal practitioners providing legal services other than through legal partnerships, with regard to regulatory, disciplinary, enforcement, and protection actions that may be taken against same.
- 8.2. With regard to the consequences for breaches of the Act, and regulations made thereunder, by legal partnerships as an entity, this raises the question as to whether the legal practitioners within the legal partnership are being regulated, or the legal partnership itself.
- 8.3. With regard to solicitor complaints, regulatory and disciplinary action is taken against the solicitor, rather than the solicitor firm. Each solicitor, rather than the entity through which they provide legal services, is responsible for ensuring that they comply with the solicitors acts and the relevant regulations.
- 8.4. With regard to financial regulation, while the solicitor firm is investigated, responsibility for any breaches of the solicitors acts and regulations made thereunder, lies with the principals of the solicitor firm. Any disciplinary cases are taken against the principals, or in some cases a solicitor employee, rather than against the firm as an entity.
- 8.5. Solicitor firms are required to have at least one practising solicitor principal. Where a solicitor principal is suspended, or struck-off, or otherwise deemed to be non-practising, the firm is automatically deemed to be inactive, and cessation procedures are put in place. As such, taking disciplinary action against a solicitor principal can result in the forced closure of a solicitor firm.
- 8.6. This principle even applies to PII. PII is held by a solicitor firm for all solicitors in that firm, rather than by individual solicitor. If the solicitor firm does not have PII in place, the Society makes an application to the High Court to have the firm shut down. Disciplinary action however continues to be taken against the principal or principals of that solicitor firm for practising without PII in place.
- 8.7. If the consequences for breaches of the Act or regulations, falls on the legal partnership as an entity, rather than on the partners as legal practitioners, any serious consequences can be avoided by the partners by simply shutting down the legal partnership, and opening a new legal partnership or solicitor firm or acting as a barrister.
- 8.8. However, if the consequences for breaches of the Act or regulations, fall on the partners of the legal partnership, this continues to follow them regardless of the status of the legal partnership as an entity. This is also why joint and several liability for partners is recommended.
- 8.9. Regulation by legal practitioner, rather than by entity, also allows the legal partnership to be taken over, or continued by the innocent partner in the case of serious misconduct. This provides for continuity of service for the clients, while ensuring that disciplinary action is taken against the legal practitioner or practitioners responsible for the breaches.

- 8.10. With regard to any notification requirements for legal partnerships, such as commencement, cessation and notification of change, failure to meet these requirements could be dealt with by way of fines to be paid by the partners to the Authority.
- 8.11. As such, it is the recommendation of the Society that legal partnerships are regulated by legal practitioner, rather than by legal partnership entity, and primary legislation be amended to acknowledge that partners of legal partnerships are jointly and severally liable as automatically provided for under partnership law.

Recommendation 43 – Consequences for breaches of the Act and regulations

It is the recommendation of the Society that:

- 1 legal partnerships should be regulated by individual legal practitioner, rather than by the legal partnership entity;
- 2 breaches of the Act and regulations by legal practitioners in legal partnerships should be treated the same as breaches by all other legal practitioners;
- 3 the Act should be amended to acknowledge that partners of legal partnerships are jointly and severally liable;
- 4 consideration should be given to dealing with failure by legal partnerships to meet notification requirements by way of fines to be paid to the Authority.

9. Funding of regulation of legal partnerships

- 9.1. Under section 95 of the Act, the Authority will seek payment of a levy by the professional bodies for the annual expenses of the Authority and Legal Practitioner Disciplinary Tribunal with 10% paid *pro rata* by the Bar of Ireland and non-Law Library member barrister, 10% paid by the Law Society, and the remaining 80% apportioned *pro rata* between the professional bodies and non-Law Library barristers according to the number of practising solicitors, and practising barristers and non-Law Library practising barristers.
- 9.2. It is the recommendation of the Society that a similar funding structure be put in place for the establishment and maintenance of the register of legal partnerships, as well as the ongoing regulation, monitoring and operation of legal partnerships as follows:
- (a) 10% paid *pro rata* by the Bar of Ireland and non-Law Library barristers;
 - (b) 10% paid by the Law Society;
 - (c) remaining 80% apportioned *pro rata* between the Law Society, Bar of Ireland, and non-Law Library barristers in accordance with the number of solicitors, and barristers registered as partners in legal partnerships in that year.
- 9.3. In addition, any fees imposed and recovered by the Authority in relation to legal partnerships should be offset against the levy sought for the regulation of legal partnerships from the professional bodies, and non-Law Library barristers.

Recommendation 44 – Funding regulation of legal partnerships

It is the recommendation of the Society that the following funding structure (as provided for in section 95 of the Act) be put in place for the establishment and maintenance of the register of legal partnerships, as well as the ongoing regulation, monitoring and operation of legal partnerships as follows:

- 5 10% paid *pro rata* by the Bar of Ireland and non-Law Library barristers;
- 6 10% paid by the Law Society;
- 7 remaining 80% apportioned *pro rata* between the Law Society, Bar of Ireland and non-Law Library barristers in accordance with the number of solicitor and barristers registered as partners in legal partnerships in that year; and
- 8 any fees recovered by the Authority from legal partnerships should be offset against the levy sought for the regulation of legal partnerships from the professional bodies and non-Law Library barristers.

