



STATUTORY INSTRUMENTS.

**S.I. No. 617 of 2007**

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THE SOLICITORS ACTS 1954 TO 2002 (PROFESSIONAL INDEMNITY  
INSURANCE) REGULATIONS 2007

**(Prn. A7/1680)**

## THE SOLICITORS ACTS 1954 TO 2002 (PROFESSIONAL INDEMNITY INSURANCE) REGULATIONS 2007

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

## 1. Citation:

- (a) These Regulations may be cited as The Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007.
- (b) These Regulations shall come into operation on the 1 November 2007.
- (c) The instruments listed in the Schedule to these Regulations shall cease to have effect as from 1 January 2008 to the extent set out in the Schedule.

## 2. Interpretation:

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

“ARP default premium” means the sums payable by a defaulting firm for any coverage arranged pursuant to Regulation 9(a) from time to time;

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

- (i) that the firm has not been in the assigned risks pool for more than twenty four of the sixty months preceding the date of its application to enter the assigned risks pool and is not a successor firm to such a firm, and
- (ii) that no direction in relation to the firm is in effect pursuant to Regulation 10(g) or Regulation 11(e)(iv), and
- (iii) that the firm is not a defaulting run-off firm;

“ARP eligibility dispensation” means, in respect of any firm, a dispensation under Regulation 7(b) of these Regulations;

“ARP manager” means any person (including any body corporate, partnership or unincorporated body) from time to time appointed by

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the PII Committee to manage the assigned risks pool, and includes any replacement to such a person appointed from time to time;

“assigned risks pool” means the pooling arrangement participated in by each qualified insurer through which an eligible firm, a defaulting firm or a run-off firm (including a defaulting run-off firm) may obtain or be granted coverage (such coverage to be provided by insurance or by other arrangements for indemnification) that incorporates the minimum terms and conditions;

“assigned risks pool coverage” means an arrangement for indemnification (which may include a contract or contracts of insurance with or without other arrangements for indemnification) issued by the ARP manager on behalf of those qualified insurers that participate in the assigned risks pool and incorporating the minimum terms and conditions but shall not include run-off cover issued to a firm through the assigned risks pool or coverage issued to a defaulting firm through the assigned risks pool;

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

“defaulting firm” means a firm that does not hold qualifying insurance outside the assigned risks pool and which falls within one of the following categories:—

- (i) in the case of a firm that is an eligible firm, it has failed to make an application to be admitted into the assigned risks pool prior to the start of any relevant indemnity period or prior to the start of the firm’s practice whichever is the later;
- (ii) in the case of a firm that is not an eligible firm, it is a firm that is carrying on a practice without qualifying insurance;

“defaulting run-off firm” means a firm that ceases a practice in circumstances where it is required pursuant to these Regulations to establish and maintain run-off cover in respect of a run-off period, but where it is not entitled to and does not itself establish and maintain run-off cover either from qualified insurers or from the assigned risks pool (and a firm on whose behalf the ARP manager makes arrangements for that firm’s run-off period to be covered through the assigned risks pool because it has failed itself to establish and maintain run-off cover pursuant to these Regulations shall be regarded as a defaulting run-off firm);

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

“firm” means:—

- (i) any partnership of two or more lawyers (as constituted from time to time, whether before or during any relevant indemnity period) where such partnership includes at least one solicitor or registered lawyer and whether or not such partnership includes non-registered lawyers, and
- (ii) any sole practitioner being either a solicitor or registered lawyer, and including a sole practitioner who employs one or more solicitors or registered lawyers, and a sole practitioner who is employed by a person who is not a solicitor or registered lawyer,

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

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

“indemnity period” means the transitional period and any period of one year starting on 1 December in 2008 or in any subsequent calendar year;

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

- (i) the appointment of a liquidator, receiver, administrative receiver, administrator or examiner to the qualified insurer (or an analogous appointment being made in respect of the qualified insurer in any jurisdiction outside the State),
- (ii) the passing by the members of a qualified insurer of a resolution for a voluntary winding up (or an analogous step being taken in relation to a qualified insurer in any jurisdiction outside the State),
- (iii) the making of a winding up order in relation to a qualified insurer (or an analogous order being made in relation to a qualified insurer in any jurisdiction outside the State), or
- (iv) the approval of a voluntary arrangement or similar form of composition with creditors in respect of a qualified insurer (or an analogous event occurring in relation to a qualified insurer in any jurisdiction outside the State);

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

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

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

- (i) any investment business services or investment advice provided by a firm,
- (ii) acting as personal representative or trustee,
- (iii) acting as notary public,
- (iv) acting as a commissioner for oaths,
- (v) acting as liquidator or receiver,
- (vi) acting as company secretary,
- (vii) acting as director of any body corporate owned by the principals of a firm that provides trustee, nominee, administration or other services,
- (viii) acting as arbitrator or mediator, and
- (ix) acting on a pro bono basis;

“minimum terms and conditions” means the minimum terms and conditions set out in Appendix 1 to these Regulations with which a qualifying insurance (or, in the case of a qualifying insurance provided as a co-insurance, any part thereof) underwritten by a qualified insurer is required by these Regulations to comply;

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

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

“operative date” means 1 November 2007;

“PII Committee” means the Professional Indemnity Insurance Committee constituted under Regulation 13 of these Regulations;

“pool participation agreement” means an agreement in such terms as the PII Committee may from time to time designate setting out the terms and conditions on which a qualified insurer may provide qualifying insurance to firms in the State and the terms on which such qualified insurer shall participate in the assigned risks pool;

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

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

“predecessor firm” is a firm in relation to which pursuant to these Regulations another firm is a successor firm;

“principal” means:—

- (i) the sole practitioner of any firm that during any indemnity period carries on or carried on business as a sole practitioner and includes a sole practitioner who employs or employed one or more solicitors or registered lawyers,
- (ii) every partner of a firm and every person held out as a partner of a firm that during any indemnity period carries on or carried on business as a partnership;

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

“qualifying insurance” means a policy or policies of insurance (or in the case of the SMDF, an arrangement for coverage) which (in the case of a single such policy or arrangement) includes the relevant minimum terms and conditions or (in the case of a number of such policies or arrangements) taken together include the relevant minimum terms and conditions;

“qualified insurer” means:—

- (i) an authorised insurer which has entered into and duly executed a pool participation agreement with the Society which is effective to permit such insurer to underwrite qualifying insurance,
- (ii) the SMDF where the SMDF has entered into and duly executed a pool participation agreement with the Society which is effective to permit the SMDF to provide qualifying insurance;

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

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

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

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

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

- (i) the risk management auditor’s view as to the management and other conditions prevailing within the firm and the management and professional competence of the personnel employed by or engaged in the firm’s practice and of the principals of the firm,
- (ii) providing such information in relation to the practice conducted by the firm as is necessary to ensure that the report responds to the matters required to be addressed by the risk management audit terms of reference,
- (iii) giving the views of the risk management auditor as to the reasons why the firm was unable to obtain qualifying insurance, and
- (iv) making recommendations as to the steps that should be taken by the firm to enhance its prospects of being in a position to obtain qualifying insurance from a qualified insurer outside the assigned risks pool in the future;

“risk management audit terms of reference” means the matters set out in Appendix 2 to these Regulations;

“run-off cover” means a policy or policies of insurance (or in the case of the SMDF, an arrangement for coverage) for a firm that has ceased to carry on a practice which (in the case of a single such policy or arrangement) includes the relevant minimum terms and conditions or (in the case of a number of such policies or arrangements) taken together include the relevant minimum terms and conditions;

“run-off firm” means a firm that has ceased to carry on a practice;

“run-off period” means the period of six years from the date of cessation of a firm’s practice (save that where a firm ceases practice during an indemnity period, the run-off period in respect of that firm shall be six years from the end of that indemnity period), and a firm’s practice shall not be deemed to have ceased for the purposes of this definition where for the purposes of the minimum terms and conditions there is a succeeding practice to which coverage must extend pursuant to those terms and conditions;

“short transitional period” means the period from 1 January 2008 to 30 November 2008;

“SMDF” means the fund known as the Solicitors Mutual Defence Fund, operated by the Solicitors Mutual Defence Fund Limited;

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

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

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

“transitional period” means the period from 1 November 2007 to 30 November 2008; and

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

- (b) Other words and phrases in these Regulations shall have the meanings (if any) assigned to them by The Solicitors Acts 1954 to 2002.
- (c) The Interpretation Act 2005 shall apply for the purpose of interpreting these Regulations as it applies to the interpretation of an act of the



Oireachtas, except insofar as it may be inconsistent with The Solicitors Acts 1954 to 2002, or with these Regulations.

- (d) A reference in these Regulations to any statute, statutory provision, statutory instrument or other similar instrument includes:—
  - (i) any subordinate legislation made under it, and
  - (ii) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it either before, at or after the date of commencement of these Regulations.
- (e) Nothing in these Regulations shall be construed to negative any discretion that the SMDF or the Solicitors Mutual Defence Fund Limited on its behalf may have, whether under statute, its organisational documents or otherwise howsoever to determine in its discretion whether to indemnify a firm or any other person under any qualifying insurance.

### 3. Maintenance of Insurance:

- (a) Every firm that carries on a practice during an indemnity period where such indemnity period commences on or after 1 November 2007 shall, subject to and in accordance with the remaining provisions of these Regulations, establish and maintain in place qualifying insurance with a qualified insurer.
- (b) During the transitional period, a firm may at its discretion establish and maintain qualifying insurance covering either the transitional period or the short transitional period, and in either case, that firm shall, subject to Regulation 3(c), be regarded as having satisfied the requirements of Regulation 3(a) in respect of the transitional period.
- (c) A firm that establishes and maintains in place qualifying insurance covering the short transitional period shall only be regarded as having satisfied the requirements of Regulation 3(a) during the period from 1 November 2007 to 31 December 2007 where each solicitor and registered lawyer engaged in that firm's practice holds the minimum level of cover prescribed under the 1995 Regulations during such part of the period between 1 November 2007 and 31 December 2007 for which that solicitor or registered lawyer was engaged in the firm's practice.
- (d) Each solicitor or registered lawyer who is required during the period from 1 November 2007 to 31 December 2007 under the 1995 Regulations to hold the minimum level of cover prescribed under the 1995 Regulations shall be regarded as having satisfied the requirements of the 1995 Regulations to hold such cover where:—

- (i) that solicitor or registered lawyer is engaged in the practice of a firm that has established and maintains in place qualifying insurance covering the transitional period; and
  - (ii) that solicitor or registered lawyer does not provide legal services other than in the name of and for the account of that firm during the period from 1 November 2007 to 31 December 2007.
- (e) The PII Committee shall be entitled, in its discretion at any time and from time to time, for such period or periods as it considers fit and subject to such conditions as it may specify, to recognise a policy of insurance or other arrangement for coverage held by a firm (including, but not limited to, a firm at least one of the principals of which is a registered lawyer) as being equivalent to qualifying insurance for all or some of the purposes of these Regulations. For the avoidance of doubt, the PII Committee shall be entitled to exercise its discretion under this Regulation 3(e) by prescribing categories of policies of insurance or other arrangements for coverage that shall be regarded as equivalent to qualifying insurance for all or some of the purposes of these Regulations.
- (f) The PII Committee shall have power to treat a firm as complying with any requirements of these Regulations notwithstanding that the firm has failed so to comply where such non-compliance is regarded by the PII Committee in a particular case or cases as being insignificant.
- (g) The PII Committee shall have power at such time or times and on such conditions as it thinks fit to waive any provision or part of a provision of these Regulations in a particular case or cases including by extending the time, either prospectively or retrospectively, for the doing of any act under any provision of these Regulations.
- (h) Where a firm is required by these Regulations to establish and maintain in place qualifying insurance during an indemnity period, no individual solicitor or registered lawyer employed by or engaged in the firm's practice shall, during his or her period of employment or engagement with the firm and save as specifically required by Regulation 3(c), also be required to establish or maintain in place qualifying insurance in respect of that part of such individual's practice as is carried on in the name of and for the account of the firm.
- (i) Regulation 3(a) shall not apply to or in respect of any solicitor or registered lawyer who provides legal services only as part of an employment within the State to provide legal services to and for his or her employer, provided that:—
  - (i) the solicitor's or registered lawyer's employer is not also a solicitor or a registered lawyer; and
  - (ii) the solicitor or registered lawyer confirms to the Society in a manner acceptable to it that, for the duration of a relevant indemnity

period, the solicitor or registered lawyer has not and will not engage in the provision of legal services to or for any person other than his or her employer; and

- (iii) the solicitor or registered lawyer shall notify the Society immediately in writing if the exemption from Regulation 3(a) under Regulation 3(i) shall cease to apply in respect of the solicitor or registered lawyer.
- (j) A firm to which Regulation 3(a) applies shall be required to establish and maintain qualifying insurance as at and from the commencement of any indemnity period in which the firm carries on a practice, or as at and from the commencement by the firm of a practice, whichever is the later.
- (k) No firm shall be permitted to agree with a qualified insurer a renewal date for its qualifying insurance that is any date other than 1 December in each indemnity period following the transitional period.
- (l) A firm shall provide to the Society such evidence that it has established and is maintaining qualifying insurance in accordance with these Regulations as the Society may from time to time require.
- (m) Without prejudice to the generality of Regulation 3(l), a firm shall be required to provide to the Society, or procure that there is provided to the Society on its behalf, confirmation in any form designated by the Society that it has established and is maintaining qualifying insurance within ten working days of the commencement of the indemnity period to which the qualifying insurance relates.
- (n) Without prejudice to the generality of Regulation 12(a), every principal of a firm to which these Regulations apply shall be responsible for ensuring:—
  - (i) that the firm has established and maintains in place qualifying insurance where required under these Regulations during any indemnity period in which the firm carries on a practice; and
  - (ii) that the firm provides in a timely manner any evidence that may be required under or pursuant to these Regulations that it has established and is maintaining qualifying insurance where required to do so.

#### 4. Self-Insured Excess on Qualifying Insurance:

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

self-insured excess to a claimant when lawfully due, the qualified insurer will pay the outstanding amount directly to the claimant.

- (b) Every firm shall be required to make prompt payment to a claimant, in the event of a claim being upheld against it, of the amount of any self-insured excess provided for under a qualifying insurance when the same is lawfully due to the claimant.
- (c) Without prejudice to the generality of Regulation 12(a), every principal of a firm to which these Regulations apply shall be responsible for ensuring that the firm makes prompt payment of any self-insured excess under its qualifying insurance as required by these Regulations.

#### 5. Maintenance of Insurance in Run-off:

- (a) Every firm that is carrying on a practice on the operative date, or that subsequently commences a practice, shall:—
  - (i) where immediately prior to the commencement of a run-off period, the firm held qualifying insurance with a qualified insurer, maintain in place run-off cover with a qualified insurer during the run-off period in respect of the firm's former practice;
  - (ii) where immediately prior to the commencement of a run-off period, the firm held an assigned risks pool coverage, maintain in place run-off cover through the assigned risks pool during the run-off period in respect of the firm's former practice.
- (b) The run-off cover required to be obtained by a firm pursuant to Regulation 5(a) shall be as follows:—
  - (i) for a firm that, immediately prior to the commencement of a run-off period, held qualifying insurance with a qualified insurer or more than one qualified insurer, cover that incorporates the minimum terms and conditions;
  - (ii) for a firm that, immediately prior to the commencement of a run-off period, held an assigned risks pool coverage, a run-off cover on like terms and conditions to the assigned risks pool coverage previously held by that firm.
- (c) A firm to which Regulation 5(a) applies shall provide to the Society such evidence that it has established and is maintaining run-off cover as required pursuant to Regulation 5(a) as the Society may from time to time require.
- (d) Without prejudice to the generality of Regulation 5(c), a firm shall be required to provide to the Society, or procure that there is provided to the Society on its behalf, confirmation in any form designated by the Society that it has established and is maintaining run-off cover as

required pursuant to Regulation 5(a) within ten working days of the commencement of the relevant run-off period.

- (e) Without prejudice to the generality of Regulation 12(a), every principal of a firm to which these Regulations apply, and in the case of a firm that has ceased its practice every person that is or was a principal of that firm at the relevant time as determined by the PII Committee in its discretion shall be responsible for ensuring:—
  - (i) that the firm has established and maintains in place run-off cover as required pursuant to Regulation 5(a) in respect of its former practice during a run-off period;
  - (ii) that the firm provides any evidence that the firm has established and is maintaining run-off cover as required pursuant to Regulation 5(a) that may be required under or pursuant to these Regulations in a timely manner.
- (f) The ARP manager shall make arrangements to ensure that a defaulting run-off firm is covered through the assigned risks pool in respect of any period during a run-off period in which such a firm does not hold run-off cover either with a qualified insurer or through the assigned risks pool, and such arrangements shall procure that a defaulting run-off firm in respect of which the arrangements apply is covered in respect of all claims and circumstances where coverage would extend pursuant to the minimum terms and conditions. Any arrangements made by the ARP manager pursuant to this Regulation 5(f) in respect of defaulting run-off firms shall not be regarded as run-off cover for the purposes of satisfying Regulation 5(a) of these Regulations.
- (g) The ARP manager shall determine the amount of the premium payable by any defaulting run-off firm in respect of whose former practice arrangements pursuant to Regulation 5(f) are made from time to time, and in determining the amount of such premium, the ARP manager may base its calculations on any estimate of that firm's gross fees prior to the cessation of its practice made by the ARP manager in its absolute discretion and as it deems appropriate and reasonable, without prejudice to Regulations 5(j) and 5(k).
- (h) The ARP manager on behalf of qualified insurers shall be entitled to recover from each and every principal in a defaulting run-off firm all amounts of premium due from that defaulting run-off firm as calculated by the ARP manager pursuant to Regulation 5(g) together with interest thereon at two per cent over the base lending rate of the European Central Bank from time to time.
- (i) The ARP manager on behalf of qualified insurers shall be entitled to recover from each and every principal in a defaulting run-off firm all amounts paid in or towards the discharge of a claim and defence costs

pursuant to arrangements made under Regulation 5(*f*), together with interest thereon at two percent over the base lending rate of the European Central Bank from time to time.

- (*j*) In setting the premium pursuant to Regulation 5(*g*) the ARP manager may take into account such facts and circumstances as the ARP manager may in its professional opinion deem relevant and appropriate, without prejudice to Regulations 5(*k*) and 5(*l*).
- (*k*) The ARP manager shall from time to time produce and provide to each qualified insurer guidelines for the determination of premium to be paid by any defaulting run-off firm pursuant to Regulation 5(*g*), and shall consult with the PII Committee and with any liaison committee representing qualified insurers maintained from time to time pursuant to the pool participation agreement in connection with such guidelines prior to the finalisation thereof, but it shall be for the ARP manager to determine the final form and content of any guidelines produced pursuant to Regulation 5(*k*).
- (*l*) In the application of the guidelines referred to in Regulation 5(*k*) when exercising its discretion to determine premium pursuant to Regulation 5(*g*), the ARP manager shall afford qualified insurers a reasonable opportunity to make representations to it (such representations to be made through any liaison committee representing qualified insurers maintained from time to time pursuant to the pool participation agreement), but it shall be for the ARP manager to determine the final amount of premium payable by any defaulting run-off firm pursuant to Regulation 5(*g*).

#### 6. Insolvency of Qualified Insurers and Other Events:

- (*a*) Where a firm has established qualifying insurance or run-off cover with a qualified insurer or a number of qualified insurers in accordance with Regulations 3 or 5, and an insolvency event or non-performance event occurs in respect of that qualified insurer or one or more of those qualified insurers, as the case may be, the firm shall, as soon as reasonably practicable and in any event within 20 working days after the date upon which such insolvency event or non-performance event occurs (but not counting the date upon which such event occurs):—
  - (i) establish and maintain in place qualifying insurance or run-off cover with a qualified insurer or qualified insurers that is or are unaffected by an insolvency event or non-performance event; or
  - (ii) where it is an eligible firm, apply under Regulation 7 to enter the assigned risks pool.
- (*b*) A firm to which Regulation 6(*a*) applies shall provide to the Society such evidence that it has established and is maintaining qualifying

insurance or run-off cover or that it has applied to enter the assigned risks pool as the Society may from time to time require.

- (c) Without prejudice to the generality of Regulation 6(b), a firm shall be required to provide to the Society, or procure that there is provided to the Society on its behalf, confirmation in any form designated by the Society that it has established and is maintaining qualifying insurance or run-off cover or that it has applied to enter the assigned risks pool within 30 working days of the insolvency event or non-performance event that gives rise to the obligation to establish and maintain qualifying insurance or run-off cover pursuant to Regulation 6(a).
- (d) Without prejudice to the generality of Regulation 12(a), every principal of a firm to which these Regulations apply, and in the case of a firm that has ceased its practice every person that is or was a principal of that firm at the relevant time as determined by the PII Committee in its discretion shall be responsible for ensuring:—
  - (i) that the firm has established and maintains in place qualifying insurance or run-off cover following the occurrence of an insolvency event or a non-performance event in respect of its former qualified insurer or qualified insurers with a qualified insurer or qualified insurers that is or are unaffected by such an event, or that it applies to enter the assigned risks pool; and
  - (ii) that the firm provides any evidence that the firm has established and is maintaining qualifying insurance or run-off cover or that it has applied to enter the assigned risks pool following the occurrence of an insolvency event or a non-performance event in respect of its former qualified insurer or qualified insurers that may be required under or pursuant to these Regulations in a timely manner.

#### 7. Entering the Assigned Risks Pool:

- (a) Where at any time a firm either has not established or fails to maintain qualifying insurance underwritten by a qualified insurer as required by these Regulations, that firm shall (if it is an eligible firm) apply to enter the assigned risks pool prior to:—
  - (i) the date on which its practice commences; or
  - (ii) the date on which the relevant indemnity period commences; or
  - (iii) the date on which it fails to maintain qualifying insurance

whichever date is the latest.

- (b) The PII Committee in its absolute discretion shall have power to grant a dispensation from the ARP eligibility criteria to a firm in an appropriate case.
- (c) A firm that is required to apply to enter the assigned risks pool and that is an eligible firm shall apply in the following manner:—
  - (i) it shall submit to the ARP manager a proposal form in a format designated from time to time by the PII Committee seeking to obtain assigned risks pool coverage and stating the date upon which such coverage should commence (not being a date earlier than the date upon which the application is made), together with such further information (if any) as may be required by the ARP manager for the purposes of considering the firm's application and setting the applicable premium;
  - (ii) it shall, if so required by the ARP manager, pay in advance of entry to the assigned risks pool such sum by way of an advance payment of premium as the ARP manager may nominate and it shall undertake to pay and shall pay such further sums by way of premium as the ARP manager may from time to time determine;
  - (iii) it shall submit to the Society a signed undertaking in a format designated from time to time by the PII Committee confirming that it will:-
    - (A) submit to such monitoring and investigation, take all such actions and pay such costs and expenses thereof as is provided for under and pursuant to these Regulations, and
    - (B) pay any costs and expenses incurred by the Society or the ARP manager from time to time as a result of any failure on its part to comply with any provision of these Regulations.
- (d) Every firm that applies to enter the assigned risks pool shall provide to the ARP manager such information as the ARP manager may from time to time in its discretion reasonably require to progress the firm's application for entry to the assigned risks pool and otherwise to deal efficiently and effectively with the firm's membership of the assigned risks pool.
- (e) Where a firm has been issued with assigned risks pool coverage, the terms of the assigned risks pool coverage shall prescribe that, and the firm shall be deemed to agree that, the premium determined by the ARP manager to be applicable in respect of such assigned risks pool coverage shall, as from the date upon which such assigned risks pool coverage commences (if not already paid by the firm) constitute a debt due from the firm to the ARP manager as agent for all qualified insurers participating in the assigned risks pool, and that failing prompt payment thereof, such premium shall also carry interest at the



rate of two percent above the base lending rate from time to time of the European Central Bank.

- (f) Every firm to which this Regulation applies shall be required to take all reasonable steps to ensure that the firm receives an acknowledgement in writing of receipt by the ARP manager of its application pursuant to this Regulation to enter the assigned risks pool within ten working days of the date of despatch of such application by or on behalf of the firm, and where no such acknowledgement in writing is received within ten working days of such date, the application shall be deemed never to have been made, and the firm shall be required to re-apply in accordance with the provisions of Regulation 7.
- (g) An eligible firm that has applied in the manner prescribed by these Regulations to enter the assigned risks pool will be issued by the ARP manager with an assigned risks pool coverage.
- (h) The period of coverage under each assigned risks pool coverage shall commence:—
  - (i) in the case of a firm that applies to enter the assigned risks pool prior to the commencement of an indemnity period, from the start of that indemnity period;
  - (ii) in the case of a firm that applies to enter the assigned risks pool during an indemnity period, from the date specified in the firm's application, but that date may not be earlier than the date upon which the application was made, and no assigned risks pool coverage may provide retrospective cover.
- (i) The period of coverage under each assigned risks pool coverage shall terminate on the earliest to occur of the following dates:—
  - (i) the date upon which the relevant indemnity period ends;
  - (ii) the date upon which the firm obtains qualifying insurance outside the assigned risks pool; or
  - (iii) the date when the firm ceases to be an eligible firm.
- (j) Every firm that holds assigned risks pool coverage shall be required to report or notify any claim or circumstance required to be reported or notified pursuant to its assigned risks pool coverage to the ARP manager within any time prescribed therefor under that assigned risks pool coverage.
- (k) The ARP manager shall determine the amount of the premium payable by any firm in respect of whose practice an assigned risks pool coverage is to be issued from time to time, and in determining the amount of such premium, the ARP manager may base its calculations on any estimate of that firm's gross fees made by the ARP manager

in its absolute discretion and as it deems appropriate and reasonable, without prejudice to Regulations 7(*m*) and 7(*n*).

- (*l*) In setting the premium pursuant to Regulation 7(*k*) the ARP manager may take into account such facts and circumstances as the ARP manager may in its professional opinion deem relevant and appropriate, without prejudice to Regulations 7(*m*) and 7(*n*).
- (*m*) The ARP manager shall from time to time produce and provide to each qualified insurer guidelines for the determination of premium to be paid by any firm to be issued with an assigned risks pool coverage pursuant to Regulation 7, and shall consult with the PII Committee and with any liaison committee representing qualified insurers maintained from time to time pursuant to the pool participation agreement in connection with such guidelines prior to the finalisation thereof, but it shall be for the ARP manager to determine the final form and content of any guidelines produced pursuant to Regulation 7(*k*).
- (*n*) In the application of the guidelines referred to in Regulation 7(*m*) when exercising its discretion to determine premium pursuant to Regulation 7(*k*), the ARP manager shall afford qualified insurers a reasonable opportunity to make representations to it (such representations to be made through any liaison committee representing qualified insurers maintained from time to time pursuant to the pool participation agreement), but it shall be for the ARP manager to determine the final amount of premium payable by any firm pursuant to Regulation 7.
- (*o*) Without prejudice to the generality of Regulation 12(*a*), every principal of a firm to which these Regulations apply shall be responsible for ensuring:—
  - (i) that the firm applies to enter the assigned risks pool within the time limits and in the manner required under these Regulations;
  - (ii) that the firm pays any premium due in respect of an assigned risks pool coverage to the ARP manager promptly when due;
  - (iii) that the firm takes steps to ensure that it is provided with an acknowledgement of its application to enter the assigned risks pool when required to do so under these Regulations; and
  - (iv) that the firm makes any notifications or reports required by these Regulations to be made pursuant to its assigned risks pool coverage in a timely manner.

#### 8. Membership of the Assigned Risks Pool:

- (*a*) A firm that has been issued with an assigned risks pool coverage but that is no longer an eligible firm shall be required as from the date upon which it ceases to be an eligible firm, to establish and maintain

qualifying insurance with a qualified insurer in accordance with Regulation 3(a) and if it fails to do so, it shall be required to cease its practice.

- (b) A firm may leave the assigned risks pool at any time after it has provided to the Society such evidence as the Society may require that it has obtained qualifying insurance from a qualified insurer that satisfies the provisions of these Regulations for at least the then-current indemnity period.
- (c) The PII Committee may in its absolute discretion at any time decide to treat any firm as being a successor firm to another firm, or as not being a successor firm to another firm, in circumstances where the effect of treating the first-mentioned firm as a successor firm to the second-mentioned firm, or the effect of treating the first-mentioned firm as not being a successor firm to the second-mentioned firm would be that the first-mentioned firm would not then be, or would then be, an eligible firm (as the respective case may be) and the PII Committee may, for the purposes of making any such decision, take into account such facts and matters as to it appear appropriate and relevant.
- (d) Where a firm applies for membership of the assigned risks pool but is not permitted to enter the assigned risks pool, that firm shall be required to indemnify the Society and the ARP manager on demand in respect of any costs, fees, expenses, losses or liabilities incurred by the Society and the ARP manager in relation to its application.

#### 9. Defaulting Firms:

- (a) The ARP manager shall make arrangements to ensure that a defaulting firm is covered in respect of any period in which such a firm does not hold qualifying insurance with a qualified insurer and has not applied to enter the assigned risks pool and been issued by the ARP manager with an assigned risks pool coverage, and such arrangements shall procure that a defaulting firm in respect of which the arrangements apply is covered in respect of all claims and circumstances where coverage would have extended pursuant to the minimum terms and conditions.
- (b) Every defaulting firm shall be liable to pay to the ARP manager the ARP default premium in respect of any coverage arranged in respect of its practice or former practice pursuant to Regulation 9(a).
- (c) The ARP manager on behalf of qualified insurers shall be entitled to recover from each and every principal in a defaulting firm all amounts paid in or towards the discharge of a claim and defence costs pursuant to arrangements made under Regulation 9(a), together with interest thereon at two percent over the base lending rate of the European Central Bank from time to time.

- (d) A defaulting firm may, at the discretion of the PII Committee, be required to cease its practice unless it obtains qualifying insurance from a qualified insurer outside the assigned risks pool.
- (e) The ARP manager shall determine the amount of the ARP default premium payable by any defaulting firm in respect of whose practice arrangements pursuant to Regulation 9(a) are made from time to time, and in determining the amount of such premium, the ARP manager may base its calculations on any estimate of that firm's gross fees made by the ARP manager in its absolute discretion and as it deems appropriate and reasonable, without prejudice to Regulations 9(g) and 9(h).
- (f) In setting the premium pursuant to Regulation 9(e) the ARP manager may take into account such facts and circumstances as the ARP manager may in its professional opinion deem relevant and appropriate, without prejudice to Regulations 9(g) and 9(h).
- (g) The ARP manager shall from time to time produce and provide to each qualified insurer guidelines for the determination of premium to be paid by any defaulting firm pursuant to Regulation 9(e), and shall consult with the PII Committee and with any liaison committee representing qualified insurers maintained from time to time pursuant to the pool participation agreement in connection with such guidelines prior to the finalisation thereof, but it shall be for the ARP manager to determine the final form and content of any guidelines produced pursuant to Regulation 9(e).
- (h) In the application of the guidelines referred to in Regulation 9(g) when exercising its discretion to determine premium pursuant to Regulation 9(e), the ARP manager shall afford qualified insurers a reasonable opportunity to make representations to it (such representations to be made through any liaison committee representing qualified insurers maintained from time to time pursuant to the pool participation agreement), but it shall be for the ARP manager to determine the final amount of premium payable by any defaulting firm pursuant to Regulation 9(e).

#### 10. Risk Management Audits:

- (a) A firm that enters or that seeks to enter the assigned risks pool shall be required to submit to and co-operate with a risk management audit to be conducted by a risk management auditor selected and appointed by the PII Committee at such times and at such intervals during the firm's membership of the assigned risks pool as the PII Committee may in its absolute discretion determine.
- (b) Every principal of a firm to which Regulation 10(a) applies shall be responsible for ensuring that the firm submits to and co-operates with

any risk management audit that is directed by the PII Committee in relation to the firm's practice pursuant to Regulation 10(a).

- (c) Where the PII Committee directs that a risk management audit is to be carried out in relation to the practice of a firm, every principal of that firm shall be responsible for ensuring that the risk management auditor appointed to carry out the risk management audit is afforded every possible facility to carry out the following tasks:—
- (i) to attend at any place or places where the firm engages in its practice and, for the avoidance of doubt, any place or places where the firm may store its records (including electronic records) in relation to matters it is involved in;
  - (ii) to interview any principal of the firm and such other persons employed by or associated with the firm as the risk management auditor deems necessary and appropriate;
  - (iii) to inspect such documents relating to the practice of the firm as the risk management auditor deems necessary and appropriate; and
  - (iv) to provide the risk management auditor with access to all electronic records maintained by or on behalf of the firm and to all computer or electronic communication systems operated by the firm and relating in either case to the practice of the firm.
- (d) Every principal of a firm to which this Regulation applies shall direct all persons employed by the firm and any relevant third party (to the extent that it is possible for that principal to do so) to facilitate and provide all necessary assistance to the risk management auditor in reviewing any documents referred to in Regulation 10(c)(iii) and any records or systems referred to in Regulation 10(c)(iv).
- (e) It shall be misconduct for any principal of a firm, or any solicitor or registered lawyer employed by a firm to which Regulation 10 applies to fail to attend at any interview with a risk management auditor of which not less than two working days notice has been given to that person, or to fail to provide a risk management auditor with access to documents, records or computer or communication systems within two working days of a request in that regard being made to such principal, solicitor or registered lawyer by a risk management auditor pursuant to these Regulations.
- (f) Where the PII Committee directs that a risk management audit is to be carried out in relation to the practice of a firm, that firm shall be required to indemnify the Society (or as the Society may direct) on demand in respect of any costs, fees, expenses, losses or liabilities incurred by the Society in relation to the conduct of that risk management audit, and every principal of that firm shall be responsible for

ensuring that the firm discharges its liabilities to the Society under Regulation 10.

- (g) Where a firm fails to comply with any provision of this Regulation, the PII Committee may direct that such firm shall no longer be treated as an eligible firm, and may further direct that any successor firm to such a firm shall not be an eligible firm.

#### 11. Risk Management Audit Reports:

- (a) A risk management auditor who conducts a risk management audit in relation to a firm shall, as soon as practicable thereafter, furnish a written risk management audit report to the ARP manager and to the PII Committee.
- (b) The PII Committee shall, on receipt of a risk management audit report, provide a copy thereof to the firm concerned and shall invite such firm to provide any written response thereto to the PII Committee within ten working days of receipt by the firm of such risk management audit report.
- (c) Following receipt by the PII Committee of the written response (if any) of a firm the subject of a risk management audit report or (failing any such written response) at any time after the expiry of the relevant time period for such firm to provide a written response, the PII Committee may provide the firm concerned with a written direction indicating which of the risk management audit recommendations are to be binding on the firm, and any such direction made by or on behalf of the PII Committee shall be binding upon the firm immediately upon receipt thereof by the firm and the firm shall forthwith take steps at its own expense to comply with any such direction.
- (d) At any time following the receipt by the PII Committee of the written response (if any) of a firm the subject of a risk management audit report or (failing any such written response) at any time after the expiry of the relevant time period for such firm to provide a written response, the PII Committee may, on giving not less than two working days notice, require any principal of such firm to attend before it to respond to such questions, to provide such information or to produce such documents regarding the management of the practice of the firm as may appear appropriate to the PII Committee.
- (e) At any time following the receipt by the PII Committee of the written response (if any) of a firm the subject of a risk management audit report or (failing any such written response) at any time after the expiry of the relevant time period for such firm to provide a written response, the PII Committee may take any one or more of the following measures:—
  - (i) direct the firm concerned to comply with such measures within such time period as the PII Committee deem appropriate and

reasonable to avoid or mitigate the risk of claims in respect of civil liability arising from the practice of the firm, and such measures may be more extensive than any risk management audit recommendations, and the firm shall forthwith take steps at its own expense to comply with any such direction;

- (ii) instruct any risk management auditor to assist and supervise the firm concerned or any principal of the firm or any solicitor or registered lawyer employed by the firm and to report to the PII Committee as appropriate in relation to compliance by the firm, principal, solicitor or registered lawyer concerned with any measures directed by the PII Committee pursuant to Regulation 11(e)(i);
  - (iii) commission any further inquiry into the affairs of the firm concerned to be made as to the PII Committee may appear appropriate and necessary to permit the PII Committee properly to assess the prevailing state of management of that firm;
  - (iv) conclude that the circumstances of the state of management of the firm concerned as disclosed by a risk management audit report, or by any subsequent report or investigation directed by the PII Committee to be undertaken are such that it is not appropriate and reasonable that the firm should be provided or continue to be provided with qualifying insurance by the assigned risks pool and may in consequence decide, on not less than two working days notice in writing to the firm concerned, to declare that the firm in question shall no longer be an eligible firm and shall be treated thenceforth as a defaulting firm.
- (f) Where the PII Committee takes any step pursuant to Regulation 11(e)(ii) or Regulation 11(e)(iii) in relation to the practice of a firm, that firm shall be required to indemnify the Society (or as the Society may direct) on demand in respect of any costs, fees, expenses, losses or liabilities incurred by the Society in relation to the steps taken, and every principal of that firm shall be responsible for ensuring that the firm discharges its liabilities to the Society under this Regulation 11(f).
- (g) The PII Committee may in its discretion and on such terms and conditions as it deems appropriate:—
- (i) permit the Society to use any risk management audit report provided by the PII Committee pursuant to Regulation 11(g)(ii) as the Society deems appropriate for the purposes of exercising any of its statutory powers and functions;
  - (ii) provide to qualified insurers a copy of any risk management audit report in accordance with the confidentiality provisions of the then-current pool participation agreement.

## 12. Responsibilities of Principals:

- (a) Every principal of a firm to which these Regulations apply shall be responsible for ensuring that the firm complies with its obligations and responsibilities under these Regulations, and it shall be misconduct for a principal to fail to procure that the firm so complies.
- (b) Without prejudice to the generality of Regulation 12(a), every principal of a firm to which these Regulations apply, and in the case of a firm that has ceased its practice every person that is or was a principal of that firm at the relevant time as determined by the PII Committee in its discretion shall be responsible for ensuring:—
  - (i) that the firm ceases its practice where required so to do under these Regulations;
  - (ii) that the firm discharges any costs, liabilities and expenses due to the Society under these Regulations promptly on demand; and
  - (iii) that the firm and each principal thereof complies with each of the responsibilities imposed upon it under Regulations 10 and 11.
- (c) Where any firm fails to comply with any of its obligations and responsibilities under or pursuant to these Regulations, or any principal of a firm fails to comply with any of his or her obligations and responsibilities under or pursuant to these Regulations, the PII Committee may take any one or more of the following courses of action:—
  - (i) apply to the High Court for suspension of the practising certificate or qualifying certificate of any principal or former principal of that firm, or of the principal concerned, as the case may be; or
  - (ii) direct the Registrar to refuse to issue a practising certificate or qualifying certificate to any principal or former principal of that firm, or to the principal concerned, as the case may be; or
  - (iii) apply to the Disciplinary Tribunal for an inquiry into the conduct of any principal or former principal of that firm, or of the principal concerned, as the case may be, on grounds of misconduct; or
  - (iv) apply to the High Court for an order to prohibit any principal or former principal of that firm, or the principal concerned, as the case may be, from contravening any provision of these Regulations.
- (d) Where the PII Committee decides to take one of the courses of action referred to in Regulation 12(c), the PII Committee shall give to each affected principal or former principal of that firm notice in writing of its intention to do so.



- (e) The provisions of Regulation 12 are without prejudice to the designation by these Regulations as misconduct of any particular act or omission by a solicitor or a registered lawyer, or to any other right or power given under these Regulations, under the Acts or under any instrument made under or pursuant to the Acts to the PII Committee or to the Society.

13. Professional Indemnity Insurance Committee:

- (a) The Council shall, as soon as practicable after the coming into operation of these Regulations, appoint a Professional Indemnity Insurance Committee which shall be responsible for exercising on behalf of the Council the functions vested in:—
  - (i) the Society by or under section 26 of the Solicitors (Amendment) Act 1994; and
  - (ii) the PII Committee by or under these Regulations; and
  - (iii) (to the extent that the 1995 Regulations remain in force by virtue of these Regulations) the committee constituted under the 1995 Regulations and designated as the PII Committee thereunder by or under the 1995 Regulations

save in each case for the making of regulations.
- (b) The Society shall from time to time in its discretion determine the number of members of the PII Committee and appoint the members thereof.
- (c) The quorum of the PII Committee shall be three.
- (d) The PII Committee may, with the prior approval of the Council, establish sub-committees to carry out some or all of its functions, or delegate some or all of its functions to an executive of the Society or the ARP manager.
- (e) The PII Committee shall exercise on behalf of the Council the following functions of the Society:—
  - (i) making recommendations, issuing guidance or giving directions on behalf of the Society in relation to the management, administration and protection by the ARP manager of the assigned risks pool;
  - (ii) (without prejudice to the generality or specificity of any Regulation) directing steps necessary or expedient to be taken to ascertain whether these Regulations or the provisions of the 1995 Regulations are being complied with;

- (iii) specifying circumstances in which any solicitor or registered lawyer or specified category of solicitors or registered lawyers may be exempted in whole or in part from compliance with these Regulations or the 1995 Regulations;
  - (iv) specifying the manner in which solicitors or registered lawyers or any specified category of solicitors or registered lawyers shall bring their compliance with, or exemption from, these Regulations or the 1995 Regulations to the notice of their clients or the Society;
  - (v) determining whether a perceived breach of section 26(6) of the Solicitors Act, 1994 or of these Regulations or of the 1995 Regulations by a solicitor or registered lawyer should be the subject of an application by the Society to the Disciplinary Tribunal for an inquiry into the conduct of that solicitor or registered lawyer on the ground of alleged misconduct;
  - (vi) making decisions in relation to matters (including procedural matters) deemed to be in pursuance of or incidental or supplementary to the functions vested in the Society under section 26 of the Solicitors (Amendment) Act 1994 or in pursuance of or incidental or supplementary to the provisions of these Regulations or of the 1995 Regulations.
- (f) The PII Committee shall, at least once in every calendar year, review the minimum terms and conditions and shall recommend to the Society any amendments thereto as to the PII Committee appear appropriate.
- (g) The PII Committee shall be entitled to appoint the ARP manager to discharge the functions and responsibilities of the person or entity appointed as Pool Manager under the 1995 Regulations to the extent that those Regulations remain in effect by virtue of these Regulations.

#### 14. Provision of Information:

- (a) If a person asserts a claim against a firm or any person insured under that firm's qualifying insurance and the claim relates to a matter within the scope of coverage under the minimum terms and conditions, that firm and every principal thereof (including, in the case of a firm that has ceased its practice, any former principal thereof) shall be required to provide that claimant on request with details of the identity of the qualified insurers that provided the qualifying insurance, together with any applicable coverage reference number and the relevant qualified insurers' contact details.
- (b) The Society may maintain in such form or forms as it considers appropriate a register of firms showing such details of any qualifying insurance, assigned risks pool coverage or run-off cover maintained by those firms appearing on the register as the Society deems fit, and

may permit persons to enquire as to the registered status of firms and provide persons with the information contained in the register relating to firms in such manner and to such extent as the Society may determine.

15. Amendment to Independent Law Centres Regulations:

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

“For the avoidance of doubt, an employed solicitor shall be required to comply with the Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007.”

Dated this 11th day of September 2007.

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

PHILIP JOYCE

President of the Law Society of Ireland

## SCHEDULE

## TABLE OF REVOCATIONS

Name of Instrument	Extent of Revocation
The Solicitors Acts 1954 to 1994 (Professional Indemnity Insurance) Regulations 1995 (Statutory Instrument No. 312 of 1995)	<p>Revoked in its entirety save that:—</p> <p>(i) the instrument (as subsequently amended) shall remain binding upon solicitors and registered lawyers required, prior to the operative date, by virtue of the provisions of the instrument to maintain run-off cover (as defined by the instrument) such that those solicitors and registered lawyers shall be required to continue to maintain such coverage in accordance with the terms of the instrument and that the provisions of the instrument (including provisions relating to the enforcement thereof and the penalties thereunder) shall be fully continued in effect as regards such solicitors and registered lawyers and such run-off cover; and</p> <p>(ii) the instrument (as subsequently amended) shall remain in effect to the extent necessary to permit the proper functioning and operation of the assigned risks pool constituted by virtue of the provisions of the instrument to permit that assigned risks pool to be administered to fulfil the terms of all coverages granted thereunder</p>
<p>The Professional Indemnity Insurance (Amendment) Regulations 1998 (Statutory Instrument No. 209 of 1998);</p> <p>The Solicitors Acts 1954 to 1994 (Professional Indemnity Insurance) (Amendment) Regulations 1999 (Statutory Instrument No. 362 of 1999);</p> <p>The Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) (Amendment) Regulations 2004 (Statutory Instrument No. 115 of 2004);</p> <p>The Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) (Amendment) Regulations 2005 (Statutory Instrument No. 122 of 2005)</p>	<p>Each revoked in its entirety save that the provisions of the relevant instrument shall be continued in effect to the extent that they amend The Solicitors Acts 1954 to 1994 (Professional Indemnity Insurance) Regulations 1995 (Statutory Instrument No. 312 of 1995) in order to give effect to the provisions of this Table as they relate to the revocation of The Solicitors Acts 1954 to 1994 (Professional Indemnity Insurance) Regulations 1995 (Statutory Instrument No. 312 of 1995)</p>
The Solicitors Acts 1954 to 1994 (Euro Changeover) Regulations, 2001 (Statutory Instrument No. 504 of 2001)	Regulation 3 only

APPENDIX 1

MINIMUM TERMS AND CONDITIONS OF PROFESSIONAL  
INDEMNITY INSURANCE

CONTENTS

	Page No
1 Interpretation.....	30
2 Scope of Cover .....	35
3 Minimum Level of Insurance Cover .....	37
4 Self-Insured Excesses.....	38
5 Special Conditions.....	39
6 Run-Off Cover.....	41
7 Exclusions.....	42
8 General Conditions.....	46
9 Dispute Resolution .....	47

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

1 Interpretation

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

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

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

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

- (a) civil compensation of any nature,
- (b) civil damages of any nature, or
- (c) any award to be made pursuant to the provisions of The Solicitors Acts 1954 to 2002 for compensation or restitution to clients or any other obligations that may be imposed on solicitors to compensate or make restitution to clients by statute from time to time,

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

“Coverage Period” means the period for which the Insurance affords cover;

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

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

- (a) defending any proceedings, or
- (b) conducting any proceedings for indemnity, contribution or recovery, or

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

but the term “Defence Costs” does not include:—

- (i) any internal overhead expenses of the Firm or the Insurer or the cost of any Insured’s time, or
- (ii) any costs incurred by an Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in paragraph (c) under the definition of “Claim” where the Insurance, in accordance with the Minimum Terms and Conditions, excludes the Insurer’s liability to indemnify the Insured in respect of such costs;

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

“Firm” means:—

- (a) the Partnership (as constituted as at the commencement of the Coverage Period) which, or sole practitioner who, contracted with the Insurer to provide the Insurance, and
- (b) the Partnership referred to in paragraph (a) as constituted from time to time, whether prior to or during the Coverage Period;

“Firm’s Practice” means the practice carried on by the Firm at the commencement of the Coverage Period and the continuous legal practice preceding and succeeding this practice;

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

“Insured” means:—

- (a) the Firm,
- (b) each trustee, nominee, service or administration company owned by the Firm and/or the Principals of the Firm from time to time,
- (c) each director, officer or employee of any such company as is referred to in paragraph (b) above from time to time,
- (d) each Principal or former Principal of the Firm from time to time,

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

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

“Insurer” means the underwriter of the Insurance or the provider of the coverage the subject of the Minimum Terms and Conditions and where the context so requires includes the SMDF;

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

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

“Law Society” means the Law Society of Ireland;

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

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

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

(b) acting as personal representative or trustee,

(c) acting as notary public,

(d) acting as commissioner for oaths,

(e) acting as liquidator or receiver,

(f) acting as company secretary,

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

(h) acting as arbitrator or mediator, and

(i) acting on a pro bono basis;

“Minimum Terms and Conditions” means these minimum terms and conditions;

“Partner” means a partner in a Firm;



“Partnership” means an unincorporated firm;

“Preceding Practice” means each practice to which the Firm’s Practice is a Succeeding Practice;

“Principal” means:-

- (a) in relation to a Partnership, any person that is a partner of that Partnership and any person held out as a partner,
- (b) in relation to a sole practice, any person that is a sole practitioner of that practice, including, for the avoidance of doubt a sole practitioner who employs one or more solicitors, registered lawyers or other lawyers;

“Regulations” means the Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007;

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

“SMDF” means the Solicitors Mutual Defence Fund Limited; and

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

- (a) it is held out as being a successor to the practice or part thereof of the Preceding Practice by whatever means such holding out occurs, or
- (b) it is conducted by a Partnership that has a majority of Principals that are identical to those persons that were Principals of any partnership that conducted the Preceding Practice, or
- (c) it is conducted by a sole practitioner who was the sole practitioner conducting the Preceding Practice, or
- (d) it is conducted by a Partnership in which the sole practitioner conducting the Preceding Practice is a partner and where no other person has been held out as a successor to the Preceding Practice, or
- (e) it is carried on under the same name as the Preceding Practice or a name which substantially incorporates the name of the Preceding Practice, or
- (f) it is carried on from the same premises as the Preceding Practice, or

(g) the Partnership which, or sole practitioner who, conducts the practice has acquired the goodwill and/or assets of the Preceding Practice, or

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

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

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

(a) words and expressions shall have the same meaning and shall be construed consistently with the same words and expressions in the Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007;

(b) the singular includes the plural, and vice versa;

(c) the male gender includes the female and neuter genders;

(d) references to a “person” include any individual or company;

(e) references to a “company” include any body corporate; and

(f) headings are inserted for convenience only and are not an aid to interpretation.

1.3 In the Minimum Terms and Conditions, where they apply to coverage issued by the SMDF:-

(a) the definition of the term “Insured” as set out herein shall apply to identify the persons and entities required to be the subject of coverage issued by the SMDF pursuant to the Regulations;

(b) the terms “Insurance”, “Insurer”, “insure” and other cognate terms shall be construed, where those terms apply to the SMDF and to coverage issued by it on the terms of the Minimum Terms and Conditions, to include and to refer to such coverage.

1.4 Nothing in the Minimum Terms and Conditions shall be construed to negative any discretion that the SMDF or the Solicitors Mutual Defence Fund Limited on its behalf may have, whether under statute, its organisational documents or otherwise howsoever to determine in its discretion whether to indemnify a Firm or a member or any other person.

## 2 Scope of Cover

### 2.1 The Insured

The Insured must include, and coverage under the Insurance must extend to, all those persons and entities set out in clause 1 under the definition of “Insured”.

### 2.2 Civil Liability

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

- (a) a Claim in respect of such civil liability is first made against the Insured during the Coverage Period; or
- (b) such civil liability arises from Circumstances first notified to the Insurer during the Coverage Period.

### 2.3 Defence Costs

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

- (a) any Claim referred to in clauses 2.2, 2.4 and 2.5; or
- (b) any Circumstance first notified to the Insurer during the Coverage Period;

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

### 2.4 Preceding Practice

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

- (a) a Claim in respect of such liability is first made against an Insured during the Coverage Period; or
- (b) a Claim in respect of such liability is first made during or after the Coverage Period and arises from Circumstances first notified to the Insurer during the Coverage Period.

2.4.2 For the purposes of such cover as is contemplated in clause 2.4.1, the Insurance must include:—

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

- (b) each trustee, nominee, service or administration company owned by the persons referred to in paragraph (a) from time to time;
- (c) each director or officer of any such company as is referred to in paragraph (b) above from time to time;
- (d) each Principal and former Principal of any Partnership referred to in paragraph (a);
- (e) each Employee and former Employee of any Partnership or sole practitioner or company referred to in paragraph (a) and (b); and
- (f) the estate or legal personal representatives of any person referred to in this clause 2.4.2 who is deceased or legally incapacitated.

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

## 2.5 Succeeding Practice

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

- (a) a Claim in respect of such liability is first made against an Insured during the Coverage Period; or
- (b) a Claim in respect of such liability is made during or after the Coverage Period and arises from Circumstances first notified to the Insurer during the Coverage Period.

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

- (a) each Partnership or sole practitioner who carries on the Succeeding Practice;
- (b) each trustee, nominee, service or administration company owned by the persons referred to in paragraph (a) from time to time;
- (c) each director or officer of any such company as is referred to in paragraph (b) above from time to time;
- (d) each Principal and former Principal of any Partnership referred to in paragraph (a);

- (e) each Employee and former Employee of any Partnership or sole practitioner or company referred to in paragraph (a) and (b); and
- (f) the estate or legal personal representatives of any person referred to in this clause 2.5.2 who is deceased or legally incapacitated.

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

### 3 Minimum Level of Insurance Cover

#### 3.1 Minimum Level of Cover

The Amount Insured for each and every Claim (exclusive of Defence Costs) must be at least €2,500,000 (two million five hundred thousand euro).

#### 3.2 Cover for Defence Costs

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

#### 3.3 Proportionate liability for Defence Costs

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

#### 3.4 No retrospective dates

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

#### 3.5 No other limits

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

### 3.6 Co-Insurance

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

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

## 4 Self-Insured Excesses

### 4.1 Self-Insured Excess

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

### 4.2 Effect of Self-Insured Excess

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

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

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

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

### 4.3 Payment of Self-Insured Excess to Claimant

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

## 5 Special Conditions

### 5.1 Minimum Terms and Conditions must prevail

- 5.1.1 The terms and conditions of the Insurance must comply with the Minimum Terms and Conditions as and to the extent prescribed by the Regulations.
- 5.1.2 Any provision of the Insurance that is inconsistent with the Minimum Terms and Conditions shall either be severed from the terms of the Insurance or the Insurance shall be rectified so as to comply with the Minimum Terms and Conditions.
- 5.1.3 The Insurance must provide that the Minimum Terms and Conditions shall always prevail in the event of a conflict between the terms and conditions of the Insurance and the Minimum Terms and Conditions.

### 5.2 No cancellation

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

- (a) the Firm's Practice is merged into a Succeeding Practice, provided that the Succeeding Practice has Insurance in compliance with the Minimum Terms and Conditions as and to the extent prescribed by the Regulations, or
- (b) replacement Insurance complying with the Minimum Terms and Conditions as and to the extent prescribed by the Regulations commences (but only where any replacement Insurance is not or would not in the event of cancellation of the original Insurance be provided wholly or partly by the Assigned Risks Pool).

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

### 5.3 No avoidance or repudiation

The Insurance must provide that the Insurer is not entitled to avoid or repudiate the Insurance on any grounds whatsoever including, without limitation, where there has been non-disclosure or misrepresentation by the Insured, whether such non-disclosure or misrepresentation is or is alleged to be innocent, negligent or fraudulent.

### 5.4 Rights of Insurer

Without prejudice to clause 5.3, the Insurance may provide that the Insurer is entitled to recover any outstanding premium or additional premium amounts from the Firm in any circumstance where (but for the operation

of clause 5.3) the Insurer would have been entitled to avoid or repudiate the Insurance.

The Insurance may further provide that, in any situation where the Insurer becomes aware that there has been fraudulent non-disclosure or fraudulent misrepresentation to the Insurer in connection with a placement or renewal of Insurance for a Firm, the Insurer may refer the conduct of any relevant Principal of that Firm to the Law Society to permit the Law Society to take action against that Principal under The Solicitors Acts 1954 to 2002 or otherwise.

#### 5.5 No set-off

The Insurance must provide:—

- (a) that any indemnity amount payable to the Insured by the Insurer must be paid only to the relevant Claimant or as the Claimant may direct, and
- (b) that the Insurer is not entitled to set off against any such indemnity amount any payment owing to the Insurer by the Insured, including, without limitation, any payment of premium due to, or any payment required to be made by the Insured to reimburse, the Insurer.

#### 5.6 No other policy to bar recovery

Save to the extent permitted under clause 7.4, the Insurance must provide that no rights of recovery available to a Firm under another policy of insurance may bar recovery under the Insurance.

#### 5.7 Contribution where Succeeding Practice exists

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

#### 5.8 No denial or reduction

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

- (a) any failure to notify a Claim or Circumstance within a prescribed period or at all,
- (b) any breach of any term or condition of the Insurance, or



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

be entitled to reduce or deny its liability under the Insurance, except in circumstances where a prescribed exclusion contemplated by clause 7 applies.

## 5.9 Coverage Period

The Coverage Period must run from the date of inception of the relevant Insurance and must expire on the following 30 November.

## 5.10 Contesting Liability

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

## 6 Run-Off Cover

### 6.1 Cessation of Firm's Practice

Where each of the following conditions is met:—

- (a) the Firm's Practice ceases during or on expiry of a Coverage Period, and
- (b) there is no Succeeding Practice in relation to the Firm's Practice that holds Qualifying Insurance in respect of the Firm's Practice

then the Insurance must provide run-off cover for the first six calendar years from the date upon which the Firm's last Coverage Period expires, such cover to be provided on the basis of the Minimum Terms and Conditions as they stand as at the inception date of the relevant Policy. Where the Insurance was provided on a co-insurance basis and the conditions in (a) and (b) above are satisfied, each relevant Insurer shall provide its proportionate share of such run-off coverage on the basis of the Minimum Terms and Conditions as they stand at the inception date of the relevant Policy.

### 6.2 Extent of Coverage

The run-off cover referred to in clause 6.1 must indemnify the Insured in accordance with the Minimum Terms and Conditions as and to the extent prescribed by the Regulations.

### 6.3 Succeeding Practice

The Insurance must provide that where there is a Succeeding Practice in relation to the Firm's Practice, run-off cover will not be activated, provided that the Succeeding Practice has Insurance in place in compliance with the Minimum Terms and Conditions as and to the extent prescribed by the Regulations.

### 6.4 No Cancellation

The Insurance must provide that the run-off cover is not subject to cancellation on any basis whatsoever, save that it may be cancelled on terms to be agreed between the Insurer and the Firm where the following conditions are met:-

- (a) the Firm has obtained Insurance in accordance with these Minimum Terms and Conditions as and to the extent prescribed by the Regulations on the date of cancellation of the relevant run-off cover, and
- (b) the Qualified Insurer or Qualified Insurers under the replacement Insurance referred to in paragraph (a) have confirmed in writing to the Firm and to the Qualified Insurer or Qualified Insurers under the relevant run-off cover that they are providing Insurance on the basis that the Firm's Practice is to be treated as a continuation of the Firm's Practice prior to the cessation thereof and that accordingly they will be liable for any Claims against the Firm arising from matters that occurred prior to the cessation; and
- (c) the Qualified Insurer or Qualified Insurers under the replacement Insurance referred to in paragraph (a) have provided any required confirmations of coverage to the Law Society pursuant to the Regulations.

### 6.5 Run-Off Premium

The Insurance may provide that run-off cover is to be provided by the Insurer on such terms as to the payment of premium or additional premium relating thereto as may be set out therein (save that the Insurance may not permit cancellation of run-off cover for failure to pay premium or additional premium required to be paid in connection therewith).

## 7 Exclusions

### 7.1 No other exclusions

The Insurance must not exclude or limit the liability of the Insurer on any basis whatsoever save where and to the extent that any Claim or related Defence Cost is proved to have arisen from one or a number of the matters set out in this clause 7.

## 7.2 Death or bodily injury

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

## 7.3 Property

The Insurance may exclude liability of the Insurer to indemnify for any act or omission which results in or contributes to damage to, or destruction or physical loss of any property of any kind whatsoever, other than property in the care, custody or control of any Insured in connection with the Firm's Practice and not occupied or used in the course of the Firm's Practice, unless such liability is occasioned by the Insured being in breach of professional duty in the performance of or failure to perform Legal Services.

## 7.4 Previous cover

The Insurance may exclude liability in respect of Claims where another professional indemnity insurance contract for a period earlier than the Coverage Period entitles the Insured to be indemnified in respect of the same Claim. Save as specified in this clause 7.4, the Insurance must comply with clause 5.5.

## 7.5 Fraud or dishonesty

The Insurance may exclude liability of the Insurer to indemnify any particular person to the extent that any civil liability or related Defence Costs arise from dishonesty or a fraudulent act or omission committed or condoned by that person provided that the Insurance must nonetheless cover each other Insured and the Insurance must provide that no dishonesty, act or omission will be imputed to another Insured unless it is committed or condoned by that Insured, or in the case of a company, by all the directors and officers of that company.

## 7.6 Trading debts

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

## 7.7 Partnership Agreement

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

## 7.8 Solicitors Acts

Save as specifically provided in this clause, the Insurance may generally exclude liability of the Insurer to indemnify the Insured against any loss occurring as a result of any process or proceedings brought against the Insured by or on behalf of the Law Society or any other person so entitled to ensure compliance with, or consequent on the breach (or alleged breach) by the Insured of any provisions of The Solicitors Acts 1954 to 2002 or any regulations made thereunder or in respect of misconduct (including, for the avoidance of doubt, any costs incurred by an Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in sub-clause (c) of the definition of “Claim”). However, the Insurance must specifically indemnify each Insured for any awards made under the provisions of The Solicitors Acts 1954 to 2002 for compensation or restitution to clients or any other obligations that may be imposed on solicitors or registered lawyers by statute from time to time to compensate or make restitution to clients.

## 7.9 Insured acting as their own lawyer

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

## 7.10 Claims/Exposure to risk outside Ireland

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

- (a) any part of the Firm’s Practice carried on from offices of the Firm located outside the Republic of Ireland, or
- (b) any advice given or action taken or omitted to be taken by the Insured in relation to any law other than the law of the Republic of Ireland (which includes European Union law where the same forms part of the law of the Republic of Ireland).

## 7.11 Employment

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

- (a) a wrongful dismissal, or
- (b) any other alleged or actual breach, or any other relief in respect of any contract of employment (including but not limited to a stress-related claim brought by an Employee against a Firm

where such claim arises out of the employment relationship between that Employee and the Firm)

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

#### 7.12 Contracts

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

- (a) wrongful termination by the Insured of, or
- (b) any other actual or alleged breach by the Insured of, or
- (c) any other relief claimed against the Insured in respect of

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

#### 7.13 Directors liability

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

- (a) the Insurance must cover any liability of that person which arises from a breach of duty in the performance of or failure to perform Legal Services, and
- (b) the Insurance must cover each other Insured against any vicarious or joint liability.

#### 7.14 War, Terror, Asbestos, Radiation

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

- (a) war, riot, civil commotion and other hostilities,
- (b) terrorism,
- (c) asbestos or any actual or alleged asbestos related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos, and
- (d) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of

nuclear fuel; or from the radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof

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

## 8 General Conditions

### 8.1 General Conditions

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

### 8.2 Reimbursement

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

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

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

8.2.4 The Insurance must provide that any right of reimbursement contemplated by this clause 8.2 against any Employee, each former Employee, and each person who becomes an Employee of the Firm during the Coverage Period, or their personal representatives, is limited to the extent that is just and equitable having regard to the prejudice caused to the Insurer's interests by that person having committed

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

### 8.3 Reimbursement of Defence Costs

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

### 8.4 Reimbursement of the Self-Insured Excess

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

### 8.5 Reimbursement of monies paid pending dispute resolution

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

## 9 Dispute Resolution

### 9.1 Arbitration

The Insurance must contain the following arbitration clause:

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

Every or any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Acts, 1954 to 1998 or any Act amending same and shall be an arbitration conducted in Dublin, Ireland in the English language and governed by the Arbitration Acts, 1954 to 1998”.

### 9.2 Related Disputes

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

### 9.3 Conduct of Claims

The Insurance must provide that pending resolution of any coverage dispute the Insurer shall conduct any Claim against the Insured, advance Defence Costs to the Insured and if appropriate compromise and/or pay any Claim against the Insured.

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



## APPENDIX 2

## RISK MANAGEMENT AUDIT TERMS OF REFERENCE

- (a) Each risk management audit report should estimate the number of files held by the firm and break these down statistically, giving the percentage of total files and the percentage of gross fees of the firm falling under such different categories of business as may be appropriate.
- (b) Each risk management audit report should give an account of the methods of file maintenance and post and communications delivery used by the firm and should confirm:—
  - (i) that all filing is up to date and is contained in fire-proof storage facilities; and
  - (ii) that provision has been made for back-up storage of all electronic files and communication records held by the firm.
- (c) Each risk management audit report should give details of any diary system used by the firm and set out details of how the diaries of any solicitor, registered lawyer, principal or other person employed by or engaged in the practice of the firm (including any consultants) is managed and monitored during any absences.
- (d) Each risk management audit report should set out a list of the principals of the firm and of every staff member employed by or engaged in the practice of the firm (including any consultants) and should list and summarise:—
  - (i) their roles and years of service;
  - (ii) their qualifications;
  - (iii) any other relevant information.
- (e) Each risk management audit report should include an account of interviews held with each principal of the firm and any other staff member employed by or engaged in the practice of the firm believed by the risk management auditor to be relevant to obtain a proper view of the levels of risk management pertaining within the firm.
- (f) Each risk management audit report should include a list of the files closed within the firm during the 12 months preceding the date of the risk management auditor's visit to the firm and these files should be examined by the risk management auditor to obtain a summary view of them from a risk management perspective.
- (g) Each risk management audit report should include an account of an examination by the risk management auditor of the firm's accounting

system, indicating that access to ledgers, account cards or any relevant electronic record storage system was obtained, and further indicating any areas of concern that arise from a risk management perspective.

- (h) Each risk management audit report should indicate whether a centralised record of undertakings given by the firm is maintained, and should include an examination of such record, indicating any areas of concern that arise from a risk management perspective.
- (i) Each risk management audit report should give an account of any files identified by the risk management auditor as being of concern from a risk management perspective, and should report as to the extent of liability involved in each case.

## EXPLANATORY NOTE

*(The note that follows does not form part of the Regulations and is provided for guidance only.)*

## 1 Introductory Commentary

- 1.1 The Law Society introduced compulsory professional indemnity insurance coverage for the solicitors profession in 1995 (under The Solicitors Acts 1954 to 1994 (Professional Indemnity Insurance) Regulations 1995). The 1995 Regulations operated to require practising solicitors to maintain a prescribed level of professional indemnity insurance coverage for practice years commencing on or after 1 January 1996. The 1995 Regulations were subsequently amended by The Professional Indemnity Insurance (Amendment) Regulations 1998, The Solicitors Acts 1954 to 1994 (Professional Indemnity Insurance) (Amendment) Regulations 1999, The Solicitors Acts 1954 to 1994 (Euro Changeover) Regulations 2001; The Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) (Amendment) Regulations 2004 and The Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) (Amendment) Regulations 2005.
- 1.2 The Law Society established a Professional Indemnity Insurance Task Force to examine the area of professional indemnity insurance. The Report of the Professional Indemnity Insurance Task Force was presented to the Council of the Law Society at its meeting on 13 July 2007, together with revised draft Regulations and associated documentation, which the Council adopted at that meeting. The principal purpose of the revised Regulations is to make provision to remedy existing perceived gaps in the system of professional indemnity insurance coverage for solicitors for the better protection of the profession and its clients.

## 2 Regulation 1, General

- 2.1 The revised Regulations come into effect on 1 November 2007. The 1995 Regulations as amended are revoked (subject to transitional provisions) on 1 January 2008.
- 2.2 Solicitors and registered lawyers in practice prior to 1 November 2007 continue, by virtue of the provisions of the 1995 Regulations as amended, to require coverage on an individual basis for the full practice year commencing on 1 January 2007 and ending on 31 December 2007. “Firms” (as defined, see Regulation 2) are required to maintain coverage under the revised Regulations with effect from 1 November 2007 and for all indemnity periods thereafter. The transitional provisions (see Regulation 3) are designed to avoid any unnecessary duplication of coverage requirements.

## 3 Regulation 2, Interpretation

- 3.1 This Regulation sets out certain definitions that are of significance in the context of the revised Regulations. Not every definition will be the subject of commentary herein.

### 3.1.1 “ARP eligibility criteria”

To be eligible to apply for coverage under the assigned risks pool, a firm must satisfy these criteria. The firm cannot have been in the pool for more than twenty four of the preceding sixty months and cannot be a successor to such a firm. Where a firm fails to comply with the requirements of Regulation 10 relating to risk management audits or is the subject of an adverse risk management audit report under Regulation 11, the PII Committee may direct that it is no longer eligible for membership.

### 3.1.2 “defaulting firm”

A firm becomes a defaulting firm for the purposes of the Regulations where (i) it does not hold qualifying insurance with a qualified insurer, it is eligible to apply for coverage under the assigned risks pool and it has failed to apply for such coverage; or (ii) it does not hold qualifying insurance with a qualified insurer, it is ineligible to apply for coverage under the assigned risks pool and it has not ceased its practice.

### 3.1.3 “defaulting run-off firm”

A firm that ceases practice where it is required to maintain run-off cover by virtue of the revised Regulations but fails to establish such coverage either from insurers or under the assigned risks pool.

### 3.1.4 “eligible firm”

An eligible firm is one that is entitled to apply for coverage under the assigned risks pool. To be eligible, a firm must either satisfy the ARP eligibility criteria (see paragraph 3.1.1) or hold an ARP eligibility dispensation.

### 3.1.5 “firm”

One of the principal changes under the revised Regulations to the pre-existing system of professional indemnity insurance coverage for solicitors is the move from an individual basis of coverage to a firm basis of coverage. This definition identifies those types of practice entity that qualify as “firms” for the purposes of an obligation to maintain insurance coverage. The definition is sufficiently comprehensive to extend to all legal partnerships, whether comprised solely of solicitors, solely of registered lawyers, partly of one or partly of the other, and even a partnership including foreign qualified lawyers that are not registered lawyers (should such be permissible). The definition also extends to sole practitioners, whether or not those persons employ other solicitors or registered lawyers. It is sufficiently comprehensive to extend to sole practitioners that are employed by, for example, commercial enterprises (although legal services provided as

part of an employment solely to an employer do not require to be the subject of compulsory coverage).

### 3.1.6 “practice”

This definition is sufficiently comprehensive to extend to any business consisting of the provision of legal services (as defined) from an establishment in the State. Note that services involving the provision of legal advice in relation to foreign law are not covered, nor are services provided through an establishment outside the State (such as an overseas office of an Irish firm).

### 3.1.7 “qualifying insurance”

This term is used to identify coverage incorporating the revised minimum terms and conditions, attached to the Regulations as Appendix 1. Qualifying insurance can consist of one or a number of coverages issued by different insurers, such that the insurance can be written on a co-insurance basis. Similarly, the term is defined to include coverage issued by the SMDF.

### 3.1.8 “qualified insurer”

To be a qualified insurer, a commercial insurer must hold the necessary authorisation to conduct insurance business (as an “authorised insurer”) and must have entered into an agreement in terms prescribed by the PII Committee defining the terms on which it is permitted to provide such coverage to firms. The SMDF is a qualified insurer where it has entered into a similar agreement.

### 3.1.9 “run-off period”

This term defines the period during which run-off cover must be maintained by a firm that ceases practice. Cover must be maintained for a six year period after cessation of practice, but if a firm ceases practice during an indemnity period, cover must be maintained for six years after the end of the relevant indemnity period. Thus a firm ceasing practice on 1 December 2008 would be required to maintain run-off cover until 30 November 2014, whereas a firm ceasing practice on 1 January 2009 would be required to maintain run-off cover until 30 November 2015.

## 4 Regulation 3, Maintenance of Insurance

4.1 Regulation 3(a) is the principal operative provision of the revised Regulations. It requires each “firm” (see commentary under Regulation 2 above) carrying on a “practice” (see commentary under Regulation 2 above) on or after 1 November 2007 to maintain “qualifying insurance” (see commentary under Regulation 2 above) with a “qualified insurer” (see commentary under Regulation 2 above). Regulation 3(j) provides that each firm is

required to maintain such insurance from the date when its practice commences (if that is during an indemnity period) or from the beginning of any indemnity period during which the firm carries on practice (where it commenced practice prior to the beginning of that indemnity period).

- 4.2 Solicitors currently have coverage arrangements that renew either on 1 November or 1 January, depending on the provider. An objective of the revised Regulations is to standardise coverage arrangements, such that all coverages renew on a single date. The date selected is 1 December, and all coverage renewals will be standardised to take effect on 1 December from 2008 onwards by virtue of Regulation 3(k). Accordingly, under Regulation 3(b), firms may elect either to take out qualifying insurance under the revised Regulations with effect from 1 November 2007 until 30 November 2008, and then to renew that insurance for each twelve month period commencing on 1 December thereafter, or to take out qualifying insurance under the revised Regulations with effect from 1 January 2008 until 30 November 2008, and then to renew that insurance for each twelve month period commencing on 1 December thereafter. Firms will decide which option to select depending on the renewal date of coverage for the individual solicitors currently engaged in their practices.
- 4.3 It should be noted, under Regulation 3(c), that a firm that elects to take out coverage under the revised Regulations from 1 January 2008 will only be deemed to have satisfied the overarching obligation to have coverage under Regulation 3(a) where each individual solicitor or registered lawyer engaged in that firm's practice at any time between 1 November 2007 and 31 December 2007 holds the necessary coverage on an individual basis under the 1995 Regulations. Similarly, under Regulation 3(d), an individual solicitor or registered lawyer with an obligation to maintain coverage under the 1995 Regulations between 1 November 2007 and 31 December 2007 will be regarded as having satisfied this obligation where that person did not engage in practice other than for the account of a firm during that period and that firm maintained coverage under the revised Regulations during that period.
- 4.4 Employed solicitors are not required to maintain insurance cover under Regulation 3(a) by virtue of Regulation 3(i), provided that they only provide legal services to or for their employer who is not a solicitor. The Society will require confirmation in writing of this fact in a format to be prescribed.
- 4.5 The Regulations impose an obligation on all firms to provide evidence to the Society on request that it is complying with its obligations under Regulation 3, and to provide specific confirmation of coverage within ten days of the commencement of the relevant indemnity period. The form of confirmation of coverage is set out as Schedule 3 to the Pool Participation Agreement to be entered into by all qualifying insurers. Under Regulation 3(m), principals of firms are responsible for ensuring that the firm complies with its obligations under the Regulations to maintain the necessary coverage.

## 5 Regulation 4, Self-Insured Excesses

- 5.1 Firms are permitted to agree self-insured excesses with their insurers under the revised Regulations without restriction (contrary to the former position under the 1995 Regulations). However, the insurers must undertake to remain liable to claimants for the self-insured excess amount such that if the firm defaults in payment to claimants, the claimant will be protected.
- 5.2 Firms that wish to take advantage of this option should take note of their obligations under Regulation 4 to make prompt payment of the amount of the excess to claimants and the obligation imposed on principals of firms under Regulation 4(c) to ensure that this occurs.

## 6 Regulation 5, Run-off Coverage

- 6.1 Firms that cease practice without there being a succeeding practice must maintain run-off coverage under the revised Regulations. Where the firm's insurance prior to its cessation of practice was formerly held with a qualifying insurer, the run-off cover in question must be provided by an insurer, while where the firm's insurance prior to its cessation of practice was held with the assigned risks pool, the run-off cover must be provided by the pool.
- 6.2 Regulation 5(b) defines the scope of the run-off cover to be maintained. Cover must incorporate the minimum terms and conditions, if taken out with a qualifying insurer or insurers, or must be on like terms to the coverage formerly held through the assigned risks pool. The obligation to maintain run-off cover continues throughout a "run-off period" (see commentary under Regulation 2).
- 6.3 Firms are required to provide confirmation that run-off cover is being maintained pursuant to Regulation 5 by virtue of Regulations 5(c) and 5(d) and principals of firms are responsible for ensuring that firms comply with these obligations by virtue of Regulation 5(e).
- 6.4 It should also be noted that the provision of run-off coverage will become a mandatory requirement of each coverage to be issued by qualifying insurers under the revised Regulations (see clause 6 of the revised minimum terms and conditions). Although a firm will not be required to take out such coverage with its existing insurers should it identify commercially preferable arrangements, its existing insurers will have an obligation to provide such coverage and thus no firm should find itself in a position where it ceases practice without run-off coverage being available to it, either from its existing insurers or from the assigned risks pool.
- 6.5 Any firm that for any reason fails to maintain run-off coverage when required to do so under Regulation 5(a) will be deemed to be a "defaulting run-off firm" (see commentary under Regulation 2 above) for the purposes of Regulation 5(f). Regulation 5(f) requires the ARP manager to make arrangements for coverage under the assigned risks pool to extend to such firms. Coverage under the assigned risks pool will therefore extend to

benefit claimants against such a defaulting run-off firm, for the protection of such a firm's clients.

- 6.6 Firms should note that the ARP manager will be entitled to recover premium amounts from defaulting run-off firms and their principals in respect of the coverage extended under Regulation 5(f). The premium amounts to be charged are expected to be significantly in excess of premium rates set in the commercial market for run-off coverage, and it is expected therefore to be in the interest of firms to make arrangements for run-off coverage with their insurers, rather than allowing themselves to become covered as defaulting run-off firms.

## 7 Regulation 6, Insolvency of Insurers

The insolvency of insurers is a rare event. In such circumstances clients require protection, and therefore Regulation 6 of the revised Regulations provides for each firm to ensure that replacement coverage is thereupon established with an insurer that is unaffected by insolvency. Firms should note that under Regulation 6(a) the responsibility to establish replacement coverage falls upon the firm in question, is not contingent upon the firm being required to take any action by the Society and that the responsibility to take action arises from the date upon which the insolvency event occurs, not the date on which the firm becomes aware of the insolvency. Firms should therefore be alert to the circumstances of their particular insurers and should not wait to take action until notified by the Society of an insolvency.

## 8 Regulation 7, The Assigned Risks Pool

- 8.1 Wherever a firm is required to maintain qualifying insurance under the revised Regulations and does not have such insurance in place, that firm is required by virtue of Regulation 7(a) to apply to enter the assigned risks pool if it is eligible to do so. The criteria of eligibility are incorporated in the definition of "eligible firm" (see commentary under Regulation 2).
- 8.2 Regulation 7(c) sets out the method of application to the assigned risks pool. Regulation 7(d) requires firms to provide the ARP manager with any information required to progress the firm's application for membership. It will be for the ARP manager to determine the appropriate level of premium to be paid for coverage under the assigned risks pool, and Regulations 7(e), 7(k), 7(l), 7(m) and 7(n) make provision for this.
- 8.3 Firms should note that where they have submitted an application for coverage under the assigned risks pool, it is the firm's responsibility to ensure that this application has been received and to obtain an acknowledgement of this fact by virtue of Regulation 7(f). Firms should also note the general responsibilities of principals under Regulation 7(o) in respect of assigned risks pool coverage.
- 8.4 Retrospective coverage under the assigned risks pool is not permissible by virtue of Regulation 7(h)(ii) and coverage will terminate automatically on



the occurrence of a number of events set out in Regulation 7(i)(i) to (iii), including the firm ceasing to satisfy the relevant eligibility criteria.

## 9 Regulation 8, Membership of Assigned Risks Pool

- 9.1 Any firm that ceases to be eligible for coverage under the assigned risks pool (for example because it has spent twenty four of the preceding sixty months covered under the pool arrangements) must either obtain qualifying insurance outside the pool or must cease its practice, by virtue of Regulation 9(a). Regulation 9(b) permits firms to leave the pool at any time following provision to the Society of evidence that the firm holds satisfactory coverage outside the pool.
- 9.2 The effect of Regulation 9(c) is that a firm may not be permitted to obtain coverage under the assigned risks pool where it is a successor firm to a firm that would not itself have satisfied the eligibility criteria (thus, where Partnership ABC had spent more than twenty four of the preceding sixty months covered under the pool arrangements, thereby becoming ineligible, ABC may not be permitted to reconstitute itself as Partnership ABCD and claim to be a different firm thereby becoming eligible). The PII Committee will have power to treat an applicant as a successor to the practice of an ineligible firm and thereby itself ineligible.
- 9.3 Firms should note that the consequence of making an application to enter the pool where the firm is, or is deemed to be, ineligible is that the firm may be required to indemnify the Society and the ARP manager in respect of their costs of dealing with any such application. This provision is set out in Regulation 9(d).

## 10 Regulation 9, Defaulting Firms

- 10.1 The Regulations provide for the protection of clients by ensuring that coverage will be available in respect of the acts or omissions of firms that have not fulfilled their obligations to take out qualifying insurance or to apply for coverage under the assigned risks pool. Thus, the ARP manager is required under Regulation 9(a) to make arrangements to ensure that “defaulting firms” (see commentary under Regulation 2) are covered in all circumstances where coverage would have extended under the minimum terms and conditions.
- 10.2 Firms that become defaulting firms for the purposes of the Regulations will be required to pay ARP default premium, and it is anticipated that the level of such premium will be such as to properly reflect the relevant firm’s failure to comply with its obligations under the Regulations to maintain coverage and the resulting increased risk to the assigned risks pool. The ARP manager has power to set the level of ARP default premium pursuant to Regulations 9(b) to 9(h).

## 11 Regulation 10, Risk Management Audits

- 11.1 An important part of the scheme of the Regulations is to encourage those firms that, for whatever reason, are covered under the assigned risks pool to address any issues in their practice that have caused them to be unable to obtain insurance outside the pool. The Society will encourage this by causing such firms to submit to a risk management audit pursuant to Regulation 10(a). The PII Committee may require multiple such audits.
- 11.2 Firms should note the responsibilities of principals in relation to risk management audits, which include ensuring that the risk management auditor is given access to all premises where the firm engages in practice, all records and documents requested and permission to interview principals and staff of the firm. Principals that fail to comply with their responsibilities will be subject to sanctions under Regulations 10(b) to 10(e).
- 11.3 Firms must indemnify the Society in respect of the costs of a risk management audit exercise pursuant to Regulation 10(f). Regulation 10(g) provides that any firm that fails to comply with its obligations under a risk management audit may be treated as ineligible for coverage under the assigned risks pool. The terms of reference of a risk management audit are as set out in Appendix 2 to the Regulations.

## 12 Regulation 11, Risk Management Audit Reports

- 12.1 Each risk management audit process will involve the submission to the ARP manager and the PII Committee of a written report by the relevant risk management auditor. The report must address the matters set out in the definition of “risk management audit report” in the Regulations.
- 12.2 Regulation 11 prescribes a process by which the PII Committee will review and invite submissions from the firm concerned relating to, any risk management audit report received. Following consideration by the PII Committee of any such submission received, the PII Committee has extensive powers by virtue of Regulation 11(e) to, inter alia, direct the firm to comply with prescribed risk mitigation measures, or in an extreme case, to direct that the firm should no longer be eligible for coverage under the assigned risks pool.
- 12.3 Firms are required to indemnify the Society in relation to the costs of steps taken under Regulation 11(e)(ii) (additional supervision) or Regulation 11(e)(iii) (ineligibility) and firms should note the responsibility of principals to ensure that firms discharge their obligations thereunder.

## 13 Regulation 12, Responsibilities of Principals

Principals have extensive responsibilities under the Regulations as will be apparent from the foregoing notes, but Regulation 12 states explicitly that

principals are responsible for ensuring that all firms of which they are principals comply with all of their obligations under the Regulations and Regulation 12(a) explicitly deems it misconduct for a principal to fail so to procure. Regulations 12(b) to 12(e) set out certain further provisions relating to the responsibilities of principals under the Regulations.

14 Regulation 13, PII Committee

Regulation 13 makes provision for the establishment and composition of the PII Committee of the Society for the purposes of supervising the administration of the Regulations.

15 Regulation 14, Provision of Information

This Regulation requires firms and principals to provide any claimant against the firm with details of that firm's insurance coverage, and permits the Society to maintain a register of coverage reported by firms and to permit inspection of such register.

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