



STATUTORY INSTRUMENTS.

**S.I. No. 389 of 2017**



THE SOLICITORS ACTS 1954 TO 2015 (PROFESSIONAL INDEMNITY  
INSURANCE) REGULATIONS 2017

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ARRANGEMENT OF REGULATIONS

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## THE SOLICITORS ACTS 1954 TO 2015 (PROFESSIONAL INDEMNITY INSURANCE) REGULATIONS 2017

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 2015 (Professional Indemnity Insurance) Regulations 2017.

(b) These Regulations shall come into operation on 1 December 2017.

(c) The regulations listed in the Schedule to these Regulations shall cease to have effect as from 11:59 pm on 30 November 2017 to the extent set out in the Schedule.

**2. Interpretation:**

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

“additional ARP premium” has the meaning ascribed to it in Regulation 11(d)(ii);

“ARP” means the assigned risks pool;

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

“ARP default premium” means the sums payable by a defaulting firm for any coverage arranged pursuant to Regulation 15(a) from time to time;

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

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

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preceding the date of its application to enter the assigned risks pool and is not a successor firm to such a firm; or

- (b) in respect of all other firms, that the firm has not been in the assigned risks pool for more than 12 (twelve), or such other period (not to exceed 24 (twenty four) months) as the PII committee may from time to time determine, of the 60 (sixty) months preceding the date of its application to enter the assigned risks pool and is not a successor firm to such a firm, and
  - (ii) in respect of a firm which commenced practice on or subsequent to the operative date, it established qualifying insurance with a participating insurer or more than one (1) participating insurer with effect from the date of commencement of its practice, and
  - (iii) that no direction in relation to the firm is in effect pursuant to Regulation 17(g) or Regulation 18(e)(iv), and
  - (iv) that the firm is not a defaulting run-off firm;

“ARP eligibility dispensation” means, in respect of any firm, a dispensation under Regulation 11(b);

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

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

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

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

“ARP run-off eligibility criteria” means in relation to a firm:—

- (i) a firm which held ARP coverage on the date of cessation of its practice, and
- (ii) in respect of a firm which held ARP coverage prior to the operative date, continued to satisfy the ARP eligibility criteria on the operative date, and
- (iii) a firm in respect of which there is no succeeding practice, and
- (iv) a firm which is not a defaulting firm;

“ARP run-off eligible firm” means a firm which satisfies the ARP run-off eligibility criteria;

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

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

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

- (i) civil compensation of any nature or civil damages of any nature; or
- (ii) any award to be made pursuant to the provisions of the Solicitors Acts 1954 to 2015, or any regulations made thereunder, for compensation or restitution to clients or any other obligation that may be imposed on solicitors or registered lawyers 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 the payment of costs incurred by any insured in defending or resisting proceedings seeking an award against that insured of the nature described in this subparagraph (ii) 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. For the purposes of this subparagraph (ii), the discharge of an obligation of an insured, following receipt by an insured of a notification of a requirement to rectify, shall be treated as a “claim” (subject to the provisions of the regulations and/or minimum terms and conditions) notwithstanding that a formal award pursuant to the provisions of the Solicitors Acts 1954 to 2015, or any regulations made thereunder, has not been made;

“client account” shall have the same meaning as prescribed in the Solicitors Accounts Regulations or the meaning prescribed in any statute or statutory instrument amending or replacing the Solicitors Accounts Regulations;

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

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

“compliant run-off firm” means a firm which is designated as a compliant run-off firm by the SPF manager pursuant to Regulation 9(a) or 9(b);

“compliant run-off firm eligibility criteria” means, in relation to a run-off firm, a run-off firm which:

- (i) (a) complies with the close of practice guidelines;
  - (b) notifies the SPF manager of its intention to cease practice in accordance with Regulation 8(a);
  - (c) sends its most recently completed proposal form to the SPF manager in accordance with Regulation 8(a); and
  - (d) ceases to practice on the date specified in the written notice of its intention to cease practice provided by the firm to the SPF manager; or
- (ii) ceases to practice due to the death of a principal of the firm who was in practice at the time of his or her death or the critical illness of a principal of the firm who was in practice at the time he or she became critically ill; or
- (iii) ceases to practice due to occurrence of matters personal to the sole principal of the firm which, in the opinion of the SPF Manager, did not allow sufficient time for the firm to comply with the criteria listed in (i)(a) to (d) above, including, but not limited to, the appointment of the sole principal of the firm to the judiciary or other public office or the election of the sole principal to public office;
- (iv) ceases to practice due to the suspension or strike-off of the sole principal from practice and;
  - (a) complies with the close of practice guidelines;
  - (b) notifies the SPF manager of its intention to cease practice prior to the end of the indemnity period in which it ceases to practice;
  - (c) sends its most recently completed proposal form to the SPF manager prior to the end of the indemnity period in which it ceases to practice; and
  - (d) ceases to practice on the date specified in the written notice of its intention to cease practice provided by the firm to the SPF manager.

“Council” means the council of the Law Society;

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

“Data Protection Acts” means the Data Protection Acts 1988 and 2003;

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

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

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

- (ii) in the case of a firm that is not an ARP eligible firm, it is a firm that is carrying on a practice without qualifying insurance;
- (iii) a firm designated as a defaulting firm pursuant to Regulation 11(g);

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

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

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

or

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

but the term “defence costs” does not include:—

- (a) any internal overhead expenses of a firm or a participating insurer or the cost of any insured’s time, or
- (b) any costs incurred by an insured in defending or resisting proceedings seeking an award against that insured of the nature described in paragraph (ii) under the definition of “claim” where the qualifying insurance, in accordance with the minimum terms and conditions, excludes a participating insurer’s liability to indemnify an insured in respect of such costs;

“earlier regulations” means the 1995 Regulations, the 2007 Regulations, the 2011 Regulations, the 2014 Regulations and the 2016 Regulations;

“financial institution” means any of the following:—

- (i) a credit institution as defined in section 2(1) of the 1995 Act,
- (ii) a credit institution that is the holder of an authorisation for the purposes of Article 3(1) of Directive 2013/36/EU,
- (iii) a retail credit firm authorised pursuant to section 31 of the 1997 Act,

- (iv) a home reversion firm authorised pursuant to section 31 of the 1997 Act,
- (v) any other party that engages on a professional basis in the business of providing financial accommodation of any nature to another person,
- (vi) any assignee of debt from an entity that has been engaged in the business of providing financial accommodation of any nature to another person, including without limitation, NAMA,

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

“firm” means:—

- (i) any partnership of two (2) or more lawyers (as constituted from time to time, whether before or during any relevant indemnity period) where such partnership includes at least one (1) solicitor or registered lawyer and whether or not such partnership includes non-registered lawyers, and
- (ii) any sole practitioner being either a solicitor or registered lawyer, and including a sole practitioner who employs one (1) or more solicitors or registered lawyers, and a sole practitioner who is employed by a person who is not a solicitor or registered lawyer, where the relevant partnership or relevant sole practitioner, as the case may be, carries on a practice;

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

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

“initial ARP premium” has the meaning ascribed to in Regulation 11(d)(ii);

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

- (i) the appointment of a liquidator, receiver, administrative receiver, administrator or examiner to the participating insurer (or an analogous appointment being made in respect of the participating insurer in any jurisdiction outside the State),
- (ii) the passing by the members of a participating insurer of a resolution for a voluntary winding up (or an analogous step being taken in relation to a participating insurer in any jurisdiction outside the State),

- (iii) the making of a winding up order in relation to a participating insurer (or an analogous order being made in relation to a participating 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 participating insurer (or an analogous event occurring in relation to a participating insurer in any jurisdiction outside the State);

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

“insured” means, in respect of a firm:—

- (i) the firm,
- (ii) each trustee, nominee, service or administration company owned by the firm and/or the principals of the firm from time to time,
- (iii) each director, officer or employee of any such company as is referred to in paragraph (ii) above from time to time,
- (iv) each principal or former principal of the firm from time to time,
- (v) each employee or former employee of the firm from time to time, or
- (vi) 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;

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

- (i) in circumstances where if that claimant had been a financial institution, the participating insurer would have been entitled to exclude liability for the claim in accordance with clause 6.15 of the minimum terms and conditions; and
- (ii) the participating insurer has not recovered the full extent of the sums paid by it by way of a claim for reimbursement pursuant to clause 7.2 of the minimum terms and conditions;

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

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

“Law Society” means the Law Society of Ireland;

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

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

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

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

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

“NAMA” means the National Asset Management Agency;

“non-compliant run-off firm” means a firm which is designated as a non-compliant run-off firm by the SPF manager pursuant to Regulation 9(a) or 9(c);

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

“notification of a requirement to rectify” means a notice in writing (including email) from the Registrar of Solicitors or from such other person as may be appointed by the Law Society for that purpose:-

- (i) notifying an insured that a deficit has arisen on one or more of the insured’s client account(s),
- (ii) informing the insured of the insured’s obligation to rectify such deficit(s), and
- (iii) setting out the regulatory consequences for the insured should such rectification not occur within a specified period of time;

“operative date” means 1 December 2017;

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

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

“personal insolvency practitioner” has the meaning ascribed to such term in the Personal Insolvency Act 2012;

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

“PII committee” means the professional indemnity insurance committee constituted under Regulation 20;

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

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

“preceding practice” means each practice:

- (i) which has ceased practice; and
- (ii) to which the firm’s practice is a succeeding practice;

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

“principal” means:—

- (i) the sole practitioner of any firm which during any indemnity period carries on or carried on business as a sole practitioner and includes a sole practitioner who employs or employed one (1) or more solicitors or registered lawyers,
- (ii) every partner of a firm and every person held out as a partner of a firm that during any indemnity period carries on or carried on business as a partnership;

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

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

“re-calculated ARP premium” has the meaning ascribed to it in Regulation 11(e);

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

“Registrar of Solicitors” means the holder of the office of Registrar of Solicitors appointed by the Law Society pursuant to section 8 of the Solicitors Act 1954;

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

“relevant premium income” has the meaning ascribed to it in the participating insurers agreement;

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

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

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

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

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

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

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

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

“ROF” means the run-off fund;

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

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

- (i) which:
  - (a) was carrying on a practice on the operative date and which established qualifying insurance with a participating insurer or more than one (1) participating insurer with effect from the operative date, or
  - (b) commenced a practice subsequent to the operative date and which established qualifying insurance with a qualifying insurer or more than one (1) participating insurer with effect from the date it commenced practice, and
- (ii) held qualifying insurance with a participating insurer or more than one (1) participating insurer immediately prior to becoming a run-off firm, and
- (iii) was not a defaulting firm immediately prior to the operative date, and
- (iv) in respect of which there is no succeeding practice in accordance with the meaning of the term “succeeding practice” as it was defined in regulations made by the Law Society pursuant to section 26 of the Solicitors (Amendment) Act 1994 and which were in force on the date on which the firm ceased to carry on a practice;

“ROF eligible firm” means a firm that satisfies the ROF eligibility criteria;

“ROF prior notice terms” means Regulation 8(g)(ii) and Regulation 8(g)(iv);

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

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

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

“run-off firm” means a firm that:—

- (i) was carrying on a practice on the operative date or that subsequently commenced a practice, and
- (ii) has ceased to carry on a practice, and

- (iii) in respect of which there is no succeeding practice in accordance with the meaning of the term “succeeding practice” as it was defined in regulations made by the Law Society pursuant to section 26 of the Solicitors (Amendment) Act 1994 and which were in force on the date on which the firm ceased to carry on a practice;

“run-off fund” means the run off fund established pursuant to Regulation 7(c);

“sensitive personal data” has the meaning ascribed to it in the Data Protection Acts;

“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;

“Solicitors Accounts Regulations” means the Solicitors Accounts Regulations 2014 (S.I. No. 516 of 2014) or any statute or statutory instrument amending or replacing the Solicitors Accounts Regulations 2014 (S.I. No. 516 of 2014);

“SPF management committee” means the SPF management committee constituted under Regulation 21;

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

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

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

- (i) it is held out as being a successor to the practice or part thereof of the preceding practice by whatever means such holding out occurs, or
- (ii) it is conducted by a partnership where half or more of the principals are identical to those persons who were principals of any partnership that conducted the preceding practice, or
- (iii) it is conducted by a sole practitioner who was the sole practitioner conducting the preceding practice, or
- (iv) it is conducted by a sole practitioner who was one of the principals conducting the preceding practice, or
- (v) 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

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

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

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

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

“the 2011 Regulations” means The Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011 (Statutory Instrument No. 409 of 2011) as amended by the Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) (Amendment) Regulations 2012 (Statutory Instrument No. 452 of 2012) and by the Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) (Amendment) Regulations 2013 (Statutory Instrument No. 433 of 2013);

“the 2014 Regulations” means The Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) Regulations 2014 (Statutory Instrument No. 445 of 2014) as amended by the Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) (Amendment) Regulations 2015 (Statutory Instrument No. 403 of 2015);

“the 2016 Regulations” means the Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) Regulations 2016 (Statutory Instrument No. 534 of 2016);

“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 2015.
- (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 2015 or with these Regulations.

- (d) A reference in these Regulations to any, directive, statute, statutory provision, statutory instrument or other similar instrument includes:—
  - (i) any subordinate legislation made under it, and
  - (ii) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it either before, at or after the date of commencement of these Regulations.

### **3. Maintenance of Insurance:**

- (a) Every firm that carries on a practice during an indemnity period where such indemnity period (or part thereof) commences on or after the operative date shall, subject to and in accordance with the remaining provisions of these Regulations, establish and maintain in place qualifying insurance with a participating insurer.
- (b) Each firm which submits a proposal form to a participating insurer(s) in respect of qualifying insurance (whether directly to the insurer or through a broker, agent or intermediary who is advising the firm on establishing and maintaining qualifying insurance) shall ensure that such proposal form does not contain any material misrepresentation or material non-disclosure (save for an innocent misrepresentation or innocent non-disclosure) on the part of the firm.
- (c) The PII committee shall be entitled, in its discretion at any time and from time to time, for such period or periods as it considers fit and subject to such conditions as it may specify, to recognise a policy of insurance held by a firm (including, but not limited to, a firm at least one (1) of the principals of which is a registered lawyer) as being equivalent to qualifying insurance for all or some of the purposes of these Regulations. For the avoidance of doubt, the PII committee shall be entitled to exercise its discretion under this Regulation 3(c) 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.
- (d) 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.
- (e) 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.

- (f) Where a firm is required by these Regulations to establish and maintain in place qualifying insurance during an indemnity period, no individual solicitor or registered lawyer employed by or engaged in the firm's practice shall, during his or her period of employment or engagement with the firm, also be required to establish or maintain in place qualifying insurance in respect of that part of such individual's practice as is carried on in the name of and for the account of the firm.
- (g) Regulation 3(a) shall not apply to or in respect of any solicitor or registered lawyer who provides legal services only as part of an employment within the State to provide legal services to and for his or her employer, provided that:—
  - (i) the solicitor's or registered lawyer's employer is not also a solicitor or a registered lawyer; and
  - (ii) the solicitor or registered lawyer confirms to the Law Society in a manner acceptable to it that, for the duration of a relevant indemnity period, the solicitor or registered lawyer has not and will not engage in the provision of legal services to or for any person other than his or her employer; and
  - (iii) the solicitor or registered lawyer shall notify the Law Society immediately in writing if the exemption from Regulation 3(a) under Regulation 3(g) shall cease to apply in respect of the solicitor or registered lawyer.
- (h) A firm to which Regulation 3(a) applies shall be required to establish and maintain qualifying insurance in respect of any indemnity period (or part thereof) in which the firm carries on a practice, or as at and from the commencement by the firm of a practice, whichever is the earlier.
- (i) No firm shall be permitted to agree a coverage period with a participating insurer which is greater than 24 (twenty four) months.
- (j) A firm shall provide to the Law Society such evidence that it has established and is maintaining qualifying insurance in accordance with these Regulations as the Law Society may from time to time require.
- (k) Without prejudice to the generality of Regulation 3(j), a firm shall be required to provide the Law Society, or procure that there is provided to the Law Society on its behalf, such confirmation and evidence, in any form designated by the Law Society, that it has established and is maintaining qualifying insurance within three (3) working days of the commencement of the coverage period to which the qualifying insurance relates.

- (l) Without prejudice to the generality of Regulation 19(a), every principal of a firm to which these Regulations apply shall be responsible for ensuring:—
  - (i) that the firm has established and maintains in place qualifying insurance where required under these Regulations during any indemnity period (or part thereof) in which the firm carries on a practice; and
  - (ii) that the firm provides in a timely manner any evidence that may be required under or pursuant to these Regulations that it has established and is maintaining qualifying insurance where required under these Regulations.
- (m) A phoenix firm shall not be in compliance with its requirement to establish and maintain qualifying insurance with a participating insurer pursuant to Regulation 3(a) unless its professional indemnity insurance cover includes cover in accordance with the minimum terms and conditions for claims made against any other firm in respect of which it is treated as a phoenix firm pursuant to Regulation 3(n).
- (n) The PII committee may, in its absolute discretion at any time, decide to treat any firm as being a phoenix firm to another firm, or as not being a phoenix firm to another firm, in circumstances where the effect of treating the first-mentioned firm as a phoenix firm to the second-mentioned firm, or the effect of treating the first-mentioned firm as not being a phoenix firm to the second-mentioned firm, would be that the first-mentioned firm would not then be, or would then be, an ARP eligible firm or a run-off firm (as the respective case may be) and the PII committee may, for the purposes of making any such decision, take into account such facts and matters as to it appear appropriate and relevant.

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

- (a) A firm shall be permitted, in accordance with the minimum terms and conditions, to agree with its participating 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 participating 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 participating 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 19(a), every principal of a firm to which these Regulations apply shall be responsible

for ensuring that the firm makes prompt payment of any self-insured excess under its qualifying insurance as required by these Regulations.

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

- (a) Every run-off firm shall be required to establish and maintain runoff cover from the expiry of the coverage period during which its practice ceases.
- (b) The run-off cover required to be obtained by a run-off firm pursuant to Regulation 5(a) shall be as follows:—
  - (i) for a run-off firm that is a ROF eligible firm, ROF coverage.
  - (ii) for a run-off firm that is an ARP run-off eligible firm, ARP run-off cover.
- (c) No premium shall be payable by an ROF eligible firm or an ARP runoff eligible firm for run-off cover from the run-off fund.
- (d) The run-off cover provided by the run-off fund shall commence from the expiry of the coverage period during which that firm's practice ceases, such cover to be provided on the basis of the minimum terms and conditions as varied by or pursuant to these Regulations.
- (e) For the avoidance of doubt, where run-off cover is extended to a ROF eligible firm or to an ARP run-off eligible firm by the run-off fund, that firm shall be deemed to have "established" run-off cover for the purposes of the definition of defaulting run-off firm and any other relevant definitions or provisions that require a firm to "establish and maintain" run-off cover.
- (f) Run-off cover is not subject to cancellation on any basis whatsoever, save that it may be cancelled on terms to be agreed between the SPF manager and the firm where the following conditions are met:—
  - (i) the firm has obtained replacement qualifying insurance in accordance with the minimum terms and conditions on the date of cancellation of the relevant run-off cover;
  - (ii) the participating insurer or participating insurers under the replacement qualifying insurance referred to in Regulation 5(f)(i) have confirmed in writing to the firm and to the SPF manager that they are providing qualifying insurance on the basis that the firm's practice is to be treated as a continuation of the firm's practice prior to the cessation thereof and that accordingly they will be liable for any claims against the firm arising from matters that occurred prior to the cessation; and
  - (iii) the participating insurer or participating insurers under the replacement qualifying insurance referred to in Regulation 5(f)(i)

have provided any required confirmations of coverage to the Law Society pursuant to these Regulations.

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

#### **6. Defaulting Run-off Cover:**

- (a) The SPF manager shall make arrangements to ensure that a defaulting run-off firm is covered through the run-off fund in respect of any period during which such a firm does not hold run-off cover in accordance with its obligations under Regulation 5 and such arrangements shall procure that a defaulting run-off firm in respect of which the arrangements apply is covered in respect of all claims and circumstances where coverage would extend to a defaulting firm through the assigned risks pool. Any arrangements made by the SPF manager pursuant to this Regulation 6(a) in respect of defaulting run-off firms shall not be regarded as run-off cover for the purposes of satisfying Regulation 5(a).
- (b) No premium shall be payable by a defaulting run-off firm for arrangements made under Regulation 6(a).
- (c) The SPF manager, on behalf of participating insurers, shall be entitled to recover from each and every principal in a defaulting run-off firm all amounts paid in or towards the discharge of a claim and defence costs pursuant to arrangements made under Regulation 6(a) together with interest thereon at two percent (2%) over the base lending rate of the European Central Bank from time to time.

#### **7. Establishment of Special Purpose Fund:**

- (a) On the operative date there shall be and is hereby established by these Regulations a fund to be known as the “special purpose fund” to fulfil the functions assigned to it by these Regulations.
- (b) From the operative date, the assigned risks pool shall form a constituent part of the special purpose fund.
- (c) On the operative date there shall be and is hereby established by these Regulations a fund to be known as the run-off fund. The run-off fund shall form a constituent part of the special purpose fund and shall fulfil the functions assigned to it by these Regulations.
- (d) In each indemnity period, the special purpose fund shall be participated in by each insurer which is a participating insurer in that indemnity period.

**8. Entering the Run-off Fund:**

- (a) A firm which intends to cease practice shall provide the SPF manager with a written notice of its intention to cease practice at least 60 (sixty) days, or such other period as the PII committee may from time to time determine, prior to ceasing practice and at least 60 (sixty) days, or such other period as the PII committee may from time to time determine, prior to the expiry of its coverage period, whichever is the earlier. The firm shall include its most recent completed proposal form with such notice.
- (b) A firm which provides the SPF manager with written notice of its intention to cease practice pursuant to Regulation 8(a) shall cease practice on the date specified in such notice unless otherwise previously agreed in writing with the Law Society.
- (c) The SPF manager shall procure that:—
  - (i) in respect of a ROF eligible firm, ROF coverage shall be issued to the firm with effect from the date of expiry of the coverage period in which its practice ceases; and
  - (ii) in respect of an ARP run-off eligible firm, ARP run-off cover shall be issued to that firm with effect from the date of expiry of its coverage period.
- (d) Every firm that holds run-off cover through the run-off fund, or in respect of which arrangements are made under Regulation 6(a), shall notify any claim or circumstance required to be reported or notified to the SPF manager pursuant to its run-off cover or arrangements within any time prescribed therefor under such run-off cover or arrangements.
- (e) ROF coverage issued to a ROF eligible firm shall have a self-insured excess equal to the self-insured excess applicable to the qualifying insurance held by that firm at the time it ceased practice. ARP runoff cover issued to an ARP run-off eligible firm shall have a self-insured excess equal to the self-insured excess applicable to ARP coverage.
- (f) Subject to Regulation 8(h), the SPF manager shall pay any amount that is within the self-insured excess of any firm's run-off cover to a claimant but shall be entitled to recover any amount so paid from the firm.
- (g) Where a run-off firm fails to:—
  - (i) comply with the close of practice guidelines; or
  - (ii) notify the SPF manager of its intention to cease practice in accordance with Regulation 8(a); or

- (iii) cease practice on the date specified in the written notice of its intention to cease practice provided by the firm to the SPF manager; or
- (iv) send its most recently completed proposal form to the SPF manager in accordance with Regulation 8(a); or
- (v) comply with the minimum common risk management standard; or
- (vi) fully co-operate with the SPF manager in the conduct of claims; or
- (vii) notify any claim or circumstance required to be notified to the SPF manager pursuant to Regulation 8(d) within a reasonable period of time;

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

- (h) The SPF manager shall not be obliged to pay any amount which is within the additional self-insured excess (as determined by the SPF manager in accordance with Regulation 8(g)) in respect of a claim made by a financial institution.
- (i) Every run-off firm that is issued with run-off cover by the run-off fund, or in respect of which arrangements are made under Regulation 6(a), shall provide to the SPF manager such information as the SPF manager may from time to time in its discretion reasonably require to deal efficiently and effectively with that firm's membership of the run-off fund.

## 9. Compliant and Non-Compliant Run-off Firms

- (a) With effect from 1 December 2017 and on 1 December of each year thereafter, each run-off firm shall be designated as either a compliant run-off firm or a non-compliant run-off firm by the SPF manager in accordance with the following:
  - (i) in relation to a run-off firm which ceased to practice on or after 1 December 2012 and on or before 30 November 2016,
    - (a) a run-off firm shall be designated as a compliant run-off firm by the SPF manager, if, in the opinion of the SPF manager, such firm has cooperated with the SPF manager in a manner which has allowed the SPF manager to deal efficiently and effectively with the firm's membership of the run-off fund and any claims made against the firm;
    - (b) a run-off firm shall be designated as a non-compliant run-off firm by the SPF manager, if, in the opinion of the SPF manager, such firm has not cooperated with the SPF manager in

a manner which has allowed the SPF manager to deal efficiently and effectively with the firm's membership of the run-off fund or any claims made against the firm;

- (ii) in relation to a run-off firm which ceased to practice on or after 1 December 2016,
  - (a) a run-off firm shall be designated as a compliant run-off firm by the SPF manager with effect from the date the firm is first provided with ROF cover, if, in the opinion of the SPF manager, the firm has complied with the compliant run-off firm eligibility criteria;
  - (b) a run-off firm shall be designated as a non-compliant run-off firm by the SPF manager with effect from the date the firm is first provided with ROF cover, if, in the opinion of the SPF manager, the firm has not complied with the compliant run-off firm eligibility criteria;
- (b) A firm which is designated as a non-compliant run-off firm by the SPF manager pursuant to Regulation 9(a), may be re-designated as a compliant run-off firm by the SPF manager at any time during the course of the relevant indemnity period, if, in the opinion of the SPF manager, such firm has cooperated with the SPF manager in a manner which has allowed the SPF manager to deal efficiently and effectively with the firm's membership of the run-off fund and any claims made against the firm.
- (c) A firm which is designated as a compliant run-off firm by the SPF manager pursuant to Regulation 9(a), may be re-designated as a non-compliant run-off firm by the SPF manager at any time during the course of the relevant indemnity period, if, in the opinion of the SPF manager, such firm has not cooperated with the SPF manager in a manner which has allowed the SPF manager to deal efficiently and effectively with the firm's membership of the run-off fund or any claims made against the firm.
- (d) A firm which has been designated as a non-compliant run-off firm by the SPF manager may appeal its designation as a non-compliant run-off firm to the SPF management committee. This appeal shall be dealt with by the SPF management committee in accordance with the applicable appeal procedures published by the SPF management committee from time to time. The SPF manager shall be recused from and shall not participate in any business or activity of the SPF management committee in respect of an appeal brought before it by a non-compliant run-off firm pursuant to this Regulation 9(d). An appeal of the decision of the SPF management committee shall be subject to arbitration in accordance with Regulation 10.

- (e) With effect from 1 December 2017, ROF coverage shall not extend to a non-compliant run-off firm in respect of any claim made against that run-off firm by a financial institution.

#### **10. Arbitration**

- (a) Any dispute or claim arising out of or in connection with Regulation 9(d) shall be referred, by written notice from either party, to the decision of a single arbitrator, as may be nominated by agreement between the parties to the arbitration, or failing such agreement within 21 (twenty one) days of a written notification being made by one (1) of the parties to the arbitration, by the Chairman for the time being (or failing the Chairman any other member of the Committee) of the Chartered Institute of Arbitrators (Irish Branch).
- (b) Every or any reference made pursuant to Regulation 10(a) shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2010 or any Act or statutory provision amending or repealing same and shall be an arbitration conducted in Dublin, Ireland in the English language and shall be governed by the Arbitration Act 2010.
- (c) In the event of the arbitrator being unable or unwilling to act as such, any replacement arbitrator shall be appointed in a like manner to that stipulated in Regulation 10(a).
- (d) The costs of any dispute submitted to arbitration pursuant to Regulation 102(a) shall be decided by the arbitrator.

#### **11. Entering the Assigned Risks Pool:**

- (a) Subject to Regulation 11(k), where at any time a firm either has not established or fails to maintain qualifying insurance underwritten by a participating insurer as required by these Regulations, that firm shall (if it is an ARP eligible firm) apply to enter the assigned risks pool prior to:—
  - (i) the date on which the relevant indemnity period commences, or
  - (ii) the date on which it fails to maintain qualifying insurance, whichever date is the earliest.
- (b) The PII committee, in its absolute discretion, shall have power to grant a dispensation from the ARP eligibility criteria (or any part thereof) to a firm in an appropriate case.
- (c) The ARP premium payable by any firm in respect of whose practice an ARP coverage is to be issued from time to time, shall be calculated by the SPF manager in accordance with the ARP premium schedule.

- (d) A firm that is required to apply to enter the assigned risks pool and that is an ARP eligible firm shall apply in the following manner:—
- (i) it shall submit to the SPF manager a proposal form, in a format designated from time to time by the SPF management committee, seeking to obtain ARP coverage and stating the date upon which such coverage should commence (not being a date earlier than the date upon which the application is made), together with such further information (if any) as may be required by the SPF manager for the purposes of considering the firm’s application and determining the applicable ARP premium in accordance with Regulation 11(d)(ii);
  - (ii) it shall pay in advance of entry to the assigned risks pool such sum by way of an advance payment of premium to be known as the “initial ARP premium” as the SPF manager may determine in accordance with the ARP premium schedule, and it shall undertake to pay and shall pay such further sums, to be known as “additional ARP premium”, by way of premium calculated in accordance with the ARP premium schedule, on such further dates as the SPF manager may from time to time determine;
  - (iii) it shall submit to the Law Society a signed undertaking, in a format designated from time to time by the SPF management committee, confirming that it will:—
    - (A) submit to such monitoring and risk management audits and take all such actions and pay such costs and expenses thereof as is provided for under and pursuant to these Regulations,

and

    - (B) pay any costs and expenses incurred by the Law Society or the SPF manager from time to time as a result of any failure on its part to comply with any provision of these Regulations.
- (e) Where a firm with ARP coverage is deemed to be in compliance with the minimum common risk management standard in respect of an indemnity period pursuant to Regulation 17, that firm shall be entitled to have its ARP premium for that indemnity period re-calculated in accordance with the relevant provisions of the ARP premium schedule, to be known as the “re-calculated ARP premium”. Where the recalculated ARP premium is lower than that firm’s ARP premium:
- (i) if the firm has already paid the ARP premium for that indemnity period to the SPF manager, it shall be entitled to reimbursement from the SPF manager of the difference between the re-calculated ARP premium and the ARP premium; or

- (ii) if the firm has not already paid the ARP premium for that indemnity period to the SPF manager, it shall pay the re-calculated ARP premium to the SPF manager on such date at the SPF manager may from time to time determine.
- (f) The provisions of Regulation 11(e) may, from time to time, be cancelled or varied by the PII committee in its sole discretion and for such period as it may, in its sole discretion, determine.
- (g) Where a firm has been issued with ARP coverage, the terms of the ARP coverage shall prescribe that, and the firm shall be deemed to agree that, any additional ARP premium or re-calculated ARP premium (as the case may be) determined in accordance with Regulation 11(d) to be applicable in respect of such an ARP coverage shall, as from the date upon which the additional ARP premium or re-calculated ARP Premium is due (as determined by the SPF manager pursuant to Regulation 11(d)) (if not already paid by the firm), constitute a debt due from the firm to the SPF manager as agent of all participating insurers participating in the special purpose fund. Failing payment of the additional ARP premium or, re-calculated ARP premium within three (3) days of the relevant due date, the SPF manager shall be entitled to treat the firm as a defaulting firm for the period during which the additional ARP premium or re-calculated ARP premium remains outstanding, such that the ARP premium for that firm for that period shall be calculated in accordance with Regulation 15(e).
- (h) Every firm that applies to enter the assigned risks pool shall provide to the SPF manager such information as the SPF manager may from time to time in its discretion reasonably require to progress the firm's application for entry to the assigned risks pool and otherwise to deal efficiently and effectively with the firm's membership of the assigned risks pool.
- (i) Every firm to which this Regulation 11 applies shall be required to take all reasonable steps to ensure that the firm receives an acknowledgement in writing of receipt by the SPF manager of its application, pursuant to this Regulation 11, to enter the assigned risks pool within ten (10) working days of the date of despatch of such application by or on behalf of the firm, and where no such acknowledgement in writing is received within ten (10) working days of such date, the application shall be deemed never to have been made, and the firm shall be required to re-apply in accordance with the provisions of this Regulation 11.
- (j) An ARP eligible firm that has applied in the manner prescribed by these Regulations to enter the assigned risks pool will be issued by the SPF manager with an ARP coverage.
- (k) An ARP eligible firm may apply to enter the assigned risk pool within 60 (sixty) days immediately following the expiry of its most recent coverage period.

- (l) The provisions of Regulation 11(k) are a dispensation solely in relation to the time limits for making an application to join the assigned risks pool and such provisions shall not in any way relieve a firm of any requirement of these Regulations to establish or maintain qualifying insurance.

## 12. Operation of ARP Coverage:

- (a) The period of coverage under each ARP coverage shall commence:—
- (i) in the case of a firm that applies to enter the assigned risks pool prior to the commencement of an indemnity period, from the start of that indemnity period;
  - (ii) in the case of a firm that applies to enter the assigned risks pool during an indemnity period, from the date specified in the firm's application, but that date may not be earlier than the date upon which the application was made, and no ARP coverage may provide retrospective cover.
- (b) The period of coverage under each ARP coverage shall terminate on the earliest to occur of the following dates:—
- (i) the date upon which the relevant indemnity period ends;
  - (ii) the date upon which the firm obtains qualifying insurance outside the assigned risks pool; or
  - (iii) the date when the firm ceases to be an ARP eligible firm.
- (c) Every firm that holds ARP coverage shall be required to report or notify any claim or circumstance required to be reported or notified pursuant to its ARP coverage to the SPF manager within any time prescribed therefor under that ARP coverage.
- (d) Without prejudice to the generality of Regulation 19(a), every principal of a firm to which these Regulations apply shall be responsible for ensuring:—
- (i) that the firm applies to enter the assigned risks pool within the time limits and in the manner required under these Regulations;
  - (ii) that the firm pays any premium due in respect of an ARP coverage to the SPF manager promptly when due;
  - (iii) that the firm takes steps to ensure that it is provided with an acknowledgement of its application to enter the assigned risks pool when required to do so under these Regulations; and

- (iv) that the firm makes any notifications or reports required by these Regulations to be made pursuant to its ARP coverage in a timely manner.
- (e) The SPF manager shall make arrangements to procure that a participating insurer shall be reimbursed in respect of insurer reimbursement claims and shall ensure that the amount of such reimbursement is equal to the sums paid by that participating insurer in respect of the relevant claim, provided however that the amount of such reimbursement shall be without prejudice to any sums to be paid by the participating insurer following a demand being made by the SPF manager, pursuant to the participating insurers agreement, for the purposes of settling liability in respect of the relevant claim. No participating insurer shall be entitled to such reimbursement unless that participating insurer can demonstrate, to the reasonable satisfaction of the SPF manager, that it has acted in a commercially reasonable manner and as though recourse to the assigned risks pool is not available to it and has used its best efforts to obtain reimbursement of amounts paid by it pursuant to its rights under clause 7.2 of the minimum terms and conditions.

### **13. Membership of the Assigned Risks Pool:**

- (a) A firm that has been issued with an ARP coverage but that is no longer an ARP eligible firm shall be required, as from the date upon which it ceases to be an ARP eligible firm, to establish and maintain qualifying insurance with a participating insurer in accordance with Regulation 3(a) and if it fails to do so, it shall be required to cease its practice.
- (b) A firm may leave the assigned risks pool at any time after it has provided to the Law Society such evidence as the Law Society may require that it has obtained qualifying insurance from a participating insurer that satisfies the provisions of these Regulations for at least the remainder of the then-current indemnity period.
- (c) Where a firm applies for membership of the assigned risks pool but is not permitted to enter the assigned risks pool, that firm shall be required to indemnify the Law Society, the SPF manager and the SPF management committee on demand in respect of any costs, fees, expenses, losses or liabilities incurred by the Law Society, the SPF manager and the SPF management committee in relation to its application.

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

- (a) The minimum terms and conditions to apply in respect of ARP coverage are amended to the extent that claims made by financial institutions shall not be covered by the ARP, with the exception of a claim

made by a financial institution in respect of a residential property transaction where:—

- (i) the relevant firm was first instructed to provide legal services in respect of that transaction on or after the operative date; and
  - (ii) the relevant firm was deemed to be or found to be in compliance with the minimum common risk management standard in accordance with Regulation 16 prior to the commencement of the provision of the legal services.
- (b) The PII committee may from time to time publish model terms and conditions to apply to ARP coverage, which shall when published constitute the minimum terms and conditions applicable to such coverage.
  - (c) The provisions of Regulation 14(a) may, from time to time, be cancelled or varied by the PII committee in its sole discretion and for such period as it may, in its sole discretion, determine.
  - (d) The PII committee may, in its sole discretion and for such period as it may, in its sole discretion, determine, impose an aggregate limit on the ARP's liability for claims in respect of any one firm in any one indemnity period and such limit shall, unless otherwise determined by the PII committee, be €1,500,000 (one million five hundred thousand euro).
  - (e) Any limit or exclusion imposed by the PII committee in accordance with Regulation 14(d) shall not apply in respect of defence costs, save that in such cases ARP coverage will apply proportionate liability for defence costs in accordance with clause 3 of the minimum terms and conditions.
  - (f) If a claim is made that would otherwise exceed the limit of liability, as imposed by the PII committee in accordance with Regulation 14(d), whether on its own or in aggregate with prior or concurrent claims, the ARP will be liable only for the amount of such claim that does not exceed the limit prescribed thereunder by the PII committee.

#### **15. Defaulting Firms:**

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

- (b) Every defaulting firm shall be liable to pay the SPF manager the ARP default premium in respect of any coverage arranged in respect of its practice or former practice pursuant to Regulation 15(a).
- (c) The SPF manager on behalf of participating 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 15(a), together with interest thereon at two percent (2%) over the base lending rate of the European Central Bank from time to time.
- (d) A defaulting firm may, at the discretion of the PII committee, be required to cease its practice unless it obtains qualifying insurance from a participating insurer outside the assigned risks pool.
- (e) The amount of the ARP default premium payable by:—
  - (i) any firm designated as a defaulting firm pursuant to Regulation 11(g); or
  - (ii) any defaulting firm in respect of which arrangements pursuant to Regulation 15(a) are made from time to time;

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

#### **16. Insolvency of Participating Insurers and Other Events:**

- (a) Where a firm has established qualifying insurance with a participating insurer or a number of participating insurers in accordance with Regulation 3, and an insolvency event or non-performance event occurs in respect of that participating insurer or one (1) or more of those participating insurers, as the case may be, the firm shall, as soon as reasonably practicable and in any event within 30 (thirty) working days after the date upon which such insolvency event or non-performance event occurs (but not counting the date upon which such event occurs):—
  - (i) establish and maintain in place qualifying insurance with a participating insurer or participating insurers that is or are unaffected by an insolvency event or non-performance event; or
  - (ii) where it is an ARP eligible firm, apply under Regulation 11 to enter the assigned risks pool.
- (b) A firm to which Regulation 16(a) applies shall provide to the Law Society such evidence that it has established and is maintaining qualifying insurance or that it has applied to enter the assigned risks pool, as the Law Society may from time to time require.

- (c) Without prejudice to the generality of Regulation 16(b), a firm shall be required to provide to the Law Society, or procure that there is provided to the Law Society on its behalf, confirmation in any form designated by the Law Society that it has established and is maintaining qualifying insurance or that it has applied to enter the assigned risks pool within 30 (thirty) working days of the insolvency event or non-performance event that gives rise to the obligation to establish and maintain qualifying insurance pursuant to Regulation 16(a).
- (d) Without prejudice to the generality of Regulation 19(a), every principal of a firm to which these Regulations apply, shall be responsible for ensuring:—
  - (i) that the firm has established and maintains in place qualifying insurance following the occurrence of an insolvency event or a non-performance event in respect of its former participating insurer or participating insurers, with a participating insurer or participating insurers that is or are unaffected by such an event, or that it applies to enter the assigned risks pool; and
  - (ii) that the firm provides any evidence that the firm has established and is maintaining qualifying insurance or that it has applied to enter the assigned risks pool following the occurrence of an insolvency event or a non-performance event in respect of its former participating insurer or participating insurers as may be required under or pursuant to these Regulations in a timely manner.

#### **17. Risk Management Audits:**

- (a) A firm that enters or that seeks to enter the assigned risks pool shall be required to submit to and co-operate with a risk management audit to be conducted by a risk management auditor selected and appointed by the SPF management committee at such times and at such intervals during the firm's membership of the assigned risks pool as the SPF management committee may in its absolute discretion determine.
- (b) Every principal of a firm to which Regulation 17(a) applies shall be responsible for ensuring that the firm submits to and co-operates with any risk management audit that is directed by the SPF management committee in relation to the firm's practice pursuant to Regulation 17(a).
- (c) Where the SPF management committee directs that a risk management audit is to be carried out in relation to the practice of a firm, every principal of that firm shall be responsible for ensuring that the risk management auditor appointed to carry out the risk management audit is afforded every possible facility to carry out the following tasks:—
  - (i) to attend at any place or places where the firm engages in its practice and, for the avoidance of doubt, any place or places

where the firm may store its records (including electronic records) in relation to matters it is involved in;

- (ii) to interview any principal of the firm and such other persons employed by or associated with the firm as the risk management auditor deems necessary and appropriate;
  - (iii) to inspect such documents relating to the practice of the firm as the risk management auditor deems necessary and appropriate; and
  - (iv) to provide the risk management auditor with access to all electronic records maintained by or on behalf of the firm and to all computer or electronic communication systems operated by the firm and relating in either case to the practice of the firm.
- (d) Every principal of a firm to which this Regulation 17 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 17(c)(iii) and any records or systems referred to in Regulation 17(c)(iv).
- (e) It shall be misconduct for any principal of a firm, or any solicitor or registered lawyer employed by a firm to which this Regulation 17 applies to fail to attend at any interview with a risk management auditor of which not less than two (2) working days' notice has been given to that person, or to fail to provide a risk management auditor with access to documents, records or computer or communication systems within two (2) working days of a request in that regard being made to such principal, solicitor or registered lawyer by a risk management auditor pursuant to these Regulations.
- (f) Where the SPF management committee directs that a risk management audit is to be carried out in relation to the practice of a firm, that firm shall be required to indemnify the Law Society (or as the Law Society may direct) on demand in respect of any costs, fees, expenses, losses or liabilities incurred by the Law Society in relation to the conduct of that risk management audit, and every principal of that firm shall be responsible for ensuring that the firm discharges its liabilities to the Law Society under Regulation 17.
- (g) Where a firm fails to comply with any provision of this Regulation 17, the SPF management committee may direct that such firm shall no longer be treated as an ARP eligible firm, and may further direct that any successor firm to such a firm shall not be an ARP eligible firm.

#### **18. Risk Management Audit Reports:**

- (a) A risk management auditor who conducts a risk management audit in relation to a firm shall, as soon as practicable thereafter, furnish a

written risk management audit report to the SPF manager and to the SPF management committee. The report shall include an opinion from the risk management auditor as to whether the firm is in compliance with the minimum common risk management standard in the indemnity period in which the risk management audit is carried out.

- (b) The SPF management committee shall, on receipt of a risk management audit report, provide a copy thereof to the firm concerned and shall invite such firm to provide any written response thereto to the SPF management committee within ten (10) working days of receipt by the firm of such risk management audit report.
- (c) Following receipt by the SPF management committee of the written response (if any) of a firm the subject of a risk management audit report or (failing any such written response) at any time after the expiry of the relevant time period for such firm to provide a written response, the SPF management committee may provide the firm concerned with a written direction indicating:—
  - (i) which of the risk management audit recommendations are to be binding on the firm, and any such direction made by or on behalf of the SPF management committee shall be binding upon the firm immediately upon such direction being made by the SPF management committee and the firm shall forthwith take steps at its own expense to comply with any such direction; and
  - (ii) whether the opinion of the risk management auditor as to whether the firm is in compliance with the minimum common risk management standard is to be binding on the firm and any such direction made by or on behalf of the SPF management committee shall be binding upon the firm immediately upon such direction being made by the SPF management committee.
- (d) At any time following the receipt by the SPF management committee of the written response (if any) of a firm the subject of a risk management audit report or (failing any such written response) at any time after the expiry of the relevant time period for such firm to provide a written response, the SPF management committee may, on giving not less than two (2) working days' notice, require any principal of such firm to attend before it to respond to such questions and to provide such information or to produce such documents regarding the management of the practice of the firm as may appear appropriate to the SPF management committee.
- (e) At any time following the receipt by the SPF management committee of the written response (if any) of a firm the subject of a risk management audit report or (failing any such written response) at any time after the expiry of the relevant time period for such firm to provide a written response, the SPF management committee may take any one (1) or more of the following measures:—

- (i) direct the firm concerned to comply with such measures within such time period as the SPF management committee may deem appropriate and reasonable to avoid or mitigate the risk of claims in respect of civil liability arising from the practice of the firm, and such measures may be more extensive than any risk management audit recommendations, and the firm shall forthwith take steps at its own expense to comply with any such direction;
  - (ii) instruct any risk management auditor to assist and supervise the firm concerned or any principal of the firm or any solicitor or registered lawyer employed by the firm and to report to the SPF management committee as appropriate in relation to compliance by the firm, principal, solicitor or registered lawyer concerned with any measures directed by the SPF management committee pursuant to Regulation 18(e)(i);
  - (iii) commission any further inquiry into the affairs of the firm concerned to be made as to the SPF management committee may appear appropriate and necessary to permit the SPF management committee properly to assess the prevailing state of management of that firm;
  - (iv) conclude that the circumstances of the state of management of the firm concerned as disclosed by a risk management audit report, or by any subsequent report or investigation directed by the SPF management committee to be undertaken are such that it is not appropriate and reasonable that the firm should be provided or continue to be provided with ARP coverage by the assigned risks pool and may in consequence decide, on not less than two (2) working days' notice in writing to the firm concerned, to declare that the firm in question shall no longer be an ARP eligible firm and shall be treated thenceforth as a defaulting firm.
- (f) Where the SPF management committee takes any step pursuant to Regulation 18(e)(ii) or Regulation 18(e)(iii) in relation to the practice of a firm, that firm shall be required to indemnify the Law Society (or as the Law Society may direct) on demand in respect of any costs, fees, expenses, losses or liabilities incurred by the Law Society in relation to the steps taken, and every principal of that firm shall be responsible for ensuring that the firm discharges its liabilities to the Law Society under this Regulation 18(f).
- (g) The PII committee may in its discretion and on such terms and conditions as it deems appropriate:—
- (i) permit the Law Society to use any risk management audit report as the Law Society deems appropriate for the purposes of exercising any of its statutory powers and functions;

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

### **19. 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 19(a), every principal of a firm to which these Regulations apply, and in the case of a firm that has ceased its practice every person that is or was a principal of that firm at the relevant time as determined by the PII committee in its discretion, shall be responsible for ensuring:—
  - (i) that the firm ceases its practice where required so to do under these Regulations;
  - (ii) that the firm discharges any costs, liabilities and expenses due to the Law Society under these Regulations promptly on demand;
 and
  - (iii) that the firm and each principal thereof complies with each of the responsibilities imposed upon it under Regulations 17 and 18.
- (c) Where any firm fails to comply with any of its obligations and responsibilities under or pursuant to these Regulations, or any principal of a firm fails to comply with any of his or her obligations and responsibilities under or pursuant to these Regulations, the PII committee may take any one (1) or more of the following courses of action:—
  - (i) apply to the High Court for suspension of the practising certificate or qualifying certificate of any principal or former principal of that firm, or of the principal concerned, as the case may be; or
  - (ii) direct the Registrar to refuse to issue a practising certificate or qualifying certificate to any principal or former principal of that firm, or to the principal concerned, as the case may be; or
  - (iii) apply to the Disciplinary Tribunal for an inquiry into the conduct of any principal or former principal of that firm, or of the principal concerned, as the case may be, on grounds of misconduct; or
  - (iv) apply to the High Court for an order to prohibit any principal or former principal of that firm, or the principal concerned, as the case may be, from contravening any provision of these Regulations;

or

- (v) apply to the High Court for an order to require any principal or former principal of that firm, or the principal concerned, as the case may be, to perform any obligation imposed on the firm or such principal by any provision of these Regulations.
- (d) Where the PII committee decides to take one (1) of the courses of action referred to in Regulation 19(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 19 are without prejudice to the designation by these Regulations as misconduct of any particular act or omission by a solicitor or a registered lawyer, or to any other right or power given under these Regulations, under the Acts or under any instrument made under or pursuant to the Acts to the PII committee or to the Law Society.

## **20. Professional Indemnity Insurance Committee:**

- (a) The Council shall, as soon as practicable after the coming into operation of these Regulations, appoint a professional indemnity insurance committee which shall be responsible for exercising on behalf of the Council the functions vested in:—
  - (i) the Law Society by or under section 26 of the Solicitors (Amendment) Act 1994; and
  - (ii) the PII committee by or under these Regulations; and
  - (iii) (to the extent that the 1995 Regulations remain in force by virtue of these Regulations) the committee constituted under the 1995 Regulations and designated as the PII committee thereunder by or under the 1995 Regulations; and
  - (iv) (to the extent that the 2007 Regulations remain in force by virtue of these Regulations) the committee constituted under the 2007 Regulations and designated as the PII committee thereunder by or under the 2007 Regulations, save in each case for the making of regulations; and
  - (v) (to the extent that the 2011 Regulations remain in force by virtue of these Regulations) the committee constituted under the 2011 Regulations and designated as the PII committee thereunder by or under the 2011 Regulations; and
  - (vi) (to the extent that the 2014 Regulations remain in force by virtue of these Regulations) the committee constituted under the 2014 Regulations and designated as the PII committee thereunder by or under the 2014 Regulations; and

- (vii) (to the extent that the 2016 Regulations remain in force by virtue of these Regulations) the committee constituted under the 2016 Regulations and designated as the PII committee thereunder by or under the 2016 Regulations;
- (b) The Council shall from time to time in its discretion determine the number of members of the PII committee and appoint the members thereof and may, in its sole discretion and for such period as it may determine, retain as members of the PII committee each or any of the members of the PII committee in place at the coming into operation of these Regulations.
- (c) The quorum of the PII committee shall be three (3).
- (d) The PII committee may establish sub-committees to carry out some or all of its functions, or delegate some or all of its functions to an executive of the Law Society, the SPF management committee or the SPF manager.
- (e) The PII committee shall exercise on behalf of the Council the following functions of the Law Society:—
  - (i) making recommendations, issuing guidance or giving directions on behalf of the Law Society in relation to the management, administration and protection by the SPF manager of the special purpose fund;
  - (ii) (without prejudice to the generality or specificity of any Regulation) directing steps necessary or expedient to be taken to ascertain whether these Regulations or any relevant provisions of the earlier regulations which remain in force 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 any relevant provisions of the earlier regulations which remain in force;
  - (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 any relevant provisions of the earlier regulations which remain in force to the notice of their clients or the Law Society;
  - (v) determining whether a perceived breach of section 26(6) of the Solicitors (Amendment) Act, 1994 or of these Regulations or any relevant provisions of the earlier regulations which remain in force by a solicitor or registered lawyer should be the subject of an application by the Law Society to the Disciplinary Tribunal

for an inquiry into the conduct of that solicitor or registered lawyer on the ground of alleged misconduct;

- (vi) making decisions in relation to matters (including procedural matters) deemed to be in pursuance of or incidental or supplementary to the functions vested in the Law Society under section 26 of the Solicitors (Amendment) Act 1994 or in pursuance of or incidental or supplementary to the provisions of these Regulations or any relevant provisions of the earlier regulations which remain in force.
- (f) The PII committee shall, at least once in every calendar year, review the minimum terms and conditions and shall recommend to the Law Society any amendments thereto as to the PII committee appear appropriate.
- (g) The PII committee shall be entitled to appoint the SPF manager to discharge the functions and responsibilities of:
  - (i) the person or entity appointed as pool manager under the 1995 Regulations to the extent that those regulations remain in effect by virtue of these Regulations; and
  - (ii) the person or entity appointed as ARP manager under the 2007 Regulations to the extent that those regulations remain in effect by virtue of these Regulations; and
  - (iii) the person or entity appointed as SPF manager under the 2011 Regulations to the extent that those regulations remain in effect by virtue of these Regulations; and
  - (iv) the person or entity appointed as SPF manager under the 2014 Regulations to the extent that those regulations remain in effect by virtue of these Regulations; and
  - (v) the person or entity appointed as SPF manager under the 2016 Regulations to the extent that those regulations remain in effect by virtue of these Regulations.
- (h) The PII committee shall from time to time and in its sole discretion issue rules regulating the conduct of coverage disputes and any rules (or part thereof) issued by the PII committee under this Regulation 21(h) shall be binding upon a participating insurer and a firm immediately upon such rules being made by the PII committee and each participating insurer and each firm shall forthwith take steps at its own expense to comply with any such rules.

**21. SPF Management Committee:**

- (a) The PII committee shall, as soon as practicable after the coming into operation of these Regulations appoint a special purpose fund management committee which shall be responsible for exercising the functions vested in:
  - (i) the SPF management committee by or under these Regulations;
  - and
  - (ii) any functions delegated to it by the PII committee pursuant to Regulation 20.
- (b) The number of members of the SPF management committee shall be five (5).
- (c) The members of the SPF management committee shall be appointed by the Law Society and shall comprise the SPF manager, two (2) representatives of the Law Society and one (1) representative of each of the two (2) participating insurers with the largest relevant premium income for that indemnity period as calculated in accordance with Schedule 2 of the participating insurers agreement.
- (d) The SPF management committee shall provide a quarterly report to the PII committee summarising its activities and the decisions it has taken in the previous quarter. The SPF management committee shall receive and consider any comments that the PII committee may have on any such report.

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

- (a) If a person asserts a claim against a firm or any person insured under that firm's qualifying insurance and the claim relates to a matter within the scope of coverage under the minimum terms and conditions, that firm and every principal thereof (including, in the case of a firm that has ceased its practice, any former principal thereof) shall be required to provide that claimant on request with details of the identity of the participating insurers that provided the qualifying insurance, together with any applicable coverage reference number and the relevant participating insurers' contact details.
- (b) The Law Society may maintain in such form or forms as it considers appropriate a register of firms showing such details of any qualifying insurance, ARP coverage or run-off cover maintained by those firms appearing on the register as the Law Society deems fit, together with details of any firms that have not maintained such insurance and/or cover, and may permit persons to enquire as to the registered status of firms and provide persons with the information contained in the

register relating to firms in such manner and to such extent as the Law Society may determine.

- (c) The Law Society may, based on the information available to it, establish an information service to disclose certain information to participating insurers in such a manner as it may in its absolute discretion deem fit, including the following:—
  - (i) on or before 31 January in each indemnity period, provide a participating insurer with details of the identity of firms which maintained qualifying insurance with that participating insurer in the prior indemnity period, together with the identity of the current participating insurer (including for the avoidance of doubt, the assigned risks pool and the run-off fund) of any such firm;
  - (ii) from time to time, to provide a participating insurer with details of the identity of any firm, which has had all of its principals suspended or struck off the roll.
- (d) All firms and their principals shall extend such co-operation to the participating insurer providing qualifying insurance or the SPF manager (as appropriate) as is required by the minimum terms and conditions. In the event that a participating insurer or the SPF manager (as appropriate) considers that a firm or its principals have failed to extend such co-operation, the participating insurer or the SPF manager (as appropriate) may notify the Law Society and the Law Society may take disciplinary action against the principals and the former principals of such firm as appropriate.
- (e) In the event that a participating insurer or the SPF manager (as appropriate) considers that a firm has failed to pay any stamp duty which the firm is liable to pay, the participating insurer or the SPF manager (as appropriate) may notify the Law Society and the Law Society may take disciplinary action against the principals and the former principals of such firm as appropriate.

### **23. 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 2015 (Professional Indemnity Insurance) Regulations 2017.”

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

Dated this 29th day of August 2017.

STUART GILHOOLY,  
President of the Law Society of Ireland.

## Schedule

### Table of Revocations

NAME OF INSTRUMENT	EXTENT OF REVOCATION
<p>The Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) (Amendment) Regulations 2016 (Statutory Instrument No. 534 of 2016)</p>	<p>Revoked in its entirety save that:—(i) the instrument (as subsequently amended) shall remain binding upon solicitors and registered lawyers required, prior to the operative date, by virtue of the provisions of the instrument to maintain run-off cover (as defined by the instrument) such that those solicitors and registered lawyers shall be required to continue to maintain such coverage in accordance with the terms of the instrument and that the provisions of the instrument (including provisions relating to the enforcement thereof and the penalties thereunder) shall be fully continued in effect as regards such solicitors and registered lawyers and such run-off cover; and (ii) the instrument (as subsequently amended) shall remain in effect to the extent necessary to permit the proper functioning and operation of the special purpose fund constituted by virtue of the provisions of the instrument to permit the special purpose fund to be administered to fulfil the terms of all coverages granted thereunder (iii) the instrument (as subsequently amended) shall remain in effect to permit the proper functioning and operation of the SMDF (as defined therein) to permit the SMDF to be administered to fulfil the terms of all coverages granted by it.</p>

## Appendix 1

### Minimum Terms and Conditions of Professional Indemnity Insurance for Solicitors and Registered Lawyers in Ireland

#### 1. Interpretation

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

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

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

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

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

- (a) civil compensation of any nature or civil damages of any nature, or
- (b) any award to be made pursuant to the provisions of the Solicitors Acts 1954 to 2015, or any regulations made thereunder, for compensation or restitution to clients or any other obligation that may be imposed on solicitors or Registered Lawyers 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 the payment of costs incurred by any Insured in defending or resisting proceedings seeking an award against that Insured of the nature described in this subparagraph (b) 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. For the purposes of this subparagraph (b), the discharge of an obligation of an Insured, following receipt by an Insured of a Notification of a Requirement to Rectify, shall be treated as a “Claim” (subject to the provisions of the Regulations and/or Minimum Terms and Conditions) notwithstanding that a formal award pursuant to the provisions of the Solicitors Acts 1954 to 2015, or any regulations made thereunder, has not been made;

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

“Client Account” shall have the same meaning as prescribed in the Solicitors Accounts Regulations or the meaning prescribed in any statute or statutory instrument amending or replacing the Solicitors Accounts Regulations;

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

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

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

- (a) defending any proceedings, or
- (b) conducting any proceedings for indemnity, contribution or recovery,  
or
- (c) investigating, reducing, avoiding or compromising any actual or potential Claim;

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

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

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

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

“Financial Institution” means any of the following:—

- (a) a credit institution as defined in section 2(1) of the 1995 Act,
- (b) a credit institution that is the holder of an authorisation for the purposes of Article 3(1) of Directive 2013/36/EU,
- (c) a retail credit firm authorised pursuant to section 31 of the 1997 Act,
- (d) a home reversion firm authorised pursuant to section 31 of the 1997 Act,

- (e) any other party that engages on a professional basis in the business of providing financial accommodation of any nature to another person,
- (f) any assignee of debt from an entity that has been engaged in the business of providing financial accommodation of any nature to another person, including without limitation, NAMA, but, for the avoidance of doubt, does not include a Minister of the Government in the exercise of the functions, powers or duties of his office;

“Firm” means:—

- (a) any Partnership of two (2) or more lawyers (as constituted from time to time, whether before or during any relevant indemnity period) where such Partnership includes at least one (1) solicitor or registered lawyer and whether or not such Partnership includes non-registered lawyers, and
- (b) any sole practitioner being either a solicitor or registered lawyer, and including a sole practitioner who employs one (1) or more solicitors or registered lawyers, and a sole practitioner who is employed by a person who is not a solicitor or registered lawyer; where the relevant partnership or relevant sole practitioner, as the case may be, carries on a practice;

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

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

“Insured” means, in respect of a Firm:—

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

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

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

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

“Law Society” means the Law Society of Ireland;

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

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

- (a) any Investment Business Services or Investment Advice provided by a Firm,
- (b) acting as personal representative or trustee,
- (c) acting as notary public,
- (d) acting as a commissioner for oaths,
- (e) acting as liquidator or receiver,
- (f) acting as company secretary,
- (g) acting as director of any body corporate owned by the principals of a firm that provides trustee, nominee, administration or other services,
- (h) acting as arbitrator or mediator,
- (i) acting on a pro bono basis,
- (j) acting as Personal Insolvency Practitioner, and
- (k) acting as an expert witness and/or providing opinions as a professional expert;

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

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

“NAMA” means the National Asset Management Agency;

“Notification of a Requirement to Rectify” means a notice in writing (including email) from the Registrar of Solicitors or from such other person as may be appointed by the Law Society for that purpose:-

- (a) notifying an Insured that a deficit has arisen on one or more of the Insured’s Client Account(s),
- (b) informing the Insured of the Insured’s obligation to rectify such deficit(s), and
- (c) setting out the regulatory consequences for the Insured should such rectification not occur within a specified period of time;

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

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

“Partner” means a partner in a Firm;

“Partnership” means an unincorporated firm;

“Personal Insolvency Practitioner” has the meaning ascribed to such term in the Personal Insolvency Act 2012;

“Policy” means a contract of professional indemnity insurance made between a Participating Insurer (whether alone or in conjunction with other participating insurers) and a Firm, and “Policies” shall be construed accordingly;

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

“Preceding Practice” means each Practice:

- (a) which has ceased practice; and
- (b) to which the Firm’s Practice is a Succeeding Practice;

“Principal” means:—

- (a) the sole practitioner of any Firm which during any indemnity period carries on or carried on business as a sole practitioner and includes a

sole practitioner who employs or employed one (1) or more solicitors or registered lawyers,

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

“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;

“Registrar of Solicitors” means the holder of the office of Registrar of Solicitors appointed by the Law Society pursuant to section 8 of the Solicitors Act 1954;

“Regulations” means The Solicitors Acts 1954 to 2015 (Professional Indemnity Insurance) Regulations 2017, as the same may be amended from time to time;

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

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

“Solicitors Accounts Regulations” means the Solicitors Accounts Regulations 2014 (S.I. No. 516 of 2014) or any statute or statutory instrument amending or replacing the Solicitors Accounts Regulations 2014 (S.I. No. 516 of 2014);

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

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

- (a) it is 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 where half or more of the Principals are identical to those persons who 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 sole practitioner who was one of the Principals conducting the Preceding Practice, or

- (e) 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
- (f) 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) or (f) of this definition if another practice is or was held out by the owner of that other practice as the Succeeding Practice;

“the 1995 Act” means the Consumer Credit Act 1995 (as amended);

“the 1997 Act” means the Central Bank Act 1997 (as amended);

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

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

- (a) words and expressions shall have the same meaning and shall be construed consistently with the same words and expressions in the Solicitors Acts 1954 to 2015 (Professional Indemnity Insurance) Regulations 2017;
- (b) the Interpretation Act 2005 shall apply for the purpose of interpreting these Minimum Terms and Conditions as it applies to the interpretation of an act of the Oireachtas, except insofar as it may be inconsistent with the Solicitors Acts 1954 to 2015 or with these Minimum Terms and Conditions;
- (c) a reference in these Minimum Terms and Conditions to any directive, statute, statutory provision, statutory instrument or other similar instrument includes:—
  - (i) any subordinate legislation made under it, and
  - (ii) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it either before, at or after the date of commencement of these Minimum Terms and Conditions;
- (d) the singular includes the plural, and vice versa;
- (e) words denoting any gender include all genders and words denoting the singular include the plural and vice versa;

- (f) any reference to a person shall be construed as a reference to any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two (2) or more of the foregoing;
- (g) references to a “company” include any body corporate;
- (h) headings are inserted for convenience only and shall not affect the interpretation of these Minimum Terms and Conditions; and
- (i) references to awareness of the Insured shall be limited to the actual knowledge of a Principal of the Firm, or any solicitor or registered lawyer employed by the Firm.

## **2 Scope of Cover**

### **2.1 The Insured**

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

### **2.2 Civil Liability**

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

- (a) a Claim in respect of such civil liability is:
  - (i) first made against the Insured during the Coverage Period; and
  - (ii) notified to the Insurer during the Coverage Period or within three (3) Working Days immediately following the end of the Coverage Period; or
- (b) a Claim in respect of such liability is first made during or after the Coverage Period and:
  - (i) arises from Circumstances first notified to the Insurer during the Coverage Period; or
  - (ii) arises from Circumstances first notified to the Insurer within three (3) Working Days immediately following the end of the Coverage Period provided that the Insured was aware of the Circumstances during the Coverage Period.

## 2.3 Continuous Coverage

### Historic claims

2.3.1 Notwithstanding the provisions of clause 2.2 and subject to the provisions of clause 2.3.2, the Insurance must indemnify the Insured against civil liability incurred by the Insured arising from any provision of Legal Services where:

- (a) a Claim in respect of such liability:
  - (i) is first made against the Insured during the coverage period (the “Relevant Period”) of a professional indemnity insurance policy (the “Relevant Policy”) held by the Firm with the Insurer in respect of an Indemnity Period commencing on or after 1 December 2013; and
  - (ii) is first notified to the Insurer during the Coverage Period;
- (b) the Insured maintained Qualifying Insurance with the Insurer without interruption from the Relevant Period until the date of notification of the Claim to the Insurer; and
- (c) the Claim would have been covered by the Relevant Policy,

such a Claim to be referred to herein as an “Historic Claim”.

2.3.2 Where the Insurance is underwritten on a co-insurance basis, the Insurance may provide that an Insurer shall only be liable in respect of an Historic Claim where the Insurer provided cover to the Insured continuously and without interruption from the Relevant Period until the date of notification of the Historic Claim.

### Limit of liability

2.3.3 The liability of an Insurer in respect of any one Historic Claim referred to in clause 2.3.1 shall not exceed the lesser of the limit of liability of the Insured under the Insurance and the limit of liability of the Insured under the Relevant Policy.

2.3.4 In the case of co-insurance, the liability of an Insurer in respect of any one Historic Claim referred to in clause 2.3.2 shall not exceed the lesser of the Insurer’s proportion of the limit of liability of the Insured under the Insurance and the Insurer’s proportion of the limit of liability of the Insured under the Relevant Policy.

### Self-insured excess

2.3.5 Notwithstanding the provisions of clause 4, the self-insured excess payable by the Insured in respect of an Historic Claim referred to in clause 2.3.1 shall be the higher of the self-insured excess applicable to the Insurance and the self-insured excess applicable to the Relevant Policy.

**Historic circumstances**

2.3.6 Notwithstanding the provisions of clause 2.2 and subject to the provisions of clause 2.3.7, the Insurance must indemnify the Insured against civil liability incurred by the Insured arising from any provision of Legal Services where a Claim in respect of such liability is first made against the Insured during or after the Coverage Period and:

- (a) arises from Circumstances which:
  - (i) the Insured first became aware of, or ought reasonably to have become aware of, during the Relevant Period of the Relevant Policy held by the Firm with the Insurer in respect of an Indemnity Period commencing on or after 1 December 2013; and
  - (ii) are first notified to the Insurer during the Coverage Period;
- (b) the Insured maintained Qualifying Insurance with the Insurer without interruption from the Relevant Period until the date of notification of the Circumstances to the Insurer; and
- (c) the Claim would have been covered by the Relevant Policy,

such Circumstances to be referred to herein as “Historic Circumstances”.

2.3.7 Where the Insurance is underwritten on a co-insurance basis, the Insurance may provide that an Insurer shall only be liable in respect of a Claim arising from Historic Circumstances where the Insurer provided cover to the Insured continuously and without interruption from the Relevant Period until the date of notification of that Claim.

**Limit of liability**

2.3.8 The liability of an Insurer in respect of any one Claim referred to in clause 2.3.6 arising from Historic Circumstances shall not exceed the lesser of the limit of liability of the Insured under the Insurance and the limit of liability of the Insured under the Relevant Policy.

2.3.9 In the case of co-insurance, the liability of an Insurer in respect of any one Claim referred to in clause 2.3.7 arising from Historic Circumstances shall not exceed the lesser of the Insurer’s proportion of the limit of liability of the Insured under the Insurance and the Insurer’s proportion of the limit of liability of the Insured under the Relevant Policy.

**Self-insured excess**

2.3.10 Notwithstanding the provisions of clause 4, the self-insured excess payable by the Insured in respect of a Claim referred to in clause 2.3.6 arising from Historic Circumstances shall be the higher of the self-insured excess applicable to the Insurance and the self-insured excess applicable to the Relevant Policy.

## 2.4 Defence Costs

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

- (a) any Claim referred to in clauses 2.2, 2.5 and 2.6; and
- (b) any Circumstance referred to in clauses 2.2, 2.5 and 2.6, and the Insurance shall provide that such Defence Costs will be met by the Insurer as and when they are determined, due and payable.

## 2.5 Preceding Practice

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

- (a) a Claim in respect of such liability is:
  - (i) first made against an Insured during the Coverage Period; and
  - (ii) notified to the Insurer during the Coverage Period or within three (3) Working Days immediately following the end of the Coverage Period; or
- (b) a Claim in respect of such liability is first made during or after the Coverage Period and:
  - (i) arises from Circumstances first notified to the Insurer during the Coverage Period; or
  - (ii) arises from Circumstances first notified to the Insurer within three (3) Working Days immediately following the end of the Coverage Period provided that the Insured was aware of such circumstances during the Coverage Period.

2.5.2 For the purposes of such cover as is contemplated in clause 2.5, 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 2.5.2 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 Preceding 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.

## **2.6 Succeeding Practice**

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

- (a) a Claim in respect of such liability is:
  - (i) first made against an Insured during the Coverage Period; and
  - (ii) notified to the Insurer during the Coverage Period or within three (3) Working Days immediately following the end of the Coverage Period; or
- (b) a Claim in respect of such liability is made during or after the Coverage Period and:
  - (i) arises from Circumstances first notified to the Insurer during the Coverage Period; or
  - (ii) arises from circumstances first notified to the Insurer within three (3) Working Days immediately following the end of the Coverage Period provided that the Insured was aware of such circumstances during the Coverage Period.

2.6.2 For the purposes of such cover as is contemplated in this clause 2.6 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 2.6.2 who is deceased or legally incapacitated.

2.6.3 The Insurance may permit the Insurer to charge an additional premium in respect of coverage for a Succeeding Practice provided pursuant to this clause 2.6, but the Insurance may not provide that the Insurer can decline to indemnify the Insured or cancel, terminate or avoid the Insurance due to non-payment of any such additional premium when due.

### **3 Minimum Level of Insurance Cover**

#### **3.1 Minimum Level of Cover**

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

#### **3.2 Cover for Defence Costs**

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

#### **3.3 Proportionate liability for Defence Costs**

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

#### **3.4 No retrospective dates**

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

#### **3.5 No other limits**

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

#### **3.6 Co-insurance**

3.6.1 The Insurance may be underwritten by more than one (1) Insurer, each of which must be a Participating 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 Participating Insurers.

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

## **4 Self-Insured Excesses**

### **4.1 Self-Insured Excess**

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

### **4.2 Effect of Self-Insured Excess**

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

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

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

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

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

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

## **5 Special Conditions**

### **5.1 Minimum Terms and Conditions must prevail**

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

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

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

## **5.2 No cancellation**

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

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

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

## **5.3 No avoidance or repudiation**

Without prejudice to clause 6.17, the Insurance must provide that the Insurer is not entitled to avoid or repudiate the Insurance on any grounds whatsoever including, without limitation, where there has been non-disclosure or misrepresentation by the Insured, whether such non-disclosure or misrepresentation is or is alleged to be innocent, negligent or fraudulent.

## **5.4 Rights of Insurer**

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

5.4.2 The Insurance may further provide that, in any situation where the Insurer becomes aware that there has been fraudulent non-disclosure or fraudulent misrepresentation to the Insurer in connection with a placement or renewal of Insurance for a Firm, the Insurer may refer the conduct of any relevant Principal of that Firm to the Law Society to permit the Law Society to take action against that Principal under the Solicitors Acts 1954 to 2015 or otherwise.

### **5.5 No set-off**

The Insurance must provide:—

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

### **5.6 No other policy to bar recovery**

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

### **5.7 Contribution where Succeeding Practice exists**

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

### **5.8 No denial or reduction**

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

- (a) any failure to notify a Claim or Circumstance within a prescribed period, or
- (b) any breach of any term or condition of the Insurance, or
- (c) any failure to pay any part of the premium in relation to the Insurance be entitled to reduce or deny its liability under the Insurance, except in circumstances where a prescribed exclusion contemplated by clause 6 applies.

### **5.9 Coverage Period**

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

## **5.10 Contesting Liability**

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

## **6 Exclusions**

### **6.1 No other exclusions**

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

### **6.2 Death or bodily injury**

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

### **6.3 Property**

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

### **6.4 Previous cover**

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

### **6.5 Fraud or dishonesty**

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

### **6.6 Trading debts**

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

### **6.7 Partnership Agreement**

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

### **6.8 Solicitors Acts**

Save as specifically provided in the Regulations and/or the Minimum Terms and Conditions, 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 2015 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 (b) of the definition of “Claim”).

### **6.9 Insured acting as their own lawyer**

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

### **6.10 Claims/Exposure to risk outside Ireland**

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

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

### **6.11 Employment**

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

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

### **6.12 Contracts**

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

- (a) wrongful termination by the Insured of, or
- (b) any other actual or alleged breach by the Insured of, or
- (c) any other relief claimed against the Insured in respect of any contract for supply to or use by the Insured of services and/or materials and/or equipment and/or other goods.

### **6.13 Directors' liability**

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

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

### **6.14 War, Terror, Asbestos, Radiation**

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

- (a) war, riot, civil commotion and other hostilities,
- (b) terrorism,

- (c) asbestos or any actual or alleged asbestos related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos, and
- (d) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or from the radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, provided that in each case any such exclusion or endorsement does not exclude or limit any liability of the Insurer to indemnify the Insured against civil liability or related Defence Costs arising from any actual or alleged breach of duty in the performance of (or failure to perform) Legal Services or failure to discharge or fulfil any duty incidental to the Firm's Practice.

### **6.15 Undertakings to Financial Institutions in respect of Commercial Property Transactions**

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

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

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

- (i) the Relevant Undertaking was given by that Insured (acting either for a client borrower alone, or for a client borrower and a Financial Institution jointly) in connection with the provision by the relevant Financial Institution of financial accommodation to that Insured's client to permit that client to effect the relevant Commercial Property Transaction; and
- (ii) such Claims are made by a Financial Institution; and
- (iii) to the extent that the Insurer can demonstrate (and for the avoidance of doubt, the burden of proof in this regard shall rest with the Insurer) any civil liability or related Defence Costs arise from any dishonest, fraudulent, criminal or malicious act or omission by that Insured, or any acts or omissions which were done by that Insured knowing them to be wrongful.

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

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

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

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

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

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

#### **6.16 Interpretation of Clause 6.15**

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

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

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

“Commercial Development” has the meaning ascribed thereto in the Commercial Property Regulations;

“Commercial Property Transaction” has the meaning ascribed thereto in the Commercial Property Regulations;

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

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

“Representative” has the meaning ascribed thereto in the Commercial Property Regulations;

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

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

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

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

### **6.17 Misrepresentation and Non-Disclosure**

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

### **6.18 Financial Sanctions**

The Insurance may exclude liability of the Insurer to indemnify the Insured against any Claim to the extent that payment of such Claim would cause the Insurer to breach any United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union or any other jurisdiction applicable to the Insurer, such that the Insurer would be exposed to a sanction, prohibition or restriction.

### **6.19 Insolvency of Financial Institution**

The Insurance may exclude liability of the Insurer to indemnify an Insured against any Claim arising as a result of the insolvency of a financial institution which holds client money in a Client Account of an Insured or arising from the failure of such financial institution generally to repay monies on demand.

## **7 General Conditions**

### **7.1 General Conditions**

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

## **7.2 Reimbursement**

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

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

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

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

## **7.3 Reimbursement of Defence Costs**

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

## **7.4 Reimbursement of the Self-Insured Excess**

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

## **7.5 Reimbursement of monies paid pending dispute resolution**

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

## **7.6 Claims Reports**

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

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

7.6.2 the amount reserved by the Insurer against each Claim;

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

7.6.4 whether or not each such amount includes Defence Costs;

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

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

7.7 In providing Claims Reports, the Insurer shall use its reasonable endeavours to provide all of the information set out in clause 7.6, but shall not be required to provide any part of that information to the extent that doing so would not be reasonably practicable having regard to the manner in which Claims information is stored on the computer systems of the Insurer.

## **8 Dispute Resolution**

### **8.1 Arbitration**

The Insurance must contain the following arbitration clause:

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

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

## 8.2 Related Disputes

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

## 8.3 Conduct of Claims

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

8.3.2 The Law Society may make a Direction as referred to in clause 8.3.1 upon receipt of a request for such Direction from the Insured (to the exclusion of all other parties) if it is satisfied, in its absolute discretion, that:-

- (a) the Insured has taken all reasonable steps, to resolve the dispute with the other party, including but not limited to participating in Arbitration until a final decision had been made by the arbitrator as outlined in clause 8.1;
- (b) there is a reasonable prospect that the coverage dispute will be resolved or determined in the Insured's favour;
- (c) the Insured has demonstrated to the satisfaction of the Law Society that, in connection with the claim made to the Insurer, the Insured has provided all information reasonably requested by the Insurer and answered all reasonable questions asked by the Insurer in relation to the subject matter of the dispute; and
- (d) it is fair and equitable in all the circumstances for such Direction to be given.

8.3.3 The Law Society may delegate its power to make a Direction in relation to a claim under clause 8.3.2 to an independent expert, to be appointed by the Law Society at its sole discretion and in accordance with any guidelines that may be adopted by the PII Committee from time to time in relation to the independence or expertise of any expert so appointed. For the avoidance of doubt, such independent expert must be satisfied that conditions (a) to (d) of clause 8.3.2 are met before making a Direction under that clause.

8.3.4 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 Insurer.

## 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.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2  
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)  
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