



Succeeding Practice Rule



Professional Indemnity Insurance

The purpose of this practice note is to provide guidance to the profession on the succeeding practice rule for the 2022/2023 indemnity period. This information is intended as general guidance and does not constitute a definitive statement of law.

Ceasing firms

Where a firm ceases practice, valid professional indemnity insurance (PII) claims made against the firm are covered in one of two ways:

1. If the ceased firm has a succeeding practice or succeeding practices, the insurance of any succeeding practice(s) covers such claims,
2. If the ceased firm does not have a succeeding practice or succeeding practices, the firm enters the Run-Off Fund. The coverage provided under the Run-Off Fund covers such claims.

Whether or not a firm is a preceding practice or a succeeding practice in relation to any other firm will depend on a detailed analysis, taking account of the facts of the particular case. No generalised practice guidance can be given, and each case must be individually examined with reference to the definitions of preceding and succeeding practice as set out in the regulations.

Definitions

'Preceding practice' means a practice that has ceased practice and to which the firm's practice is a succeeding practice.

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

Succeeding practice rule is found in the current PII Regulations - Solicitors Professional Indemnity Insurance (Amendment) Regulations 2022 (S.I. No. 585 of 2022) as follows, and a firm automatically becomes a succeeding practice if any of conditions of the definition apply:

(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 two 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 that other practice as the Succeeding Practice.

Multiple succeeding practices

Depending on the precise circumstances, more than one firm can be a succeeding practice to a preceding practice, and a number of factors may need to be taken into account to identify the succeeding practices that meet the definition in the regulations.

For example, the definition of a succeeding practice includes a practice that is held out as being a successor to the preceding practice or any part thereof. In this context, the 'part' of the practice that the succeeding practice is being held out as a successor to may mean a recognisable part of the practice, such as all the conveyancing or litigation or probate files, or all of the residential conveyancing or personal injury or debt collection or family law files, or all the files of a branch office, depending on the context and structure of the practice. However, this is not an exhaustive list. Therefore, the preceding practice could be broken into a number of succeeding practices holding themselves out as a successor to specific parts of the preceding practice.

It should be noted that a firm may take on the files of a preceding practice without being deemed to be a succeeding practice so long as they do not meet any of the conditions in the definition of a succeeding practice, including holding themselves out as a successor to all or part of the preceding practice.

Determination of whether a firm is a succeeding practice

It is clear from the definition of a succeeding practice that determination of whether a firm is or will be deemed to be a succeeding practice depends on the particular circumstances in question. While the Society will seek to assist firms in relation to the general definition of preceding and succeeding practices, the Society will not, and cannot, provide any advice, declaration or ruling as to whether a firm would be considered to be a succeeding practice. The Society considers that it is best practice for the relevant firm to liaise with its broker and/or insurer with a view to ascertaining its views on whether the firm would be considered to be a succeeding practice and to discuss generally the impact on its PII.

For more information contact: firms@lawsociety.ie

Updated 120923