



STATUTORY INSTRUMENTS.

S.I. No. 617 of 2007

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

(Prn. A7/1680)

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

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

1. Citation:

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

2. Interpretation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“firm” means:—

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

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

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

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

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

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

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

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

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

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

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

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

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

“operative date” means 1 November 2007;

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

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

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

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

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

“principal” means:—

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

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

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

“qualified insurer” means:—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Maintenance of Insurance:

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

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

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

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

4. Self-Insured Excess on Qualifying Insurance:

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

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

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

5. Maintenance of Insurance in Run-off:

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

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

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

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

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

6. Insolvency of Qualified Insurers and Other Events:

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

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

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

7. Entering the Assigned Risks Pool:

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

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

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

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

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

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

8. Membership of the Assigned Risks Pool:

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

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

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

9. Defaulting Firms:

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

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

10. Risk Management Audits:

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

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

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

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

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

11. Risk Management Audit Reports:

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

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

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

12. Responsibilities of Principals:

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

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

13. Professional Indemnity Insurance Committee:

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

save in each case for the making of regulations.

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

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

14. Provision of Information:

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

