



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;

