

***GUIDE TO
LOCUM ARRANGEMENTS***

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GUIDE TO LOCUM ARRANGEMENTS CONTENTS

	Page
1. Introduction	4
2. Advantages of locum arrangements	5
3. Legislative and regulatory matters	6-8
Practising Certificate	
Professional Indemnity Insurance	
Tax	
The self-employed locum	
The PAYE locum	
Notifying the Law Society	
4. Contract of engagement	9-11
The work	
The pay	
Expenses	
Planning for the next job	
5. On the Job	12-15
Hand-over at the beginning	
Office procedures	
Files	
Secretarial support	
Other support	
Undertakings	
Conflict of interest	
Hand-over at the end	
6. Problems in the practice	16
7. Finding employment as a locum, or recruiting a locum	17-18
Jobs Register	
Employment Register	
Gazette advertisement	
8. Support available to the solicitors' profession	19-25
9. Appendix 1 – 'Planning For Emergencies In A Sole Practitioner's/Principal's Firm.'	26

1. Introduction

The term locum is generally used to describe both the self-employed locum solicitor and also other solicitors who opt to take only short-term contracts, but as employed rather than self-employed solicitors. Many locums do not wish to be self-employed.

Locum solicitors are employed to meet various situations in firms such as the following:

- Solicitor on maternity leave
- Solicitor ill or incapacitated
- Solicitor's holidays
- To add capacity to handle a particularly heavy workload in the firm
- To clear a backlog
- To deal with problem files

The locum position is that of an assistant solicitor, one or more proprietors being present, or, although the position is that of an assistant solicitor, the locum may be covering the absence of a sole practitioner.

Planning for emergencies

All sole practitioners/principals planning prudently for the future of their practice should have in place a plan for emergencies. The use of a locum solicitor may be an essential part of such a plan. Please see Appendix 1 "*Planning For Emergencies In A Sole Practitioner's/Principal's Firm*" including a precedent practice management agreement.

2. Advantages of locum arrangements

Locum arrangements can be ideal both for the owners of a firm and for the locum.

The arrangement can be tailored, by the principal or partners of a firm, to meet the particular needs of the firm at a particular time, rather than committing the firm to the expense of an additional permanent employee.

It can also suit the locum very well. Locums may wish to limit the period of their employment to give them flexibility or to fit in with other commitments. For instance, a locum may opt not to work during the summer months or to work fewer hours than a full-time position would require.

A solicitor who may not be available for full-time employment can, by taking a locum position, stay in the workforce and keep their legal knowledge and knowledge of practice up-to-date. This will be important for any future employer. There is also the benefit of being in contact with colleagues.

Some solicitors who work part-time in one job may be available to do locum work on a part-time basis elsewhere. For example, a solicitor setting up on their own may not be fully occupied in the early days and may opt to do part-time locum work to provide a steady source of income.

Many locum solicitors first start locum work by chance, perhaps to help out a friend or colleague in difficulty. However, if the arrangement goes well they may continue working on this basis.

Many locums consider that they achieve a better work/life balance by working as a locum. They also enjoy the independence this way of practising gives them.

3. Legislative and regulatory matters

Practising Certificates

A solicitor cannot practise without a practising certificate. It is a matter for each solicitor to ensure that a current practising certificate is in force for him or her before they commence in practise. A practising certificate cannot be taken out for a period limited to the months of a locum contract - it must be taken out for the remainder of the year during which the application is made.

The firm employing the locum may agree to fund the practising certificate fee. If not, it is a matter for the locum to apply for and pay for the certificate. The practising certificate fee may then be an expense, which will be reflected in the locum's fees/hourly rates, or, if an employee, salary. The fee payable is a necessary expense and therefore is an allowable expense for income tax purposes.

On the conclusion of a locum contact if the solicitor knows that he/she will not take up another position during the course of that practice year then a repayment can be sought from the Law Society of the practising certificate fee for the remainder of that year. This repayment can be sought by surrendering the practising certificate and confirming to the Society in writing that the solicitor concerned will not practice for the remainder of that practice year.

However, it is important to note that the practising certificate fee must be paid prior to commencing in practice before any locum fee/salary is received. This may present cash flow difficulties. If so, a loan may have to be taken out to fund the practising certificate fee. A funding scheme for easy payment of the practising certificate fee and professional indemnity insurance premium is arranged by the Society each year. Details are available from the Law Society's website www.lawsociety.ie

Professional Indemnity Insurance

A locum should ensure that the employing firm has professional indemnity insurance in place. Prior to engaging a locum, employers should ensure that they are covered for the legal services a locum provides on their behalf and in the name of the practice. The firm's insurers should be advised that the locum solicitor has joined the practice and the firm should obtain written confirmation of cover for the locum.

Tax

It is important to be clear, having regard to the nature (rather than the description) of the contract between the parties, whether the locum is being retained as a self-employed contractor under a contract for services or an employee under a contract of service.

The self-employed locum

If the locum is self-employed (rather than an employee) he/she should be registered as such with the Revenue Commissioners. The necessary annual tax returns should be made. These matters are solely the responsibility of the locum. As a matter of prudence, when the locum receives fees, the relevant proportion of the fees should be set aside to meet his/her annual tax bill and VAT payments.

The locum should inform himself/herself about any expenses, which are legitimate deductions for income tax purposes.

Depending on the self-employed locum's annual turnover, it may be necessary to register for VAT and issue formal invoices to the employer. All independent solicitors (i.e. solicitors who are not employees) are obliged to register for VAT if their annual turnover from the supply of taxable services exceeds, or is likely to exceed, €37,500 (01/05/2008). 'Turnover' consists of professional fees together with all taxes (including VAT itself), commissions, costs, and any charges whatsoever that a solicitor is entitled to receive.

The PAYE locum

If the locum is an employee, their employer will deduct tax on a PAYE basis in the normal way.

When offering a locum position, a prospective employer may say that the position is only available on a sub-contract basis and not on a PAYE basis. The employer's position may be, understandably, that they want to avoid paying the employer's PRSI contribution. They may also wish to avoid the administration involved in having an additional employee.

Solicitors who wish to stay in the PAYE tax payment system, and who are not prepared to move to being taxed on a self-employed basis, cannot accept such positions. If they accept a position on a sub-contract basis, but do not register with the Revenue as self-employed and arrange payment of their own tax, then they are a tax defaulter and subject to the usual penalties.

If they do register with the Revenue, they then face the disadvantage that, if a PAYE position becomes available, the locum cannot accept this without going through all the formalities of "ceasing to trade", including filing final accounts.

It would not make any sense for a locum solicitor to be constantly moving from a self-employed to a PAYE basis of tax payment.

The only option for a locum who is being offered a position, which is stated only to be available on a sub-contract basis, is to seek to negotiate with the employer on the matter.

The break in continuity of PRSI contribution in this situation could also result in PRSI benefits being refused.

Notifying the Law Society

As soon as they enter into each new contract, the locum should, as a matter of routine, write a simple letter to the Registrar of Solicitors at the Law Society, notifying the Society of the date that the solicitor is leaving the employment of a firm and the date that the solicitor is joining another firm. The name and address of the new employer should also be provided. (Section 81 of the Solicitors Act, 1954 “Notification by practising solicitor of change in place of business”)

4. Contract of engagement

Employers should take the same, if not more, precautions when filling a locum position as they would for any other position. Some locums are experienced. Some locums are inexperienced.

The employer should satisfy himself/herself as follows:

- That the solicitor is competent
- That the solicitor has adequate past experience to do the job
- That the solicitor has adequate computer skills to operate the firm's systems
- That proper references are checked out
- That the solicitor will uphold the culture and ethos of the firm, always subject to the provisions of equality legislation

As with any contract, it is important that all the terms of the locum's contract are agreed and recorded in writing to facilitate proof of the agreement.

The expectations of both parties must be realistic. If the expectations of both parties are not the same, it is inevitable that the locum arrangement will disappoint both sides. It is reasonable for the employer to expect that the locum will adapt to the firm more quickly than a new employee would and that the locum will be productive immediately. Essentially the locum is offering flexibility and adaptability. However, a locum cannot work miracles.

The work

The locum should be informed about the areas of practice in which he or she will be required to deal with files.

Both parties should be clear about the role of the locum. Is the position a straightforward assistant solicitor position? Is the locum to progress identified current active files or simply to be available to another solicitor who will delegate work to the locum? Another possibility would be that the locum would only be working in a backroom situation on problem files.

If the principal in a sole practice is to be absent, will the role include a general supervisory role in relation to the running of the practice? What additional duties will be involved? The duties should be clearly set out and agreed by both parties. Solicitors who do not have experience of being a principal, a partner or at least a manager in a firm may not be suitable to take on a supervisory role.

If a locum arrives at a firm, and the work is not what was represented, difficulties will of course arise. If the locum discovers that the responsibilities are greater than agreed, the locum solicitor would be entitled to refuse to take on the extra responsibility.

The pay

Employing a locum is a significant expense for a firm. However, a good locum is worth paying well.

It is a matter for the locum to negotiate their charges or salary on a contract-by-contract basis. Before negotiating, the locum could ascertain from recruitment agencies or public sector pay scales, the going rate for a solicitor of their qualification and experience, and negotiate from there. If the locum takes on extra responsibilities due to the sole practitioner being absent, this may be a point on which to negotiate an increased salary. On the other hand, if a locum is only newly-qualified and is to be doing relatively routine work in a well-supported situation, the employer may be able to negotiate a lower rate than a standard assistant's rate.

The time and method of invoicing or payment should be discussed and agreed

Some of the terms on which employees employed on short-term contracts must be employed are now covered by legislation. (Protection of Employees (Part-time Workers) Act, 2001 and Protection of Employees (Fixed-Term Work) Act, 2003). Is the locum to be paid during holidays or if the locum is on sick leave? Check for compliance with relevant legislation, especially the Organisation of Working Time Act 1997 (as amended).

Expenses

Issues such as travelling expenses should be clarified. If the locum is not resident in the locality, the locum may require that accommodation expenses be met.

If the locum contract is not for a fixed term or either of the parties' wishes to have a break clause in their agreement, then provision should be made for a period of notice to be given prior to termination so that both parties are clear about the notice required.

It may be prudent to provide for a simple mediation procedure so that disputes in relation to the nature of the work, work practices, the payment of fees or any other matter can be quickly resolved.

In some circumstances a locum may be negotiating terms with someone other than the solicitor in a sole practitioner firm. This may be because, for instance, the solicitor is ill, perhaps too ill to be involved. A family member or friend may be making the locum arrangement. If this were the case, it would be reasonable for the locum to require written confirmation from that person that they are taking responsibility for payment of the locum's fees or salary.

Ideally, the locum will have visited the office premises before signing the contract.

Planning for the next job

Solicitors who wish to work full time as locums need to plan well ahead to try to ensure they have continuous employment. If there are several gaps of, say, a month between each locum position, their income will be much less than they would have hoped at the end of the year.

5. On the Job

Hand-over at the beginning

If the principal of a sole practice is to be absent, it is very important to put appropriate arrangements in place beforehand. The contract should allow for a hand-over session for the locum prior to commencement. The employer may trust the locum to take on considerable responsibilities.

If the principal is to be absent, the locum must be left a contact number for the principal. It might also be helpful to give the locum the name and contact details of a senior colleague in the locality who is willing to assist with general queries.

If the principal is to be absent, there should be a suitable overlap period, if possible, so that the locum has an opportunity to review the files for which he or she will be responsible, in order to be in a position to deal with queries from the clients as soon as the principal departs. Otherwise, each phone call from a client will be an emergency for the locum.

Office procedures

For all locum positions, if the firm has an office handbook, which sets out the general office procedures, this should be given to the locum. If no handbook is available, the main procedures should be set out in writing. The locum should be informed of the basic management systems in the office, and office policy in relation to dealing with clients. Practical matters, such as the time of postal collections, should be explained.

The procedures for handling money should be outlined. The arrangements for cheque signatories should be stated. Will the locum be signing cheques?

Files

The locum should be given a list of files to be progressed. Any urgent files should be highlighted. Not all the files in the cabinets will be files to be progressed. Files that are to be progressed should have a clear note of instruction, giving the background to the case and should state the current situation. In particular, if there are imminent closings on conveyancing files, any outstanding issues requiring attention before the closing should be highlighted. The locum can attend to these matters immediately, and ensure that all closing documents are available, to allow a successful closing take place. If a closing were unsuccessful, with all the practical consequences that could result along a chain of closings, it would be unfair to blame the locum, if they were not given an opportunity to prepare properly for the closing.

Secretarial support

Appropriate secretarial backup should be available. Ideally, the absent solicitor's secretary will be available, and this should greatly facilitate the work of the locum. For holiday locums, if the secretary to the solicitor being replaced is also on holidays, additional help will be needed. In this case someone else within the firm should be nominated to assist the locum and temporary secretary, with information about office procedures.

Other support

If the locum is to report to other solicitors, the reporting lines should be fully clarified. If several members of the firm are giving the locum work, this should be monitored to ensure that the locum is not being asked to deal with a volume of work that is too large to be handled efficiently.

If proprietors are present, the usual supervision that would be given to an assistant solicitor, appropriate to the experience of the solicitor, must be put in place. Senior staff should be available to the locum to discuss queries on files.

The employer should ensure that staff who will be working with the locum are properly briefed about the arrangement, to ensure that the arrangement operates smoothly. The locum should be made feel welcome and part of the firm.

Undertakings

Locums will generally seek to avoid giving undertakings. This is for the simple reason that once the locum contract is terminated, the matter of compliance is completely outside the locum's control.

No problem arises where the principal or partners are present. The undertaking will be signed on behalf of the firm by the principal or a partner.

However, where the locum is working in the absence of the principal, difficulties may arise unless certain precautions are taken. In all cases the locum should be formally authorised in writing to give undertakings on behalf of the firm. If the requirement to give an undertaking in the absence of the principal can be foreseen, a specific authorisation dealing with the particular case should be given. The principal should approve the wording of the undertaking and, if possible, the principal should sign the undertaking. Many lending institutions will, in any event, call for evidence of authority to give the undertaking.

If the locum is signing, they should always sign clearly "per pro" the firm so that there is no confusion. When a locum is signing, the letter of authority will also clarify for the recipient of the undertaking that the locum is signing on behalf of the firm only and not on their own behalf. The locum solicitor should be indemnified in relation to any loss that may be suffered by the locum in relation to these matters.

As the undertaking is given on behalf of the firm, it is the principal or partners in the firm who must comply.

All undertakings should be given on the firm's notepaper and recorded in the firm's records.

With regard to residential undertakings it should be noted that following consultation between the Society and the IBF, new Certificate of Title documentation (2009 Edition) will apply to all residential mortgages approved after 5th May 2009. A principal or partner will sign undertakings, except in exceptional circumstances, when an authorised solicitor may sign if the principal/partner is temporarily unavailable. The principal/partner should ensure that any authorised signatory is covered by the firm's PII policy, especially if the authorised signatory is a solicitor from outside the firm. The use of an authorised solicitor on a permanent or regular basis is not agreed. Signatures by an authorised solicitor shall bind the partners or principal of the firm only.

At the end of the locum contract and on the return of the principal, the principal should note all the undertakings given.

However, it should be noted that, if a difficulty subsequently arose with regard to an undertaking given by a locum and the matter was the subject of a complaint to the Law Society, the conduct of both the principal and the locum solicitor might be investigated. In those circumstances the locum would be expected by the Law Society to co-operate with the investigation.

It would be prudent for a locum solicitor to retain, and bring with them when they leave, a schedule and details of any undertakings given.

The same considerations apply to endorsing bank drafts and signing certificates of title.

Conflict of interest

Because a locum moves from firm to firm, possibly within a small locality, they may find themselves in a position where they have confidential information relating to one file which would put them in a conflict situation if acting on the opposite side of the file in another firm. Locums should be alert to this possibility and, if a conflict arises, should immediately cease to handle that file and ensure that other arrangements are made for the client.

If the principal or partners are present, the locum should inform them of the situation but may not be in a position to reveal details to explain why there is a conflict. This is a matter that must be left to the professional judgement of the locum.

Hand-over at the end

It is important that there is a good hand-over procedure at the end of the contract so that all the information that the locum has gained in relation to files during the locum period is passed on within the firm. It is important that there is a report on all the files showing the work that the locum has done. For instance, there may be important dates to be diarised forward. A hand-over procedure is particularly important if the principal in a sole practice has been absent.

6. Problems in the practice

If a matter comes to the locum's attention that should be reported to the firm's insurers, this should be done.

If there is a problem in the practice, which should be brought to the principal's attention, a confidential memo could be written to the principal.

On a few rare occasions locums have contacted the Law Society to say that they have discovered that the employing solicitor is engaged in serious misconduct. This is the correct course of action for a locum in such circumstances. If this would involve disclosure of a client's affairs, the client's consent to do so should be obtained.

7. Finding employment as a locum or recruiting a locum

Online Jobs Register

In early March 2009, the Society launched a new and improved Jobs Register on the website. The register is located in the Employment Opportunities area of the website and can be used by members who are seeking new employment, and employer members who have vacancies they need to fill. This service is provided free of charge.

The new service allows members to upload their CV to the online register to indicate their availability for part-time and/or full-time work, in addition to locum work. The solicitor can also indicate:

- Where they would like to work in Ireland,
- Their areas of expertise, and
- Their date of availability.

A text box has been provided to enable the solicitor to add more detail, as required.

The form is quick and easy to use and the details stay on the register for up to a month at a time. To keep the details live on the register the user just selects the Activate option on the Job Seekers form once a month.

Employers who need to fill a vacancy can browse the entries on the Jobs Register by job type, location, expertise and date of availability, and contact candidates directly for interview.

Access to the register is open to solicitor members only. The user must login to the members' area, with their solicitor number, and select the Employment Opportunities option in the website menu.

For any queries about the Jobs Register, please contact Carmel Kelly, Law Society Web Editor, Blackhall Place, Dublin 7. Ph: 01 6724829 or email c.kelly@lawsociety.ie

Vacancies posted on the Employment Opportunities area of the website

A list of vacancies is also posted on the Employment Opportunities area of the website free of charge. Vacancies can be advertised for all the staff requirements for a legal office, not just solicitors. It is updated on a regular basis as vacancies are filled and new positions arise. To advertise a vacancy, please contact Trina Murphy or Cathriona Barry, The Law School, Courthouse Chambers, Washington Street, Cork on 021 4226203 or 021 4226212 or e-mail: t.murphy@lawsociety.ie or c.barry@lawsociety.ie

Gazette Advertisements

A solicitor seeking a locum position or an employer seeking to recruit a locum can consider advertising in the Society's Gazette by contacting Sean O hOisin, the Gazette Advertising Manager, Ph: 01 8375018 or email seanos@iol.ie, who will advise on the types of advertisement and the cost involved.

8. SUPPORT AVAILABLE TO THE SOLICITORS' PROFESSION

The Law Society strives to ensure that a wide range of support services are available to the solicitors' profession. These include:

<u>PERSONAL BENEFITS</u>	<u>CONTACT</u>
Law Society Retirement Trust Scheme — a Revenue-approved “personal pension” group scheme, established to facilitate Law Society members, whether self-employed, in partnership or in non-pensionable employment, in saving for retirement.	Brian King or Yvette McDonnell, Mercer, Charlotte House, Charlemount Street, Dublin 2. Ph: 01 4118273 or 01 4118401. e-mail: brian.king@mercerc.com or yvette.mcdonnell@mercerc.com
Law Society Group Life Assurance Scheme — the Scheme currently provides cover of €52,000 subject to fulfilling the Scheme's conditions.	Louise Campbell, Law Society of Ireland, Blackhall Place, Dublin 7. Ph: 01 8815712. e-mail: l.campbell@lawsociety.ie
Financial advice — including insurance and mortgage advice and advice regarding finance plans for preliminary tax, pension contributions, professional indemnity, and practising certificate fee finance.	Liz McGrath, Penpro Limited, 14 Priory Hall, Stillorgan, Co. Dublin. Ph: 01 2000100. e-mail: emcgrath@penpro.ie
Health Insurance — special offers for Law Society members.	VHI Healthcare Ph: 1850 444444. Hibernian Aviva Health Ph: 1850 716666. Quinn Healthcare Ph: 1890 700890
<u>EMPLOYMENT AND CAREER DEVELOPMENT</u>	<u>CONTACT</u>
Career Development Advisor - From 5 th May 2009, the Society has appointed a Career Development Advisor to assist members who are facing unemployment, adjustments to working arrangements or career transition.	Keith O'Malley, Law Society of Ireland, Blackhall Place, Dublin 7. Ph: 01 6724800. e-mail: careers@lawsociety.ie

<p style="text-align: center;"><u>EMPLOYMENT AND CAREER DEVELOPMENT (CONTINUED)</u></p>	<p style="text-align: center;"><u>CONTACT</u></p>
<p>The Employment Register — opportunity for Law Society members to advertise for all their staff requirements for a legal office on the Law Society website, free of charge.</p>	<p>Trina Murphy or Cathriona Barry, The Law School, Courthouse Chambers, Washington Street, Cork. Ph: 021 4226203 or 021 4226212 e-mail: t.murphy@lawsociety.ie or c.barry@lawsociety.ie</p> <p>The Employment Register section of the Society website www.lawsociety.ie</p>
<p>The Job Seekers Register — opportunity for solicitors seeking employment full-time, part-time or as a locum to make their curriculum vitae available on the Law Society website free of charge to members seeking to employ a solicitor full-time, part-time or as a locum.</p>	<p>The Job Seekers Register Section of the Society website www.lawsociety.ie</p> <p>Carmel Kelly, Web Editor, Law Society of Ireland, Blackhall Place, Dublin 7. Ph: 01 6724829. e-mail: c.kelly@lawsociety.ie</p>
<p>The Human Rights Internship Section of the Society’s website - covers job vacancies, internships and volunteer opportunities for legal professionals in the area of human rights and international law.</p>	<p>The Human Rights Internship Section of the website www.lawsociety.ie</p> <p>Elaine Dewhurst, Secretary to the Human Rights Committee, Law Society of Ireland, Blackhall Place, Dublin 7. Ph: 01 6724831. e-mail: e.dewhurst@lawsociety.ie</p>
<p>Free Information Booklets, for instance: 1. <i>Guide to Locum Arrangements.</i> 2. <i>Guide for Solicitors Employed in the Corporate and Public Sectors.</i></p>	<p>Available on the members’ area of the Society’s website www.lawsociety.ie</p>

<u>EDUCATION AND TRAINING</u>	<u>CONTACT</u>
<p>CPD FOCUS Skillnet—Lifelong learning education/training seminars and courses in specific legal areas and management organisation. CPD Focus also issues a bi-monthly electronic newsletter, sent directly to members via their desktop e-mail address.</p>	<p>CPD FOCUS Skillnet, The Law School, Law Society of Ireland, Blackhall Place, Dublin 7. Ph: 01 6724802. e-mail: cpdfocus@lawsociety.ie</p>
<p>CPD Scheme — Law Society Scheme for Continuing Professional Development, introduced pursuant to Regulation 5 of the Solicitors (Continuing Professional Development) Regulations 2007. These Regulations apply to all solicitors holding a practising certificate and to all solicitors in the full-time employment of the State.</p>	<p>CPD Scheme Unit, The Law School, Law Society of Ireland, Blackhall Place, Dublin 7. Ph: 01 6724802. e-mail: cpdscheme@lawsociety.ie</p>
<p>Diploma Programme — diverse portfolio of relevant courses, meeting the needs of the practitioner in a changing and competitive environment.</p>	<p>Diploma Team, The Law School, Law Society of Ireland, Blackhall Place, Dublin 7. Ph: 01 6724802. e-mail: diplomateam@lawsociety.ie</p>
<u>INFORMATION/GUIDANCE SERVICES</u>	<u>CONTACT</u>
<p>Law Society Committees/Task Forces — giving guidance relating to best practice on various aspects of the law and/or professional conduct</p>	<p>Contact the Committee’s Secretary, details contained in the Law Directory or on the Law Society website www.lawsociety.ie</p>
<p>Library Service — including the on-line library catalogue, precedents, textbook and document supply and a general enquiry service on all aspects of legal information.</p>	<p>The Library, Law Society of Ireland, Blackhall Place, Dublin 7. Ph: 01 6724843 or 01 6724844. e-mail: library@lawsociety.ie</p>
<p>The Law Society Website — www.lawsociety.ie and in particular the members’ area of the website, where a wealth of information is available at the touch of a button.</p>	<p>Carmel Kelly, Web Editor, Law Society of Ireland, Blackhall Place, Dublin 7. Ph: 01 6724829. e-mail: c.kelly@lawsociety.ie</p>

<u>INFORMATION/GUIDANCE SERVICES (CONTINUED)</u>	<u>CONTACT</u>
<p>The eZine — bi-monthly electronic newsletter, sent directly to registered members via their desktop e-mail address, to bring news and information directly to members in a brief and easily digestible manner, those registered for the eZine also receive Society eBulletins on important topical issues.</p>	<p>Carmel Kelly, Web Editor, Law Society of Ireland, Blackhall Place, Dublin 7. Ph: 01 6724829. e-mail: c.kelly@lawsociety.ie</p>
<p>Queries on Anti-Money Laundering Obligations.</p>	<p>Emma-Jane Williams, Law Society of Ireland, Blackhall Place, Dublin 7. Ph: 01 6724821. e-mail: e.williams@lawsociety.ie</p>
<p>Queries on the Solicitors' Advertising Regulations.</p>	<p>Linda Kirwan, Senior Solicitor, Complaints and Client Relations Section, Law Society of Ireland, Regulation Department, George's Court, George's Lane, Dublin 7. Ph; 01 8798700. e-mail: complaints@lawsociety.ie</p>
<p>The Gazette — the definitive source of news and information for the solicitors' profession in Ireland.</p>	<p>A member of the Gazette staff at the Gazette office, Blackhall Place, Dublin 7. Ph: 01 6724828 or 01 6724800. e-mail: gazette@lawsociety.ie</p>
<p>The Law Directory — perhaps the most widely used Law Society publication, containing the contact details of solicitors' offices and a lot more very useful information.</p>	<p>Send any change of address details to IT Section, Blackhall Place, Dublin 7. Ph: 01 6724800. e-mail: customerservice@lawsociety.ie</p>
<p>Publications and leaflets — for purchase of client information leaflets, standard forms, practical publications, and the conveyancing handbook, among others.</p>	<p>Esther McCormack, Law Society of Ireland, Blackhall Place, Dublin 7. Ph: 01 6724912. e-mail: e.mccormack@lawsociety.ie</p>

<u>SETTING UP, RETIRING PURCHASE, SALE, MERGER, OVERHEAD SHARING</u>	<u>CONTACT</u>
Queries on Law Society requirements for setting up or retiring from practice, professional indemnity insurance and/or practising certificates.	Nicola Darby or Rosemary Fallon, Law Society of Ireland, Regulation Department, George's Court, George's Lane, Dublin 7. Ph: 01 8798700. e-mail: n.darby@lawsociety.ie or r.fallon@lawsociety.ie
Solicitor Link — countrywide, confidential, introduction service for solicitors interested in acquiring or selling a practice or merging or sharing overheads with another practice.	Louise Campbell, Law Society of Ireland, Blackhall Place, Dublin 7. Ph: 01 8815712. e-mail: l.campbell@lawsociety.ie
The Mentor Programme — opportunity for solicitors who have set up in practice for the first time to make contact with a more senior and experienced solicitor, for guidance and advice, on an informal and voluntary basis.	A copy of the Register of Mentors is available from Louise Campbell, Law Society of Ireland, Blackhall Place, Dublin 7. Ph: 01 8815712. e-mail: l.campbell@lawsociety.ie
Free Information Booklets: 1. <i>Solicitors Setting Up in Practice.</i> 2. <i>Partnership.</i> 3. <i>Guide for Solicitors Retiring or Ceasing to Practice.</i>	Available on the members' area of the Society's website www.lawsociety.ie
<u>SERVICES TO HELP WITH PERSONAL AND/OR PROFESSIONAL PROBLEMS</u>	<u>CONTACT</u>
LawCare — free and completely confidential health support and advice for solicitors and trainee solicitors, their families and staff, 365 days a year, on issues such as depression, stress, and addiction.	LawCare, PO Box 147, Benfleet, Essex, SS7 3WX, England. Freephone: 1800 991801. e-mail: help@lawcare.ie or admin@lawcare.ie website: www.lawcare.ie or www.lawsociety.ie

<p align="center"><u>SERVICES TO HELP WITH PERSONAL AND/OR PROFESSIONAL PROBLEMS</u></p>	<p align="center"><u>CONTACT</u></p>
<p>Consult a Colleague Helpline — free and completely confidential helpline co-ordinated by the Dublin Solicitors Bar Association to assist every member of the profession nationwide with any problem, whether professional or personal.</p>	<p>Ph: 01 2848484.</p>
<p>Cork Solicitors' Helpline — free and completely confidential support offered by the Southern Law Association (SLA) for Cork solicitors who, for whatever reason, are finding it difficult to cope.</p>	<p>Contact the SLA Officers details included in the Law Directory.</p>
<p>The Panel to Assist Solicitors in Difficulty with the Law Society — giving assistance and support with formulating a response.</p>	<p>The list of Panel members is available in the Law Directory, on the Society's website www.lawsociety.ie or on request from Anne Collins, Law Society of Ireland, Blackhall Place, Dublin 7. Ph: 01 8798720. e-mail: a.collins@lawsociety.ie</p>
<p>Bar Associations — there are 29 Bar Associations throughout the country, they can be an invaluable source of practical advice and assistance.</p>	<p>A list of Bar Associations and their Officers are included in the Law Directory.</p>
<p>Solicitors' Benevolent Association – aims to assist solicitors and their dependents who are in need, or who fall on hard times for whatever reason.</p>	<p>Contact details are contained in the Law Directory.</p>
<p>The Guidance and Ethics Helpline — operated by the Guidance and Ethics Committee to assist solicitors concerned about their own position on any matter of conduct.</p>	<p>Therese Clarke, Secretary to the Guidance and Ethics Committee, Law Society of Ireland, Blackhall Place, Dublin 7. Ph: 01 8798720 e-mail: t.clarke@lawsociety.ie</p>

<p style="text-align: center;"><u>CONFERENCES, RECEPTIONS, MEETING FACILITIES AND ANCILLARY SERVICES</u></p>	<p style="text-align: center;"><u>CONTACT</u></p>
<p>The Law Society Four Courts service — including consultation rooms and the Friary Café.</p>	<p>The Law Society Office, The Four Courts, Dublin 7. Ph: 01 6681806. e-mail: fourcourts@lawsociety.ie</p>
<p>The Law Society Tribunal and Arbitration Centre, Bow Street Friary — including a tribunal room and consultation rooms.</p>	<p>Mary Lynch, The Tribunal and Arbitration Centre, The Friary, Bow Street, Dublin 7. Ph: 01 8690766. e-mail: general@distrib.ie</p>
<p>Facilities at the Law Society, Blackhall Place — including meeting and consultation rooms, private dining and bar facility, weddings and overnight accommodation.</p>	<p>Reception at Law Society of Ireland, Blackhall Place, Dublin 7. Ph: 01 6724800. e-mail: general@lawsociety.ie</p>

Further information in relation to all of the above support services can be obtained by contacting their co-ordinator, by logging onto the members' area of the Law Society website at www.lawsociety.ie or by contacting the Society's support services executive, Louise Campbell, Ph: 01 8815712 or e-mail l.campbell@lawsociety.ie

APPENDIX 1

Guidance and Ethics Committee August/September 2007 Gazette article -

‘Planning For Emergencies In A Sole Practitioner’s/Principal’s Firm.’

PLANNING FOR EMERGENCIES IN A SOLE PRACTITIONER'S/ PRINCIPAL'S FIRM

A sole practitioner/principal who is planning prudently for the future of his/her firm needs to make a will and also to execute three deeds, as set out below:

- Agreement for management,
- Power of attorney,
- Enduring power of attorney.

The will obviously will cover the situation where the solicitor dies in practice. The three deeds are needed to cover eventualities during the solicitor's life that might prohibit him/her from practising.

Will

It goes without saying that all sole practitioners/principals should make a will appointing a solicitor as one of their executors to deal with the disposal of the practice after their death.

Solicitors should be aware that, with regard to the period between a solicitor's death and the issue of the grant, the *Solicitors Acts* provide that a solicitor may be appointed to the practice with the consent of the Law Society, on a temporary basis, pending the issue of a grant of probate or administration. However, non-legal family members might not have the experience or expertise to recruit a suitable solicitor without the assistance of a solicitor executor.

Suggested clauses for a solicitor's will were published in the October 2005 *Gazette*, p29, available at www.lawsociety.ie/Gazette/oct05.pdf.

Agreement for management – to be used if the solicitor is likely to return to practise

In this scenario the practitioner/principal continues to hold a current practising certificate and continues to be responsible for

all matters relating to the firm.

A precedent is offered below (see panel, page 56). As with any precedent, it can be amended freely to suit individual circumstances. At a minimum, it will operate as a useful checklist for matters that may need attention.

The agreement is a simple agreement for management services. Under this agreement, there is no question of the manager having power to sell or wind up the practice. The agreement would cover temporary absences from the office, where the solicitor is likely to return to the practice and resume as sole practitioner/principal.

This agreement would cover illnesses, both physical and mental – for instance, long stays in a general hospital or long stays in a mental hospital recovering from, for example, depression, alcoholism, and so on. It would not cover a situation where the solicitor had permanently lost mental capacity. It would also cover unexplained absences or abandonment. However, solicitors are reminded that reckless abandonment may have serious repercussions in terms of regulatory action being taken by the Law Society against the solicitor or negligence actions being taken by clients who suffer a loss.

The agreement, suitably amended, could also be used by sole practitioners/principals who are going on maternity leave. For instance, the manager might be an assistant solicitor in the firm who is asked to take charge during the maternity leave period.

In most circumstances, it will not be difficult to trigger the commencement of the agreement. However, it is recognised that there are some situations where it would be difficult to do so.

The *Solicitors Acts* provide

that the High Court may appoint another solicitor to carry on a practice in the event of the incapacity or bankruptcy of a sole practitioner or the abandonment by a sole practitioner of his/her practice. However, this is an expensive and cumbersome alternative to having a detailed management agreement in place, which has been agreed by both the solicitor and the manager and which reflects the wishes of both.

Power of attorney – to be used if the solicitor will not, or is unlikely to, return to practise in his/her former role

The power of attorney will be used only if the practice is to be sold, to give the attorney the necessary powers to do this. A standard deed can be used.

Without a power of attorney, the practice cannot be sold by another solicitor. The power could be exercised where the solicitor is *compos mentis* but too ill to attend to, or does not wish to attend to, business affairs. In this scenario, the sole practitioner/principal might or might not hold a current practising certificate.

Again, the sole practitioner/principal will continue to be responsible for all matters relating to the practice.

It is recommended that the powers given in this deed are limited to matters relating to the sale of the practice. While the named attorney might also be the named manager in an agreement for management, the management arrangement is best dealt with separately in the detailed agreement for management.

Enduring power of attorney – to be used if the solicitor is not *compos mentis* and will not, or is unlikely to, return to practise

In this scenario, the presump-

tion would be that the solicitor is no longer in practice and no longer *compos mentis*. The enduring power of attorney would be used to sell the practice and to do any acts necessary to facilitate this.

The standard Law Society precedent can be used. This can be accessed on the members' area of the Law Society website, www.lawsociety.ie.

Who should be selected to be the executor/manager/attorney?

Many solicitors may decide to have a reciprocal arrangement with another sole practitioner, and this may be appropriate for them. However, it should be remembered that the duties being undertaken may be onerous. In some situations, a better alternative would be to make an arrangement with a medium-to-large firm to give a professional service should the need arise. The cost of doing this would have to be taken into account.

The solicitor selected should have sufficient experience and time to manage the practice, as well as continuing with his/her existing commitments.

Remuneration for manager

The precedent agreement for management below sets out a formula for remuneration, which is to be an average hourly rate that an assistant solicitor of ten years' standing would be paid. Solicitors might wish to negotiate a different formula. However, this formula is suggested in the context of a reciprocal arrangement being made between two solicitor friends/colleagues.

Budgeting for the new situation

It is clear that if a sole practitioner cannot attend at his/her offices, there may be additional

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expenses incurred. Solicitors should be aware that not only do they need to plan for the emergencies, but they also need to budget for them. For instance, if there is a decision to wind up the practice, rather than sell it, this can be a very expensive exercise. It is labour intensive, and significant costs may have to be paid. Files that can be destroyed may have to be destroyed professionally. Another solicitor's firm may have to be paid to take all the files not distributed to clients.

In situations where a locum solicitor will be employed, this too is an additional cost. Locum solicitors are expensive to employ and are unlikely to bring in the level of fees that the solicitor himself/herself would have brought in, so that there will be less money than usual available to pay for overheads.

Insurance policies

Solicitors could consult with their brokers to check out whether an income protection insurance (known as permanent health) policy or 'keyman' insurance policy should be put in place as part of the emergency plan. Some premiums may be tax deductible.

Inform the Law Society, a member of staff and a member of the family

It is important that the Law Society, a member of staff and a member of the solicitor's family should be informed of the arrangements that a solicitor has made for emergencies.

As all solicitors know, making a will and not telling anyone about it can prove to have been a futile exercise, if the will is never found after a person's

death. Likewise, if no-one is aware of the arrangements that have been put in place for emergencies, there will be needless upset and inconvenience to all concerned if an emergency does occur.

Objectives

The objective of having a plan for emergencies is to minimise the disruption to clients' affairs. The position of staff will also be secured. It is also to ensure that the practice can continue, if this is what the solicitor and/or his family wish. However, if the wish is that the practice be sold, then the powers are in place to do so.

In the event that there is a vacuum, then it is likely that the Law Society will have to become involved, and the only option may be for the Society to require that the firm cease trading. It would

then be closed and the clients asked to nominate new solicitors. This might not be in accordance with what the solicitor would have wished, particularly if the likelihood is that he/she will return to practice. In addition, it is likely that all expenses incurred by the Society in the exercise of its statutory duty, including the salaries of personnel involved in carrying out the function, will be charged to the solicitor or his estate.

Authority to operate bank account

There are some situations where the full emergency plan would not need to be triggered, but the emergency might be met by having an authority in place simply to operate the firm's bank accounts.

Guidance and Ethics Committee

AGREEMENT PROVIDING FOR THE TEMPORARY MANAGEMENT OF A SOLICITOR'S FIRM DURING THE INCAPACITY OF A SOLE PRACTITIONER/PRINCIPAL

THIS AGREEMENT is made on the ____ day of ____ BETWEEN [AB – insert name of sole practitioner/principal] (hereinafter called The Practitioner, which expression shall include his personal representatives and assigns) of the first part AND [XY/XY firm – insert name of practitioner/firm] (hereinafter called The Manager) of the second part AND [PQ/PQ firm – insert name of substitute/firm] (hereinafter called The Substitute) of the other part.

WHEREAS

1. The Practitioner is carrying on the practice of solicitor at ____ (hereinafter called The Practice).
2. The Manager is carrying on the practice of solicitor at ____.
3. The Substitute is carrying on the practice of solicitor at ____.
4. The Practitioner wishes to

make arrangements to ensure that The Practice continues during any period of his/her temporary incapacity, on the terms and conditions set out below.

5. The Manager has agreed to act as manager during any such period as defined below.
6. The Substitute has agreed to act as manager during any such period as defined below, if The Manager is unavailable because of his/her own temporary incapacity or other circumstances arise, because of which The Manager cannot reasonably be expected to act. In the event that this happens, The Substitute shall be deemed to be The Manager as referred to throughout this agreement.
7. Prior to the execution of this agreement, The Practitioner and/or The Manager have taken the prior steps set out in

the schedule below.

8. The Practitioner has agreed to keep The Manager updated in relation to any changes to the information provided, as necessary, and at least on an annual basis.

THIS AGREEMENT WITNESSES

as follows:
COMMENCEMENT OF
MANAGEMENT

- (i) This agreement shall take effect in any one of the following circumstances:
 - a) The Practitioner is incapacitated, whether through illness, physical or mental, accident or otherwise from properly and effectively carrying on The Practice AND The Practitioner furnishes a written request to The Manager to commence managing the practice OR
 - b) The Practitioner is certified by a medical practitioner,

whether at the request of The Manager, or any other person, as being incapable of carrying on his/her practice AND

The medical practitioner(s) also confirms that the incapacity is likely to remain for a period of not less than four weeks, but is likely to be temporary AND The Manager is furnished with a copy of the medical certificate.

- (ii) The Manager is hereby authorised to make the request for a medical certificate.
- (iii) On receipt of the written request from The Practitioner, referred to above, or receipt of the medical certificate referred to above, The Manager shall commence to manage The Practice, provided that both The Practitioner's professional indemnity insurers and The Manager's professional indem-

nity insurers provide such cover as may be necessary.

- (iv) The business of The Practice shall be carried on under its existing name and all reasonable steps shall be taken to preserve the goodwill of the firm.
- (v) The Manager shall not accept instructions in his/her own firm from any client of The Practice in relation to any matter, during the period of management.
- (vi) The Manager shall not be permitted to make any drawings.
- (vii) The Manager may, but will not be required to, attend to the day-to-day work of the firm personally.

MANAGER'S AUTHORITIES

The Manager shall have authority to do all acts necessary for the proper operation of The Practice, including the following:

- (i) To act as an employed locum solicitor.
- (ii) To employ such staff as may be necessary, including a locum solicitor, or a bookkeeper, for the purpose of carrying on the business of The Practice.
- (iii) To take new instructions from clients.
- (iv) To operate the client accounts of The Practice in relation to clients' monies received, held or paid.
- (v) To operate the office accounts of The Practice to pay necessary overheads, operating within approved overdraft limits, if any.
- (vi) To pay The Practitioner's spouse and/or dependants necessary amounts to fund day-to-day and other appropriate expenses from the office account of The Practice, subject to funds being available and in consultation with the firm's accountants.
- (vii) To negotiate additional loan facilities for the firm.
- (viii) Having exercised reasonable professional care, to sign letters, give undertakings and cer-

tify title.

- (ix) To deal with all disciplinary matters relating to staff, up to and including dismissal.

STEPS TO BE TAKEN BY THE MANAGER AT THE COMMENCEMENT OF THE MANAGEMENT

The Manager shall take the following steps at the commencement of the management period:

- (i) Notify the Law Society of the commencement of the management.
- (ii) Notify The Practitioner's professional indemnity insurers of the commencement of the management and seek written confirmation of such cover as may be necessary.
- (iii) Notify The Manager's professional indemnity insurers of the commencement of the management and seek written confirmation of cover as may be necessary.
- (iv) Obtain any necessary extension of professional indemnity insurance to cover any additional employees.
- (v) Notify The Practitioner's banks of the commencement of The Practice.

KEEPING THE OWNER INFORMED

If The Practitioner is in a position to be involved, The Manager shall keep him/her reasonably informed about the affairs of The Practice.

REMUNERATION

The Manager shall be entitled to remuneration for all work done in connection with the management of The Practice.

- (i) When The Manager commences to manage The Practice, The Manager will be paid an hourly rate based on an average current salary of an assistant solicitor of ten years' standing.
- (ii) The Manager will also be entitled to be reimbursed all expenses reasonably incurred in connection with the manage-

ment of The Practice, subject to the expenses being properly vouched. This will include any additional professional indemnity insurance premiums, which he/she incurs on his/her own insurance policy, as necessary.

- (iii) In the event of a dispute relating to the remuneration of The Manager or reimbursement of his/her expenses, The Practitioner's accountants will make a decision in relation to the matter, taking into account all such circumstances as they deem relevant. If this is not accepted by The Manager, the matter will be dealt with in accordance with the provisions for disputes at Clause 10 below.

BOOKS OF ACCOUNT

- (i) The Manager shall take all reasonable steps to keep the books of account and all the existing records of The Practice up to date.
- (ii) The Manager shall take all reasonable steps to ensure that the annual reporting accountant's report is submitted to the Law Society on time.
- (iii) The Manager shall take all reasonable steps to make arrangements to ensure compliance with The Practitioner's obligations under the *Taxes Acts*, to include the filing of VAT, PAYE and PRSI returns and the discharge of liabilities incurred. For the avoidance of doubt, The Manager shall not be responsible for filing The Practitioner's personal income tax returns or for making pension contributions.

INDEMNITY

- (i) The Practitioner agrees that he, as owner of The Practice, will continue to be fully responsible for compliance with the *Solicitors Acts*, regulations and all other matters relating to the practice and indemnifies The Manager for any loss arising

because of breaches.

- (ii) The Practitioner also indemnifies The Manager in respect of any breaches of the *Solicitors Acts* or regulations that occurred prior to the commencement date.
- (iii) This indemnity shall operate, provided that The Manager acts in good faith. It shall not operate if The Manager acts recklessly or manifestly in error.

TERMINATION OF MANAGEMENT

- (i) The period of management shall terminate by either party giving one calendar month's notice in writing to the other party or such other period as is agreed.
- (ii) In exceptional circumstances, notice of immediate termination can be given by either party.
- (iii) The Manager shall give all reasonable assistance and explanations for the proper handing back of the management of the firm.
- (iv) The Law Society shall be informed of the termination of the management period.

MANAGEMENT PERIOD NOT TO CONTINUE IF THE PRACTITIONER'S PRACTISING CERTIFICATE IS NOT RENEWED

If The Practitioner's practising certificate expires during the period of the management and The Practitioner is not in a position to renew his/her practising certificate, this management agreement will not continue beyond the date of the expiry of the practising certificate.

DISPUTES

Any dispute arising between the parties to this agreement shall be settled by AA [*here name the individual*], who is to act as expert and not as arbitrator and his/her decision is to be binding on the parties. If AA is not available, an alternative expert shall be

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appointed by agreement between the parties.

CONFIDENTIALITY

The existence of this agreement, and its terms, are confidential and none of the parties may disclose anything about this agreement except to the Law Society, or, in confidence, to the parties' professional advisers, or if required by law to do so.

SIGNED _____

SCHEDULE OF PRIOR STEPS TAKEN

1. The Practitioner has given general information to The Manager with regard to The Practice, its organisation and staff.
2. The Practitioner has confirmed all locations at which files of The Practice, current or closed, are held.
3. The Practitioner has given The Manager a full set of keys to the office premises.

4. The Practitioner has given The Manager a sealed envelope containing all passwords to The Practitioner's computer system, including the password for the principal's level. All changes in passwords will be placed in a sealed envelope and left with The Practitioner's current secretary.
5. The Practitioner has given The Manager a comprehensive list of the firm's service

providers, with contact details.

6. The Practitioner and Manager have arranged with the relevant banks that The Manager is to be a signatory on all client accounts and also on office accounts, as necessary.
7. The Practitioner has given The Manager information about The Practitioner's history of regulatory investigations and the outcome of these.



SOCIETY OF YOUNG SOLICITORS IRELAND

AUTUMN CONFERENCE 2007

16 – 18 NOVEMBER 2007 AT MOUNT JULIET ESTATE, THOMASTOWN, CO KILKENNY

Friday 16 November

20.00 – late: Registration, followed by welcome drinks in the President's Bar

Saturday 17 November

- 10.00 – 12.00: Lectures*
- Brightwater Recruitment Specialists: *Current Trends in Legal Recruitment*
 - Deborah McHugh, Senior Associate, Mason Hayes+Curran: *Overview of Pensions Law and Corporate Due Diligence*
 - Claire Waterson, Senior Associate, William Fry: *Developments in Competition Law*

• Laura McGowan, Pupil Barrister, Carmelite Chambers, London: *Corporations and the Criminal Law*

14:00: Health centre, swimming, beauty treatments, golf and other activities, see www.mountjuliet.ie for details.

19.30 – 20.00: Pre-dinner drinks reception
20.00 – late: Gala dinner, band (Spring break) and DJ.
Dress code: black tie

Sunday 18 November

12.00: Check out

NOTES

1. Persons wishing to attend must apply through SYS. Accommodation is limited and will be allocated on first-come, first-served basis, in accordance with the procedure set out below.
2. Conference fee is €310.00 p.p.s. for two nights' accommodation (with breakfast), pre-dinner drinks reception, gala dinner and conference pack. Application forms, enclosing cheque(s) payable to SYS, in the sum of €620.00 and a self-addressed envelope, to be sent to: Catherine Allen, Mason Hayes+Curran, South Bank House, Barrow Street, Dublin 4. One application must be submitted per room per envelope.
3. All applications must be sent by ordinary prepaid post and only applications exhibiting a postmark dated **FRIDAY 28 SEPTEMBER, 2007** or later will be considered.
4. Rejected applications will be returned. Successful applications will be confirmed by email.
5. Names of delegates to whom the cheque(s) apply must be written on the back of the cheque(s).
6. Cancellations must be notified to callen@mhc.ie on or before Friday, 26 October, 2007. Cancellations after that date will not qualify for a refund.
7. There are a limited number of twin rooms and/or double rooms. Please tick one of the above options for your preferred room type (the SYS cannot guarantee that delegates will be allocated their preference). If no preference is indicated, rooms will be allocated at the SYS's discretion.

APPLICATION FORM

PLEASE USE BLOCK CAPITALS. ONE FORM PER ROOM PER ENVELOPE.

Name 1: _____ Name 2: _____

Firm 1: _____ Firm 2: _____

Email: _____ Email: _____

One Contact Address: _____

Phone (Office): _____ (Mobile): _____ (Home): _____

I enclose cheque(s) payable to SYS, in the sum of €590 and a self-addressed envelope.
Application to be sent to: Elizabeth Bradley, A & L Goodbody, North Wall Quay, IFSC, Dublin 1.

*Time spent attending the lectures may be counted towards your CPD requirements