



2014/2015 Solicitors' Professional Indemnity Common Proposal Form Guidelines

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Introduction

The solicitors' professional indemnity insurance ("PII") common proposal form for 2014/2015 was published on the Law Society's website on 3 October 2014 and is available to download from www.lawsociety.ie/Solicitors/Practising/PII. The form should be used for applications for professional indemnity insurance cover for the 2014/2015 indemnity period, which covers 1 December 2014 to 30 November 2015. The form should be completed in conjunction with these guidance notes. The form has also been circulated to participating insurers and brokers currently in the market.

The common proposal form ensures that each firm will have to complete only one proposal form at the next renewal, thereby simplifying the renewal process for the profession and making it easier for firms to obtain multiple quotes. This form was prepared by the Law Society in consultation with the insurers.

These guidelines will be updated on an ongoing basis to include any new queries raised with the Law Society. If you have any queries that are not dealt with in the guidelines, you can contact the Law Society's PII helpline, which is available Monday to Friday, 10am to 4pm, to assist firms with PII queries, at 01 879 8707 or [piihelpline@lawsociety.ie](mailto:pjihelpline@lawsociety.ie).

Please note that the information provided in these guidelines is intended a general guidance and does not constitute a definitive statement of law.

Points to note

1. Ultimately, the principals/partners of each firm are responsible for obtaining PII for the firm before the renewal date.
2. The proposal form should be:
 - (a) submitted early;
 - (b) completed fully and correctly;
 - (c) have all required documentation attached;
 - (d) clear, accurate, well presented and comprehensive.
3. Try to avoid submitting handwritten proposal forms.
4. Firms are not required to provide certificates of good standing with the common proposal form. Insurers did not seek to have a requirement to provide this certificate included in the common proposal form. Please note that the fee for obtaining a certificate of good standing from the Law Society within ten working days is €100, to be paid in advance of the certificate issuing. Certificates of good standing issued later than ten working days are free of charge.
5. Answer all questions in the form. If you are unsure of any question, answer what you think the insurer is looking for and provide additional information to clarify. Check and recheck the form to ensure that all questions have been answered correctly.
6. Check that all additional documentation has been attached to the form and is correctly cross-referenced.
7. Make sure that the figures add up. For example, ensure that the gross fee income figures add up to 100%.

8. The insurer must accept a fully and properly completed proposal form as a duly completed application for a policy, and must not require the firm to complete or submit any other proposal form or application for a policy.
9. An insurer cannot require a firm seeking a policy to provide it with supplemental information until such time as the insurer has received and reviewed a proposal form fully completed by that firm.
10. The insurer can only request a firm to provide it with supplemental information where the insurer reasonably requires such information in order to decide whether to insure the firm. In this case, the insurer must make a statement to that effect and request that the firm provide such supplemental information within a reasonable timescale.
11. It is proper practice for firms to notify insurers of claims or circumstances arising during the year as they arise, not at the end of the indemnity period. Notifying all claims and circumstances at the end of the indemnity period is referred to as 'laundry listing' by insurers and is not looked on favourably.
12. Firms must notify their current insurer of all claims and circumstances before the end of the indemnity period.
13. The common proposal form is an application for normal PII, not for run-off cover. Firms should contact the Special Purpose Fund Manager, Capital Commercial Insurance Services, with regard to obtaining run-off cover through the Run-off Fund. Capita can be contacted at 0044 207 397 4539 and spf@capita.co.uk. More information on the Run-off Fund can be found on the Law Society's website at www.lawsociety.ie/Solicitors/Practising/PII/Run-off-Cover.
14. Claims information must be provided by your current insurer and be attached to the common proposal form. If you have a poor claims history, provide the insurer with further information on how the claim arose and what procedures are now in place to ensure that, henceforth, as far as possible, such claims will not arise. Failure to provide a claims history, or provision of an incomplete claims history, may indicate to insurers that something is being hidden. Claims information is used by insurers to compare your previous loss experience against improvements to risk management you may have implemented or changes you may have made to your work type activities.
15. Firms should ensure to redact any information in any documentation provided to insurers that may breach legal privilege or client confidentiality.
16. Insurers focus on risk management, and it would be to the benefit of firms to demonstrate to insurers that they have robust risk management procedures in place.
17. Ensure that the form is signed and dated, otherwise the proposal form is invalid.
18. With regard to yes/no questions in the form, where the answer is some variation of yes or no, expanded answers should be provided on such questions in the covering letter submitted with the form.

Checklist for required additional information

Page 1 of the form contains a checklist for required additional information. Certain questions in the form require firms to provide additional information and documentation with the form to the insurer, and these questions are listed in the checklist. When the form is completed, you should use the checklist to ensure that all required additional information and documentation has been included with the form.

General notes

You should provide a full answer to every question in the form, and use supplementary sheets for questions where you may have insufficient space to answer a question.

Some information, as directed and highlighted in **bold font** in the form, should be provided in the additional information section (section 16 of the form).

Additional documentation to be provided with your form is highlighted in **red** in the form and is set out in the checklist on page 1 of the form.

You should provide as much information as possible with your firm as the more information you provide, the better your broker will understand your firm to negotiate with the participating insurers on your behalf.

A partner or principal of your firm must sign and date the form, along with the supplementary sheets.

In this form:

1. 'Principal' means the sole practitioner or sole principal in your firm;
2. 'Partner' means a partner in your firm; and
3. 'Preceding Practice' and 'Succeeding Practice' are as defined in any applicable minimum terms and conditions.

Section 1: Your firm's details

Section 1 of the form contains four questions and looks for basic information about your firm.

Question 1.1 looks for information on your firm's practising titles (including associate companies, nominee companies and service companies), basic contact information, the PII contact in your firm, your firm number and the date that your firm was established. **If your firm has been established less than two years, you are required to provide a business plan and CVs for all principals and partners in the firm.**

Question 1.2 looks for information on your firm's branch offices including the location, residential partner or principal and percentage fees generated from each branch office. If your firm has no branch office, you should tick the 'none' box.

Question 1.3 looks for information on how each branch office is supervised. If there is no resident partner or principal in the office, **you are required to attach CVs for the solicitors or registered lawyers based in the branch office(s) and provide full details of same in section 16 of the form.** If you have no branch office, please mark this question as 'N/A'.

Question 1.4 looks for information on any planned mergers or consolidation between your firm and another firm in the next 12 months. This is a new question for 2014/2015. Firms should ensure that they know the insurance and claims history of any firm that they intend to merge or consolidate with. Insurers will want to be assured that due diligence was done on any files being taken on by your firm and that proper risk management procedures are in place for the merger/consolidation.

Section 2: Succeeding practice

The definitions of 'Succeeding practice' and 'Preceding practice' in this form are as set out in the minimum terms and conditions in place at the time of completion of the form.

The definition of 'Preceding practice' as set out in the 2013/2014 and 2014/2015 minimum terms and conditions is as follows:

"preceding practice" means each practice:

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

The definition of 'Succeeding practice' as set out in the 2013/2014 and 2014/2015 minimum terms and conditions is as follows:

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

- (i) it is held out as being a successor to the practice or part thereof of the preceding practice by whatever means such holding out occurs, or*
- (ii) it is conducted by a partnership where half or more of the principals are identical to those persons who were principals of any partnership that conducted the preceding practice, or*
- (iii) it is conducted by a sole practitioner who was the sole practitioner conducting the preceding practice, or*
- (iv) it is conducted by a sole practitioner who was one of the principals conducting the preceding practice, or*
- (v) it is conducted by a partnership in which the sole practitioner conducting the preceding practice is a partner and where no other person has been held out as a successor to the preceding practice, or*
- (vi) the partnership which, or sole practitioner who, conducts the practice has assumed the liabilities of the preceding practice;*

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

Question 2.1 looks for information on any firms or preceding practice on your headed paper that were not listed in question 1. If such firms exist, details should be provided in the text box in question 2.1 and **a copy of your letterhead** should be provided with the form.

Question 2.2 looks for confirmation as to whether your firm has become a succeeding practice. If your firm has become a succeeding practice, you should complete question 2.3. If your firm has not become a succeeding practice you should move straight to section 3.

Question 2.3 looks for details of all preceding practices to which your firm is a succeeding practice, including the names of those firms, whether they have run-off cover in place, the date they were established, the date of succession and the number of solicitors who joined your firm.

Section 3: Your staff details

Section 3 contains six questions, and looks for information about your firm's staff.

Question 3.1 looks for information on your staff for the last 4 years, including principals and equity partners, salaried partners, solicitors, consultants, legal executives, other fee earners and other staff (excluding cleaning, maintenance and other manual employees), including whether such staff are full time ('FT') or part-time ('PT').

Question 3.2 looks for information on all fee earners in your firm as listed in question 3.1, including their solicitor numbers (if applicable), names, years as a principal or partner in the firm (if applicable), and date qualified (if applicable). This table should be completed even if you are a sole practitioner or principal.

Question 3.3 looks for confirmation as to whether any partner or principal in your firm is also a partner or principal in another solicitors' firm, is involved in any other business activity, or has a financial interest in any other business activity. **If the answer to any of the questions is yes, you are required to provide full details, including the number of hours worked in respect of each relevant partner or principal in section 16 of the form.** The requirement to provide information on the number of hours worked is new to the 2014/2015 form.

Question 3.4 looks for confirmation as to whether any fee earner in your firm, including any partner or principal, obtained their first legal qualification outside of the Republic of Ireland. **If the answer to this question is yes, you are required to attach an up-to-date CV for each person listed in the question with the form.**

Question 3.5 looks for information with regard to reference checks and recruitment policies of your firm with regard to current staff. If your firm currently has no staff, the question should still be answered with regard to your firm's general recruitment practices. Insurers are looking for confirmation in this question that:

1. your firm carries out full recruitment checks for all partners, principals, consultants and employees in the firm;
2. that such recruitment checks include taking up written and verbal references, questions about the individual's claims record (where relevant) and enquiries as to whether the individual has a disciplinary record with the Law Society, the Solicitors Disciplinary Tribunal and any other relevant body.

If the answer to any of the questions is yes, you should provide details in the text box in question 3.5.

Question 3.6 looks for confirmation that your firm has a valid employer's liability policy and, if yes, the expiry date of that policy.

Section 4: General questions

Section 4 contains 5 questions and covers matters such as the regulatory, investigation, disciplinary and insurance history of the firm and its employees, whether there has been or is expected to be any material change in the firm, and whether your business is limited to a solicitor's firm.

Question 4.1 looks for information on the regulatory, investigation, disciplinary and insurance history of the firm and any preceding practice including:

1. whether the firm has been subject of an investigation that resulted in any adverse finding by the Law Society, the Solicitors Disciplinary Tribunal or any other recognised body;
2. whether the firm received any inspection visits from the Law Society;

3. whether the firm has been the subject of an Irish Financial Regulator or Central Bank of Ireland investigation, or proceedings commenced by the Central Bank of Ireland;
4. whether the firm has failed to pay any insurance premium or excess contribution; and
5. whether the firm has been declined PII by any previous or existing insurer, or whether the firm has applied to the Assigned Risks Pool.

If the answer to any of these questions is yes, you are required to provide details in the text box at the end of page 5 of the form, and **include reports where applicable**.

Question 4.2 looks for confirmation as to whether there has been a material change in your firm in the last three years, including (but not limited to) change of legal entity, nature of work or location. If there has been such a change, details should be provided in the text box at the end of page 5 of the form, and **reports included where applicable**.

Question 4.3 asks if you expect there to be any significant changes to, or in, your firm in the coming year. If such changes are expected, details should be provided in the text box at the end of page 5 of the form, and **reports included where applicable**.

Question 4.4 asks if your business is a solicitor's firm only. If your business is not limited to a solicitor's firm, you should provide details of any non-regulated business in the question's text box. An example of a non-regulated business would be a separately constituted financial services adviser operating outside of the Law Society's regulations.

Question 4.5 looks for information on the regulatory, disciplinary, criminal, and financial history of your partners, principals, consultants and legal employees, including:

1. whether they have been the subject of any investigation that resulted in an adverse finding by the Law Society, the Solicitors Disciplinary Tribunal or any other recognised body;
2. whether they have been convicted of, or charged with but not yet tried for, any criminal offence involving fraud or dishonesty;
3. whether they have previously been, or currently are, the subject of a petition for bankruptcy or any judgment or decrees that remain unsatisfied, in whole or in part;
4. whether they have been refused a practising certificate, or granted a restricted practising certificate subject to specified conditions, by the Law Society; or
5. whether they have been the subject of a finding of misconduct by the Solicitors Disciplinary Tribunal.

If the answer to any of these questions is yes, details should be provided in the question's text box, and **relevant documentation, where available, attached to the form**.

Section 5: Gross fees (exclusive of VAT)

Section 5 contains 8 questions, and looks for information on gross fees (exclusive of VAT), overseas domiciled interests, fee income and provision of international legal advice.

Question 5.1 seeks confirmation as to whether you have any US domiciled interest to be insured under your PII policy. Examples of US domiciled interests would be having a US office that is a subsidiary or branch office of a Republic of Ireland parent office, or having a US registered address. Providing services to a US client from the Republic of Ireland office, even if it requires you to visit the US, would not count as a US domiciled interest.

Question 5.2 seeks confirmation as to whether you have any other overseas domiciled interests to be insured under your PII policy. **If yes, you should provide full details in section 16 of the form.**

Question 5.3 looks for information on your firm's gross fees, exclusive of VAT, for the last five completed accounting periods, and an estimate for the current year ending 2014, for the Republic of Ireland, USA/Canada and any other jurisdiction. **If you have figures for gross fees for USA/Canada and any other jurisdiction, details of this work should be provided in section 16 of the form.**

Question 5.4 looks for information on the largest total fee that your firm has charged in the last twelve months.

Question 5.5 looks for information on the average fee that your firm has charged in the last twelve months.

Question 5.6 asks for confirmation as to whether any one client, or any one group of clients, generates 20% or more of your firm's annual fees. **If yes, you should provide full details in section 16 of the form.**

Question 5.7 asks for confirmation as to whether your firm's fee income has changed by more than 30% in any of the last three years. **If yes, you should provide full details in section 16 of the form.**

Question 5.8 asks if your firm provides advice in relation to any other law other than the law of the Republic of Ireland. For the avoidance of doubt, Republic of Ireland law includes European Union law to the extent that it forms part of the law of the Republic of Ireland. **If you do provide such advice, you should confirm the jurisdiction under which the work is undertaken and state of the gross fee income for the accounting period, together with full details of these activities in section 16 of the form.**

Section 6: Type of work

Section 6 contains 3 questions and dealt with the type of work done by your firm, focusing on the breakdown of work between specified areas of legal work and types of clients.

Question 6.1 looks for a breakdown of percentage gross fee income for the last accounting period across a range of specified legal work categories. The total on this table must equal 100%. It should be noted that 'low-risk work' includes debt collection under €10,000, children, mental health tribunal, administering oaths and taking affidavits, lecturing and related activity, expert witness, and planning.

Question 6.2 looks for a percentage breakdown of your firm's client base across a range of specified categories.

Question 6.3 asks for confirmation as to whether any substantial changes in the percentage breakdown of gross fee income or client base is anticipated in the next twelve months and, **if yes, full details should be provided in section 16 of the form.** This is a new question in the 2014/2015 form.

Section 7: Nature of work – 'no foal, no fee' arrangements

Section 7 contains three questions and deals with the nature of work done by your firm, in particular so-called 'no foal, no fee' arrangements. These are conditional fee arrangements, also known as 'no win, no fee'.

Question 7.1 looks for confirmation as to whether your firm has ever entered into a 'no foal, no fee' or other conditions fee arrangement which has led to deductions from personal injury damages for solicitor/own client charges. If yes, you should continue to answer the rest of the questions in section 7. If the answer to this question is no, you should move straight to section 8 and disregard the rest of the questions in section 7.

Question 7.2 looks for confirmation as to whether your firm uses a written risk-assessment procedure before accepting such conditional fee arrangements. **If yes, you should provide full details of this procedure in section 16 of the form.**

Question 7.3 seeks confirmation as to whether a partner or principal of your firm agrees to each conditions fee type arrangement before it is offered to your client. **If this is not the case, you should provide full details in section 16 of the form.**

Section 8: Nature of work – personal injury

Section 8 contains 3 questions and deals with the nature of work done by your firm in relation to personal injury work.

Question 8.1 looks for confirmation as to whether your firm has been part of any referral network, claims management or promotional group, or if your firm has conducted work for or on behalf of a trade union or similar body. **If yes, you should provide full details in section 16 of the form.**

Question 8.2 asks you to provide information on your largest personal injury settlement on behalf of any claimant in the last five years, and the average personal injury settlement in the last five years.

Question 8.3 asks you to estimate the number of personal injury cases your firm currently has where the expected settlement exceeds €250,000.

Section 9: Nature of work – financial services and personal insolvency work

Section 9 contains 4 questions, and deals with the nature of work done by your firm with regard to financial services and personal insolvency work.

Question 9.1 looks for confirmation as to whether your firm, or any preceding practice of your firm, has within the last six years:

1. sold or assisted in the promotion of a financial product; or
2. provided advice in connection with financial services;

where such activity is regulated by the Law Society, the Central Bank, the Investment Intermediaries Act 1995 or any other financial services regulation legislation.

If the answer is yes, you are required to complete a separate questionnaire which will be supplied to you on receipt of your completed common proposal form, or can be downloaded from the Law Society's website at www.lawsociety.ie/Solicitors/Practising/PII/.

Question 9.2 asks you to describe in the text box provided the financial advice and services provided by your firm.

Question 9.3 asks you to confirm whether your firm holds escrow accounts in relation to investment-related services. If your firm does, you should describe in the text box provided the procedures your firm has in place to prevent unauthorised withdrawals or inappropriate use of funds contained in such escrow accounts.

Question 9.4 asks you to confirm whether any individual in your firm provides services, or intends to provide services, as a personal insolvency practitioner under the Personal Insolvency Act 2012. If yes, you should provide the names of these individuals authorised by the Insolvency Service of Ireland to carry out this work within your firm in the text box provided.

Section 10: Nature of work - conveyancing

Section 10 contains 22 questions relating to conveyancing work done by your firm. It should be noted that the period of time covered by a number of the questions has increased from five years (as per last year's common proposal form) to ten years for this form, and three new questions have been added to the end of the section.

Question 10.1 seeks information on whether more than 10% of your conveyancing turnover was derived from a single source or referrer between 2005 and 2014. **If yes, you should provide full details in section 16 of the form.** It should be noted that this question in last year's form only sought information for 2005 to 2009, but this question seeks information from 2005 to 2014.

Question 10.2 seeks confirmation as to whether your firm has undertaken any principal private residential ('PPR') conveyancing and/or commercial conveyancing in the last 10 years. It should be noted that 'buy-to-let' transactions should be classed as commercial conveyancing by default.

If the answer is yes, you should complete sub-questions 10.2.1 to 10.2.3. If no, you should move directly to question 10.3. It should be noted that last year's form only sought information for the last five years, but this question seeks information for the last ten years.

- Question 10.2.1 looks for confirmation as to whether your firm has ever been removed from a lender's panel for any reason connected to your professional work (that is, other than by reason of a lack of instructions or a decision on the lender's part not to instruct sole practitioners). **If yes, you should provide full details in section 16 of the form.**
- Question 10.2.2 looks for confirmation as to whether your firm has acted for multiple buyers of property in the same development or in the same building in the last ten years. **If yes, you should provide full details in section 16 of the form.** It should be noted that in last year's form this information was sought for the last five years, but this question seeks information for the last ten years.
- Question 10.2.3 looks for confirmation as to whether your firm has acted for a single buyer purchasing more than two properties in the last ten years. **If yes, you should provide full details in section 16 of the form.** It should be noted that in last year's form this information was sought for the last five years, but this question seeks information for the last ten years.

Question 10.3 asks you to provide a breakdown of:

1. your firm's gross fees derived from principal private residential ('PPR') conveyancing and commercial conveyancing for the last five years and an estimate for the current year;
2. the number of PPR conveyancing and commercial conveyancing transactions carried out by your firm for the last five years and an estimate for the current year; and
3. the number of undertakings that currently remain to be discharged by your firm with regard to PPR conveyancing and commercial conveyancing for the last five years and an estimate for the current year.

Question 10.4 asks you to confirm whether all conveyancing transactions are directly supervised by a partner or principal of your firm. If they are not, you should confirm in the text box provided the individual that is responsible for the supervision process with regard to conveyancing transactions and how this works.

Question 10.5 asks you to confirm whether your firm has given an undertaking in a situation where you are not in a position to fully discharge the undertaking. This would include situations where your firm is not in receipt of stamp duty, or stage payment transactions.

Question 10.6 looks for information for the following for the last ten years for your firm:

1. the highest PPR conveyancing transaction value;
2. the average PPR conveyancing transaction value;
3. the highest commercial conveyancing transaction value;
4. the average typical commercial conveyancing transaction value.

It should be noted that last year's form only sought this information for the last five years, but this question requires the information for the last ten years.

Question 10.7 asks you to confirm whether your firm has received fees in connection with sub-prime loans in the last ten years. If yes, you should estimate the number of such transactions in the last three years in the text box provided. It should be noted that in last year's form this question referred only to the last six years, but this question requires a response with regard to the last ten years.

Question 10.8 asks you to provide the names of all sub-prime lenders your firm has acted for in the past ten years in the text box provided. It should be noted that last year's form required this information only for the last five years, but this question requires information for the last ten years.

Question 10.9 seeks to confirm whether your firm received any requests for conveyancing files, or information from conveyancing files, over the last five years from a lender or a lender's representative, other than in accordance with normal business, such as a standard audit. If yes, you are asked to confirm how many requests your firm has received, whether your firm has reported such requests to your insurer and whether any potential notifications made by your firm have been declined by your insurer. **If yes to any of these, you should provide full details in section 16 of the form.** It should be noted that this question in last year's form only covered the last 24 months, rather than the last five years are required by this form.

Question 10.10 refers to claims arising from conveyancing file requests. You are asked to confirm whether such file requests have resulted in claims being made against your firm, how many such claims have been made, whether such claims have been reported to your insurer and whether any such claim notifications have been declined by your insurer. **If the answer to these questions in yes, you should provide full details in section 16 of the form.**

Question 10.11 asks you to confirm whether you have made a block notification to your current insurer, or any other previous insurer, of all claims and circumstances that have arisen out of requests for your

conveyancing files by a particular lender, or in respect of a particular fee earner. **If you have made such a notification, you should provide full details in section 16 of the form.**

Question 10.12 asks you to confirm if you are aware of any disputes, questions or queries arising from the provision of undertakings given by your firm, or accepted by your firm. **If yes, you should provide full details in section 16 of the form.**

Question 10.13 deals with controls for managing undertakings. You are asked to confirm if such controls include both written procedures and provision of training in respect of four different categories as set out in the sub-questions. **If you answer yes to any of the sub-questions, you should provide full details in section 16 of the form.**

- Question 10.13.1 asks if your undertaking management controls include written procedures and provision of training with regard to recording of any undertakings given or received in writing in a prominent position on the file.
- Question 10.13.2 asks if your undertaking management controls include written procedures and provision of training with regard to clear authorisation processes and working defining specific obligations, due dates, and so on. The level of authority and process for giving and/or approving undertakings must be defined to ensure that everyone in your firm is aware of, and follows, the agreed process.
- Question 10.13.3 asks if your undertaking management controls include written procedures and provision of training with regard to the keeping of a central record of all undertakings given, discharged and not discharged.
- Question 10.13.4 asks if your undertaking management controls include written procedures and provision of training with regard to a systemic means of monitoring undertakings by a partner or principal to ensure all obligations are fulfilled.

Question 10.14 asks for you to confirm whether you have received correspondence from any financial institution threatening legal action, or a complaint to the Law society or Solicitors Disciplinary Tribunal, in relation to a delay or non-compliance with an undertaking given by your firm. **If yes, you should provide full details in section 16 of the form.**

Question 10.15 asks you to confirm whether you are aware of any actual, or possible, claim or circumstance against your firm arising from the transfer of any client assets to NAMA. **If yes, you should provide full details in section 16 of the form.**

Question 10.16 asks if any person in your firm is a partner or principal with, a director of, or engaged with any client in a commercial partnership or venture whose primary objective is investment in commercial or residential property. **If yes, you should provide full details in section 16 of the form.**

Question 10.17 checks if you have followed the Law Society's guidelines when issuing undertakings. **If you have not followed the guidelines, you should provide full details in section 16 of the form.**

Question 10.18 checks if you have systems in place to ensure timely compliance with undertakings. **If you do not have such systems in place, you should provide full details in section 16 of the form.**

Question 10.19 deals with undertakings to financial institutions in respect of commercial property transactions. You are asked to confirm whether you issued such undertakings between 1 December 2009 and 30 November 2010, how many undertakings were issued and whether you obtained additional cover for such transactions. It should be noted that you may be asked for evidence by the insurers that such cover was purchased.

Question 10.20 is a new question in the 2014/2015 form. It asks if training on identifying mortgage fraud is actively given to partners, principals, consultants and employees who undertake conveyancing work in your firm. If yes, you should include full details in the text box provided.

Question 10.21 is a new question in the 2014/2015 form. It asks if procedures are in place to ensure that your firm establishes the net price paid for a property when acting on behalf of the purchaser. If such procedures are in place, you should include full details in the text box provided.

Question 10.22 is a new question in the 2014/2015 form. It asks if a partner or principal in your firm directly supervises all principal private residential conveyancing transactions undertaken by your firm. If yes, you should include full details in the text box provided.

Section 11: Risk-management procedures

Section 11 is the largest section in the form with 23 questions divided between 7 categories, namely general management, new clients and new matters, supervision and training, file management, conclusion of matters, undertakings and financial.

It is important that you do not leave any questions unanswered in this section.

- You should answer 'yes' to any questions where you have implemented the relevant policy or procedure, and can verify that such policy or procedure is in place.
- You should answer 'no' to any question if you have not implemented the relevant policy or procedure.
- If your answer to any question is 'no' but you are working towards the achievement of this objective, you should provide full details in section 16 on what your firm has done so far to achieve this objective, what your firm plans to do to fully achieve the objection, and within what time scale.
- If you are unsure of the answer (a qualified 'yes' or 'no' answer), then you should chose 'yes' or 'no' and then **provide further details in section 16 of the form.**

GENERAL MANAGEMENT

The first two questions in section 11 deal with general management of your firm.

Question 11.1 asks if your firm has written risk management procedures, and if such procedures are reviewed at least on an annual basis. Such risk management procedures should, as a minimum, cover the operational processes, risk and quality controls employed in all practice areas your firm provides. A further development would be to expand these procedures to cover all areas of business management.

Question 11.2 deals with risk management and quality standards. You are asked to confirm whether your firm has applied for, or achieved, any risk management or quality standard. If yes, you are asked to provide **a copy of your report** and details in the table provided of the number of times your firm was audited and accredited in the last three years, the standards your firm applied for or achieved, any scores awarded, the date(s) accreditation was achieved and when your accreditation expires. It should be noted that accreditation to a risk management standard is generally valid for one year. Some standards have minor annual maintenance visits, but are fully reassessed after three years.

NEW CLIENTS AND NEW MATTERS

Questions 11.3 to 11.7 in the form deal with issues relating to new clients and new matters. Each question in this section has a number of sub-questions.

Question 11.3 checks if new matters are subject to a written risk assessment that is signed off by a partner or principal, prior to acceptance of instructions, in order to establish a number of matters specified in the eight sub-questions. High or unusual risk factors should be defined for each work type. These might include, for example, unusually high transaction values, tight limitation or key dates, taking files over from other firms, complexity, novelty, limited scope/funds, and/or a higher number of parties involved than normal.

- Question 11.3.1 asks if the written risk assessment establishes whether the matter is within your firm's capability and capacity.
- Question 11.3.2 asks if the written risk assessment establishes whether the matter has unusual or higher risk factors than normal.
- Question 11.3.3 asks if the written risk assessment establishes whether there is adequate time to complete the work and meet any critical dates.
- Question 11.3.4 asks if the written risk assessment establishes whether the instructions received are reviewed against clearly defined risk criteria for both your client and the type of work.
- Question 11.3.5 asks if the written risk assessment establishes whether any difficult issues relating to the work and/or your client have been identified, recorded and can be managed.
- Question 11.3.6 asks if the written risk assessment establishes whether a review of potential exposure values has been carried out and, following that review, whether your firm's liability should be capped (whether this is appropriate and can be agreed with your client).
- Question 11.3.7 asks if the written risk assessment establishes whether a review of potential exposure values has been carried out and, following that review, whether your firm's PII cover should be extended to address such exposures.
- Question 11.3.8 asks if the written risk assessment establishes whether your firm will refuse work, or refer work elsewhere, where a full duty of care cannot be given, or there are unmanageable conflicts, potential conflicts, or other risks.

Question 11.4 checks whether your firm has formal written procedures for engaging new clients, and whether those procedures include matters specified in the eight sub-questions.

- Question 11.4.1 asks if the new client procedures include the issuing and acceptance of your firm's current terms and conditions.
- Question 11.4.2 asks if the new client procedures define the scope of the transaction.
- Question 11.4.3 asks if the new client procedures include, whether appropriate, the limiting of the liability of your firm under section 44 of the Civil Law (Miscellaneous Provisions) Act 2008.

44.— The [Solicitors \(Amendment\) Act 1994](#) is amended by inserting the following after section 26:

“Limitation of solicitors’, etc. liability by contract

26A.— (1) Subject to subsections (2) and (3), a contract between a solicitor and a client of the solicitor that any description of civil liability incurred—

- a) by the solicitor arising from his or her practice as a solicitor in respect of the provision of legal

services to the client be limited to an amount specified or referred to in the contract, or

- b) by a partner, clerk or servant or former partner, clerk or servant of the solicitor arising from that solicitor's practice as a solicitor in respect of the provision of legal services to the client be limited to an amount specified or referred to in the contract,

shall be binding on and enforceable by—

- (i) if paragraph (a) is applicable, the solicitor and the client, and
- (ii) if paragraph (b) is applicable, the partner, clerk or servant or former partner, clerk or servant of the solicitor and the client.

(2) Nothing in subsection (1) shall affect the operation of—

- (a) section 40 (as amended by [section 31 of the Restrictive Practices \(Amendment\) Act 1987](#)) of the [Sale of Goods and Supply of Services Act 1980](#), or
- (b) Regulation 6 of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 ([S.I. No. 27 of 1995](#)).

(3) The amount referred to in subsection (1) in respect of a description of civil liability the subject of the contract concerned shall be not less than the minimum level of cover, as specified from time to time in regulations under paragraph (b) of section 26(4), for indemnity against losses arising from those classes of claims which fall within that description of civil liability and, accordingly, any such amount which is less than such minimum level of cover shall, by virtue of this subsection, be deemed to be increased to such minimum level of cover, and such contract shall be binding and enforceable accordingly.

(4) [Section 7 of the Attorneys and Solicitors Act 1870](#) is repealed on the commencement of [section 44 of the Civil Law \(Miscellaneous Provisions\) Act 2008](#).

- Question 11.4.4 asks if the new client procedures include standard file-opening processes to capture all relevant client, owners, stakeholders and asset/liability details.
- Question 11.4.5 asks if the new client procedures include conflict of interest checks between clients, and conflict of interest checks between clients and your firm.
- Question 11.4.6 asks if the new client procedures include money laundering and client identity checks.
- Question 11.4.7 asks if the new client procedures include checks by a partner or principal to ensure that the matter is within the competence of your firm.
- Question 11.4.8 asks if the new client procedures include issuing a formal engagement letter capturing all the terms and conditions of the retainer.

Question 11.5 checks if new instructions are reviewed to ensure that actual, or potential conflicts of interest are systematically identified, recorded, notified if relevant and managed appropriately in accordance with procedures and specific training on this subject. These reviews should be in relation to actual or potential conflicts of interest either between your client and your firm, and your client and your firm's partners, principals, consultants and employees.

Question 11.6 checks if your engagement letters explicitly state items set out in the ten sub-questions.

- Question 11.6.1 asks if your engagement letters explicitly state what work your firm will be conducting for your client (scope of instructions) including specific objectives.

- Question 11.6.2 asks if your engagement letters explicitly state what your firm will not be doing for clients. This refers to limitations on your remit, including those based on third party funding restrictions, referral source or other advisor involvement, or your client wishing to limit costs or remit generally.
- Question 11.6.3 asks if your engagement letters explicitly state important dates and the implications if those dates are missed.
- Question 11.6.4 asks if your engagement letters explicitly state what you expect your client to do, and by when.
- Question 11.6.5 asks if your engagement letters explicitly state how long the matter is likely to take overall.
- Question 11.6.6 asks if your engagement letters explicitly state the fee basis and how much it will cost in total. This should include fees, disbursements, VAT and potential for other costs. It also asks if your engagement letters explicitly state, if relevant, details of any fee-sharing or referral commissions and how this will be accounted for.
- Question 11.6.7 asks if your engagement letters explicitly state the service levels your client should expect. 'Service levels' are the softer aspects of case handling related to the client interface. For example, the methods of client contact which will be used, which channels should not be used, how often general and cost updates will be given, response times, other involvement, who the client will have access to, and so on.
- Question 11.6.8 asks if your engagement letters explicitly state your current terms and conditions of business. These may be provided with the engagement letter as a separate document.
- Question 11.6.9 asks if your engagement letters explicitly state the contact names and statuses of the advisers to be involved in the case, their supervisor (if any), the complaints partner/manager, and procedure to follow in case of problems.
- Question 11.6.10 asks if your engagement letters explicitly state, where appropriate, notification and information regarding your firm's limitation of liability under section 44 of the Civil Law (Miscellaneous Provisions) Act 2008 which has been agreed with your client.

Question 11.7 seeks confirmation that your engagement letter for insurance products or investments advised on and/or sold explicitly includes specific items as set out in the sub-questions, namely 'fair, clear and not misleading' financial services information, status disclosure, basis of advice, demands and needs assessment and correspondence suitability statement.

SUPERVISION AND TRAINING

Questions 11.8 to 11.11 pertain to supervision and training.

Question 11.8 seeks confirmation that your firm operates a supervision system which includes procedures specified in the seven sub-questions.

- Question 11.8.1 asks if your supervision system includes a defined supervision structure with clear reporting lines that provides one or more named supervisors for all personnel and for each field of law. Appropriate supervisors include the principal, nominated partners or other experienced advisors. One supervisor may be responsible for more than one area of work.

- Question 11.8.2 asks if your supervision system includes supervisors who are qualified to supervise in the assigned categories of work based on technical competence, experience and ability.
- Question 11.8.3 asks if your supervision system includes allocation and/or early review of new work by a partner, principal or supervisor.
- Question 11.8.4 asks if your supervision system includes setting aside a regular time slot to review workloads, check for progress and inactivity, prioritise work and to deal with problem cases. Supervision may be on a risk-based frequency, with supervision less frequent with more experienced personnel, and more frequent with newer or less experienced personnel.
- Question 11.8.5 asks if your supervision system includes agreed systems for reviewing incoming and outgoing correspondence, including post, DX, faxes and emails.
- Question 11.8.6 asks if your supervision system includes systematic indexing, filing, updating, using and sharing of precedents and professional information.
- Question 11.8.7 asks if your supervision system includes inspection of sample client files on a regular basis using defined review criteria and effective reporting, and follow up of any necessary corrective/improvement action arising. Inspection may be at risk-based intervals, with some personnel subject to monthly file reviews and other personnel subject to bi-monthly or quarterly reviews, depending on the experience of the personnel and on the results of the file reviews. If file review results are poor, the frequency may be increased regardless of experience or authority levels. 'Defined review criteria' generally refers to a checklist for file review to ensure all agreed procedures have been followed. Defining the criteria in this way ensures consistency of approach and recording regardless of who is conducting the review, and enables more effective follow-up and easier review of results by supervisors and partners.

Question 11.9 checks that regular properly minuted partner or principal meetings take place that deal with planning, monitoring and reviewing of training and supervision activities.

Question 11.10 deals with solicitors' continuing training and asks if your firm offers and promotes such training, who is responsible for overall supervision and control of the training, and if your firm operates a supervision system involving identification, delivery and evaluation of training for legal and support staff of all levels.

Question 11.11 checks if your firm has procedures for ensuring that all staff members understand their legal, regulatory and best practise obligations from the outset and remain up to date with any changes to those obligations.

FILE MANAGEMENT

Question 11.12 deals with file audits, which should not be confused with file reviews. A *file audit* is when a file is audited according to specific criteria, a form is used, and generally the file is scored. Fee earners or partners do not audit their own files. A *file review* is a quick, frequent review of files to monitor progress which can be done by fee earners on their own files or by a supervising partner. The question checks if your firm carries out regular file audits of all current files including those of partners or principals, whether a formal file review form is used when auditing these files, whether frequent file progress monitoring is carried out on current files, and whether supervisors are required to independently check on file progress as appropriate.

Question 11.13 deals with policies for the management of client files including matters set out in the nine sub-questions.

- Question 11.13.1 checks if the client file management policies include key information to be shown in a prominent position on the file. Key information in this context includes critical dates, undertakings, risks and controls, plans and strategies.
- Question 11.13.2 checks if the client file management policies include a summary list/plan identifying key stages showing which are complete and which remain outstanding.
- Question 11.13.3 checks if the client file management policies include arrangements to ensure that files are kept in an orderly fashion in line with an agreed format, and such files are stored securely.
- Question 11.13.4 checks if the client file management policies include arrangements to ensure that sensitive materials are identified and recorded on the file, together with any associated undertakings or conditions. Sensitive materials in this context include evidence given by children, information and details of informants, covert intelligence, some personal/business/governmental/financial or tax matters, intelligence about national or other security matters, and so on.
- Question 11.13.5 checks if the client file management policies include procedures to ensure that correspondence is kept in date order and the file is kept up to date.
- Question 11.13.6 checks if the client file management policies include procedures to ensure that files and content can be identified consistently and be readily accessible and secure. This should apply whether the files/content are in paper files, cabinets, electronic storage systems or shared drives.
- Question 11.13.7 checks if the client file management policies include procedures to ensure that client property is identified, recorded on the file, stored and returned under secure conditions.
- Question 11.13.8 checks if the client file management policies include procedures to ensure that client confidentiality is observed when managing client work, discussing client matters, taking files out of the office or providing information to third party service providers.
- Question 11.13.9 checks if the client file management policies include procedures to ensure that files are archived securely for agreed periods and destroyed only with the approval of a principal or partner.

Question 11.14 deals with attendance notes and seeks confirmation of issues as set out in the three sub-questions.

- Question 11.14.1 checks if procedures are in place to ensure that legible attendance notes confirming both verbal instructions and written instructions from clients are held on file, and that the client's instructions are confirmed in writing.
- Question 11.14.2 checks if the attendance notes contain key matters, as set out in the seven sub-questions, which include requirements and objectives, agreed billing and charge out arrangements which comply with Section 68 of the Solicitors (Amendment) Act 1994 (<http://www.irishstatutebook.ie/1994/en/act/pub/0027/sec0068.html#sec68>), issues raised and advice given, options and associated risks, actions your firm will take, timescales to complete the action, and any action your client should take.
- Question 11.14.3 checks if all legal advisers in your firm rigidly adhere to a policy of keeping in writing all advice given, and confirming in writing all advice given. It checks if this is done prior to the formal acceptance of work, at the outset of the case, and throughout the duration of the case. This should include where further instructions are received or altered, the scope or limitations of

the agreed work are varied, advice is given, options and/or risks are discussed, choices are made, and actions are agreed or disagreed with.

Question 11.15 deals with key dates and checks your firm's procedures with regard to key dates through the five sub-questions including whether your firm notes key dates prominently on file, enters key dates into back-up systems that identifies the client and the matter number and the activity, records countdown dates to plan ahead effectively for key dates, caters for the planned or unforeseen absence of the person responsible for the key date matter, and operates a key date reminder system for fee earners.

CONCLUSION OF MATTERS

Question 11.16 deals with completion reviews of cases using a checklist of defined criteria and asks whether such a review considers and deals with the issues set out in the nine sub-questions. The object of the concluding case checklist is to ensure that claims do not arise from loose ends being left unattended. The review should check if all undertakings have been discharged, your client has been sent a letter informing them that the case has concluded (which letter should include, as appropriate, an explanation of the outcome or implications or other factors of note, and any need and timings for future review or action that the client should take), copies of final documents produced and signed/sealed are retained on file, a final statement of account and fee note have been sent to the client, any original documents or sensitive material or other assets have been returned and such return has been evidenced, any client dissatisfaction or other outstanding problems have been resolved or reported as appropriate, any intentions for case publicity involving client details have been agreed with the client, return and receipt of client and third party property has been evidenced, and all other concluding steps specific to work-type (such as registering and filing) and specific to your client's own service agreement have been completed.

UNDERTAKINGS

There are three questions under the undertakings section, dealing with established procedures for undertakings and transactions resting in contract.

Question 11.17 deals with established procedures for the control of undertakings and asks whether these procedures include specified issues, as set out in the five sub-questions, including a definition of what an undertaking is, the authority required for giving undertakings, how undertakings should be worded, where undertakings should be recorded (on case file or in a central register) and the timescales for confirming oral undertakings in writing.

Question 11.18 checks the date on which your firm's procedures for control of undertakings were established.

Question 11.19 deals with transactions resting in contract and asks if any solicitor in your firm has ever been involved in a transaction that was or is resting in contract and, if so, whether an undertakings was furnished to a lending institution. It checks if your firm has received written confirmation from relevant lending institutions for completed resting-in-contract transactions that your firm was involved in confirming that your firm has been released from the relevant undertaking.

FINANCIAL

There are 4 questions under the financial section which deal with monetary limits of cheques, authorisation to sign cheques, reconciliation of bank accounts and compliance with obligations under the Solicitors Accounts Regulations.

Question 11.20 checks the monetary limit for cheques signed by a sole signatory in your firm.

Question 11.21 checks whether anyone, other than the principal or equity partners in your firm, is authorised to sign cheques.

Question 11.22 checks whether your firm reconciles all client and office bank accounts at least once a month.

Question 11.23 checks whether your firm has complied with all of its obligations under the Solicitors Accounts Regulations.

Section 12: Cover required for 2014/2015

You are asked in this section to confirm your choice of limits of indemnity, your choice of excess, the details of your current insurance and whether your firm has ever been covered by the Assigned Risks Pool. There are four questions in the section.

It should be noted that the statutory minimum cover for solicitors' professional indemnity insurance in this jurisdiction is €1.5 million each and every claim.

Question 12.1 asks you to state your choice of limits of indemnity, with a maximum of three choices. It should be noted that the limit of indemnity chosen cannot be lower than the statutory minimum level of €1.5 million each and every claim.

Question 12.2 asks you to state your choice of limits of self-insured excess for each and every claim with a maximum of three choices. Self-insured excess is the amount that your firm must pay for each claim. You should ensure that your firm can afford to pay the excess chosen, especially given that this excess must be paid for each claim that arises. For example, if you have a self-insured excess of €10,000 for each claim, and ten claims arise in a coverage period, your firm would be required to pay out excesses of €100,000 in total.

Question 12.3 asks you to provide details of your current insurance including the total limit of cover, the self-insured excess for each claim, the insurer and the broker. Please note that there is a distinct difference between your insurance broker and your insurer. Your broker places your insurance, but the coverage is provided by the insurer. If you are not sure of your insurer, please ask your broker for confirmation.

Question 12.4 is a new question and asks if your firm, or any preceding firm, has ever been provided cover by the Assigned Risks Pool.

Section 13: Claims and circumstances

Section 13, as indicated by the title, seeks information on claims made and circumstances notified to and by your firm. There are eight questions in this section.

Question 13.1 asks if your firm, or any preceding practice, has made any claims, or has reported any circumstances, to insurers in the last ten years.

Question 13.2 asks you to provide details in the table provided of all claims and circumstances, including all notifications, made by your firm to insurers that are dormant for each of the years listed in the table (indemnity periods 2004/2005 to 2013/2014), including any preceding practices and branch offices. You

must not leave this section blank. If you have no claims or circumstances, you should state 'no claims or circumstances' on the form.

Question 13.3 asks you to **attach a copy of your current claims report to the proposal form**. This should be sought from and provided by the relevant insurer or the Assigned Risks Pool (through the Special Purpose Fund Manager). If you do not have a copy of your current claims report, you should provide **details of all claims and circumstances on the supplementary claims form** which is available from your broker or can be downloaded from the Society's website at www.lawsociety.ie/PII.

Question 13.4 asks if any principal or partner in your firm is aware of any loss or claim or circumstance, which has not been previously notified to a past or present insurer, that may give rise to a loss being sustained or a claim being made against, or involving, any person(s) to be included in this insurance, their predecessors in practice, or any past partners or principals or directors or members. Principals and partners are required to make careful enquiry regarding this matter of all solicitors and employees of their firm before responding to this question. **If you are aware of such matters, you should provide full details on a separate sheet to be included with the proposal form.**

Question 13.5 asks if any matters notified, either by your firm or any preceding practice to your firm, to your insurer or the Assigned Risks Pool, have not been accepted as an effective notification, or whether cover has been denied for such matters. **If the answer is yes, you should provide full details in section 16 of the form.**

Question 13.6 asks you to list in the table provided details of all claims and circumstances which may give rise to a claim which you have not already notified to your insurer. Such details include the date of the claim/circumstances, the claimant's name, the type of legal work involved in the claim (such as conveyancing, family law etc), and the estimated cost of the claim.

Question 13.7 asks you to confirm that all claims and circumstances that you are aware of have now been notified to your current insurer.

Question 13.8 asks you to confirm the date on which the claims and circumstances referred to in question 13.7 were notified.

Section 14: Duty to disclose material information

This is an information section, and should be read carefully and fully understood before you sign the declaration in section 15. It sets out the definition of 'material information' in the context of the proposal form and why such material information should be disclosed. If you are unsure of any matter set out in this section, you should seek further clarification from your broker.

Section 15: Declaration

This declaration should be read carefully, in conjunction with section 14, before being signed as it sets out some important undertakings and consents. The declaration should be signed by a partner or principal in the firm and dated. The form will not be accepted if the declaration is not completed properly.

It should be noted that completion of the proposal form does not bind the proposers of the insurers to complete a contract of insurance. However, if the policy is issued, the proposal form, together with any other information supplied prior to inception, shall form the basis of any contract of insurance effected thereon.

Section 16: Additional information

Some questions in the form require provision of additional information, to be provided in section 16 of the form. This information is highlighted in **bold font** both in the questions in the form, and throughout these guidelines.

You should clearly number the question in respect of which you are providing additional information in section 16, and double check before submitting the form that the numbering is correct.