



2021/2022

Solicitors' Professional Indemnity Common Proposal Form Guidelines

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Introduction

The solicitors' professional indemnity insurance ("PII") common proposal form for 2021/2022 is available to download from www.lawsociety.ie/PII. The form should be used for applications for professional indemnity insurance cover for the 2021/2022 indemnity period, which covers 1 December 2021 to 30 November 2022. 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.

The following amendments have been made to the form for the 2021/2022 renewal, other than the usual date updates or minor text changes:

1. Question 3.5.4 – This question has been expanded to include disciplinary records with the Legal Services Regulatory Authority and the Legal Practitioners Disciplinary Tribunal.
2. Question 4.1.1 - This question has been expanded to include adverse findings by the Legal Services Regulatory Authority and the Legal Practitioners Disciplinary Tribunal.
3. Questions 4.2 and 4.3 – Minor text changes have been made to bring the questions in line with the requirements of the Consumer Insurance Contracts Act 2019.
4. Questions 4.5.1 and 4.5.5 – These questions have been expanded to include findings by the Legal Services Regulatory Authority and the Legal Practitioners Disciplinary Tribunal.
5. Question 9.1 – This question has been expanded to include reference to the Legal Services Regulatory Authority.
6. Question 10.10 – This question has been expanded to include complaints to the Legal Services Regulatory Authority and the Legal Practitioners Disciplinary Tribunal.
7. Question 11.24 – This question has been amended to ask if the firm has faced one or more impersonation fraud attempts, payment diversion attempts, or other fraud attempts involving impersonation over the last 5 years, rather than the last 2 year, and requires that details of same be provided.
8. Question 11.32 – This question has been amended to include a requirement to provide full details of any separate cyber liability policy that the firm has in place, including the minimum limit of the policy, whether the policy covers cybercrime, the cyber-crime limit on the policy, and the renewal date of the cyber policy.
9. Question 11.36 – This is a new question seeking confirmation as to whether the firm has specific IT security provisions in place and, if yes, seeking full details of those provisions including details of firewalls and use of anti-virus software.
10. Question 11.40 – This is a new question seeking confirmation as to whether the firm has put specific supervision measures in place with respect to remote working and/or hybrid working and, if yes, that full details are provided.
11. Section 14: Duty to disclose material information – This section has been amended to provide for the requirements of the Consumer Insurance Contracts Act 2019.

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.

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 of 1 December 2021.
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. Care should be taken to ensure that all information provided in the form is correct and accurate. In accordance with the 2021/2022 PII regulations, there is a regulatory obligation for principals of firms to ensure that their proposal form does not contain any material misrepresentation or non-disclosure, save for an innocent misrepresentation or non-disclosure, and it shall be misconduct for the principals of firms to fail to comply with this obligation.
5. 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.
6. 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.
7. Check that all additional documentation has been attached to the form and is correctly cross-referenced.
8. Make sure that the figures add up. For example, ensure that the gross fee income figures add up to 100%.
9. 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.
10. 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.
11. 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.
12. 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.
13. Firms must notify their current insurer of all claims and circumstances before the end of the indemnity period.

14. If you are unable to obtain cover in the market, the common proposal form can be used to apply to the Assigned Risks Pool, which is administrated by the Special Purpose Fund Manager DWF Claims (Ireland) Limited, who can be contacted at 5 George's Dock, IFSC, Dublin 1 (phone: 01 790 9400, fax: 01 790 9401, and email: SPF@dwfclaims.com).
15. The common proposal form is an application for normal PII, not for run-off cover. Firms should contact the Special Purpose Fund Manager with regard to obtaining run-off cover through the Run-off Fund. 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.
16. 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.
17. Firms should ensure to redact any information in any documentation provided to insurers that may breach legal privilege or client confidentiality.
18. 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.
19. Ensure that the form is signed and dated, otherwise the proposal form is invalid.
20. 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 form 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.

Insurers prefer the common proposal form to be completed by computer, rather than hand written.

Please ensure that the common proposal form is filled out completely and properly. The insurers see the form as an indication of the professionalism of the firm, and so the risk profile of the firm.

Section 1: Your firm's details

Section 1 of the form contains three 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 or 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'.

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 (2020/2021 PII regulations if completed before 1 December 2021, and 2021/2022 PII regulations if completed after 1 December 2021).

The definition of 'preceding practice' as set out in the 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 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 was not listed in question 1. If such firms exist, details **should be provided in section 16** 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 five 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.**

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 **provide full details of each relevant fee earners' solicitor number, solicitor name and place of qualification in section 16** and **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 Legal Services Regulatory Authority, the Legal Practitioners Disciplinary Tribunal, the Solicitors Disciplinary Tribunal and any other relevant body.

If the answer to any of the questions is no, **you should provide full details in the text box in section 16.**

Section 4: Practice 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, the Legal Services Regulatory Authority, the Legal Practitioners 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 full details in section 16**, and **include documentation where available**.

Question 4.2 looks for confirmation as to whether there has been a material change in your firm in the last three years, in relation to change of legal entity, nature of work or location. If there has been such a change, **full details should be provided in section 16**, and **documentation included where available**.

Question 4.3 asks if you expect there to be any significant changes to, or in, your firm in the coming year. This includes any merger plans, or consolidation plans with another firm. If such changes are expected, **full details should be provided in section 16**, and **documentation included where available**.

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 section 16**. 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, the Legal Services Regulatory Authority, the Legal Practitioners 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;
5. whether they have been the subject of a finding of misconduct by the Solicitors Disciplinary Tribunal or Legal Practitioners Disciplinary Tribunal; or
6. whether they have been a partner, principal or consultant in a firm that is now in the Run-off Fund.

If the answer to any of these questions is yes, **full details should be provided in section 16**, and **relevant documentation, where available, attached to the form.**

Section 5: Gross fees (exclusive of VAT)

Section 5 contains five 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 2017, 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 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 5.5 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 two questions and deals 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. The question also asks if substantial changes are expected in the percentage gross fee income in the next 12 months. If the answer is yes **full details should be provided in section 16**.

Question 6.2 looks for an estimated percentage breakdown of your firm's client base across a range of specified categories. It also asks if substantial changes are expected in the percentage gross fee income in the next 12 months. If the answer is yes **full details should be provided in section 16**.

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 this is not the case, you should provide full details as to why in section 16 of the form.**

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

Section 8: Nature of work – personal injury

Section 8 contains three 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. **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.

Question 8.4 asks you to confirm whether a diary system is in place to record, monitor, and review key dates in relation to personal injury cases, and to confirm the name of the person in the firm with responsibility for same.

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

Section 9 contains four 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 seven 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, Legal Services Regulatory Authority, 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/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 thirteen questions relating to conveyancing work done by your firm. It should be noted that the number of questions in this section has decreased substantially from the twenty-two questions in last year's form.

Question 10.1 seeks information on whether more than 10% of your conveyancing turnover was derived from a single source or referrer between 2007 and 2017. **If yes, you should provide full details in section 16 of the form.**

Question 10.2 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. The total of all the years should also be included at the end of the table.

Question 10.3 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. If this answer to this question is yes, full details should be provided in section 16 of the form.

Question 10.4 looks for information for the following for the last ten years for your firm:

1. the highest PPR conveyancing transaction value; and
2. the highest commercial conveyancing transaction value.

Question 10.5 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 and provide the names of all subprime lenders in the text box provided.

Question 10.6 seeks to confirm whether your firm received any requests for conveyancing files, or information from conveyancing files, over the last six 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. You are asked to confirm whether such requested have been reported to your insurer and, **if your answer is no, you are required to provide full details as to why these were not reported in section 16 of the form.** You are also asked if any potential notifications made by you have been declined by your insurer, and **if your answer is yes, you are required to provide full details of the notifications and reasons for declination in section 16 of the form.**

Question 10.7 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 and, if yes, how many such

claims have been made. You are asked to confirm whether such claims have been reported to your insurer and, **if your answer is no, you are required to provide full details as to why these were not reported in section 16 of the form.** You are asked to confirm whether claims notifications have been declined by your insurer and **if your answer is yes, you are required to provide full details of the notifications and reasons for declination in section 16 of the form.**

Question 10.8 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 10.9 asks you to confirm if you are aware of any disputes, questions or queries arising from the provision of undertaking given by your firm, or accepted by your firm. **If yes, you should provide full details in section 16 of the form.**

Question 10.10 asks for you to confirm whether you have received correspondence from any financial institution threatening legal action, or a complaint to the Legal Services Regulatory Authority, or Solicitors Disciplinary Tribunal, or Legal Practitioners 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 10.11 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 10.12 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 10.13 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.

Section 11: Risk-management procedures

Section 11 is the largest section in the form with 32 questions divided between 8 categories, namely general management, new clients and new matters, supervision and training, file management, conclusion of matters, undertakings, financial, and a new section on cybersecurity.

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 (unless otherwise indicated by the question).
- You should answer 'no' to any question if you have not implemented the relevant policy or procedure, or any part thereof in multi-part questions (unless otherwise indicated by the question).
- If your answer is 'no', or 'yes' but qualified, you should provide full details and explanations in section 16.
- 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.

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 by a Partner or Principal. 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 detail in the table provided 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, or is a multi-part question. You should only answer 'yes' to a multi-part question where all matters listed apply. If the answer would be 'no' in relation to even one of the sub-items listed, you should answer 'no' **and provide more detail in section 16**.

Question 11.3 is a multi-part question that checks if, prior to acceptance of new instruction, new matters are subject to a written risk assessment that is signed off by a Principal or Partner to establish all of the

matters listed in 11.3.1 to 11.3.6. 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 11.4 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 11.4.3 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 11.5 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 is a multi-part question which checks if your engagement letters explicitly state all of the items listed in 11.6.1 to 11.6.9.

Question 11.7 is a multi-part question which seeks confirmation that your engagement letter for insurance products or investments advised on and/or sold explicitly includes all specific items as set out in 11.7.1 to 11.7.5.

SUPERVISION AND TRAINING

It should be noted that sole practitioners are not required to complete the 'Supervision and Training' section of the form, and should tick the 'N/A' box and move straight to the 'File Management' section. Sole principals and partnerships are required to complete this section.

There are three questions in this sub-section. You should only answer 'yes' to a multi-part question where all matters listed apply. If the answer would be 'no' in relation to even one of the sub-items listed, you should answer 'no' **and provide more detail in section 16**.

Question 11.8 is a multi-part question that seeks confirmation that your firm operates a supervision system which includes all procedures specified in 11.8.1 to 11.8.9.

- 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 11.8.4 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 11.9 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 checks if all solicitors in your firm have fully complied with their annual CPD requirements.

FILE MANAGEMENT

There are 4 questions in this sub-section. You should only answer 'yes' to a multi-part question where all matters listed apply. If the answer would be 'no' in relation to even one of the sub-items listed, you should answer 'no' **and provide more detail in section 16**.

Question 11.11 is a multi-part question which 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. The question checks if your firm complies with all of the file audit criteria set out in 11.11.1 to 11.11.4.

Question 11.12 is a multi-part question which checks if your firm has set policies for the management of client files that require all of the items listed in 11.12.1 to 11.12.9.

- Question 11.12.1 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 11.12.4 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 deals with attendance notes and seeks confirmation of issues as set out in the two sub-questions.

- Question 11.13.1 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 11.13.2 checks if the attendance notes contain all key matters, as set out in 11.13.2.1 to 11.13.2.7, which include requirements and objectives, agreed billing and charge out arrangements which comply with Section 149-152 of the Legal Services Regulation Act 2015 (<http://www.irishstatutebook.ie/eli/2015/act/65/enacted/en/html>), 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 checks if your firm operates a system for recording, monitoring and reviewing key dates which includes a procedure for absenteeism.

CONCLUSION OF MATTERS

There is only one multi-part question in this sub-section. You should only answer 'yes' to a multi-part question where all matters listed apply. If the answer would be 'no' in relation to even one of the sub-items listed, you should answer 'no' and **provide more detail in section 16**.

Question 11.15 deals with completion reviews of cases using a checklist of defined criteria and asks whether such a review considers and deals with all the issues set out in 11.15.1 to 11.15.8. 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, 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 in this sub-section, dealing with established procedures for undertakings and transactions resting in contract. You should only answer 'yes' to a multi-part question where all matters listed apply. If the answer would be 'no' in relation to even one of the sub-items listed, you should answer 'no' and **provide more detail in section 16**.

Question 11.16 is a multi-part question which checks if your firm has established procedures for the control of undertaking which include all items listed in 11.16.1 to 11.16.8.

Question 11.17 checks the date on which your firm's procedures for control of undertakings were established.

Question 11.18 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 any undertakings were 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 four 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. If you answer no to any of these questions (except question 11.20) you should provide **full details in section 16 of the form**.

Question 11.19 checks the monetary limit for cheques signed by a sole signatory in your firm, which should be stated in the text box provided.

Question 11.20 checks whether anyone, other than the principal or equity partners in your firm, is authorised to sign cheques. **If the answer to this question is yes, you should provide full details in section 16 of the form, with particular emphasis on safeguards put in place on the non-principal signatory.**

Question 11.21 checks whether your firm reconciles all client and office bank accounts at least once a month.

Question 11.22 checks whether your firm has complied with all of its obligations under the Solicitors Accounts Regulations.

CYBERSECURITY

There are 10 questions in this sub-section. General information on cybersecurity can be found on the Society's website at <https://www.lawsociety.ie/Solicitors/Running-a-Practice/Cybersecurity/>.

Question 11.23 asks whether your firm has put in place measures, plans or controls to prevent or mitigate against impersonation fraud involving the impersonation of a principal, partner, director, officer or employee of the firm, or payment diversion fraud involving the impersonation of your suppliers or

vendors. **If the answer to this question is no, full details should be provided in section 16 of the form.**

Question 11.24 checks if the firm has faced any impersonation fraud or payment diversion fraud attempts in the last 5 years. If the answer to this question is yes, you should consider providing full details of same in section 16 of the form.

Question 11.25 checks if safeguards have been put in place against “phishing” attacks, including warning your reception staff about the dangers of providing names and contact details of finance department staff and partners or principals to callers. **If the answer to this question is no, full details should be provided in section 16 of the form.**

Question 11.26 asks for details about how fund transfers of over €10,000 are made, specifically whether all instructions are subject to authentication by the employee receiving the request using at least one of the mechanisms set out in 11.26.1 to 11.26.6. **If the answer to this question is no, full details should be provided in section 16 of the form.**

Question 11.27 checks whether all requests for payments by vendors or suppliers are subject to verification that such sums are actually owing to the vendor or supplier. **If the answer to this question is no, full details should be provided in section 16 of the form.**

Question 11.28 checks whether the payments details provided by the supplier are verified against the payment details held on file prior to payment. **If the answer to this question is no, full details should be provided in section 16 of the form.**

Question 11.29 checks whether your firm has back-up and recovery procedures for all mission critical systems, and data/information systems. **If the answer to this question is no, full details should be provided in section 16 of the form.**

Question 11.30 deals with proper data handling. It checks whether your firm is aware of any erroneous, mistaken, improper or unauthorised release, loss or disclosure of personally identifiable information in your firm’s care, custody, or control, or under the care, custody or control of anyone holding such information on behalf of the firm, in the last 3 years. **If the answer to this question is yes, full details should be provided in section 16 of the form.**

Question 11.31 checks whether your firm has ever received claims or complaints regarding allegations of invasion of privacy, injury to privacy, identity theft, theft of information, breach of information security, or whether your firm has been required by law or by your own volition, to provide notification to individuals due to an actual or suspected disclosure of personal information. **If the answer to this question is yes, full details should be provided in section 16 of the form.**

Question 11.32 asks whether your firm has a separate cyber liability insurance policy in place for your firm. **If the answer to this question is yes, full details should be provided in section 16 of the form including provide full details of any separate cyber liability policy that the firm has in place, including the minimum limit of the policy, whether the policy covers cybercrime, the cyber-crime limit on the policy, and the renewal date of the cyber policy.**

Question 11.33 refers to “fake president” and “social engineering” frauds.

A “fake president” fraud is an increasingly common cyberfraud which involves the scammer using a fake identity to convince someone in the firm to make an emergency bank transfer to a third party, in order to obey a direct order of a manager, principal or partner in the firm. This may be by email or phone, and may involve impersonating the manager, principal or partner.

A “social engineering” fraud is similar to a “fake president” fraud and involves manipulation of persons in a firm into disclosing private information which can then be used by the fraudster to impersonate a member of the firm, or otherwise access firm funds or files. This includes “phishing”, impersonating a financial institution or client, or blackmail/bribery for the return of confidential information.

Question 11.33.1 asks for confirmation that anyone with authority to transfer funds has been trained to avoid falling victim to these frauds.

Question 11.33.2 asks if appropriate internal controls and procedures have been put in place on bank accounts and money transfers to avoid this type of fraud.

Question 11.33.3 asks if the audit function for the firm has been briefed to check that these safeguards are in place.

Question 11.34 – This question asks if all employees have received training on privacy and security matters on an annual basis.

Question 11.35 – This question asks for confirmation that all employees in the firm have been briefed on the privacy policy for your firm, including use of your network, and have provided evidence that they understand the privacy policy.

Question 11.36 – This is a new question seeking confirmation as to whether the firm has specific IT security provisions in place and, if yes, seeking full details of those provisions including details of firewalls and use of anti-virus software.

COVID-19

This section deals with risk management procedures and survival procedures for the firm in relation to Covid-19.

Question 11.37 – This question asks if the firm has put financial plans in place to ensure the firm’s continued ability to trade during the crisis. This would include short-term and long-term plans, and use of any grants.

Question 11.38 – This question asks if the firm has put risk management procedures in place to deal with Covid-19. This would include risk management plans in relation to remote working, privacy and security.

Question 11.39 – This question asks if the firm has taken, or intends to take, financial actions in response to Covid-19. This would include bank loans, partnership profit use, and adjustment of staffing costs.

Question 11.40 – This is a new question seeking confirmation as to whether the firm has put specific supervision measures in place with respect to remote working and/or hybrid working and, if yes, that full details are provided.

Section 12: Cover required for 2021/2022

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 for 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 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 2011/2012 to 2020/2021), 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. This section has been amended to provide for the requirements of the Consumer Insurance Contracts Act 2019.

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.