
THE RUN OFF COVER RULES

RUN-OFF COVER RULES

Indemnity Period 2011/2012

Pursuant to the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011 (the “**Regulations**”) the Professional Indemnity Insurance Committee has determined that, pursuant to Regulation 5(g) of the Regulations, the following terms and conditions shall apply to the *run-off cover* offered to *firms* for the *indemnity period* or part thereof commencing 1 December 2011.

For the avoidance of doubt, undefined italicised terms herein shall have the meaning ascribed to such terms by the Regulations.

1. The Run-off Fund

The *ROF* shall be a constituent part of the *SPF* in the *indemnity period* commencing on 1 December 2011 and shall be contributed to by the *qualified insurers* in proportion to their market share as calculated in accordance with Schedule 2 of *the qualified insurers agreement*. It shall provide *run-off cover* to *ROF eligible firms* and to *ARP eligible firms*.

2. Notice of Closure

A *firm* which intends to cease *practice* shall provide the *SPF manager* with a written notice of its intention to cease *practice* by whichever is the earliest of the following:

- (i) at least 60 days prior to ceasing *practice*; or
- (ii) at least 60 days prior to the expiry of its *coverage period*.

Notice of closure can be provided by the *firm* to the *SPF manager* in the form of the Notice of Closure Form at Schedule 1 or in any written form provided that it includes the information contained in the Notice of Closure Form.

The *firm* shall provide to the *SPF manager* its most recent completed proposal form and its most recent policy of *qualifying insurance* with such notice of closure.

3. Period of Cover

Run-off cover in respect of each *firm* shall commence at the expiry of the *coverage period* during which the *firm* ceases *practice* or on the date of expiry of its *ARP coverage*, as the case may be.

4. Paying for Run-off Cover

No *run-off firm* shall be required to pay a premium for *run-off cover*.

5. Self-insured Excess

The *ROF cover* issued to *ROF eligible firms* shall have a self-insured excess equal to the self-insured excess applicable to the *qualifying insurance* held by the *firm* at the time it ceased *practice*.

ARP run-off cover issued to an *ARP run-off eligible firm* shall have a self-insured excess equal to the self-insured excess applicable under the *ARP coverage*.

The *SPF manager* shall pay any amount that is within the self-insured excess of any *firm's run-off cover* to a claimant but shall be entitled to recover any amount so paid from the *firm*.

6. Additional self-insured excess

Firms obtaining *run-off cover* through the *ROF* will not be required to bear any additional excess for *run-off cover* provided they meet the following obligations:

- (i) notification of closure to the *SPF manager* in accordance with Clause 2 above;

- (ii) compliance with the *close of practice guidelines* as published by the *PII committee*;
- (iii) satisfaction of the *minimum common risk management standard*; and
- (iv) fully co-operate with the *SPF manager* in the conduct of claims and notify any claim or circumstances required to be notified to the *SPF manager* within the period prescribed in Clause 8 of these rules.

Where a *firm* fails to comply with the obligations set out in Clause 6(i) and/or Clause 6(iii), the additional self-insured excess set out opposite that obligation in Schedule 2 shall apply to that *firm's run-off cover* in respect of its failure to comply with that obligation.

Where, in the opinion of the *SPF manager*, a *firm* fails to comply with the obligations set out in Clause 6(ii) and/or Clause 6(iv), the *SPF manager* shall determine the additional self-insured excess to apply to that *firm's run-off cover* in respect of its failure to comply with that obligation. The additional self-insured excess to apply to a *firm's run-off cover* in respect of its failure to comply with its obligations in Clause 6(ii) and/or Clause 6(iv) shall in each case not exceed the maximum amount set out opposite that obligation in Schedule 2.

The maximum additional self-insured excess that may apply to any one *firm's run-off cover* in respect of its failure to comply with its obligations in Clauses 6(i) to 6(iv) is €90,000.

The additional self-insured excess to apply to any one *firm's run-off cover*, as determined in accordance with this Clause 6, shall be applied by the *SPF manager* on an aggregate basis.

The additional self-insured excess to apply to any one *firm's run-off cover*, as determined in accordance with this Clause 6, shall apply to that *firm's run-off cover* in each *indemnity period* in which that *firm* holds *run-off cover* from the *ROF* unless otherwise determined by the *SPF manager*, at its discretion, following a review carried out by the *SPF manager* in accordance with this Clause 6.

Where the *SPF manager* has imposed an additional self-insured excess pursuant to a failure to meet the obligations in Clause 6(ii) and/or Clause 6(iv), the *SPF manager* shall review the *firm's* compliance with these obligations on a regular basis in order to determine, at its discretion, whether there should be any revision of the additional self-insured excess amount. Any changes to be made shall be at the discretion of the *SPF manager*.

The *SPF manager* shall not be required to pay any amount that is within the additional self-insured excess in respect of claims made by *financial institutions*.

7. Risk management audits

The *ROF* shall be responsible for the cost and expenses of the *firm's risk management audit*.

The *SPF manager* shall pay, on behalf of the *qualified insurers*, the costs of the first *risk management audit*.

The *SPF manager* shall pay, on behalf of the *qualified insurers*, the costs of any further *risk management audit* carried out in relation to the *practice* of a *firm*. However, the *firm* shall be required to indemnify the *SPF manager* on demand in respect of any costs, fees, expenses, losses or liabilities incurred by the *SPF manager* in relation to the conduct of that *risk management audit* or to reimburse the *SPF manager* thereafter. Every principal of that *firm* shall be responsible for ensuring that the *firm* discharges its liabilities to the *SPF manager*.

Risk management auditors shall be appointed by the *SPF management committee* on such terms as may be determined by the *SPF management committee*.

8. Claims

Every *firm* that holds *run-off cover* must notify any claim or circumstance to the *SPF manager* as soon as is reasonably practicable after the *principal* of the *firm*, or any solicitor or registered lawyer employed by the *firm* at the time it ceased practice first becoming aware of such claim.

Any interested party may notify a claim or circumstance on behalf of a *run-off firm* to the *SPF manager* and neither the *SPF manager* nor any *qualified insurer* may dispute the validity of such notification solely on the grounds that it was not made directly by the *firm*.

Every *firm* that holds *run-off cover* must confirm to the *SPF manager* at the end of each *indemnity period* that they are not aware of any claims or circumstances which have not been reported.

9. Provision of additional information

Every *run-off firm* shall provide to the *SPF manager* such information as the *SPF manager* may from time to time in its discretion reasonably require to deal efficiently and effectively with that *firm's* membership of the *run-off fund*.

10. Cancellation of run-off cover

Subject to Clause 11, *run-off cover* cannot be cancelled, except on terms agreed between the *SPF manager* and the *firm* where the following conditions are met:

- (a)
 - i) The *firm* shall obtain replacement qualifying insurance in accordance with the minimum terms and conditions on the date of cancellation of the relevant *run-off cover*;
 - ii) The *qualified insurer* under the replacement *qualifying insurance* shall confirm in writing to the *firm* and to the *SPF manager* that they are providing *qualifying insurance* on the basis that the *firm's practice* is to be treated as a continuation of the *firm's practice* prior to the cessation thereof and that the *qualified insurer* shall be liable for any claims against the *firm* arising from matters that occurred prior to the cessation and that accordingly they will be liable for any claims against the *firm* arising from matters that occurred prior to the cessation; and
 - iii) The *qualified insurer* under the replacement insurance shall provide any required confirmations of coverage to the *Law Society* pursuant to the Regulations; or
- (b) The *firm* ceases to be a ROF Eligible Firm.

11. Phoenix Firms

Run-off cover held by a *run-off firm* may be cancelled by the *SPF Manager* where, pursuant to Regulation 3(m) of the Regulations, the *PII Committee* decides to treat another firm as a *phoenix firm* to the *run-off firm*.

In the event of such cancellation, the *SPF manager* shall honour and discharge any amount due and owing in respect of any claim or circumstance notified to the *SPF Manager* within the period from the commencement of the *run-off cover* until its cancellation by the *SPF Manager* pursuant but the *SPF Manager* shall be entitled to recover any amount so paid from the *run-off firm* or from those persons who were *principals* of the *run-off firm* immediately prior to the date it ceased practice.

Where the *PII Committee* decides to treat another firm as a *phoenix firm* to a *run-off firm* the former *principals* for the *run-off firm* shall procure that the *phoenix firm* establishes and maintains professional indemnity insurance which includes cover in accordance with the *minimum terms and conditions* for claims made against the *run-off firm* from the date it ceased practice. A *phoenix firm* shall not be in compliance with its requirement to establish and maintain *qualifying insurance* with a *qualified insurer* pursuant to the Regulations where it fails to comply with this requirement.

12. Management of the ROF

The *SPF manager* shall be responsible for managing and administering the *ROF* and its duties shall include, but shall not be limited to, the following:

- i) Issue *run-off cover* and related documentation to *firms* in the *ROF* on behalf of the *qualified insurers* participating in the *ROF*;
- ii) Receive notice of, negotiate, settle and pay claims on behalf of all *qualified insurers* participating in the *ROF*;
- iii) Conduct any claims against a *firm* in the *ROF*, advance *defence costs* and, if appropriate, compromise and pay any such claim in the normal course on behalf of each relevant *qualified insurer*; and
- iv) Do all things necessary and incidental to any of the above and any other such things as may be necessary from time to time to facilitate the operation of the *ROF*.

13. Reporting to qualified insurers

The *SPF manager* shall, on or about the end of each calendar quarter (or within 10 working days of the end of each such quarter) provide a bordereau to each *qualified insurer* participating in the *ROF* setting out the claims made or notified in respect of that *indemnity period* (including claims made in respect of *financial institutions*) and the establishment, administration and management costs and expenses incurred by the *SPF manager* relating to that *indemnity period*. The obligation to report on those matters will remain so long as any claims made on the *ROF* incepting in that *indemnity period* remain outstanding.

14. Reporting to the Law Society

The *SPF manager*, acting as an agent for the *qualified insurers*, will provide such data to the *Law Society* as the *Law Society* may request from time to time in relation to the *run-off cover*, *firms* in the *ROF*, *run-off firms* where the *SPF manager* has arranged cover through the *ROF* and *defaulting run-off firms* in respect of which the *SPF manager* has arranged cover through the *ROF*.

15. Disclosure of information from the Law Society to the qualified insurers

The *Law Society* may establish an information service to disclose certain information to the *qualified insurers* in such a manner as it may, in its absolute discretion, deem fit, including the following:

- i) On or before 31st January in each *indemnity period*, provide a *qualified insurer* with details of the identity of *run-off firms* which maintained insurance with that *qualified insurer* in the prior indemnity period.
- ii) Provide *qualified insurers* with the details of the identity of any *run-off firm* which has had all of its principals suspended or struck off the roll.

SCHEDULE 1

Notice of Closure Form

Dear Sirs

Pursuant to Regulation 8(a) of the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011 (the "**Regulations**") , we hereby give notice of our intention to cease practice on *[insert date]*.

We hereby confirm that this notice is given at least 60 days prior to the earliest to occur of the following:

- (a) the cessation of the firm's practice; or
- (b) the expiry of the policy of professional indemnity insurance or ARP coverage held by the firm.

We further confirm that no person who is a principal of the firm at the time it ceases practice shall carry on a practice which is largely similar to the practice of the firm or which has succeeded the practice of the firm such that it could be treated as a phoenix firm pursuant to Regulation 3(m) of the Regulations.

We enclose with this notice the firm's most recently completed proposal form for professional indemnity insurance and most recent policy of professional indemnity insurance.

Yours faithfully

SCHEDULE 2

Self Insured Excess

	Obligation:	Maximum Additional Excess per Indemnity Period
1.	<p>Provide the <i>SPF manager</i> with a written notice of its intention to cease <i>practice</i> to include such information as contained in the Notice of Closure Form at Appendix 1 of these terms.</p> <p>This notice must be accompanied by the following: (i) the <i>firm's</i> most recent completed proposal form; and (ii) the policy of <i>qualifying insurance</i> held by the <i>firm</i> at the time it ceased <i>practice</i>.</p>	€15,000
2.	Comply with the <i>close of practice guidelines</i> as published by the <i>PII committee</i> .	€30,000
3.	Satisfaction of the minimum common risk management standard. published in accordance with the Regulations.	€15,000
4.	Fully co-operate with the <i>SPF manager</i> in the conduct of claims and notify any claim or circumstances required to be notified to the <i>SPF manager</i> within the period prescribed in Clause 8 of these rules.	€30,000