

# The ARP Policy

## Part 1

### Contract of Assigned Risks Pool insurance

#### 1 Insuring clauses

##### 1.1 Civil liability

The Insurer will indemnify each Insured against civil liability to the extent that it arises from Private Legal Practice in connection with the Insured Firm's Practice, provided that a Claim in respect of such liability:

- (a) is first made against an Insured during the Period of Insurance; or
- (b) is made against an Insured during or after the Period of Insurance and arising from Circumstances first notified to the Insurer during the Period of Insurance.

##### 1.2 Defence Costs

The Insurer will also indemnify the Insured against Defence Costs in relation to:

- (a) any Claim referred to in clause 1.1, 1.4 or 1.6; or
- (b) any Circumstances first notified to the Insurer during the Period of Insurance; or
- (c) any investigation, ~~or~~ inquiry ~~or~~ (save in respect of any disciplinary proceeding under the authority of The Law Society of England and Wales (including, without limitation, the Solicitors Regulation Authority)) during or after the Period of Insurance arising from any Claim referred to in clause 1.1, 1.4 or 1.6 or from Circumstances first notified to the Insurer during the Period of Insurance.

##### 1.3 The Insured

For the purposes of cover under clause 1.1, the Insured includes:

- (a) the Insured Firm; and
- (b) each service, administration, trustee or nominee company owned as at the date of occurrence of relevant Circumstances by the Insured Firm, and/or the Principals of the Insured Firm; and
- (c) each Principal, each former Principal and each person who becomes a Principal during the Period of Insurance of the Insured Firm or a company referred to in paragraph (b); and
- (d) each Employee, each former Employee and each person who becomes during the Period of Insurance an Employee of the Insured Firm or a company referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated person referred to in paragraph (c) or (d).

##### 1.4 Prior Practice

The Insurer will indemnify each Insured against civil liability to the extent that it arises from Private Legal Practice in connection with a Prior Practice, provided that a Claim in respect of such liability is first made against an Insured:

- (a) during the Period of Insurance; or

- (b) during or after the Period of Insurance and arising from Circumstances first notified to the Insurer during the Period of Insurance.

### **1.5 The Insured - Prior Practice**

For the purposes of cover under clause 1.4, the Insured includes:

- (a) each Partnership or Recognised Body which, or Sole Practitioner who, carried on the Prior Practice; and
- (b) each service, administration, trustee or nominee company owned as at the date of occurrence of relevant Circumstances by the Partnership or Recognised Body which, or Sole Practitioner who, carried on the Prior Practice and/or the Principals of such Partnership or Recognised Body; and
- (c) each Principal and former Principal of each Partnership or Recognised Body referred to in paragraph (a) or company referred to in paragraph (b); and
- (d) each Employee and former Employee of the Partnership, Recognised Body or Sole Practitioner referred to in paragraph (a) or company referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated Sole Practitioner referred to in paragraph (a) or person referred to in paragraph (c) or (d).

### **1.6 Successor Practice**

The Insurer will indemnify each Insured against civil liability to the extent that it arises from Private Legal Practice in connection with a Successor Practice to the Insured Firm's Practice (where succession is as a result of one or more separate mergers, acquisitions, absorptions or other transitions), provided that a Claim in respect of such liability is first made against an Insured:

- (a) during the Period of Insurance; or
- (b) during or after the Period of Insurance and arising from Circumstances first notified to the Insurer during the Period of Insurance.

### **1.7 The Insured - Successor Practice**

For the purposes of cover under clause 1.6, the Insured includes:

- (a) each Partnership or Recognised Body which, or Sole Practitioner who, carries on the Successor Practice during the Period of Insurance; and
- (b) each service, administration, trustee or nominee company owned as at the date of occurrence of relevant Circumstances by the Partnership or Recognised Body which, or Sole Practitioner who, carries on the Successor Practice and/or the Principals of such Partnership or Recognised Body; and
- (c) each Principal, each former Principal and each person who becomes during the Period of Insurance a Principal of any Partnership or Recognised Body referred to in paragraph (a) or company referred to in paragraph (b); and
- (d) each Employee, each former Employee and each person who becomes during the Period of Insurance an Employee of the Partnership, Recognised Body or Sole Practitioner referred to in paragraph (a) or company referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated Sole Practitioner referred to in paragraph (a) or person referred to in paragraph (c) or (d).

## **1.8 Award by regulatory authority**

The Insurer will indemnify each Insured against any amount paid or payable in accordance with the recommendation or determination of the Legal Services Ombudsman, the Legal Complaints Service, the Office for Legal Complaints (including the Legal Ombudsman pursuant to sections 137(2)(c) and section 137(4)(b) of the Legal Services Act 2007) or any other regulatory authority to the same extent as it indemnifies the Insured against civil liability provided that the Insurer will have no Liability in respect of any determination by the Legal Ombudsman pursuant to section 137(2)(b) of the Legal Services Act 2007 to refund any fees paid to the Insured.

## **2 Limit of insurance cover**

### **2.1 Any one Claim**

The Sum Insured for any one Claim (exclusive of Defence Costs) is as set out in the Schedule.

### **2.2 No limit on Defence Costs**

The Sum Insured does not apply to Defence Costs.

### **2.3 Proportionate limit on Defence Costs**

Notwithstanding clause 2.2, liability for Defence Costs in relation to a Claim which exceeds the Sum Insured is limited to the proportion that the Sum Insured bears to the total amount paid or payable to dispose of the Claim.

### **2.4 One Claim**

When considering what may be regarded as one Claim for the purposes of the limits contemplated by clauses 2.1 and 2.3:

(a) all Claims against any one or more Insured arising from:

- (i) one act or omission;
- (ii) one series of related acts or omissions;
- (iii) the same act or omission in a series of related matters or transactions;
- (iv) similar acts or omissions in a series of related matters or transactions

and

(b) all Claims against one or more Insured arising from one matter or transaction

will be regarded as one Claim.

### **2.5 Multiple underwriters**

Where the insurance is underwritten jointly with any other insurer:

- (a) the Insurer shall be severally liable only for its respective proportion of liability as set out in the Schedule; and
- (b) in addition to the proportionate limit on Defence Costs in accordance with clause 2.3, the Insurer's liability for Defence Costs shall be further limited to the extent or proportion of the Insurer's liability (if any) in relation to the relevant Claim.

Where the insurance is written jointly with any other insurer on an excess of loss basis, and the Insurer is writing one of the excess layers, the provisions of Part 3 shall apply.

### **3 Excesses**

#### **3.1 The Excess**

The Insured will bear the first amount of each and every Claim up to the amount of the Excess specified in the Schedule.

#### **3.2 Excess does not reduce Sum Insured**

The Excess does not reduce the Sum Insured.

#### **3.3 Excess does not apply to Defence Costs**

The Excess does not apply to Defence Costs.

#### **3.4 Funding of the Excess**

If an Insured fails to pay to a Claimant any amount which is within the Excess within 30 days of it becoming due for payment, the Claimant may give notice of the Insured's default to the Insurer, whereupon the Insurer is liable to remedy the default on the Insured's behalf. Any amount paid by the Insurer to remedy such a default erodes the Sum Insured.

#### **3.5 One Claim**

All Claims against any one or more Insured arising from the same act or omission or from one series of related acts or omissions will be regarded as one Claim for the purposes of the Excess.

### **4 Special conditions**

#### **4.1 No avoidance or repudiation**

The Insurer is not entitled to avoid or repudiate this contract on any grounds whatsoever including, without limitation, non-disclosure or misrepresentation, whether fraudulent or not.

#### **4.2 No adjustment or denial**

The Insurer is not entitled to reduce or deny its liability under this contract on any grounds whatsoever including, without limitation, any breach of any term or condition of this contract, except to the extent that one of the exclusions contained in clause 6 applies.

#### **4.3 No cancellation**

This contract cannot be cancelled except (in the case of (a), (b) or (c) below) by the agreement of both the Insured Firm and the Insurer, and in any event only in circumstances where:

- (a) the Insured Firm's Practice is merged into a Successor Practice, provided that there is insurance complying with the Minimum Terms and Conditions in relation to that Successor Practice, in which case cancellation shall have effect no earlier than the date of such merger; or
- (b) replacement insurance complying with the Minimum Terms and Conditions commences, but only where, in the case of insurance not provided wholly or partly by the Assigned Risks Pool, the replacement insurance is not provided wholly or partly by the Assigned Risks Pool, in which case cancellation shall have effect no earlier than the date on which such replacement insurance commences; or
- (c) it subsequently transpires that the Insured Firm is not required under the Solicitors Indemnity Insurance Rules ~~2009~~2010 to effect a policy of Qualifying Insurance, in which case cancellation shall have effect from the later of (a) the start of the relevant Indemnity Period and (b) the date on which the Insured Firm ceased to be required to effect a policy of Qualifying Insurance, or such later date as the Insured Firm and the Insurer may agree; or

- (d) it subsequently transpires that the Insured Firm was not or has ceased to be an Eligible Firm, in which case cancellation shall have effect from the date on which it ceased to be an Eligible Firm.

Cancellation will not affect the rights and obligations of the Insurer and the Insured accrued under this contract prior to the date from which cancellation has effect.

#### **4.4 No set-off**

Any amount payable by the Insurer to indemnify an Insured against civil liability to a Claimant will be paid only to the Claimant, or at the Claimant's direction, and the Insurer is not entitled to set-off against any such amount any payment due to it by any Insured including, without limitation, any payment of premium or to reimburse the Insurer.

#### **4.5 Other insurance**

The liability of the Insurer under this contract is not reduced or excluded by reason of the existence or availability of any other insurance except as provided by clause 6.2. This clause does not affect any right of the Insurer to claim contribution from any other insurer which is also liable to indemnify any Insured.

#### **4.6 Successor Practice - 'double insurance'**

If the Insured Firm's Practice is succeeded during the Period of Insurance and, as a result, a situation of 'double insurance' exists between two or more insurers of the Successor Practice, contribution between insurers is to be determined in accordance with the relative numbers of Principals of the owners of the constituent Practices immediately prior to succession.

#### **4.7 Advancement of Defence Costs**

The Insurer will meet Defence Costs as and when they are incurred, including Defence Costs incurred on behalf of an Insured who is alleged to have committed or condoned dishonesty or a fraudulent act or omission, provided that the Insurer is not liable for Defence Costs incurred on behalf of that Insured after the earlier of:

- (a) that Insured admitting to the Insurer the commission or condoning of such dishonesty, act or omission; or
- (b) a court or other judicial body finding that that Insured was in fact guilty of such dishonesty, act or omission.

#### **4.8 Resolution of disputes**

If there is a dispute as to whether a Practice is a Successor Practice for the purposes of clauses 1.4, 1.6 or 5.3, the Insured and the Insurer will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party which has insurance complying with the Minimum Terms and Conditions and that party's insurer.

#### **4.9 Conduct of a Claim pending dispute resolution**

Pending resolution of any coverage dispute and without prejudice to any issue in dispute, the Insurer will, if so directed by the Society, conduct any Claim, advance Defence Costs and, if appropriate, compromise and pay the Claim. If the Society is satisfied that:

- (a) the party requesting the direction has taken all reasonable steps to resolve the dispute with the Insurer; and
- (b) there is a reasonable prospect that the coverage dispute will be resolved or determined in the Insured's favour; and
- (c) it is fair and equitable in all the circumstances for such direction to be given;

it may in its absolute discretion make such a direction.

#### **4.10 Minimum Terms and Conditions prevail**

This contract is to be construed or rectified so as to comply with the requirements of the Minimum Terms and Conditions, and any provision of this contract which is inconsistent with the Minimum Terms and Conditions is to be severed or rectified to comply.

### **5 Run-off cover**

#### **5.1 Cessation of the Insured Firm's Practice**

If the Insured Firm's Practice ceases during or on expiry of the Period of Insurance and the Insured Firm has not obtained succeeding insurance in compliance with the Minimum Terms and Conditions (a **Cessation**), this contract provides run-off cover in accordance with clause 5.2. For these purposes, the Insured Firm's Practice shall (without limitation) be regarded as ceasing if (and with effect from the date upon which) the Insured Firm becomes a Non-SRA Firm.

#### **5.2 Scope of run-off cover**

If run-off cover is provided under clause 5.1, the Insurer will indemnify each Insured in accordance with clauses 1.1 to 1.8 (but subject to the limits, exclusions and conditions of this contract) on the basis that the Period of Insurance extends for an additional six years (ending on the sixth anniversary of the date upon which, but for this requirement, it would have ended).

#### **5.3 Succession**

Run-off cover is not provided under clause 5.1 if there is a Successor Practice to the ceased Practice, provided that there is insurance complying with the Minimum Terms and Conditions in relation to that Successor Practice.

#### **5.4 Suspended Practices**

Where run-off cover has been activated in accordance with this clause 5, but where the Insured Firm's Practice restarts, the Insurer may (but shall not be obliged to) cancel such run-off cover, on such terms as may be agreed, provided that:

- (a) there is insurance complying with these minimum terms and conditions in relation to the Insured Firm in force on the date of cancellation;
- (b) the Qualifying Insurer providing such insurance confirms in writing to the Insured Firm and the Insurer (if different) that:
  - (i) it is providing insurance complying with these minimum terms and conditions in relation to that Insured Firm for the then current Indemnity Period; and
  - (ii) it is doing so on the basis that the Insured Firm's Practice is regarded as being a continuation of the Insured Firm's Practice prior to Cessation and that accordingly it is liable for Claims against the Insured Firm arising from incidents, occurrences, facts, matters, acts and/or omissions which occurred prior to Cessation.

### **6 Exclusions**

The liability of the Insurer under this contract is not excluded or limited except to the extent that any Claim or related Defence Costs arise from the matters set out in this clause 6.

#### **6.1 Prior cover**

Any Claim in respect of which the Insured is entitled to be indemnified by the Solicitors Indemnity Fund (**SIF**) or under a professional indemnity insurance contract for a period earlier than the Period of Insurance, whether by reason of notification of Circumstances to SIF or under the earlier contract or otherwise.

## 6.2 Death or bodily injury

Any liability of any Insured for causing or contributing to death or bodily injury, except that this contract nonetheless covers liability for psychological injury or emotional distress which arises from a breach of duty in the performance of (or failure to perform) legal work.

## 6.3 Property damage

Any liability of any Insured for causing or contributing to damage to, or destruction or physical loss of, any property (other than property in the care, custody or control of any Insured in connection with the Insured Firm's Practice and not occupied or used in the course of the Insured Firm's Practice), except that this contract nonetheless covers liability for such damage, destruction or loss which arises from breach of duty in the performance of (or failure to perform) legal work.

## 6.4 Partnership disputes

Any actual or alleged breach of the Insured Firm's Partnership or shareholder agreement or arrangements, including any equivalent agreement or arrangement where the Insured Firm is a Limited Liability Partnership or a company without a share capital.

## 6.5 Employment breaches, discrimination, etc.

Wrongful dismissal, repudiation or breach of an employment contract or arrangement, termination of a training contract, harassment, discrimination or like conduct in relation to any Partnership or shareholder agreement or arrangement or the equivalent where the Insured Firm is a Limited Liability Partnership or a company without a share capital, or in relation to any employment or training agreement or arrangement.

## 6.6 Debts and trading liabilities

Any:

- (a) trading or personal debt of any Insured; or
- (b) ~~breach by any~~legal liability assumed or accepted by an Insured ~~of the terms of an~~Insured Firm under any contract or ~~arrangement~~agreement for the supply to, or use by, ~~any~~the Insured ~~or Insured Firm~~ of goods or services in the course of the Insured Firm's Practice; ~~or, save that this exclusion 6.6(b) will not apply to any legal liability arising in the course of an Insured Firm's Practice in connection with its or any Insured's use of or access to the HM Land Registry network (including, without limitation, access under a Network Access Agreement made under the Land Registration (Network Access) Rules and the Land Registration (Electronic Communications) Order 2007) other than an obligation to pay search fees or other charges for searches or services provided by HM Land Registry to the Insured Firm; or~~
- (c) guarantee, indemnity or undertaking by any particular Insured in connection with the provision of finance, property, assistance or other benefit or advantage directly or indirectly to that Insured.

## 6.7 Fines, penalties, etc

Any:

- (a) fine or penalty; or
- (b) award of punitive, exemplary or like damages under the law of the United States of America or Canada, other than in respect of defamation; or
- (c) order or agreement to pay the costs of a complainant, regulator, investigator or prosecutor of any professional conduct complaint against, or investigation into the professional conduct of, any Insured.

## 6.8 Fraud or dishonesty

The Insurer is not liable to indemnify any Insured to the extent that any civil liability or related Defence Costs arise from dishonesty or a fraudulent act or omission committed or condoned by that Insured, except that:

- (a) this contract nonetheless covers each other Insured; and
- (b) no such dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company or, in the case of a Limited Liability Partnership, all members of that Limited Liability Partnership.

## 6.9 Directors' or officers' liability

The Insurer is not liable to indemnify any natural person in their capacity as a director or officer of a body corporate (other than a Recognised Body or a service, administration, trustee or nominee company referred to in clause 1.3(b), 1.5(b) or 1.7(b)) except that:

- (a) this contract nonetheless covers any liability of that person which arises from a breach of duty in the performance of (or failure to perform) legal work; and
- (b) this contract nonetheless covers each other Insured against any vicarious or joint liability.

## 6.10 War and Terrorism, and Asbestos

- (a) Subject to 6.10(b) below, but otherwise notwithstanding any provision to the contrary within this insurance or any endorsement hereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
  - (i) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
  - (ii) any act of terrorism; or
  - (iii) asbestos, or any actual or alleged asbestos-related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos.

For the purpose of this clause an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This clause also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (i), (ii) and/or (iii) above.

If the Insurer alleges that by reason of this clause, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event any portion of this clause is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

- (b) Clause 6.10(a) above does not exclude or limit any liability of the Insurer to indemnify any Insured against civil liability or related Defence Costs arising from any actual or alleged breach of duty in the performance of (or failure to perform) legal work or failure to



discharge or fulfil any duty incidental to the Insured Firm's Practice or to the conduct of Private Legal Practice.

## **7 General conditions**

### **7.1 Notice of claims and circumstances**

The Insured will give notice in writing to the Insurer as soon as is reasonably practicable of any:

- (a) Claim first made against Insured during the Period of Insurance; or
- (b) Circumstances of which any Insured first became aware during the Period of Insurance.

### **7.2 Co-operation and assistance**

Each Insured will give the Insurer and any investigators or solicitors appointed by the Insurer all information and documents they reasonably require, and full co-operation and assistance in the investigation, defence, settlement, avoidance or reduction of any actual or possible Claim or any related proceeding.

### **7.3 Conduct of any proceeding**

The Insurer may at its option take over and conduct in the name of any Insured any proceeding arising out of or relating to any Claim in respect of which the Insurer is liable to indemnify any Insured under this contract.

### **7.4 No admission of liability**

The Insured will not, without the prior consent in writing of the Insurer, admit liability for or settle any Claim in respect of which the Insurer is liable to indemnify any Insured under this contract. If the Insured Firm wishes a claim to be settled, but the Insurer does not, the Insurer will brief senior counsel (to be mutually selected or, in default of agreement, to be selected by the Society) to advise on whether or not the Claim against the Insured is likely to succeed. If counsel's advice is that the Claim is likely to succeed, the Insurer shall take such steps as are mutually agreed to settle the Claim on terms to be mutually agreed or, in default of agreement, such steps and such terms as counsel advises having due regard to the interests of both the Insured and the Insurer. Counsel's fee will in each case be payable by the party against whose contention counsel advised.

### **7.5 Subrogation**

If any payment is made by the Insurer in respect of a Claim against any Insured, the Insurer will be subrogated to all rights of the Insured of indemnity, contribution or recovery to the extent of that payment. The Insured will not surrender any such right, or settle any such claim for indemnity, contribution or recovery, without the prior consent in writing of the Insurer.

### **7.6 Reimbursement**

Each Insured who:

- (a) committed; or
- (b) condoned (whether knowingly or recklessly):
  - (i) non-disclosure or misrepresentation; or
  - (ii) any breach of the terms or conditions of this contract; or
  - (iii) dishonesty or any fraudulent act or omission

will reimburse the Insurer to the extent that is just and equitable having regard to the prejudice caused to the Insurer's interests by such non-disclosure, misrepresentation, breach, dishonesty, act or omission, provided that no Insured shall be required to make any such reimbursement to the

extent that any such breach of the terms or conditions of this contract was in order to comply with any applicable rules or codes laid down from time to time by the Society, or in the Society publication *Your Clients - Your Business*, as amended from time to time.

No non-disclosure, misrepresentation, breach, dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company or, in the case of a Limited Liability Partnership, all members of that Limited Liability Partnership. Any right of reimbursement under this clause against any person referred to in clauses 1.3(d), 1.5(d) or 1.7(d) (or against the estate or legal personal representative of any such person if they die or become legally incapacitated) is limited to the extent that is just and equitable having regard to the prejudice caused to the Insurer's interests by that person having committed or condoned (whether knowingly or recklessly) dishonesty or any fraudulent act or omission.

#### **7.7 Reimbursement of Defence Costs**

Each Insured will reimburse the Insurer for Defence Costs advanced on that Insured's behalf which the Insurer is not ultimately liable to pay.

#### **7.8 Reimbursement of the Excess**

Those persons who are at any time during the Period of Insurance Principals of the Insured Firm (including, for these purposes, every person held out as a partner of a Sole Practitioner) will reimburse the Insurer for any Excess paid by the Insurer on an Insured's behalf. The Sum Insured is reinstated to the extent of reimbursement of any amount which eroded it under clause 3.4.

#### **7.9 Reimbursement of moneys paid pending dispute resolution**

Each Insured will reimburse the Insurer following resolution of any coverage dispute for any amount paid by the Insurer on that Insured's behalf which, on the basis of the resolution of the dispute, the Insurer is not ultimately liable to pay.

#### **7.10 Withholding assets or entitlements**

The Insured Firm will account to the Insurer for any asset or entitlement of any person who committed or condoned any dishonesty or fraudulent act or omission, provided that the Insured Firm is legally entitled to withhold that asset or entitlement from that person.

#### **7.11 Disclosure of information**

The Insurer may bring to the attention of the Society any of the matters referred to in Rule 17.1 (a) to (f) of the Solicitors' Indemnity Insurance Rules ~~2009~~2010, and, in the case of any of the matters referred to in Rule 17.1 (f), to the Legal Complaints Service and/or the Office for Legal Complaints ([including the Legal Ombudsman](#)), in relation to the Insured Firm or any Insured, and is not required to notify the Insured Firm or any Insured of the fact that it has done so or intends to do so.

## **8 Definitions**

### **8.1 General**

In this contract unless the context otherwise requires:

- (a) the singular includes the plural, and vice versa; and
- (b) the male gender includes the female and neuter genders; and
- (c) a reference to a person includes a body corporate, partnerships, and other unincorporated associations or bodies of persons; and
- (d) a reference to any statute, statutory provision, code or regulation includes:
  - (i) any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made under it; and

- (ii) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it either before, or at or after the date of this contract; and
- (e) references to the Society include the Solicitors Regulation Authority ~~and~~, the Legal Complaints Service and the Office for Legal Complaints (including the Legal Ombudsman), and any body or person which succeeds in whole or in part to the functions of the Society, the Solicitors Regulation Authority ~~or~~, the Legal Complaints Service or the Office for Legal Complaints (including the Legal Ombudsman), and any delegate of the Society, the Solicitors Regulation Authority, the Legal Complaints Service, the Office for Legal Complaints (including the Legal Ombudsman) or any such body or person;
- (f) headings are for ease of reference only and shall not affect the interpretation of this contract; and
- (g) a reference to a director includes a member of a Limited Liability Partnership; and
- (h) words and expressions which begin with a capital letter this contract have the meaning set out in this clause 8; and
- (i) words and expressions in this contract are to be construed consistently with the same or similar words or expressions in the Solicitors' Indemnity Insurance Rules ~~2009~~2010.

## 8.2 Defined terms

In this contract:

**Circumstances** means an incident, occurrence, fact, matter, act or omission which may give rise to a Claim in respect of civil liability.

**Claim** means a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages. For these purposes, an obligation on an Insured Firm and/or any Insured to remedy a breach of the Solicitors' Accounts Rules 1998 (as amended from time to time), or any rules which replace the Solicitors' Accounts Rules 1998 in whole or in part, shall be treated as a Claim, and the obligation to remedy such breach shall be treated as a civil liability for the purposes of clause 1, whether or not any person makes a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages as a result of such breach, except where any such obligation may arise as a result of the insolvency of a bank (as defined in section 87 of the Solicitors Act 1974) or a building society (within the meaning of the Building Societies Act 1986) which holds client money in a client account of the Insured Firm or the failure of such bank or building society generally to repay monies on demand.

**Claimant** means a person or entity which has made or may make a Claim including a Claim for contribution or indemnity.

**Defence Costs** means legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the consent of the Insurer in:

- (a) defending any proceedings relating to a Claim; or
- (b) conducting any proceedings for indemnity, contribution or recovery relating to a Claim; or
- (c) investigating, reducing, avoiding or compromising any actual or potential Claim; or
- (d) acting for any Insured in connection with any investigation, inquiry or disciplinary proceeding (save in respect of any disciplinary proceeding under the authority of The Law Society of England and Wales (including, without limitation, the Solicitors Regulation Authority)).

Defence Costs do not include any internal or overhead expenses of the Insured Firm or the Insurer or the cost of any Insured's time.

**Employee** means any person other than a Principal:

- (a) employed or otherwise engaged in the Insured Firm's Practice (including under a contract for services) including, without limitation, as a solicitor, lawyer, trainee solicitor or lawyer, consultant, associate, locum tenens, agent, appointed person (as defined in the Solicitors' Indemnity Insurance Rules ~~2009~~2010), office or clerical staff member or otherwise;
- (b) seconded to work in the Insured Firm's Practice; or
- (c) seconded by the Insured Firm to work elsewhere.

Employee does not include any person who is engaged by the Insured Firm under a contract for services in respect of any work where that person is required, whether under the Solicitors' Indemnity Insurance Rules ~~2009~~2010 or under the rules of any other professional body, to take out or to be insured under separate professional indemnity insurance in respect of that work.

The **Excess** is the first amount of each and every Claim to be borne by the Insured in accordance with clause 3.1.

**Insured** means each person and entity named or described as a person to whom cover under this contract extends.

**Insured Firm** means the Firm (as defined for the purposes of the Solicitors Indemnity Insurance Rules ~~2009~~2010) which has entered into this contract.

**Insured Firm's Practice** means:

- (a) the legal Practice carried on by the Insured Firm as at the commencement of the Period of Insurance; and
- (b) the continuous legal Practice preceding and succeeding the Practice referred to in paragraph (a) (irrespective of changes in ownership of the Practice or in the composition of any Partnership which owns or owned the Practice).

**Insurer** means the underwriter(s) of this contract as specified in the Schedule, including, where applicable, such underwriter(s) acting through the manager for the time being of the Assigned Risks Pool.

**Limited Liability Partnership** means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000.

**Minimum Terms and Conditions** means the minimum terms and conditions required by the Solicitors' Indemnity Insurance Rules ~~2009~~2010 for insurance commencing at inception of the Period of Insurance.

**Partnership** means an unincorporated Insured Firm in which persons are or are held out as partners and does not include an Insured Firm incorporated as a Limited Liability Partnership, and **Partner** means a person who is or is held out to be a partner in a Partnership.

**Period of Insurance** means the period for which this contract operates expiring at midnight on 30 September ~~2010~~2011.

**Principal** means:

- (a) where the Insured Firm is or was:
  - (i) a sole practitioner - that practitioner;
  - (ii) a Partnership - each Partner;
  - (iii) a company with a share capital - each director of that company and any solicitor, Registered European Lawyer or Registered Foreign Lawyer who:

- (A) is held out as a director; or
  - (B) beneficially owns the whole or any part of a share in the company; or
  - (C) is the ultimate beneficial owner of the whole or any part of a share in the company.
- (iv) a company without a share capital – each director of that company and any solicitor, Registered European Lawyer or Registered Foreign Lawyer who:
- (A) is held out as a director; or
  - (B) is a member of the company; or
  - (C) is the ultimate owner of the whole or any part of a body corporate or other legal person which is a member of the company;
- (v) a Limited Liability Partnership – each member of that Limited Liability Partnership, and any solicitor, Registered European Lawyer or Registered Foreign Lawyer who is the ultimate owner of the whole or any part of a body corporate or other legal person which is member of the Limited Liability Partnership.
- (b) where a body corporate or other legal person is a Partner in the Insured Firm, all solicitors, Registered European Lawyers or Registered Foreign Lawyers who are within paragraph (a)(iii) of this definition (including sub paragraphs (A) and (C) thereof), paragraph (a)(iv) of this definition (including sub paragraphs (A) and (C) thereof), or paragraph a(v) of this definition.

**Prior Practice** means each Practice to which the Insured Firm's Practice is ultimately a Successor Practice by way of one or more mergers, acquisitions, absorptions or other transitions.

**Private Legal Practice** means the provision of services in private Practice as a solicitor or registered European lawyer including, without limitation:

- (a) providing such services in England, Wales or anywhere in the world, whether alone or with other lawyers in a Partnership permitted to practise in England and Wales by rule 12 of the Solicitors' Code of Conduct 2007; and
- (b) the provision of such services as a secondee of the Insured Firm; and
- (c) any Insured acting as a personal representative, trustee, attorney, notary, insolvency practitioner or in any other role in conjunction with a Practice; and
- (d) the provision of such services by any Employee; and
- (e) the provision of such services pro bono publico.

Private Legal Practice does not include:

- (i) practising as an Employee of an employer other than a solicitor, a registered European lawyer, a Partnership permitted to practise in England and Wales by rule 12 of the Solicitors' Code of Conduct 2007, or a Recognised Body; or
- (ii) discharging the functions of any of the following offices or appointments:
  - (A) judicial office;
  - (B) Under Sheriffs;
  - (C) members and clerks of such tribunals, committees, panels and boards as the Council may from time to time designate but including those subject to the

Tribunals and Inquiries Act 1992, the Competition Commission, Legal Services Commission Review Panels and Parole Boards;

- (D) Justices' Clerks; or
- (E) Superintendent Registrars and Deputy Superintendent Registrars of Births, Marriages and Deaths and Registrars of Local Crematoria.

**Recognised Body** means a body for the time being recognised by the Solicitors Regulation Authority under Section 9 of the Administration of Justice Act 1985 and the SRA Recognised Bodies Regulations 2009.

**Relevant Recognised Body** means a Recognised Body other than:

- (a) an unlimited company, or an overseas company whose members' liability for the company's debts is not limited by its constitution or by the law of its country of incorporation; or
- (b) a nominee company only, holding assets for clients of another Practice; and
  - (i) it can act only as agent for the other Practice; and
  - (ii) all the individuals who are Principals of the Recognised Body are also Principals of the other Practice; and
  - (iii) any fee or other income arising out of the Recognised Body accrues to the benefit of the other Practice or
- (c) a partnership in which none of the partners is a limited company, a Limited Liability Partnership or a legal person whose members have limited liability.

**Schedule** means the Schedule attached to this contract.

**Society** means the Law Society of England and Wales.

**Sole Practitioner** means a solicitor or registered European lawyer who is a sole practitioner, and includes a Recognised Sole Practitioner.

**Successor Practice** means a Practice identified in this definition as 'B', where:

- (a) 'A' is the Practice to which B succeeds; and
- (b) 'A's owner' is the owner of A immediately prior to transition; and
- (c) 'B's owner' is the owner of B immediately following transition; and
- (d) 'transition' means merger, acquisition, absorption or other transition which results in A no longer being carried on as a discrete legal Practice.

B is a Successor Practice to A where:

- (i) B is or was held out, expressly or by implication, by B's owner as being the successor of A or as incorporating A, whether such holding out is contained in notepaper, business cards, form of electronic communications, publications, promotional material or otherwise, or is contained in any statement or declaration by B's owner to any regulatory or taxation authority; and/or
- (ii) (where A's owner was a Sole Practitioner and the transition occurred on or before 31 August 2000) - the Sole Practitioner is a Principal of B's owner; and/or
- (iii) (where A's owner was a Sole Practitioner and the transition occurred on or after 1 September 2000) - the Sole Practitioner is a Principal or Employee of B's owner; and/or

- (iv) (where A's owner was a Recognised Body) - that body is a Principal of B's owner; and/or
- (v) (where A's owner was a Partnership) - the majority of the Principals of A's owner have become Principals of B's owner; and/or
- (vi) (where A's owner was a Partnership and the majority of Principals of A's owner did not become Principals of the owner of another legal Practice as a result of the transition) - one or more of the Principals of A's owner have become Principals of B's owner and:
  - (A) B is carried on under the same name as A or a name which substantially incorporates the name of A (or a substantial part of the name of A); and/or
  - (B) B is carried on from the same premises as A; and/or
  - (C) the owner of B acquired the goodwill and/or assets of A; and/or
  - (D) the owner of B assumed the liabilities of A; and/or
  - (E) the majority of staff employed by A's owner became employees of B's owner.

Notwithstanding the foregoing, B is not a Successor Practice to A under paragraph (ii), (iii), (iv), (v) or (vi) if another Practice is or was held out by the owner of that other Practice as the successor of A or as incorporating A, provided that there is insurance complying with these minimum terms and conditions in relation to that other Practice.

**Sum Insured** means the aggregate limit of liability of each Insurer under this contract.

## **9 Governing law**

- 9.1 This insurance shall be governed by and interpreted in accordance with the laws of England and Wales.

## Schedule

### 1 The Insured Firm

The Insured Firm is:

### 2 Parties

This contract is made between the Insurer, the Insured Firm, and each Principal of the Insured Firm (including, where the Insured Firm is a Sole Practitioner, any person held out as a Partner of that practitioner) and each such Principal is jointly and severally liable to the Insurer for all sums due to the Insurer under this contract in accordance with Rule 10.3 of the Solicitors Indemnity Insurance Rules ~~2009~~2010.

### 3 The Insurer

The Insurer is:

[The Lead Insurer is: \_\_\_\_\_ ]

### 4 Sum Insured

The Sum Insured for any one Claim (exclusive of Defence Costs) is [£2 million / £3 million].

### 5 [Limit of Indemnity hereunder]

[..... any one claim excess of ..... (the **Underlying Limit**)]

**[Proportionate share of liability (%)]**

[.....]

### 6 The Excess

The Excess is:

### 7 Period of Insurance

The Period of Insurance is from:

to midnight on 30 September ~~2010~~2011.



## Part 2

### Contract of Assigned Risks Pool run-off insurance

If an Insured Firm is issued with an ARP Run-off Policy, run-off cover shall be provided through the ARP, which shall indemnify each Insured in accordance with clauses 1.1 to 1.8 of the ARP Policy set out in Part 1 of Schedule 2, (but subject to the limits, exclusions and conditions of the ARP Policy).

The period of cover provided by the ARP Run-off Policy shall be as determined under Rule 13.5.

## Part 3

### Excess Indemnity

If cover is provided through the ARP jointly with other Qualifying Insurers on an excess of loss basis, and the ARP is writing one of the excess layers, the terms of the ARP Policy shall be as set out in Part 1 of Schedule 2, but subject to the following terms:

- 1 Clause 3 shall not apply in relation to the excess layer.
- 2 The following additional terms shall apply:

#### 1 ~~10~~ Additional provisions

- 1.1 ~~10.1~~ The Insurer is liable for an amount representing the excess over the Underlying Limit on an Ultimate Net Loss basis. The Ultimate Net Loss shall mean the sum which is finally ascertained to be the sum which Insurers are liable for as a result of the loss insured but shall exclude Defence Costs.
- 1.2 ~~10.2~~ All salvages, recoveries or payments recovered or received after a settlement under this Policy shall be applied as if recovered or received before the settlement and all necessary adjustments shall be made by the parties. This shall not prevent any such recovery being made before the Ultimate Net Loss is ascertained.
- 1.3 ~~10.3~~ If a loss or liability arises to which the Insurer may be liable to contribute, no Defence Costs shall be incurred on behalf of it without its prior consent. Where a Claim is settled for a sum not exceeding the Underlying Limit no Defence Costs shall be payable by the Insurer.
- 1.4 ~~10.4~~ The Lead Insurer shall not settle any Claim for a sum exceeding the Underlying Limit without the prior consent of the Insurer (such consent not to be unreasonably withheld or delayed).

## Schedule 3

### Solicitors' Indemnity Insurance Rules ~~2009~~2010

The commentary provided with these Rules does not form part of the Rules, is provided for guidance only, and does not affect the meaning or interpretation of the Rules in any way.

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## PART 1: GENERAL

### 1 Authority and commencement

- 1.1 These Rules are made by the Solicitors Regulation Authority Board under sections 31, 37, 79 and 80 of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985, with the concurrence of the Master of the Rolls under sections 31 and 37 of the Solicitors Act 1974 and paragraph 16 of Schedule 22 of the Legal Services Act 2007 and the concurrence of the Lord Chancellor under paragraph 16 of Schedule 22 of the Legal Services Act 2007.
- 1.2 These Rules come into force on 1 October [2009-2010](#).
- 1.3 These Rules require Solicitors, Registered European Lawyers, Registered Foreign Lawyers and Recognised Bodies and their Managers in Private Practice in England and Wales to take out and maintain professional indemnity insurance with Qualifying Insurers with effect from 1 October [2009-2010](#).

*Commentary: These Rules apply to:*

- *Solicitors*
- *Registered European Lawyers*
- *Registered Foreign Lawyers and*
- *Recognised Bodies and their Managers*

*carrying on Private Practice in England and Wales as a Firm at any time after 1 October [2009-2010](#). Refer to the definitions in Rule 3 for guidance on the exact meanings of these terms.*

- 1.4 These Rules will apply to any Indemnity Period beginning on or after 1 October [2009-2010](#).

*Commentary: Before 1 September 2000, Firms were required to take out insurance with the Solicitors Indemnity Fund. Since 1 September 2000, Firms have been required to take out insurance in accordance with the Solicitors' Indemnity Insurance Rules. From 1 October [2009-2010](#), Firms must take out insurance in accordance with these Rules with one or more Qualifying Insurers. Continuing arrangements dealing with past claims on the Solicitors Indemnity Fund are covered in the Solicitors' Indemnity Rules.*

- 1.5 The Solicitors Indemnity Insurance Rules [2008-2009](#) shall not apply in respect of any Indemnity Period beginning on or after 1 October [2009-2010](#) but they shall remain in force in respect of the Indemnity Period from 1 October [2007-2008](#) to 30 September [2008-2009](#) inclusive (as amended by the Solicitors' Indemnity Insurance (Amendment) Rules ~~2009~~ with effect from 31 March 2009) subject to the provisions of Rules 19.1(a), 19.1(b), 19.1(c) and 19.1(d) below.

*Commentary: You should refer to previous Solicitors' Indemnity Insurance Rules in relation to earlier Indemnity Periods since 1 September 2000. However, you should refer to Rules 19.1(a) to 19.1(d) in relation to time limits in respect of an application for a waiver of the provisions of the Solicitors' Indemnity Insurance Rules 2000 to [2009-2010](#).*

### 2 Citation

- 2.1 These Rules may be cited as the Solicitors' Indemnity Insurance Rules [2009-2010](#).

### 3 Definitions and interpretation

- 3.1 In these Rules, unless the context otherwise requires:

**Appointed Person** means any person who is designated as a fee-earner in accordance with any arrangements made from time to time between the Firm and the Legal Services Commission pursuant to the provisions of the Access to Justice Act 1999, regardless of whether the services performed for the Firm by that person in accordance with Rule 4.1 are performed pursuant to such

arrangements or otherwise, and who is engaged by the Firm under a contract for services in the course of the Private Practice of the Firm.

*Commentary: Under Rule 4, work carried out by a designated fee-earner may be covered under the Qualifying Insurance of the Firm for which they do that work.*

**Approved Regulator** means a body listed in the first column of the table in paragraph 1 of Schedule 4 to the Legal Services Act 2007 (whether or not that paragraph has been brought into force), or designated as an approved regulator by an order under Part 2 of that Schedule.

**Assigned Risks Pool** means the arrangements by which an Eligible Firm may obtain professional indemnity insurance against civil liability by means of an ARP Policy on the terms set out in Part 3 of these Rules.

*Commentary: The Assigned Risks Pool is designed to ensure that professional indemnity insurance will be available to all Eligible Firms. However, it is important to note that premiums payable to the Assigned Risks Pool are intended to be high. Refer to Appendix 2 to the Rules for the method of calculation of the ARP Premium.*

**ARP Manager** means the manager of the Assigned Risks Pool being any person from time to time appointed by the Society to carry out all or any particular functions of the ARP Manager or the Society and any such person.

**ARP Policy** means a contract of professional indemnity insurance issued by the ARP Manager on behalf of Qualifying Insurers to an Eligible Firm in the Assigned Risks Pool including where the context permits a Policy provided to a Firm in Default.

*Commentary: A copy of the standard-form ARP Policy is available on the website of the Solicitors Regulation Authority at [www.sra.org.uk](http://www.sra.org.uk), and is also available from the Solicitors Regulation Authority. Contact details appear at the end of the introductory commentary.*

**ARP Premium** means the premium calculated in accordance with Part 1 of Appendix 2 to these Rules, **ARP Default Premium** means the premium calculated in accordance with Part 2 of Appendix 2 to these Rules and **ARP Run-off Premium** means the premium calculated in accordance with Part 3 of Appendix 2 to these Rules.

**ARP Run-off Policy** means a contract of professional indemnity insurance issued by the ARP Manager on behalf of Qualifying Insurers to a Run-off Firm in the Assigned Risks Pool.

**Authorised Insurer** means:

- (a) a person who has permission under Part IV of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance of a relevant class;
- (b) a person who carries on an insurance market activity, within the meaning of section 316(3) of that Act;
- (c) an EEA Firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance of a relevant class; or
- (d) a person who does not fall within paragraph (a), (b) or (c) and who may lawfully effect or carry out contracts of insurance of a relevant class in a member state other than the United Kingdom

where relevant class has the meaning set out in section 87(1B) of the Solicitors Act 1974 and provided that this definition must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act.

*Commentary:* Under the Solicitors Act 1974, it is only permitted to enter into arrangements with authorised insurers (including relevant Lloyd's syndicates), as defined under section 87(1A) of that Act. A Qualifying Insurer must be authorised to write new business on the date on which a Policy incept, but the Policy will remain a Policy of Qualifying Insurance until it expires, even if the Qualifying Insurer then ceases to write, or be authorised to write, new insurance business.

**Council** means the Council of the Society.

**Difference In Conditions Policy** means a contract of professional indemnity insurance, made between one or more Qualifying Insurers and a Firm, which provides cover including the Minimum Terms and Conditions as modified in accordance with paragraph 2 of Appendix 3 to these Rules.

**Eligible Firm** means any Firm which is eligible to be in the Assigned Risks Pool, being any Firm other than:

- (a) a Firm that has been in the Assigned Risks Pool for twelve months or more in the four Indemnity Periods immediately prior to the date from which cover is sought, without the prior written approval of the Council unless:
- (i) the date from which cover is sought is on or before 1 October 2010; and
  - (ii) a Firm that has been in the Assigned Risks Pool for immediately prior to that date the Firm is in the Assigned Risks Pool and has been in the Assigned Risks Pool, without the prior written approval of the Council, for less than twenty four months ~~or more~~ (or twenty five months ~~or more~~ in the case of a Firm which was in the Assigned Risks Pool for the whole of the Indemnity Period from 1 September 2003 to 30 September 2004) in the four Indemnity Periods immediately prior to ~~the~~that date ~~from which cover is sought, without the prior written approval of the Council; or, in which case the Firm is eligible to be in the Assigned Risks Pool only for any unexpired part of the twenty four or twenty five month period (as the case may be);~~
- (b) a Firm determined by the Council not to be an Eligible Firm by reason of its being treated as one single Firm with one or more other Firms already in the Assigned Risks Pool for the purposes of Rule 12.5 or Rule 12.6; or
- (c) subject to Rule 12.3, a Firm that at the end of any Indemnity Period to which these Rules apply is in Policy Default; or
- (d) a Firm which, at the time it applies to enter the Assigned Risks Pool, already has in place Qualifying Insurance outside the Assigned Risks Pool for the Indemnity Period in which that Firm requests cover through the Assigned Risks Pool to commence; or
- (e) a Firm that has never had in place Qualifying Insurance except through the Assigned Risks Pool.

*Commentary:* Firms cannot remain insured through the Assigned Risks Pool indefinitely. A Firm which at 1 October 2010 has been in the Assigned Risks Pool during the previous four indemnity periods is eligible for cover through the Assigned Risks Pool for a maximum of twenty four months (or twenty five months in the specified circumstances) less the aggregate number of months in which that Firm was insured through the Assigned Risks Pool during those previous four indemnity periods. For example, a Firm which has been insured through the Assigned Risks Pool for the ~~2005/06~~2007/08 and ~~2006/07~~2008/09 Indemnity Periods will not be eligible to be insured through the Assigned Risks Pool for the ~~2009/10~~Indemnity Period. ~~2010/11~~ Indemnity Period. Additionally, for the 2010/2011 indemnity year, a Firm which has not been insured through the Assigned Risks Pool in any of the four indemnity periods expiring on 1 October 2010 will, as from that date be entitled to be insured through the Assigned Risks Pool for a maximum of twelve months during the four indemnity years prior to the date from which cover is sought.

*Subject to any waiver granted under Rule 19, any Firm which no longer fulfils the definition of an Eligible Firm is therefore required to obtain Qualifying Insurance from a Qualifying Insurer outside the Assigned Risks Pool, or to cease Practice.*

*A newly created Firm not previously regulated by the Solicitors Regulation Authority or a Non-SRA Firm which elects (and is accepted) to become regulated by the Solicitors Regulation Authority must obtain Qualifying Insurance in the open market outside the Assigned Risks Pool.*

*In addition, a Firm is not eligible to join the Assigned Risks Pool if it has already obtained Qualifying Insurance from a Qualifying Insurer outside the Assigned Risks Pool for the relevant Indemnity Period.*

**Firm** means:

- (a) any Recognised Sole Practitioner; or
- (b) any Recognised Body (as constituted from time to time); or
- (c) any solicitor or Registered European Lawyer who is a sole practitioner, unless that sole practitioner is a Non-SRA Firm; or
- (d) any Partnership (as constituted from time to time) which is eligible to become a Recognised Body and which meets the requirements applicable to Recognised Bodies set out in rules 14.01, 14.03 and 14.04 of the Solicitors' Code of Conduct 2007, unless that Partnership is a Non-SRA Firm,

whether before or during any relevant Indemnity Period.

*Commentary: If you are unsure whether you or your business fall within this definition, you should consult the Solicitors Regulation Authority. Contact details appear at the end of the introductory commentary.*

**Firm in Default** means a Firm that has failed to obtain Qualifying Insurance outside the Assigned Risks Pool and which,

- (a) in the case of an Eligible Firm, has failed to apply in accordance with these Rules to be admitted into the Assigned Risks Pool before either the start of any Indemnity Period to which these Rules apply or the start of its Practice, whichever is the later; or
- (b) in the case of a Firm which is not an Eligible Firm, is a Firm which is carrying on or continuing to carry on a Practice without Qualifying Insurance outside the Assigned Risks Pool; or
- (c) in the case of a Run-off Firm, is a Run-off Firm which has failed to make an application in manner prescribed by these Rules to be issued with an ARP Run-off Policy; or
- (d) is a Firm which is a Firm in Default by virtue of Rule 10.4,

or a Firm which, having previously obtained Qualifying Insurance, has failed to obtain alternative Qualifying Insurance when required to do so in accordance with Rule 6.

*Commentary: A Firm In Default, and each Principal in that Firm, will be required to pay the ARP Default Premium, and/or the ARP Run-Off Premium to the Assigned Risks Pool, and each Principal in that Firm will have committed a disciplinary offence by having breached these Rules. Refer to Part 4 of these Rules for the provisions that apply to a Firm In Default.*

**Indemnity Period** means the period of one year starting on 1 September 2000, 2001 or 2002, the period of 13 calendar months starting on 1 September 2003, or the period of one year starting on 1 October in any subsequent calendar year.

*Commentary: Under the Qualifying Insurer's Agreement, each Policy is required to expire at the end of an Indemnity Period. It is envisaged that any change to these Rules or to the Minimum Terms and Conditions would take effect from the start of an Indemnity Period, so that at any one time, all Policies in force comply with the same version of these Rules and the Minimum Terms and Conditions.*

*Qualifying Insurers are permitted under the Qualifying Insurer's Agreement to issue a Policy covering more than one Indemnity Period, provided that the Policy expires at the end of a subsequent Indemnity Period, and provided that the terms of the Policy are amended if required to reflect any change in the Rules or the Minimum Terms and Conditions while the Policy is in force.*

**Insolvency Event** means in relation to a Qualifying Insurer:

- (a) the appointment of a provisional liquidator, administrator, receiver or an administrative receiver; or
- (b) the approval of a voluntary arrangement under Part 1 of the Insolvency Act 1986 or the making of any other form of arrangement, composition or compounding with its creditors generally; or
- (c) the passing of a resolution for voluntary winding up where the winding up is or becomes a creditors' voluntary winding up under Part IV of the Insolvency Act 1986; or
- (d) the making of a winding up order by the court; or
- (e) the making of an order by the court reducing the value of one or more of the Qualifying Insurer's contracts under section 377 of the Financial Services and Markets Act 2000; or
- (f) the occurrence of any event analogous to any of the foregoing insolvency events in any jurisdiction outside England and Wales.

**Limited Liability Partnership** means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000.

**Manager** means:

- (a) a Partner in a Partnership;
- (b) a member of a Limited Liability Partnership; or
- (c) a director of a company.

**Minimum Terms and Conditions** means the minimum terms and conditions with which a Policy of Qualifying Insurance is required by these Rules to comply a copy of which is annexed as Appendix 1 to these Rules.

*Commentary: All Qualifying Insurers agree under the Qualifying Insurer's Agreement to issue Policies which comply with the Minimum Terms and Conditions. However, under Rule 4 it remains the duty of each Firm and each Principal within that Firm to ensure that the Policy issued to it is issued by an insurer which is a Qualifying Insurer for the Indemnity Period in question, and that it complies with the Minimum Terms and Conditions. The SRA does not approve Qualifying Insurers, nor does it review their policy terms.*

*The standard form ARP Policy does comply with the Minimum Terms and Conditions.*

*In addition, each Firm should satisfy itself that the professional indemnity insurance that it has in place is sufficient. This may mean that the Firm takes out additional insurance over and above that provided under the Minimum Terms and Conditions.*

*Any such "top-up" cover is outside the scope of these Rules, and does not have to be taken out with a Qualifying Insurer.*

*Most recognised bodies are required to obtain cover complying with the minimum terms and conditions and with a sum insured of £3 million, rather than £2 million for other Firms. The definition of "Relevant Recognised Body" in clause 8.2 of the Minimum Terms and Conditions indicates which recognised bodies this requirement applies to.*

**Non-SRA Firm** means a sole practitioner, Partnership, Limited Liability Partnership or company which is not authorised to practise by the Solicitors Regulation Authority, and which is either:

- (a) authorised or capable of being authorised to practise by another Approved Regulator; or
- (b) not capable of being authorised to practise by any Approved Regulator.

**Partnership** means an unincorporated Firm in which persons are or are held out as partners and does not include a Firm incorporated as a Limited Liability Partnership and **Partner** means a person who is or is held out to be a partner in a Partnership.

*Commentary: A limited liability partnership is treated for these purposes as a Recognised Body, rather than as a partnership.*

**Period Of Default** means in relation to a Firm in Default the period starting with the date when such Firm first became a Firm in Default and ending with the date when it ceased to be a Firm in Default.

**Policy** means a contract of professional indemnity insurance made between one or more persons, each of which is a Qualifying Insurer, and a Firm, including where the context permits an ARP Policy and an ARP Run-off Policy.

**Policy Default** means a failure on the part of a Firm or any Principal of that Firm:

- (a) to pay for more than two months after the due date for payment all or any part of the premium or any other sum due in respect of a Policy (including without limitation any payment due under Rule 14.1); or
- (b) to pay for more than two months after the due date for payment all or any part of any ARP Premium, any ARP Default Premium, or any ARP Run-Off Premium, or any instalment payable in relation thereto whether payable to the ARP Manager or otherwise; or
- (c) to reimburse within two months a Qualifying Insurer (including the ARP Manager on behalf of Qualifying Insurers) in respect of any amount falling within a Firm's Policy excess which has been paid on an insured's behalf to a claimant by a Qualifying Insurer or by the ARP Manager.

For the purposes of this definition, the due date for payment means, in respect of any Policy or any payment to be made under any Policy:

- (i) the date on which such payment fell due under the terms of the Policy or any related agreement or arrangement; or
- (ii) if a Firm was first required under these or any previous Rules to effect such a Policy prior to the date on which it did so, the date if earlier on which such payment would have fallen due had such Policy been effected by the Firm when it was first required to do so under these Rules or any previous rules.

*Commentary: Principals are committing a disciplinary offence if they or their Firm is in Policy Default, whether as a result of failing to pay premium when demanded or as a result of failing to take out a Policy when required to do so. In addition, their Firm will cease to be an Eligible Firm for the purpose of taking out or renewing an ARP Policy.*



**Practice** means the whole or such part of the Private Practice of a Firm as is carried on from one or more offices in England and Wales.

*Commentary: The Rules require Firms to take out Policies which include cover in accordance with the Minimum Terms and Conditions for that part of their Practice carried on from offices located in England and Wales. They do not apply to any part of the Practice of the Firm carried on from offices outside England and Wales (although rule 15.26 of the Solicitors' Code of Conduct 2007 does apply in such cases). However, the cover in relation to the Practice carried on from offices located in England and Wales must extend to acts or omissions wherever in the world they occur, and would therefore include, for example, a Principal based in a Firm's London office who travels to Paris to advise a client.*

*If you are unsure whether you or your business fall within this definition, you should consult the Solicitors Regulation Authority. Contact details appear at the end of the introductory commentary.*

**Principal** means:

- (a) where the Firm is or was:
  - (i) a sole practitioner - that practitioner;
  - (ii) a Partnership - each Partner;
  - (iii) a company with a share capital - each director of that company and any solicitor, Registered European Lawyer or Registered Foreign Lawyer who:
    - (A) is held out as a director; or
    - (B) beneficially owns the whole or any part of a share in the company; or
    - (C) is the ultimate beneficial owner of the whole or any part of a share in the company.
  - (iv) a company without a share capital – each director of that company and any solicitor, Registered European Lawyer or Registered Foreign Lawyer who:
    - (A) is held out as a director; or
    - (B) is a member of the company; or
    - (C) is the ultimate owner of the whole or any part of a body corporate or other legal person which is a member of the company;
  - (v) a Limited Liability Partnership – each member of that Limited Liability Partnership, and any solicitor, Registered European Lawyer or Registered Foreign Lawyer who is the ultimate owner of the whole or any part of a body corporate or other legal person which is member of the Limited Liability Partnership.
- (b) where a body corporate or other legal person is a Partner in the Firm, all solicitors, Registered European Lawyers or Registered Foreign Lawyers who are within paragraph (a)(iii) of this definition (including sub paragraphs (A) and (C) thereof), paragraph (a)(iv) of this definition (including sub paragraphs (A) and (C) thereof), or paragraph a(v) of this definition.

*Commentary: It is the duty of each Principal, under Rule 4, to ensure that the Firm has Qualifying Insurance at all times.*

**Private Practice** includes without limitation all the professional services provided by a Firm including acting as a personal representative, trustee, attorney, notary, insolvency practitioner or in

any other role in conjunction with a Practice, and includes services provided pro bono publico, but does not include:

- (a) Practice carried on by a Solicitor or Registered European Lawyer in the course of employment with an employer other than a Firm; or
- (b) Practice carried on through a Non-SRA Firm; or
- (c) discharging the functions of any of the following offices or appointments:
  - (i) judicial office;
  - (ii) Under Sheriffs;
  - (iii) members and clerks of such tribunals, committees, panels and boards as the Council may from time to time designate but including those subject to the Tribunals and Inquiries Act 1992, the Competition Commission, Legal Services Commission Review Panels and Parole Boards;
  - (iv) Justices' Clerks;
  - (v) Superintendent Registrars and Deputy Superintendent Registrars of Births, Marriages and Deaths and Registrars of Local Crematoria;
  - (vi) such other offices as the Council may from time to time designate; or
- (d) Practice consisting only of:
  - (i) providing professional services without remuneration for friends, relatives, or companies wholly owned by the solicitor or Registered European Lawyer's family, or registered charities; or
  - (ii) administering oaths and taking affidavits.

*Commentary: If you are unsure whether you or your Practice fall within this definition, you should consult the Solicitors Regulation Authority. Contact details appear at the end of the introductory commentary.*

**Qualifying Insurance** means a single Policy which includes the Minimum Terms and Conditions, or more than one Policy which, taken together, include the Minimum Terms and Conditions, and each of which includes the Minimum Terms and Conditions except only in relation to the Sum Insured (as defined in the Minimum Terms and Conditions).

*Commentary: All Firms are required to take out and maintain, as a minimum, Qualifying Insurance. This may take the form of a single policy, or policies written by more than one Qualifying Insurer which together provide the minimum cover required under these Rules.*

**Qualifying Insurer** means an Authorised Insurer which has entered into a Qualifying Insurer's Agreement with the Society which remains in force for the purposes of underwriting new business at the date on which the relevant contract of Qualifying Insurance is made.

*Commentary: A list of all Qualifying Insurers appears on the website of the Solicitors Regulation Authority at [www.sra.org.uk](http://www.sra.org.uk), and is also available from the Solicitors Regulation Authority. Contact details appear at the end of the introductory commentary.*

**Qualifying Insurer's Agreement** means an agreement in such terms as the Society may from time to time prescribe setting out the terms and conditions on which a Qualifying Insurer may provide professional indemnity insurance to solicitors and others in Private Practice in England and Wales.

*Commentary: A copy of this standard form agreement, which each Qualifying Insurer is required to enter into, is available on request from the Solicitors Regulation Authority. Contact details appear at the end of the introductory commentary.*

**Recognised Body** means a body for the time being recognised by the Solicitors Regulation Authority under section 9 of the Administration of Justice Act 1985 and the SRA Recognised Bodies Regulations 2009.

**Recognised Sole Practitioner** means a solicitor or Registered European Lawyer authorised by the Solicitors Regulation Authority under section 1B of the Solicitors Act 1974 to practise as a sole practitioner.

**Registered European Lawyer** means an individual registered with the Society under regulation 17 of the European Communities (Lawyer's Practice) Regulations 2000.

**Registered Foreign Lawyer** means an individual registered with the Society under section 89 of the Courts and Legal Services Act 1990.

**Rules** means these rules as from time to time modified or amended.

**Run-off Firm** means a Firm or former Firm which has ceased to practise in circumstances where, in accordance with paragraph 5.1 of the Minimum Terms and Conditions, run-off cover is not required to be provided by any Qualifying Insurer.

**Society** means the Law Society of England and Wales.

**Solicitor** means a person who has been admitted as a solicitor and whose name is on the roll (within the meaning of the Solicitors Act 1974) and who practises as a solicitor whether or not he or she has in force a practising certificate as referred to in that Act and also includes practice under home title of a former Registered European Lawyer who has become a solicitor.

**Solicitors Regulation Authority** means the Solicitors Regulation Authority carrying out regulatory functions assigned to the Law Society as an Approved Regulator.

**Special Measures** means such measures as the Council may from time to time require with a view to reducing the risk of claims being made against a Firm in the future or with a view to enabling a Firm in the future to obtain Qualifying Insurance outside the Assigned Risks Pool.

**Supplementary Run-off Cover** means run-off cover provided by the Solicitors Indemnity Fund following the expiry of run-off cover provided to a Firm in accordance with these Rules or otherwise under a Policy (but subject to compliance with the Minimum Terms and Conditions).

### 3.2 Interpretation

In these Rules, unless the context otherwise requires:

- (a) the singular includes the plural, and vice versa;
- (b) a reference to a person includes a body corporate, partnerships, and other unincorporated associations or bodies of persons;
- (c) a reference to a Rule is to a Rule forming part of these Rules;
- (d) a reference to any statute, statutory provision, code or regulation includes:
  - (i) any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made under it; and
  - (ii) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it either before, or at the date of the commencement of these Rules, or after the date of the commencement of these Rules;

- (e) references to the Society and to the Council include the Solicitors Regulation Authority and the Legal Complaints Service, and any body or person which succeeds in whole or in part to the functions of the Society, the Council, the Solicitors Regulation Authority or the Legal Complaints Service, and any delegate of the Society, the Council, the Solicitors Regulation Authority, the Legal Complaints Service or any such body or person;
- (f) headings are for ease of reference only and shall not affect the interpretation of these Rules;
- (g) explanatory notes and commentary shall be ignored in interpreting these Rules; and
- (h) the appendices to these Rules form part of these Rules.

These Rules will be governed by and interpreted in accordance with English law.

## **PART 2: RESPONSIBILITY AND MONITORING**

### **4 Obligation to effect insurance**

- 4.1 All Firms carrying on a Practice during any Indemnity Period beginning on or after 1 October ~~2009~~2010 must take out and maintain Qualifying Insurance under these Rules.
- 4.2 A solicitor or Registered European Lawyer is not required to take out and maintain Qualifying Insurance under these Rules in respect of work done as an employee or whilst otherwise directly engaged in the Practice of another Firm (including without limitation as an Appointed Person), where that Firm is required by these Rules to take out and maintain Qualifying Insurance.
- 4.3 A Run-off Firm must apply in accordance with these Rules to be issued with an ARP Run-off Policy.

*Commentary: Under these Rules, Firms have a continuing obligation to ensure that they have Qualifying Insurance in place at all times with effect from 1 October ~~2009~~2010. Refer to the definitions of Practice, amongst others, to establish whether a Firm falls within the scope of these Rules. Firms should also check that any insurance that they take out in order to comply with these Rules (as opposed to any 'top-up' cover) is taken out with a Qualifying Insurer. A list of Qualifying Insurers appears on the website of the Solicitors Regulation Authority at [www.sra.org.uk](http://www.sra.org.uk), and is also available from the Solicitors Regulation Authority. Contact details appear at the end of the introductory commentary.*

*Firms should note in particular that work carried out by an Appointed Person for that Firm may be covered by the Firm's Policy, whether that person is engaged as an employee or on a contract for services.*

*If a Firm cannot obtain a Policy from a Qualifying Insurer it should apply to join the Assigned Risks Pool in accordance with Part 3 of the Rules, if it is an Eligible Firm. If it is not an Eligible Firm, it must cease Practice.*

*Note that, under the Minimum Terms and Conditions, a Policy, once taken out, cannot be cancelled before the end of an Indemnity Period unless:*

- (1) *the Policy is an ARP Policy and the Firm has replaced it with a Policy of Qualifying Insurance outside the Assigned Risks Pool; or*
- (2) *the Firm merges with another Firm and a Policy of Qualifying Insurance is in place for the merged Firm; or*
- (3) *it subsequently transpires that the Firm was not in fact required to take out and maintain a Policy under these Rules; or*
- (4) *in the case of an ARP Policy, it subsequently transpires that the Firm was not, or has ceased to be, an Eligible Firm; or*

- (5) *the Qualifying Insurer which issues the Policy becomes the subject of an Insolvency Event, and the Firm has replaced the Policy with another Policy of Qualifying Insurance.*

*The effect of cancellation in the circumstances described in (3) or (4) above is that the Firm ceases to have Qualifying Insurance in place with effect from the cancellation, and would therefore be in breach of Rule 4.1 if it were to carry on a Practice thereafter without taking out a new Policy.*

*Most Recognised Bodies are required to obtain cover complying with the Minimum Terms and Conditions and with a sum insured of £3 million, rather than £2 million for other Firms. The definition of "Relevant Recognised Body" in clause 8.2 of the Minimum Terms and Conditions indicates which Recognised Bodies this requirement applies to.*

- 4.4 The provisions of this Rule 4 shall be without prejudice to the ability of Firms to include as insureds on a Policy persons not required under these Rules to be insured.

## **5 Responsibility**

- 5.1 Each Firm carrying on a Practice during any Indemnity Period beginning on or after 1 October ~~2009~~,2010, and any person who is a Principal of such a Firm, must ensure:

- (a) that the Firm has in place and maintains Qualifying Insurance outside the Assigned Risks Pool during any such Indemnity Period;

or, in the case of an Eligible Firm,

- (b) that the Firm has applied to enter the Assigned Risks Pool in accordance with the procedure set out in Rule 10;

in either case before the start of any relevant Indemnity Period or the start of Practice whichever is later.

*Commentary: Note that the duty to ensure that Qualifying Insurance is in place rests not just on the Firm as a whole, but also on every Principal within that Firm.*

- 5.2 A Run-off Firm, and any person who was a Principal of that Run-off Firm immediately prior to it becoming a Run-off Firm, must ensure that the Run-off Firm has applied to enter the Assigned Risks Pool in accordance with the procedure set out in Rule 13.4(a). Making such an application does not absolve any Firm or person from any breach of Rule 5.1.

*Commentary: A Firm which has continued to practise without Qualifying Insurance immediately prior to closing down is required to apply for Run-Off Cover through the Assigned Risks Pool, but the Firm and any Principal of the Firm may still face action for a breach of Rule 5.1 for practising without Qualifying Insurance.*

## **6 Insolvency of Qualifying Insurer**

- 6.1 If a Firm is carrying on a Practice which is being provided with Qualifying Insurance by a Qualifying Insurer (whether alone or together with other Qualifying Insurers) and that Qualifying Insurer is the subject of an Insolvency Event then, subject to any waiver under Rule 19.1, the Firm and any person who is a Principal of the Firm must ensure:

- (a) that the Firm has in place Qualifying Insurance with another Qualifying Insurer which must be arranged as soon as may be reasonably practicable and in any event within four weeks of such an Insolvency Event;

or, in the case of an Eligible Firm,

- (b) that the Firm applies within that period of four weeks to enter the Assigned Risks Pool in accordance with the procedure set out in Rule 10.

*Commentary: It is important to be aware that the arrangements for professional indemnity insurance put in place by the Solicitors Regulation Authority do not seek to protect Firms against the insolvency of a Qualifying Insurer. If an Insolvency Event occurs in respect of an insurer, that insurer will cease to be a Qualifying Insurer for the purposes of writing new policies and Firms insured by that insurer must effect alternative insurance in accordance with these Rules. This is because, in such circumstances, the insurer may not be in a position to pay claims in full. Any Firm which has qualifying insurance with a Qualifying Insurer which is the subject of an Insolvency Event mustis required therefore to obtain replacement cover as soon as possible, and in any event within four weeks of the Insolvency Event occurring. Having done so, a Firm should cancel the policy with the insolvent insurer and, if entitled to do so, seek a return of the premium relating to the balance of the Indemnity Period from the insurer which has become the subject of the Insolvency Event.*

## 7 Monitoring

The Council may require from a Firm or any Principal in a Firm carrying on, or reasonably believed by the Council to be carrying on, a Practice such information and evidence as it may reasonably require to satisfy itself that such a Firm has in place Qualifying Insurance.

## 8 Registered European Lawyers

- 8.1 The special provisions contained in Appendix 3 to these Rules shall apply to a Firm that has at least one Principal who is a Registered European Lawyer.

### PART 3: THE ASSIGNED RISKS POOL

## 9 Operation of the Assigned Risks Pool

The Assigned Risks Pool shall be managed by the ARP Manager.

## 10 Applying to the Assigned Risks Pool

- 10.1 Where a Firm carrying on a Practice has not obtained Qualifying Insurance outside the Assigned Risks Pool in respect of any Indemnity Period or part thereof to which these Rules apply it must, if an Eligible Firm, apply in accordance with the procedure set out in this Rule 10 to enter the Assigned Risks Pool, subject to Rule 10.2, before the start of the relevant Indemnity Period.

*Commentary: A Firm which for any reason does not have Qualifying Insurance in place should apply to the Assigned Risks Pool before the start of the relevant Indemnity Period if it is an Eligible Firm. However, it is important to note that premiums payable to the Assigned Risks Pool are intended to be high, and Firms would therefore be prudent to seek quotations from Qualifying Insurers outside the Assigned Risks Pool before the start of an Indemnity Period.*

*An ARP Policy can be cancelled if it is replaced by a Policy with a Qualifying Insurer. A return premium may be payable to a Firm which cancels an ARP Policy in these circumstances - refer to Appendix 2 for the basis on which the ARP Premium and any return premium is calculated.*

*Firms should also be aware of the other consequences of being insured through the Assigned Risks Pool set out in this part of the Rules, including the need to comply with any Special Measures under Rule 10, and the limitations on eligibility set out in the definition of "Eligible Firm".*

- 10.2 ~~A Firm about to start carrying on a Practice which has not already obtained Qualifying Insurance outside the Assigned Risks Pool may, if an Eligible Firm, apply to enter the Assigned Risks Pool after the start of any relevant Indemnity Period.~~ A Firm must not start carrying on a Practice without either having obtained Qualifying Insurance outside the Assigned Risks Pool ~~or, alternatively, in the case of an Eligible Firm, without having applied in accordance with the procedure set out in this Rule 10 to enter the Assigned Risks Pool.~~

*Commentary:* Any Firm wishing to start up a new Practice must obtain Qualifying Insurance, ~~whether in the open market~~ with a Qualifying Insurer ~~or through other than~~ the Assigned Risks Pool, before starting Practice. For the avoidance of doubt, a Firm which has not previously been regulated by the Solicitors Regulation Authority or a Non-SRA Firm that elects (and is accepted) for regulation by the SRA must also arrange Qualifying Insurance outside the Assigned Risks Pool in order to commence carrying on a Practice. Subject to this requirement, a new Firm may start Practice at any time during an Indemnity Period.

10.3 By applying to enter the Assigned Risks Pool, the Firm and any person who is a Principal of that Firm agrees to, and (if the Firm is admitted to the Assigned Risks Pool) the Firm and any person who is a Principal of that Firm shall be jointly and severally liable to:

- (a) pay the ARP Premium in accordance with these Rules, together with any other sums due to the ARP Manager under the ARP Policy; and
- (b) submit to such investigation and monitoring and to pay the Society's costs and expenses as referred to in Rule 11.2; and
- (c) pay any costs and expenses incurred by the Society or the ARP Manager incurred as a result of any failure or delay by the Firm in complying with these Rules;

and shall be required to implement at the expense of the Firm any Special Measures.

*Commentary:* Firms within the Assigned Risks Pool may be subject to a range of Special Measures. The appointed inspectors (in the first instance, the Forensic Investigations Unit of the Compliance Directorate) will visit a Firm insured through the Assigned Risks Pool to carry out investigation and monitoring of the Firm. This is in order to determine what Special Measures are appropriate for that Firm, and to ensure that those measures are fully implemented. It should be noted that the costs of investigation and monitoring by the Inspection & Investigation Directorate, costs and expenses incurred through any failure or delay by the Firm to comply, and the implementation of the Special Measures will be payable by the Firm concerned (and by any Principal of that Firm), in addition to paying the ARP Premium.

10.4 Any material misrepresentation made in an application for admission to the Assigned Risks Pool shall, subject to any waiver under Rule 19.1, render the Firm a Firm in Default for the purposes of Part 4 of these Rules. The provisions of that Part shall apply to the Firm as if that Firm had not been admitted to the Assigned Risks Pool but neither the Firm nor any Principal of the Firm shall be entitled to the refund of any ARP Premium paid to the ARP Manager. Any amount so paid shall be credited against any sums payable under Part 4 of these Rules.

*Commentary:* Although an ARP Policy, once issued, cannot be cancelled (unless and until a replacement Policy with a Qualifying Insurer is issued to that Firm), a Firm which makes a material misrepresentation in its application to be admitted to the Assigned Risks Pool will be nevertheless treated in the same way as a Firm in Default.

10.5 The application for admission to the Assigned Risks Pool must be made to the ARP Manager on the proposal form provided by the ARP Manager.

10.6 The applicant must state on the proposal form the date from which cover is sought. This date must not be earlier than the date on which the application is made for admission to the Assigned Risks Pool. The applicant must also provide such other information as the ARP Manager requires for the purposes of setting a premium.

10.7 If the applicant is a Firm in Default it must state on the proposal form that it is a Firm in Default and give the date of the start of the Period of Default from which retrospective cover is sought.

*Commentary:* The ARP Premium is calculated in accordance with a formula set out in Appendix 2, and is linked to the gross fees of the Firm concerned. It is important to note that, under Rule 15, any material misrepresentation in an application will result in the Firm being treated in the same way as a Firm In Default, including being liable to pay the ARP Default Premium.

- 10.8 The Firm, together with each Principal of the Firm, must ensure that the Firm's application has been made and must provide the ARP Manager with all information it reasonably requires to process the application.

*Commentary: It is in the interests of the Firm and each of the Principals of that Firm to verify that the application to enter the Assigned Risks Pool has been received and that the Firm is insured. An application should be made before the start of an Indemnity Period. Failure to comply with the requirements of this Rule and Rules 13 to 15 will result in the Firm becoming a Firm in Default.*

- 10.9 If a Firm has not received a written acknowledgement of its application from the ARP Manager 30 days after making the application, or within such other period as is stated on the proposal form, the Firm and any person who is a Principal of the Firm must seek written confirmation that the Firm's application has been received by the ARP Manager. If that written confirmation is not obtained within seven days after the end of the 30 days, or within seven days after such other period specified on the proposal form, the application shall be deemed not to have been made.

- 10.10 An applicant whose first application is deemed under Rule 10.9 not to have been made must, within seven days of the day when under Rule 10.9 the first application is deemed not to have been made, make a fresh application. The Firm and any person who is a Principal of the Firm must ensure that the Firm is in a position to prove to the reasonable satisfaction of the Society that the Firm's fresh application was delivered within those seven days to the ARP Manager at the address specified on the proposal form. Provided the Firm's fresh application was so delivered, the application shall be treated as having been made at the date when the Firm's first application was made. A Firm that is not in a position to prove to the reasonable satisfaction of the Society that its fresh application was so delivered shall be deemed not to have made any application.

- 10.11 Provided that an application or, if necessary, a fresh application, has been made in accordance with Rules 10.5 to 10.10, a Firm which is an Eligible Firm will be covered in the terms of the ARP Policy to be issued to it from the start of the relevant Indemnity Period or, in the case of a Firm to which Rule 10.2 applies, the date specified in the application, being the date specified in accordance with Rule 10.6, until whichever is the earlier of:

- (a) the end of the relevant Indemnity Period; or
- (b) the date on which the Firm obtains Qualifying Insurance outside the Assigned Risks Pool; or
- (c) the date when the Firm ceases to be an Eligible Firm.

*Commentary: An Eligible Firm which should have applied to the Assigned Risks Pool before the start of an Indemnity Period but fails to do so will have breached these Rules by failing to take out a Policy from the start of the Indemnity Period. It may make a later application, but will be liable to pay the ARP Default Premium for the Indemnity Period in question. Each Principal in an Eligible Firm which fails to make an application in time commits a disciplinary offence.*

- 10.12 Any Firm in the Assigned Risks Pool, and any person who is a Principal of that Firm, is liable to pay to the ARP Manager the ARP Premium in respect of that Firm within thirty days of such premium being notified to it by the ARP Manager.

*Commentary: It is a disciplinary offence for a Firm and for any Principal of that Firm to fail to pay the ARP Premium (including the ARP Run-off Premium) to the ARP Manager within the required 30 day period. A Firm may enter into arrangements with, for example, a premium funding company (whether offered by the ARP Manager or arranged independently) to enable it to make payments by instalments, provided that the premium is received in full by the ARP Manager from the premium funding company within the required 30 day period.*



## 11 Special Measures

- 11.1 An Eligible Firm that has applied to enter the Assigned Risks Pool in accordance with the procedure set out in Rule 10 will be issued with an ARP Policy by the ARP Manager.

*Commentary:* A copy of the standard-form ARP Policy is available on the website of the Solicitors Regulation Authority at [www.sra.org.uk](http://www.sra.org.uk) and is also available from the Solicitors Regulation Authority. Contact details appear at the end of the introductory commentary.

- 11.2 A Firm in the Assigned Risks Pool must if and to the extent required by the Council submit to investigation and monitoring by the Society and/or its agents, including investigation and monitoring:

- (a) to determine the reasons why Qualifying Insurance outside the Assigned Risks Pool was not obtained;
- (b) to ascertain what Special Measures should be taken by the Firm.

The Society's costs and expenses of the investigation and monitoring and the Society's costs and expenses of ascertaining what Special Measures should be taken and of monitoring them shall be met by the Firm and by any person who is a Principal of that Firm. The amount of such costs and expenses shall be determined by the Society which shall not be required to give any detailed breakdown thereof.

*Commentary:* The appointed inspectors (in the first instance, the Forensic Investigations Department of the Inspection & Investigation Directorate) will visit a Firm insured through the Assigned Risks Pool to carry out investigation and monitoring. This is in order to determine what Special Measures should be taken and are appropriate for that Firm, and to ensure that those measures are fully implemented. It should be noted that the costs and expenses of investigation and monitoring by the Inspection & Investigation Directorate and the implementation of the Special Measures (together with VAT if applicable) will be payable by the Firm concerned (including each Principal of that Firm), in addition to paying the ARP Premium.

## 12 Time in the Assigned Risks Pool

- 12.1 A Firm may leave the Assigned Risks Pool at any time after it has satisfied the ARP Manager that the Firm has obtained Qualifying Insurance outside the Assigned Risks Pool at least until the expiry of the relevant Indemnity Period.

*Commentary:* Refer to Appendix 2 to determine whether any return premium will be payable on leaving the Assigned Risks Pool.

- 12.2 Subject to Rule 12.7, a Firm may only remain in the Assigned Risks Pool so long as it is an Eligible Firm, or if it becomes a Run-off Firm.

*Commentary:* Firms cannot remain insured through the Assigned Risks Pool for more than ~~24~~12 months in any ~~five-year period~~four consecutive Indemnity Periods, and should therefore seek insurance in the open market with a Qualifying Insurer as soon as practicable. A Firm which is no longer an Eligible Firm (because, for example, it has already been insured through the Assigned Risks Pool for ~~24~~12 months in the last ~~five-years~~four Indemnity Periods) must either obtain Qualifying Insurance on the open market or cease carrying on Practice.

- 12.3 Subject to Rule 12.7(b), a Firm in Policy Default at the end of an Indemnity Period shall be deemed to be a Firm in Default for the purposes of Part 4 of these Rules and shall not be an Eligible Firm. This Rule shall not apply in any case where the Council is satisfied that there exists a genuine dispute between the Firm and a Qualifying Insurer or the ARP Manager which makes it unreasonable for the Firm to be deemed to be a Firm in Default pending the resolution of that dispute.

*Commentary:* A Firm in Policy Default must remedy that default before the start of an Indemnity Period if it wishes to obtain insurance through the Assigned Risks Pool at any time during that

*Indemnity Period. Alternatively, it must either obtain Qualifying Insurance in the open market, or cease carrying on Practice. If a Firm believes that there is a genuine dispute which justifies that Firm not being deemed to be a Firm in Default, it should apply to the Solicitors Regulation Authority as soon as possible before the start of the next Indemnity Period. Contact details appear at the end of the introductory commentary.*

- 12.4 A Firm that is no longer an Eligible Firm must either have Qualifying Insurance outside the Assigned Risks Pool or forthwith cease carrying on Practice.
- 12.5 Where the Practice of a Firm (the **Original Firm**) which has at any time been in the Assigned Risks Pool is split between two or more Firms (the **Successor Firms**), the Council may in its absolute discretion treat the Successor Firms or any of them and the Original Firm as being a single Firm for the purposes of determining whether the Successor Firms or any of them are or remain an Eligible Firm.
- 12.6 Where the Practice of a Firm (the **Original Firm**) which has at any time been in the Assigned Risks Pool is merged with, acquired, absorbed, or by any other means taken over by a Firm (the **Successor Firm**) the Council may in its absolute discretion treat the Successor Firm and the Original Firm as being a Single Firm for the purposes of determining whether the Successor Firm is or remains an Eligible Firm.

*Commentary: The purpose of this Rule is to ensure that the time limit on participation in the Assigned Risks Pool cannot be avoided by a merger or reconstitution of that Firm. A Firm which was not previously eligible to join the Assigned Risks Pool will not necessarily become an Eligible Firm by virtue of changes in the composition of a Firm. Firms which are unsure about their eligibility following any such change should consult the Solicitors Regulation Authority. Contact details appear at the end of the introductory commentary.*

- 12.7 The Council shall have power in any particular case or cases:
- (a) to allow a Firm to remain in or to re-enter the Assigned Risks Pool after any date when the Firm would otherwise cease to be an Eligible Firm; and
  - (b) to permit a Firm to be admitted into or remain in or to re-enter the Assigned Risks Pool notwithstanding that the Firm is in Policy Default on such terms and conditions as the Council may prescribe including the taking of steps by the Firm by a specified date or dates to remedy the Policy Default;

and when such power is exercised the Firm shall continue to be an Eligible Firm for so long as the Council may from time to time permit and provided that it complies with any such terms and conditions.

*Commentary: It is envisaged that these powers would be exercised only in exceptional circumstances. Any application seeking the exercise of this power should be made to the Solicitors Regulation Authority at least three months before the Firm in question would otherwise cease to be an Eligible Firm.*

## **PART 4: FIRMS IN DEFAULT**

### **13 Eligibility of Firms in Default**

- 13.1 At any time during the Period of Default a Firm in Default is entitled to be admitted to the Assigned Risks Pool and to be issued with an ARP Policy in accordance with Rule 13.2, subject to the provisions of this Rule 13.
- 13.2 A Firm in Default is entitled to be admitted to the Assigned Risks Pool if:
- (a) it was an Eligible Firm at the start of the Period of Default;
  - (b) had it been admitted to the Assigned Risks Pool at the start of the Period of Default, its admission at that time would not have rendered it ineligible to be admitted to the Assigned

Risks Pool for any part of any subsequent Indemnity Period in which it was in fact admitted to the Assigned Risks Pool;

- (c) it has applied to join the Assigned Risks Pool in accordance with Rule 10;
- (d) the Firm discharges in full the ARP Default Premium calculated for the whole of the Indemnity Period or Indemnity Periods for which cover is sought within 30 days of such premium being notified to it by the ARP Manager or such longer period as the Council may allow;
- (e) the Firm will be subject to and comply with Rules 10.3 (other than Rule 10.3(a)) and 11.2.

*Commentary: If a Firm fails to make an application to the Assigned Risks Pool at the start of an Indemnity Period, and does not have any other Policy of Qualifying Insurance in force for that Indemnity Period, it may still be eligible to be issued with an ARP Policy provided that it meets all of the requirements of Rule 13.2. However, each Principal of the Firm will have committed a disciplinary offence, and the Firm and each Principal of that Firm will be liable to pay the ARP Default Premium under any ARP Policy issued.*

13.3 An ARP Policy issued under this Rule may afford cover retrospectively from the start of the Period of Default until the earlier of:

- (a) the end of the then current Indemnity Period; or
- (b) the date on which the Firm in Default would have ceased to be an Eligible Firm, ignoring for these purposes any failure to pay the ARP Premium or the ARP Default Premium; or
- (c) the date on which, had the Firm in Default been admitted to the Assigned Risks Pool at the start of the Period of Default, its being covered by the Assigned Risks Pool from that time would have first caused it to have been ineligible to be admitted to the Assigned Risks Pool for any part of any subsequent Indemnity Period in which it was in fact admitted to the Assigned Risks Pool.

13.4 A Run-off Firm shall be entitled at any time following the date on which it first becomes a Run-off Firm to be admitted to the Assigned Risks Pool and to be issued with an ARP Run-off Policy, subject to the following conditions:

- (a) the Run-off Firm has made an application to join the Assigned Risks Pool in manner provided by Rule 10.5 stating on the proposal form that it is a Run-off Firm and giving the date from which cover under an ARP Run-off Policy is sought;
- (b) the ARP Run-off Premium is discharged in full within thirty days of such premium being notified by the ARP Manager to the Firm or such longer period as the Council may allow; and
- (c) the Firm, and any person who is a Principal of that Firm, will be subject to and comply with Rule 10.3(c).

*Commentary: A Run-off Firm will be eligible to be issued with an ARP Policy if it meets all of the requirements of Rule 13.4. However, each Principal of the Firm will have committed a disciplinary offence for failing to make an application to the Assigned Risks Pool for run-off cover in accordance with Rule 5.2, and the Firm and each Principal of the Firm will be required to pay the ARP Run-off Premium under any ARP Run-off Policy issued.*

13.5 An ARP Run-off Policy shall provide run-off cover to a Run-off Firm retrospectively from the date on which it became a Run-off Firm until the end of the day immediately prior to the sixth anniversary of:

- (a) the start of the Indemnity Period in which it became a Run-off Firm; or
- (b) if applicable, the start of the last Indemnity Period, prior to it becoming a Run-off Firm, in which it both ceased to be an Eligible Firm and was a Firm in Default and continued as such until the date on which it became a Run-off Firm,

whichever is the earlier.

*Commentary: Run-off Firms which are issued with an ARP Run-off Policy obtain six years' run-off cover either from the start of the Indemnity Period in which their Practice ceased, or the date on which they ceased to be eligible to apply for an ARP Policy while practising uninsured.*

- 13.6 Rule 12.7 shall apply so as to enable the Council to extend the period in Rule 13.3(b) for which a Firm in Default may be issued with an ARP Policy.

*Commentary: It is envisaged that this power would be exercised only in exceptional circumstances.*

- 13.7 Any Firm that has been admitted to the Assigned Risks Pool under Rule 13.1 shall for the purposes of computing its continuing eligibility to remain in the Assigned Risks Pool be deemed to have been admitted to the Assigned Risks Pool at start of the Period of Default and to have remained continuously in the Assigned Risks Pool until the end of the Indemnity Period current at the date of its application.

- 13.8 Rule 15.2 shall not apply to a Firm which has under Rule 13 been admitted to the Assigned Risks Pool and which has been issued with an ARP Policy or an ARP Run-off Policy, the liability of the Firm and of any person who is a Principal of that Firm being limited in those circumstances to the excess payable under the terms of the Policy.

*Commentary: If a Firm is eligible to be issued with an ARP Policy under Rule 13.1, or an ARP Run-off Policy under Rule 13.4 then, provided that it complies with the relevant requirements under Rule 13 and is issued with an ARP Policy or an ARP Run-off Policy, the Firm and the Principals of that Firm will be required to pay to the ARP Manager only the relevant premium and the excess in the event of any claim.*

## **14 Firms which fail to apply to the Assigned Risks Pool**

- 14.1 A Firm in Default which is entitled to be admitted to the Assigned Risks Pool and to be issued with an ARP Policy in accordance with Rule 13.1 but which does not make an application to join the Assigned Risks Pool shall, notwithstanding, be liable, together with any person who is a Principal of that Firm, to pay to the Society an amount equivalent to the ARP Default Premium calculated for the whole of the Period of Default.

- 14.2 A Firm in Default which is entitled to be admitted to the Assigned Risks Pool and to be issued with an ARP Run-off Policy in accordance with Rules 13.4 and 13.5 but which does not make an application to join the Assigned Risks Pool shall, notwithstanding, be liable, together with any person who is a Principal of that Firm, to pay to the Society an amount equivalent to the ARP Run-off Premium calculated for the whole of the period equivalent to that which would be provided by an ARP Run-off Policy in accordance with Rule 13.5, or, if shorter and if it can be ascertained, the Period of Default.

- 14.3 Any amount payable in accordance with Rules 14.1 or 14.2 shall be determined by the ARP Manager on the basis of such assumption as to the Firm's gross fees and other matters as the ARP Manager shall in its absolute discretion determine, and may be reviewed from time to time by the ARP Manager in its absolute discretion on the basis of any further information provided to it. Any such amount paid under Rule 14.1 or 14.2 shall be deducted from any amount payable pursuant to Rule 15.2. The ARP Manager may and is hereby authorised to recover all sums due under Rules 14.1 or 14.2 on behalf of the Society.

*Commentary: If a Firm fails to make an application to the Assigned Risks Pool, but carries on Practice without having obtained Qualifying Insurance, each Principal in that Firm will have committed a disciplinary offence. The same is true if a Run-off Firm fails to apply to be issued with an ARP Run-off Policy. In each case, that Firm, and each Principal in that Firm, will also be liable under these Rules to:*

- *pay an amount to the Society equivalent to the ARP Default Premium calculated for the whole of the Period of Default; and*

- *reimburse to the Society in full under Rule 15 the amount of any claim (together with defence costs) made against the Firm and relating to the period when it did not have Qualifying Insurance in force, less any amount due under this Rule.*

## 15 Arrangements in relation to uninsured Firms

15.1 The ARP Manager on behalf of the Society shall make arrangements with Qualifying Insurers to cover any Claim (as defined in the Minimum Terms and Conditions) against:

- (a) a Firm in Default; and
- (b) a Run-off Firm

including any Defence Costs (as defined in the Minimum Terms and Conditions) relating to a Claim, in like manner and to the like extent as the Claim and the Defence Costs would have been covered had that Firm during the Period of Default been in the Assigned Risks Pool and been issued with an ARP Policy and/or, as the case may require, an ARP Run-off Policy.

15.2 Subject to Rule 13.8, Rule 14.1 and Rule 14.2, the Society on behalf of Qualifying Insurers shall be entitled to recover from each and every Principal in the Firm in Default during the Period of Default all amounts paid in or towards the discharge of a Claim and Defence Costs pursuant to Rule 15 together with interest thereon at Barclays Bank Plc base rate plus three per cent from the date when such amounts were respectively paid. The ARP Manager may and is hereby authorised to recover all sums due under this Rule on behalf of the Society.

15.3 A Firm shall not be deemed to have been admitted to the Assigned Risks Pool or to be covered in accordance with Rule 15 solely by virtue of the fact that the ARP Manager may conduct or settle any claim made against that Firm under the terms of any agreement between the Society and any Qualifying Insurer.

*Commentary: If a Firm fails to make an application to the Assigned Risks Pool, but carries on Practice without having obtained Qualifying Insurance, each Principal in that Firm will have committed a disciplinary offence. The same is true if a Run-off Firm fails to apply to be issued with an ARP Run-off Policy. In each case, that Firm, and each Principal in that Firm, will also be liable under these Rules to:*

- *reimburse to the Society in full the amount paid pursuant to Rule 15.1 in respect of any claim (together with defence costs) made against the Firm and relating to the period when it did not have Qualifying Insurance in force, less any amount due under Rule 14 (where applicable); and*
- *pay an amount under Rule 14 (where applicable) to the Society equivalent to the ARP Default Premium calculated for the whole of the Period of Default.*

*However, if a Firm in these circumstances is eligible under Rule 13.1 to be issued with an ARP Policy, then, provided that it complies with Rule 13.1 and is issued with an ARP Policy, the liability of the Firm and the Principals of that Firm will be limited, from that point on, to the ARP Default Premium and the excess payable under the terms of the ARP Policy.*

## PART 5: DISCIPLINARY OFFENCES AND REPORTING

### 16 Disciplinary consequences of failure to comply with these Rules

16.1 The provisions in Part 4 of the Rules are made without prejudice to the powers of the Council or the Society under the Solicitors Act 1974, the Administration of Justice Act 1985, the Courts and Legal Services Act 1990 or the European Communities (Lawyer's Practice) Regulations 2000, or rules made under any of them, to bring disciplinary proceedings against any Firm that has failed to comply with these Rules or any person who is or was a Principal in such a Firm or to intervene in a Practice carried on by such a Firm.

*Commentary: Payment of the ARP Default Premium and/or the ARP Run-off Premium does not detract from the fact that the Firm in question, and each Principal of that Firm, has committed a breach of these Rules as a result of the Firm being a Firm in Default. If a Firm in Default is not an Eligible Firm, it must either obtain Qualifying Insurance in the open market, or cease carrying on Practice and make an application to the Assigned Risks Pool for run-off cover in accordance with Rule 5.2.*

- 16.2 Without prejudice to any other disciplinary offence which may arise under these Rules, it shall be a disciplinary offence for any Firm or any person who is at the relevant time a Principal in a Firm to be in Policy Default, or to fail to implement any Special Measures to the satisfaction of the Society.

*Commentary: Policy Default and Special Measures are defined in Rule 3.1. Note that a Firm that is carrying on a Practice while in Policy Default will also not be an Eligible Firm for the purpose of seeking further cover through the Assigned Risks Pool.*

## 17 Use of information

- 17.1 Any Qualifying Insurer (including the ARP Manager) may, in relation to any Firm which applies to it for Qualifying Insurance, and in the case of the ARP Manager any Run-off Firm or Firm in Default, whether or not that Firm applies to enter the Assigned Risks Pool, bring to the attention of the Society (including, in the case of the matters referred to in Rule 17.1(f), the Legal Complaints Service and/or the Office for Legal Complaints [\(including the Legal Ombudsman\)](#)) at any time and without notice to the Firm concerned:

- (a) any failure on the part of the Firm or any person who is a Principal of that Firm to pay any sum, including an ARP Premium, ARP Default Premium or ARP Run-off Premium, on or before the date specified in these Rules or to reimburse any amount falling within a Policy excess which has been paid out by a Qualifying Insurer to a claimant;
- (b) a material inaccuracy in any proposal form submitted by or on behalf of the Firm;
- (c) the fact that the Firm has become or is believed to have become a Run-off Firm;
- (d) any matter or circumstances that would entitle the Firm's Qualifying Insurer to avoid or repudiate a Policy but for the provisions of clause 4.1 of the Minimum Terms and Conditions (and/or the corresponding of the Policy);
- (e) any dishonesty or fraud suspected by a Qualifying Insurer on the part of any Insured as defined in the Minimum Terms and Conditions; and
- (f) any claim of inadequate professional services made against the Firm or any Insured of that Firm of which it becomes aware.

*Commentary: All Firms, whether they obtain their Qualifying Insurance on the open market or through the Assigned Risks Pool, or whether, having failed to obtain Qualifying Insurance, they are subject to the provisions of Part 4 of these Rules, are deemed to have consented to their Qualifying Insurer or the ARP Manager bringing to the attention of the Solicitors Regulation Authority any of the matters referred to Rule 17.1 that may be applicable to the Firm. Any such information is subject to the confidentiality provisions of Rule 17.4.*

- 17.2 The Legal Complaints Service of the Society and/or the Office for Legal Complaints [\(including the Legal Ombudsman\)](#) may pass such information as it in its absolute discretion sees fit to any department or office of the Society, and to any Qualifying Insurer, including the ARP Manager, in relation to any complaint of inadequate professional services against a Firm of which it becomes aware.
- 17.3 The Council may require any Qualifying Insurer or the ARP Manager to bring to the attention of the Society any of the matters referred to in Rule 17.1 where it reasonably believes there are matters which ought to be brought to the attention of the Society in accordance with Rule 17.1.
- 17.4 In respect of any information that may be brought to the attention of the Society in accordance with Rules 17.1 to 17.3:

- (a) the Society shall keep all such information confidential;
- (b) the Society shall not (except where and to the extent required by law or in the proper performance by the Society of its regulatory functions) at any time reveal any such information to any person other than a duly authorised employee of the Society or any of its subsidiaries; and
- (c) any privilege attaching to such information shall not be regarded as having been waived whether by virtue of such information having been provided to the Society or otherwise.

17.5 The provisions of Rule 17.4 shall not prevent the Society from:

- (a) making use of any information referred to in that Rule for the purpose of bringing disciplinary proceedings against any person; or
- (b) in relation to information about a Firm's Policy under Rule 18, disclosing that information, where and to the extent that the Society in its absolute discretion considers it appropriate, to any person entitled to such information, and to any other department or office of the Society, including without limitation to the Legal Complaints Service and/or the Office for Legal Complaints [\(including the Legal Ombudsman\)](#).

## 18 Details of Qualifying Insurer

18.1 If a person (a **Claimant**) asserts a claim against a Firm or any person insured under that Firm's Policy, and where such claim relates to any matter within the scope of cover of the Minimum Terms and Conditions (whether or not such claim would or may be upheld), the Firm and any person who is at the relevant time (or, in the case of a Firm which has ceased Practice, any person who was immediately before that Firm ceased Practice) a Principal in that Firm shall be required, upon being so requested by that Claimant, by any person insured under that Firm's Policy, or by any other person with a legitimate interest, to provide to that person the following details in relation to that Firm's Policy:

- (a) the name of the Qualifying Insurer(s) who issued the policy; and
- (b) the policy number; and
- (c) the address and contact details of the Qualifying Insurer(s) for the purpose of making a claim under the policy;

in each case in respect of the Policy which it is reasonably believed to be the relevant Policy to respond to the claim, or, if applicable, the fact that the Firm or person against whom the claim is asserted is covered by Supplementary Run-off Cover.

*Commentary: A Firm, and each Principal in that Firm, is required to provide details of that Firm's policy of Qualifying Insurance to any person who asserts a claim against anyone insured under that Firm's Policy. Under Rule 17, the Solicitors Regulation Authority has the power to disclose information regarding a Firm's Qualifying Insurer where it considers it appropriate to do so.*

## PART 6: GENERAL POWERS OF THE COUNCIL

### 19 Waiver powers

19.1 The Council shall have power on such terms and conditions as it shall think fit to waive any Rule or part of any Rule in a particular case or cases including extending the time, either prospectively or retrospectively, for the doing of any act under any Rule.

- (a) Any application by any person for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2001 to ~~2009~~2010 must be made in writing to the Society as soon as reasonably practicable, and in any event no later than the relevant date set out below:

Solicitors' Indemnity Insurance Rules		Relevant date whichever is the later of:	
2001	30 November 2001	or 3 calendar months from the occurrence of any event or circumstances first giving rise to the obligation on that person under the relevant Rule or part of any Rule in respect of which the waiver application is or was made, but in any event no later than:	30 November 2002
2002	30 November 2002		30 November 2003
2003	30 November 2003		31 December 2004
2004	31 December 2004		31 December 2005
2005	31 December 2005		31 December 2006
2006	31 December 2006		31 December 2007
2007	31 December 2007		31 December 2008
2008	31 December 2008		31 December 2009
2009	31 December 2009		31 December 2010
<u>2010</u>	<u>31 December 2010</u>		

- (b) No application by any person for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 may be considered unless it was made in writing to the Society as soon as reasonably practicable and in any event no later than 28 February 2002.
- (c) Any appeal against any decision made by the Society in respect of any application for a waiver of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 to ~~2009~~2010 must be made in writing to the Society within 21 days from the date of the decision.
- (d) An application for a waiver as contemplated by this Rule 19.1 or the making of an appeal against any decision made by the Society in respect of such application shall not relieve any person from any obligation under the Solicitors' Indemnity Insurance Rules 2000 to ~~2009~~2010 pending the determination of any such application or appeal.

*Commentary: It is envisaged that Rules will be waived only in exceptional circumstances. Anyone who wishes to apply for a waiver, or to appeal against an initial decision, must do so in accordance with the time limits set out in this Rule. Contact details appear at the end of the introductory commentary. The Panel of Adjudicators Sub Committee has adopted a waiver policy, which is available on request. Unless and until any waiver is granted, the person concerned must comply with the requirements of these Rules in full. A waiver may be granted subject to conditions, and may be revoked without notice.*

- 19.2 The Council shall have power to treat any Firm as complying with any Rule or Rules for the purposes of the Solicitors Act 1974 notwithstanding that the Firm has failed to comply with a Rule or Rules where such non-compliance is regarded by the Council in a particular case or cases as being insignificant.
- 19.3 For the purposes of the Solicitors Act 1974 (including without limitation section 10 of that Act), any person who is in breach of any Rule or part of any Rule under the Solicitors' Indemnity Insurance Rules 2000 to ~~2009~~2010 shall be deemed, for so long as he remains in breach, not to be complying with these Rules.

*Commentary: The effect of this general power is that, for example, a practising certificate may be issued to a person notwithstanding a technical and insignificant breach by that person or a Firm of any provision of these Rules.*



## **PART 7: OTHER OBLIGATIONS**

### **20 Accountants' reports**

Any accountant's report which a solicitor or Registered European Lawyer or registered foreign lawyer who is a Principal in a Practice or a Recognised Body is required to deliver to the Society under section 34 of the Solicitors Act 1974 or paragraph 8 of Schedule 14 to the Courts and Legal Services Act 1990 containing such information as is prescribed by rule 35 of the Solicitors' Accounts Rules 1998 must contain a statement certifying (if it is the case) for the whole period covered by the report (excluding any part of that period falling before 1 September 2000) either that the Firm has one or more certificates of Qualifying Insurance outside the Assigned Risks Pool or that the Firm has been issued with one or more policies by the ARP Manager.

*Commentary: Firms are required to provide evidence to their accountants that a Policy of Qualifying Insurance is in place. Each Qualifying Insurer is required under the Qualifying Insurer's agreement to provide a certificate of Qualifying Insurance to each Firm within 20 working days of the start of the period covered by the Policy. Producing the relevant certificate(s) to the reporting accountant will satisfy the requirement of this Rule.*

## Appendix 1

### Minimum Terms and Conditions of Professional Indemnity Insurance for Solicitors and Registered European Lawyers in England and Wales

## 1 Scope of cover

### 1.1 Civil liability

The insurance must indemnify each Insured against civil liability to the extent that it arises from Private Legal Practice in connection with the Insured Firm's Practice, provided that a Claim in respect of such liability:

- (a) is first made against an Insured during the Period of Insurance; or
- (b) is made against an Insured during or after the Period of Insurance and arising from Circumstances first notified to the Insurer during the Period of Insurance.

### 1.2 Defence Costs

The insurance must also indemnify the Insured against Defence Costs in relation to:

- (a) any Claim referred to in clause 1.1, 1.4 or 1.6; or
- (b) any Circumstances first notified to the Insurer during the Period of Insurance; or
- (c) any investigation, or inquiry ~~or~~ (save in respect of any disciplinary proceeding under the authority of The Law Society of England and Wales (including, without limitation, the Solicitors Regulation Authority)) during or after the Period of Insurance arising from any Claim referred to in clause 1.1, 1.4 or 1.6 or from Circumstances first notified to the Insurer during the Period of Insurance.

### 1.3 The Insured

For the purposes of the cover contemplated by clause 1.1, the Insured must include:

- (a) the Insured Firm; and
- (b) each service, administration, trustee or nominee company owned as at the date of occurrence of relevant Circumstances by the Insured Firm and/or the Principals of the Insured Firm; and
- (c) each Principal, each former Principal and each person who becomes a Principal during the Period of Insurance of the Insured Firm or a company referred to in paragraph (b); and
- (d) each Employee, each former Employee and each person who becomes during the Period of Insurance an Employee of the Insured Firm or a company referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated person referred to in paragraph (c) or (d).

### 1.4 Prior Practice

The insurance must indemnify each Insured against civil liability to the extent that it arises from Private Legal Practice in connection with a Prior Practice, provided that a Claim in respect of such liability is first made against an Insured:

- (a) during the Period of Insurance; or

- (b) during or after the Period of Insurance and arising from Circumstances first notified to the Insurer during the Period of Insurance.

### 1.5 The Insured - Prior Practice

For the purposes of the cover contemplated by clause 1.4, the Insured must include:

- (a) each Partnership or Recognised Body which, or Sole Practitioner who, carried on the Prior Practice; and
- (b) each service, administration, trustee or nominee company owned as at the date of occurrence of relevant Circumstances by the Partnership or Recognised Body which, or Sole Practitioner who, carried on the Prior Practice and/or the Principals of such Partnership or Recognised Body; and
- (c) each Principal and former Principal of each Partnership or Recognised Body referred to in paragraph (a) or company referred to in paragraph (b); and
- (d) each Employee and former Employee of the Partnership, Recognised Body or Sole Practitioner referred to in paragraph (a) or company referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated Sole Practitioner referred to in paragraph (a) or person referred to in paragraph (c) or (d).

### 1.6 Successor Practice

The insurance must indemnify each Insured against civil liability to the extent that it arises from Private Legal Practice in connection with a Successor Practice to the Insured Firm's Practice (where succession is as a result of one or more separate mergers, acquisitions, absorptions or other transitions), provided that a Claim in respect of such liability is first made against an Insured:

- (a) during the Period of Insurance; or
- (b) during or after the Period of Insurance and arising from Circumstances first notified to the Insurer during the Period of Insurance-~~z~~

[unless run-off cover is provided in accordance with clause 5.3.](#)

### 1.7 The Insured - Successor Practice

For the purposes of the cover contemplated by clause 1.6, the Insured must include:

- (a) each Partnership or Recognised Body which, or Sole Practitioner who, carries on the Successor Practice during the Period of Insurance; and
- (b) each service, administration, trustee or nominee company owned as at the date of occurrence of relevant Circumstances by the Partnership or Recognised Body which, or Sole Practitioner who, carries on the Successor Practice and/or the Principals of such Partnership or Recognised Body; and
- (c) each Principal, each former Principal and each person who becomes during the Period of Insurance a Principal of any Partnership or Recognised Body referred to in paragraph (a) or company referred to in paragraph (b); and
- (d) each Employee, each former Employee and each person who becomes during the Period of Insurance an Employee of the Partnership, Recognised Body or Sole Practitioner referred to in paragraph (a) or company referred to in paragraph (b); and

- (e) the estate or legal personal representative of any deceased or legally incapacitated Sole Practitioner referred to in paragraph (a) or person referred to in paragraph (c) or (d).

## **1.8 Award by regulatory authority**

The insurance must indemnify each Insured against any amount paid or payable in accordance with the recommendation of the Legal Services Ombudsman, the Legal Complaints Service, the Office for Legal Complaints ([including the Legal Ombudsman pursuant to sections 137\(2\)\(c\) and section 137\(4\)\(b\) of the Legal Services Act 2007](#)) or any other regulatory authority to the same extent as it indemnifies the Insured against civil liability provided that the Insurer will have no liability in respect of any determination by the Legal Ombudsman pursuant to section 137(2)(b) of the Legal Services Act 2007 to refund any fees paid to the Insured.

## **2 Limit of insurance cover**

### **2.1 Any one Claim**

The Sum Insured for any one Claim (exclusive of Defence Costs) must be, where the Insured Firm is a Relevant Recognised Body, at least £3 million, and in all other cases, at least £2 million.

### **2.2 No limit on Defence Costs**

There must be no monetary limit on the cover for Defence Costs.

### **2.3 Proportionate limit on Defence Costs**

Notwithstanding clauses 2.1 and 2.2, the insurance may provide that liability for Defence Costs in relation to a Claim which exceeds the Sum Insured is limited to the proportion that the Sum Insured bears to the total amount paid or payable to dispose of the Claim.

### **2.4 No other limit**

The insurance must not limit liability to any monetary amount (whether by way of an aggregate limit or otherwise) except as contemplated by clauses 2.1 and 2.3.

### **2.5 One Claim**

The insurance may provide that, when considering what may be regarded as one Claim for the purposes of the limits contemplated by clauses 2.1 and 2.3:

- (a) all Claims against any one or more Insured arising from:
- (i) one act or omission;
  - (ii) one series of related acts or omissions;
  - (iii) the same act or omission in a series of related matters or transactions;
  - (iv) similar acts or omissions in a series of related matters or transactions
- and
- (b) all Claims against one or more Insured arising from one matter or transaction
- will be regarded as one Claim.

## **2.6 Multiple underwriters**

- 2.6.1 The insurance may be underwritten by more than one insurer, each of which must be a Qualifying Insurer, provided that the insurance may provide that the Insurer shall be severally liable only for its respective proportion of liability in accordance with the terms of the insurance.
- 2.6.2 Where the insurance is underwritten jointly by more than one insurer:
- (a) the insurance must state which Qualifying Insurer shall be the Lead Insurer; and
  - (b) in addition to any proportionate limit on Defence Costs in accordance with clause 2.3, the insurance may provide that each Insurer's liability for Defence Costs is further limited to the extent or the proportion of that Insurer's liability (if any) in relation to the relevant Claim.

***[Note: under clause 2.6 of the Qualifying Insurer's Agreement, a Policy may be issued on an excess of loss basis only in the layers set out in that clause.]***

## **3 Excesses**

### **3.1 The Excess**

The insurance may be subject to an Excess of such monetary amount and on such terms as the Insurer and the Insured Firm agree. Subject to clause 3.4, the Excess may be 'self-insured' or partly or wholly insured without regard to these minimum terms and conditions.

### **3.2 No deductibles**

The insurance must provide that the Excess does not reduce the limit of liability contemplated by clause 2.1.

### **3.3 Excess not to apply to Defence Costs**

The Excess must not apply to Defence Costs.

### **3.4 Funding of the Excess**

The insurance must provide that, if an Insured fails to pay to a Claimant any amount which is within the Excess within 30 days of it becoming due for payment, the Claimant may give notice of the Insured's default to the Insurer, whereupon the Insurer is liable to remedy the default on the Insured's behalf. The insurance may provide that any amount paid by the Insurer to remedy such a default erodes the Sum Insured.

### **3.5 One Claim**

The insurance may provide for multiple Claims to be treated as one Claim for the purposes of an Excess contemplated by clause 3.1 on such terms as the Insured Firm and the Insurer agree.

### **3.6 Excess layers**

In the case of insurance written on an excess of loss basis, there shall be no Excess except in relation to the primary layer.

## **4 Special conditions**

### **4.1 No avoidance or repudiation**

The insurance must provide that the Insurer is not entitled to avoid or repudiate the insurance on any grounds whatsoever including, without limitation, non-disclosure or misrepresentation, whether fraudulent or not.

#### **4.2 No adjustment or denial**

The insurance must provide that the Insurer is not entitled to reduce or deny its liability under the insurance on any grounds whatsoever including, without limitation, any breach of any term or condition of the insurance, except to the extent that one of the exclusions contemplated by clause 6 applies.

#### **4.3 No cancellation**

The insurance must provide that it cannot be cancelled except (in the case of (a), (b) or (c) below) by the agreement of both the Insured Firm and the Insurer, and in any event only in circumstances where:

- (a) the Insured Firm's Practice is merged into a Successor Practice, provided that there is insurance complying with these minimum terms and conditions in relation to that Successor Practice, in which case cancellation shall have effect no earlier than the date of such merger; or
- (b) replacement insurance complying with these minimum terms and conditions commences, but only where, in the case of insurance not provided wholly or partly by the Assigned Risks Pool, the replacement insurance is not provided wholly or partly by the Assigned Risks Pool, in which case cancellation shall have effect no earlier than the date on which such replacement insurance commences; or
- (c) it subsequently transpires that the Insured Firm is not required under the Solicitors Indemnity Insurance Rules ~~2009~~2010 to effect a policy of Qualifying Insurance, in which case cancellation shall have effect from the later of (a) the start of the relevant Indemnity Period and (b) the date on which the Insured Firm ceased to be required to effect a policy of Qualifying Insurance, or such later date as the Insured Firm and the Insurer may agree; or
- (d) in the case of an ARP Policy, it subsequently transpires that the Insured Firm was not or has ceased to be an Eligible Firm, in which case cancellation shall have effect from the date on which it ceased to be an Eligible Firm.

Cancellation must not affect the rights and obligations of the parties accrued under the insurance prior to the date from which cancellation has effect.

#### **4.4 No set-off**

The insurance must provide that any amount payable by the Insurer to indemnify an Insured against civil liability to a Claimant will be paid only to the Claimant, or at the Claimant's direction, and that the Insurer is not entitled to set-off against any such amount any payment due to it by any Insured including, without limitation, any payment of premium or to reimburse the Insurer.

#### **4.5 No 'other insurance' provision**

The insurance must not provide that the liability of the Insurer is reduced or excluded by reason of the existence or availability of any other insurance other than as contemplated by clause 6.1. For the avoidance of doubt, this requirement is not intended to affect any right of the Insurer to claim contribution from any other insurer which is also liable to indemnify any Insured.

#### **4.6 No retroactive date**

The insurance must not exclude or limit the liability of the Insurer in respect of Claims arising from incidents, occurrences, facts, matters, acts and/or omissions which occurred prior to a specified date.

#### **4.7 Successor Practice - 'double insurance'**

The insurance may provide that, if the Insured Firm's Practice is succeeded during the Period of Insurance and, as a result, a situation of 'double insurance' exists between two or more insurers of the Successor Practice, contribution between insurers is to be determined in accordance with the relative numbers of Principals of the owners of the constituent Practices immediately prior to succession.

#### **4.8 Advancement of Defence Costs**

The insurance must provide that the Insurer will meet Defence Costs as and when they are incurred, including Defence Costs incurred on behalf of an Insured who is alleged to have committed or condoned dishonesty or a fraudulent act or omission, provided that the Insurer is not liable for Defence Costs incurred on behalf of that Insured after the earlier of:

- (a) that Insured admitting to the Insurer the commission or condoning of such dishonesty, act or omission; or
- (b) a court or other judicial body finding that that Insured was in fact guilty of such dishonesty, act or omission.

#### **4.9 Resolution of disputes**

The insurance must provide that, if there is a dispute as to whether a Practice is a Successor Practice for the purposes of clauses 1.4, 1.6 or 5.3, the Insured and the Insurer will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party which has insurance complying with these minimum terms and conditions and that party's insurer.

#### **4.10 Conduct of a Claim pending dispute resolution**

The insurance must provide that, pending resolution of any coverage dispute and without prejudice to any issue in dispute, the Insurer will, if so directed by the Society, conduct any Claim, advance Defence Costs and, if appropriate, compromise and pay the Claim. If the Society is satisfied that:

- (a) the party requesting the direction has taken all reasonable steps to resolve the dispute with the other party/ies; and
- (b) there is a reasonable prospect that the coverage dispute will be resolved or determined in the Insured's favour; and
- (c) it is fair and equitable in all the circumstances for such direction to be given;

it may in its absolute discretion make such a direction.

#### **4.11 Minimum terms and conditions to prevail**

The insurance must provide that:

- (a) the insurance is to be construed or rectified so as to comply with the requirements of these minimum terms and conditions; and
- (b) any provision which is inconsistent with these minimum terms and conditions is to be severed or rectified to comply.

#### **4.12 Period of Insurance**

The Period of Insurance must not expire prior to 30 September ~~2010~~2011.

## 5 Run-off cover

### 5.1 Cessation of the Insured Firm's Practice

The insurance must provide that, if the Insured Firm's Practice ceases during or on expiry of the Period of Insurance and the Insured Firm has not obtained succeeding insurance in compliance with these minimum terms and conditions (a **Cessation**), the insurance will provide run-off cover. For these purposes, an Insured Firm's Practice shall (without limitation) be regarded as ceasing if (and with effect from the date upon which) the Insured Firm becomes a Non-SRA Firm.

### 5.2 Scope of run-off cover

The run-off cover referred to in clause 5.1 must indemnify each Insured in accordance with clauses 1.1 to 1.8 (but subject to the limits, exclusions and conditions of the insurance which are in accordance with these minimum terms and conditions) on the basis that the Period of Insurance extends for an additional six years (ending on the sixth anniversary of the date upon which, but for this requirement, it would have ended).

### 5.3 Succession

The insurance must provide that, if there is a Successor Practice to the ceased Practice, the Insured Firm may elect before its Cessation, whether it wishes the ceased Practice:

- (a) to be insured under the run-off cover referred to in clause 5.1; or
- (b) ~~The insurance must provide that run-off cover is not activated if there is a Successor Practice to the ceased Practice,~~ provided that there is insurance complying with these minimum terms and conditions in relation to that Successor Practice, to be insured as a Prior Practice under such insurance.

If the Insured Firm fails to make an election and/or fails to pay any premium due under the terms of the Policy, before its Cessation, clause 5.3(b) above shall apply.

The insurance must also provide that where an Insured Firm makes an election pursuant to this clause 5.3, the Insurer shall give notice to the Society in writing of the election not later than seven days following the receipt by the Insurer of the Insured Firm's election and that election has become effective and the Insured Firm shall irrevocably consent to that notification.

### 5.4 Suspended Practices

The insurance must provide that, where run-off cover has been activated in accordance with this clause 5, but where the Insured Firm's Practice restarts, the Insurer may (but shall not be obliged to) cancel such run-off cover, on such terms as may be agreed, provided that:

- (a) there is insurance complying with these minimum terms and conditions in relation to that Insured Firm in force on the date of cancellation;
- (b) the Qualifying Insurer providing such insurance confirms in writing to the Insured Firm and the Insurer (if different) that:
  - (i) it is providing insurance complying with these minimum terms and conditions in relation to that Insured Firm for the then current Indemnity Period; and
  - (ii) it is doing so on the basis that the Insured Firm's Practice is regarded as being a continuation of the Insured Firm's Practice prior to Cessation and that accordingly it is liable for Claims against the Insured Firm arising from incidents, occurrences, facts, matters, acts and/or omissions which occurred prior to Cessation.



## 6 Exclusions

The insurance must not exclude or limit the liability of the Insurer except to the extent that any Claim or related Defence Costs arise from the matters set out in this clause 6.

### 6.1 Prior cover

Any Claim in respect of which the Insured is entitled to be indemnified by the Solicitors Indemnity Fund (SIF) or under a professional indemnity insurance contract for a period earlier than the Period of Insurance, whether by reason of notification of Circumstances to SIF or under the earlier contract or otherwise.

### 6.2 Death or bodily injury

Any liability of any Insured for causing or contributing to death or bodily injury, except that the insurance must nonetheless cover liability for psychological injury or emotional distress which arises from a breach of duty in the performance of (or failure to perform) legal work.

### 6.3 Property damage

Any liability of any Insured for causing or contributing to damage to, or destruction or physical loss of, any property (other than property in the care, custody or control of any Insured in connection with the Insured Firm's Practice and not occupied or used in the course of the Insured Firm's Practice), except that the insurance must nonetheless cover liability for such damage, destruction or loss which arises from breach of duty in the performance of (or failure to perform) legal work.

### 6.4 Partnership disputes

Any actual or alleged breach of the Insured Firm's Partnership or shareholder agreement or arrangements, including any equivalent agreement or arrangement where the Insured Firm is a Limited Liability Partnership or a company without a share capital.

### 6.5 Employment breaches, discrimination, etc.

Wrongful dismissal, repudiation or breach of an employment contract or arrangement, termination of a training contract, harassment, discrimination or like conduct in relation to any Partnership or shareholder agreement or arrangement or the equivalent where the Insured Firm is a Limited Liability Partnership or a company without a share capital, or in relation to any employment or training agreement or arrangement.

### 6.6 Debts and trading liabilities

Any:

- (a) trading or personal debt of any Insured; or
- (b) ~~breach by any~~ legal liability assumed or accepted by an Insured ~~of the terms of or an~~ Insured Firm under any contract or ~~arrangement~~ agreement for the supply to, or use by, ~~any~~ the Insured ~~or Insured Firm~~ of goods or services in the course of the Insured Firm's Practice, save that this exclusion 6.6(b) will not apply to any legal liability arising in the course of an Insured Firm's Practice in connection with its or any Insured's use of or access to the HM Land Registry network (including, without limitation, access under a Network Access Agreement made under the Land Registration (Network Access) Rules and the Land Registration (Electronic Communications) Order 2007) other than an obligation to pay search fees or other charges for searches or services provided by HM Land Registry to the Insured Firm; or

- (c) guarantee, indemnity or undertaking by any particular Insured in connection with the provision of finance, property, assistance or other benefit or advantage directly or indirectly to that Insured.

#### **6.7 Fines, penalties, etc**

Any:

- (a) fine or penalty; or
- (b) award of punitive, exemplary or like damages under the law of the United States of America or Canada, other than in respect of defamation; or
- (c) order or agreement to pay the costs of a complainant, regulator, investigator or prosecutor of any professional conduct complaint against, or investigation into the professional conduct of, any Insured.

#### **6.8 Fraud or dishonesty**

The insurance may exclude liability of the Insurer to indemnify any particular person to the extent that any civil liability or related Defence Costs arise from dishonesty or a fraudulent act or omission committed or condoned by that person, except that:

- (a) the insurance must nonetheless cover each other Insured; and
- (b) the insurance must provide that no dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company, or, in the case of a Limited Liability Partnership, all members of that Limited Liability Partnership.

#### **6.9 Directors' or officers' liability**

The insurance may exclude liability of the Insurer to indemnify any natural person in their capacity as a director or officer of a body corporate (other than a Recognised Body or a service, administration, trustee or nominee company referred to in clauses 1.3(b), 1.5(b) or 1.7(b)) except that:

- (a) the insurance must nonetheless cover any liability of that person which arises from a breach of duty in the performance of (or failure to perform) legal work; and
- (b) the insurance must nonetheless cover each other Insured against any vicarious or joint liability.

#### **6.10 War and Terrorism, and Asbestos**

The Insurance may exclude, by way of an exclusion or endorsement, liability of the Insurer to indemnify any Insured in respect of, or in any way in connection with:

- (a) terrorism, war or other hostilities; and/or
- (b) asbestos, or any actual or alleged asbestos-related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos,

provided that any such exclusion or endorsement does not exclude or limit any liability of the Insurer to indemnify any Insured against civil liability or related Defence Costs arising from any actual or alleged breach of duty in the performance of (or failure to perform) legal work or failure to discharge or fulfil any duty incidental to the Insured Firm's Practice or to the conduct of Private Legal Practice.

## **7 General conditions**

### **7.1 As agreed**

The insurance may contain such general conditions as are agreed between the Insurer and the Insured Firm, but the insurance must provide that the special conditions required by clause 4 prevail to the extent of any inconsistency.

### **7.2 Reimbursement**

The insurance may provide that each Insured who:

- (a) committed; or
- (b) condoned (whether knowingly or recklessly):
  - (i) non-disclosure or misrepresentation; or
  - (ii) any breach of the terms or conditions of the insurance; or
  - (iii) dishonesty or any fraudulent act or omission,

will reimburse the Insurer to the extent that is just and equitable having regard to the prejudice caused to the Insurer's interests by such non-disclosure, misrepresentation, breach, dishonesty, act or omission, provided that no Insured shall be required to make any such reimbursement to the extent that any such breach of the terms or conditions of the insurance was in order to comply with any applicable rules or codes laid down from time to time by the Society, or in the Society publication *Your Clients - Your Business*, as amended from time to time.

The insurance must provide that no non-disclosure, misrepresentation, breach, dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company, or, in the case of a Limited Liability Partnership, all members of that Limited Liability Partnership. The insurance must provide further that any right of reimbursement contemplated by this clause 7.2 against any person referred to in clauses 1.3(d), 1.5(d) or 1.7(d) (or against the estate or legal personal representative of any such person if they die or become legally incapacitated) is limited to the extent that is just and equitable having regard to the prejudice caused to the Insurer's interests by that person having committed or condoned (whether knowingly or recklessly) dishonesty or any fraudulent act or omission.

### **7.3 Reimbursement of Defence Costs**

The insurance may provide that each Insured will reimburse the Insurer for Defence Costs advanced on that Insured's behalf which the Insurer is not ultimately liable to pay.

### **7.4 Reimbursement of the Excess**

The insurance may provide for those persons who are at any time during the Period of Insurance Principals of the Insured Firm, together with, in relation to a Sole Practitioner, any person held out as a Partner of that practitioner, to reimburse the Insurer for any Excess paid by the Insurer on an Insured's behalf. The Sum Insured must be reinstated to the extent of reimbursement of any amount which eroded it as contemplated by clause 3.4.

### **7.5 Reimbursement of moneys paid pending dispute resolution**

The insurance may provide that each Insured will reimburse the Insurer following resolution of any coverage dispute for any amount paid by the Insurer on that Insured's behalf which, on the basis of the resolution of the dispute, the Insurer is not ultimately liable to pay.

## 7.6 Withholding assets or entitlements

The insurance may require the Insured Firm to account to the Insurer for any asset or entitlement of any person who committed or condoned any dishonesty or fraudulent act or omission, provided that the Insured Firm is legally entitled to withhold that asset or entitlement from that person.

## 7.7 Premium

The premium may be calculated on such basis as the Insurer determines and the Insured Firm accepts including, without limitation, a basis which recognises Claims history, categories of work performed by the Insured Firm, numbers of Principals and Employees, revenue derived from the Insured Firm's Practice and other risk factors determined by the Insurer.

## 7.8 Co-operation and assistance

The insurance (except in the case of an ARP Policy) must provide that, if the ARP Manager is appointed to conduct any Claim, each Insured will give the ARP Manager and any investigators or solicitors appointed by it all information and documents they reasonably require, and full co-operation and assistance in the investigation, defence, settlement, avoidance or reduction of any actual or possible Claim or any related proceeding.

# 8 Definitions and interpretation

## 8.1 General

8.1.1 In these minimum terms and conditions, unless the context otherwise requires:

- (a) the singular includes the plural, and vice versa;
- (b) the male gender includes the female and neuter genders;
- (c) a reference to a person includes a body corporate, partnerships, and other unincorporated associations or bodies of persons;
- (d) a reference to any statute, statutory provision, code or regulation includes:
  - (i) any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made under it; and
  - (ii) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it either before, or at or after the date of these minimum terms and conditions;
- (e) references to the Society include the Solicitors Regulation Authority and the Legal Complaints Service, and the Office for Legal Complaints (including the Legal Ombudsman) and any body or person which succeeds in whole or in part to the functions ~~of the Society, the Solicitors Regulation Authority or the Legal Complaints Service, and any delegate~~ of the Society, the Solicitors Regulation Authority, the Legal Complaints Service or the Office for Legal Complaints (including the Legal Ombudsman) and any delegate of the Society, the Solicitors Regulation Authority, the Legal Complaints Service the Office for Legal Complaints (including the Legal Ombudsman) or any such body or person;
- (f) headings are for ease of reference only and shall not affect the interpretation of these minimum terms and conditions;
- (g) explanatory notes and commentary shall be ignored in interpreting these minimum terms and conditions;

- (h) a reference to a director includes a member of a Limited Liability Partnership;
- (i) words and expressions which begin with a capital letter in these minimum terms and conditions have the meaning set out in this paragraph 8; and
- (j) words and expressions in these minimum terms and conditions are to be construed consistently with the same or similar words or expressions in the Solicitors' Indemnity Insurance Rules ~~2009~~2010.

8.1.2 These minimum terms and conditions shall be, and the insurance shall be expressed to be, governed by and interpreted in accordance with English law.

## 8.2 Defined terms

In these minimum terms and conditions:

**Circumstances** means an incident, occurrence, fact, matter, act or omission which may give rise to a Claim in respect of civil liability

**Claim** means a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages. For these purposes, an obligation on an Insured Firm and/or any Insured to remedy a breach of the Solicitors' Accounts Rules 1998 (as amended from time to time), or any rules which replace the Solicitors' Accounts Rules 1998 in whole or in part, shall be treated as a Claim, and the obligation to remedy such breach shall be treated as a civil liability for the purposes of clause 1, whether or not any person makes a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages as a result of such breach, except where any such obligation may arise as a result of the insolvency of a bank (as defined in section 87 of the Solicitors Act 1974) or a building society (within the meaning of the Building Societies Act 1986) which holds client money in a client account of the Insured Firm or the failure of such bank or building society generally to repay monies on demand.

**Claimant** means a person or entity which has made or may make a Claim including a Claim for contribution or indemnity.

**Defence Costs** means legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the consent of the Insurer in:

- (a) defending any proceedings relating to a Claim; or
- (b) conducting any proceedings for indemnity, contribution or recovery relating to a Claim; or
- (c) investigating, reducing, avoiding or compromising any actual or potential Claim; or
- (d) acting for any Insured in connection with any investigation, inquiry or disciplinary proceeding (save in respect of any disciplinary proceeding under the authority of The Law Society of England and Wales (including, without limitation, the Solicitors Regulation Authority)).

Defence Costs do not include any internal or overhead expenses of the Insured Firm or the Insurer or the cost of any Insured's time.

**Employee** means any person other than a Principal:

- (a) employed or otherwise engaged in the Insured Firm's Practice (including under a contract for services) including, without limitation, as a solicitor, lawyer, trainee solicitor or lawyer, consultant, associate, locum tenens, agent, appointed person (as defined in the Solicitors' Indemnity Insurance Rules ~~2009~~2010), office or clerical staff member or otherwise;

- (b) seconded to work in the Insured Firm's Practice; or
- (c) seconded by the Insured Firm to work elsewhere.

Employee does not include any person who is engaged by the Insured Firm under a contract for services in respect of any work where that person is required, whether under the Solicitors' Indemnity Insurance Rules ~~2009~~2010 or under the rules of any other professional body, to take out or to be insured under separate professional indemnity insurance in respect of that work.

**Excess** means the first amount of a Claim which is not covered by the insurance.

**Insured** means each person and entity named or described as a person to whom the insurance extends and includes, without limitation, those referred to in clause 1.3 and, in relation to Prior and Successor Practices respectively, those referred to in clauses 1.5 and 1.7.

**Insured Firm** means the Firm (as defined for the purposes of the Solicitors Indemnity Insurance Rules ~~2008~~2010) which contracted with the Insurer to provide the insurance.

**Insured Firm's Practice** means:

- (a) the legal Practice carried on by the Insured Firm as at the commencement of the Period of Insurance; and
- (b) the continuous legal Practice preceding and succeeding the Practice referred to in paragraph (a) (irrespective of changes in ownership of the Practice or in the composition of any Partnership which owns or owned the Practice).

**Insurer** means the underwriter(s) of the insurance.

**Lead Insurer** means the insurer named as such in the contract of insurance, or, if no Lead Insurer is named as such, the first-named insurer on the relevant certificate of insurance.

**Limited Liability Partnership** means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000.

**Partnership** means an unincorporated Insured Firm in which persons are or are held out as partners and does not include an Insured Firm incorporated as a Limited Liability Partnership, and **Partner** means a person who is or is held out to be a partner in a Partnership.

**Period of Insurance** means the period for which the insurance operates.

**Principal** means:

- (a) where the Insured Firm is or was:
  - (i) a sole practitioner - that practitioner;
  - (ii) a Partnership - each Partner;
  - (iii) a company with a share capital - each director of that company and any solicitor, Registered European Lawyer or Registered Foreign Lawyer who:
    - (A) is held out as a director; or
    - (B) beneficially owns the whole or any part of a share in the company; or
    - (C) is the ultimate beneficial owner of the whole or any part of a share in the company.

- (iv) a company without a share capital – each director of that company and any solicitor, Registered European Lawyer or Registered Foreign Lawyer who:
    - (A) is held out as a director; or
    - (B) is a member of the company; or
    - (C) is the ultimate owner of the whole or any part of a body corporate or other legal person which is a member of the company;
  - (v) a Limited Liability Partnership – each member of that Limited Liability Partnership, and any solicitor, Registered European Lawyer or Registered Foreign Lawyer who is the ultimate owner of the whole or any part of a body corporate or other legal person which is member of the Limited Liability Partnership.
- (b) where a body corporate or other legal person is a Partner in the Insured Firm, all solicitors, Registered European Lawyers or Registered Foreign Lawyers who are within paragraph (a)(iii) of this definition (including sub paragraphs (A) and (C) thereof), paragraph (a)(iv) of this definition (including sub paragraphs (A) and (C) thereof), or paragraph a(v) of this definition.

**Prior Practice** means each Practice to which the Insured Firm's Practice is ultimately a Successor Practice by way of one or more mergers, acquisitions, absorptions or other transitions, but does not include any such Practice which has elected to be insured under run-off cover in accordance with clause 5.3(a) of these minimum terms and conditions.

**Private Legal Practice** means the provision of services in private Practice as a solicitor or Registered European Lawyer including, without limitation:

- (a) providing such services in England, Wales or anywhere in the world, whether alone or with other lawyers in a Partnership permitted to practise in England and Wales by rule 12 of the Solicitors' Code of Conduct 2007; and
- (b) the provision of such services as a secondee of the Insured Firm; and
- (c) any Insured acting as a personal representative, trustee, attorney, notary, insolvency practitioner or in any other role in conjunction with a Practice; and
- (d) the provision of such services by any Employee; and
- (e) the provision of such services pro bono publico.

Private Legal Practice does not include:

- (i) practising as an Employee of an employer other than a solicitor, a registered European lawyer, a Partnership permitted to practise in England and Wales by rule 12 of the Solicitors' Code of Conduct 2007, or a Recognised Body; or
- (ii) discharging the functions of any of the following offices or appointments:
  - (A) judicial office;
  - (B) Under Sheriffs;
  - (C) members and clerks of such tribunals, committees, panels and boards as the Council may from time to time designate but including those subject to the

Tribunals and Inquiries Act 1992, the Competition Commission, Legal Services Commission Review Panels and Parole Boards;

- (D) Justices' Clerks; or
- (E) Superintendent Registrars and Deputy Superintendent Registrars of Births, Marriages and Deaths and Registrars of Local Crematoria.

**Recognised Body** means a body for the time being recognised by the Solicitors Regulation Authority under Section 9 of the Administration of Justice Act 1985 and the SRA Recognised Bodies Regulations 2009.

**Relevant Recognised Body** means a Recognised Body other than:

- (a) an unlimited company, or an overseas company whose members' liability for the company's debts is not limited by its constitution or by the law of its country of incorporation; or
- (b) a nominee company only, holding assets for clients of another Practice; and
  - (i) it can act only as agent for the other Practice; and
  - (ii) all the individuals who are Principals of the Recognised Body are also Principals of the other Practice; and
  - (iii) any fee or other income arising out of the Recognised Body accrues to the benefit of the other Practice or
- (c) a partnership in which none of the partners is a limited company, a Limited Liability Partnership or a legal person whose members have limited liability.

**Sole Practitioner** means a solicitor or registered European lawyer who is a sole practitioner, and includes a Recognised Sole Practitioner.

**Successor Practice** means a Practice identified in this definition as 'B', where:

- (a) 'A' is the Practice to which B succeeds; and
- (b) 'A's owner' is the owner of A immediately prior to transition; and
- (c) 'B's owner' is the owner of B immediately following transition; and
- (d) 'transition' means merger, acquisition, absorption or other transition which results in A no longer being carried on as a discrete legal Practice.

B is a Successor Practice to A where:

- (i) B is or was held out, expressly or by implication, by B's owner as being the successor of A or as incorporating A, whether such holding out is contained in notepaper, business cards, form of electronic communications, publications, promotional material or otherwise, or is contained in any statement or declaration by B's owner to any regulatory or taxation authority; and/or
- (ii) (where A's owner was a Sole Practitioner and the transition occurred on or before 31 August 2000) - the Sole Practitioner is a Principal of B's owner; and/or
- (iii) (where A's owner was a Sole Practitioner and the transition occurred on or after 1 September 2000) - the Sole Practitioner is a Principal or Employee of B's owner; and/or



- (iv) (where A's owner was a Recognised Body) - that body is a Principal of B's owner; and/or
- (v) (where A's owner was a Partnership) - the majority of the Principals of A's owner have become Principals of B's owner; and/or
- (vi) (where A's owner was a Partnership and the majority of Principals of A's owner did not become Principals of the owner of another legal Practice as a result of the transition) - one or more of the Principals of A's owner have become Principals of B's owner and:
  - (A) B is carried on under the same name as A or a name which substantially incorporates the name of A (or a substantial part of the name of A); and/or
  - (B) B is carried on from the same premises as A; and/or
  - (C) the owner of B acquired the goodwill and/or assets of A; and/or
  - (D) the owner of B assumed the liabilities of A; and/or
  - (E) the majority of staff employed by A's owner became employees of B's owner.

Notwithstanding the foregoing, B is not a Successor Practice to A under paragraph (ii), (iii), (iv) (v) or (vi) if another Practice is or was held out by the owner of that other Practice as the successor of A or as incorporating A, provided that there is insurance complying with these minimum terms and conditions in relation to that other Practice.

**Sum Insured** means the aggregate limit of liability of each Insurer under the insurance.

**Appendix 2**  
**Rating schedule for ~~2009/2010~~/2011**

**1 Method for calculation of the ARP Premium**

1.1 The annual ARP Premium is calculated by identifying the fee band appropriate to the Gross Fees (as defined below) of the Insured Firm. For a £2 million primary policy (£3 million in the case of Relevant Recognised Bodies), where the Gross Fees are £500,000 or less, the ARP Premium is calculated at a rate of 27½% of the fees declared (30% in the case of Relevant Recognised Bodies). Where the Gross Fees of the Insured Firm are £500,001 or more, the ARP Premium is the sum of:

- the Maximum Premium for the previous Fee Band; plus
- the Marginal Rate on Fees applied to the amount of fees that exceed the ceiling of the previous Fee Band.

There is a minimum premium of £1,500 irrespective of the level of Gross Fees, or the period of time spent in the Assigned Risks Pool during an Indemnity Period.

**1.2 Firms other than Relevant Recognised Bodies (£2 million indemnity limit)**

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band (Calculation of example premium)	Maximum premium for fee band	Minimum rate on fee for fee band
1 £0 to £500,000	27.5%	$27.5\% \times £500,000 = £137,500$	£137,500	27.50%
2 £500,001 to £1,500,000 <i>e.g. if fees £1,000,000</i>	22%	£137,500 (maximum premium for fee band 1) plus $22\% \times £1,000,000 = £220,000 = £357,000$ <i>£137,500 plus (22% x £500,000 = £110,000) = £247,500</i>	£357,000	23.826%
3 £1,500,001 to £3,000,000 <i>e.g. if fees £2,250,000</i>	16.5%	$16.5\% \times £1,500,000 = £247,500$ plus £357,000 (maximum premium for fee band 2) = £605,000 <i>£357,000 plus (16.5% x £750,000 = £123,750) = £481,250</i>	£605,000	20.163%
4 £3,000,001 to £5,000,000 <i>e.g. if fees £4,000,000</i>	13.2%	$13.2\% \times £2,000,000 = £264,000$ plus £605,000 (maximum premium for fee band 3) = £869,000 <i>£605,000 plus (13.2% x £1,000,000 = £132,000) = £737,000</i>	£869,000	17.38%
5 £5,000,001 to £20,000,000 <i>e.g. if fees £10,000,000</i>	11%	$11\% \times £15,000,000 = £1,650,000$ plus £869,000 (maximum premium for fee band 4) = £2,519,000 <i>£869,000 plus (11% x £5,000,000 = £550,000) = £1,419,000</i>	£2,519,000	12.595%
6 £20,000,001 + <i>e.g. if fees £30,000,000</i> <i>or if fees £50,000,000</i>	5.5%	$5.5\% \times (\text{actual fees} - £20,000,000)$ plus £2,519,000 (maximum premium for fee band 5) = (annual premium) <i>£2,519,000 plus (5.5% x £10,000,000) = £550,000 = £3,069,000</i> <i>£2,519,000 plus (5.5% x £30,000,000 = £1,650,000) = £4,169,000</i>	—	—

**1.3 Relevant Recognised Bodies (£3 million indemnity limit)**

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band (Calculation of example premium)	Maximum premium for fee band	Minimum rate on fee for fee band
1 £0 to £500,000	30%	$30\% \times £500,000 = £150,000$	£150,000	30.00%
2 £500,001 to £1,500,000 <i>e.g. if fees £1,000,000</i>	24%	£150,000 (maximum premium for fee band 1) plus $24\% \times £1,000,000 = £200,000 = £390,000$ <i>£150,000 plus (24% x £500,000 = £120,000) = £270,000</i>	£390,000	25.992%

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band ( <i>Calculation of example premium</i> )	Maximum premium for fee band	Minimum rate on fee for fee band
<b>3</b> £1,500,001 to £3,000,000 <i>e.g. if fees £2,250,000</i>	18%	18% x £1,500,000 = £270,000 plus £390,000 (maximum premium for fee band 2) = £660,000  <i>£390,000 plus (18% x £750,000 = £135,000) = £525,000</i>	£660,000	24.196%
<b>4</b> £3,000,001 to £5,000,000 <i>e.g. if fees £4,000,000</i>	14.4%	14.4% x £2,000,000 = £288,000 plus £660,000 (maximum premium for fee band 3) = £948,000  <i>£660,000 plus (14.4% x £1,000,000 = £144,000) = £804,000</i>	£948,000	18.96%
<b>5</b> £5,000,001 to £20,000,000 <i>e.g. if fees £10,000,000</i>	12%	12% x £15,000,000 = £1,800,000 plus £948,000 (maximum premium for fee band 4) = £2,748,000  <i>£948,000 plus (12% x £5,000,000 = £600,000) = £1,548,000</i>	£2,748,000	13.74%
<b>6</b> £20,000,001 +  <i>e.g. if fees £30,000,000</i> <i>or if fees £50,000,000</i>	6%	6% x (actual fees – £20,000,000) plus £2,748,000 (maximum premium for fee band 5) = (annual premium)  <i>£2,748,000 plus (6% x £10,000,000) = £600,000 = £3,348,000</i> <i>£2,748,000 plus (6% x £30,000,000 = £1,800,000) = £4,548,000</i>	—	—

#### 1.4 Primary layer rates

Where an ARP Policy is written as a primary layer of £1 million, with excess layer(s) provided by a Qualifying Insurer, the premium due to the Assigned Risks Pool in respect of that policy shall be an amount calculated in accordance with the table below:

Fee bands	Marginal rate on fees	Calculation of maximum premium for fee band ( <i>Calculation of example premium</i> )	Maximum premium for fee band	Minimum rate on fee for fee band
<b>1</b> £0 to £500,000	25%	25% x £500,000 = £125,000	£125,000	25.00%
<b>2</b> £500,001 to £1,500,000  <i>e.g. if fees £1,000,000</i>	20%	£125,000 (Maximum Premium for fee band 1) plus 20% x £1,000,000 = £200,000 = £325,000  <i>£125,000 plus (20% x £500,000 = £100,000) = £225,000</i>	£325,000	21.66%
<b>3</b> £1,500,001 to £3,000,000  <i>e.g. if fees £2,250,000</i>	15%	15% x £1,500,000 = £225,000 plus £325,000 (Maximum Premium for fee band 2) = £550,000  <i>£325,000 plus (15% x £750,000 = £112,500) = £437,500</i>	£550,000	18.33%
<b>4</b> £3,000,001 to £5,000,000  <i>e.g. if fees £4,000,000</i>	12%	12% x £2,000,000 = £240,000 plus £550,000 (Maximum Premium for fee band 3) = £790,000  <i>£550,000 plus (12% x £1,000,000 = £120,000) = £670,000</i>	£790,000	15.80%
<b>5</b> £5,000,001 to £20,000,000  <i>e.g. if fees £10,000,000</i>	10%	10% x £15,000,000 = £1,500,000 plus £790,000 (Maximum Premium for fee band 4) = £2,290,000  <i>£790,000 plus (10% x £5,000,000 = £500,000) = £1,290,000</i>	£2,290,000	11.45%
<b>6</b> £20,000,001 +  <i>e.g. if fees £30,000,000</i> <i>or if fees £50,000,000</i>	5%	5% x (actual fees – £20,000,000) plus £2,290,000 (Maximum Premium for fee band 5) = (annual premium)  <i>£2,290,000 plus (5% x £10,000,000) = £500,000 = £2,790,000</i> <i>£2,290,000 plus (5% x £30,000,000 = £1,500,000) = £3,790,000</i>	—	—

## 1.5 Excess layer rates

Where an ARP Policy is written as an excess layer and the primary layer is provided by a Qualifying Insurer, the premium due to the Assigned Risks Pool in respect of that policy shall be an amount equal to the percentage set out below of the primary layer rate calculated in accordance with the table above:

Excess layer	Percentage of primary layer rate
£1 million excess of £1 million (or any part thereof)	10%
£2 million excess of £1 million (or any part thereof)	20%
£1 million excess of £2 million (or any part thereof)	10%

## 1.6 Co-insurance

Where an ARP Policy is written as co-insurance, on the basis that one or more other Qualifying Insurers are liable in respect of a proportion only of the Sum Insured, the premium due to the Assigned Risks Pool in respect of that policy shall be an amount equal to  $T \times P$ , where:

**T** = the total premium (including any default charge in accordance with Part 2) that would have been due to the Assigned Risks Pool in relation to that policy if the Assigned Risks Pool was the only insurer

**P** = the proportion, expressed as a percentage, in respect of which the Assigned Risks Pool is liable in relation to that policy

## 1.7 Definition of Gross Fees

For the purposes of the Assigned Risks Pool rating, Gross Fees means all professional fees of the Insured Firm for the latest complete financial year including remuneration, retained commission, and income of any sort whatsoever of the Insured Firm and notarial fees where a solicitor notary operates a notarial Practice in conjunction with a solicitor's Practice, but excluding only:

- (a) interest;
- (b) the reimbursement of disbursements;
- (c) any amount charged in respect of value added tax;
- (d) remuneration derived from any office excluded from the definition of private Practice by these Rules;
- (e) dividends;
- (f) rents received by the Insured Firm;
- (g) income and capital profits from reserved funds established or other investments made by the Insured Firm.

Where the Insured Firm has been in existence for less than 12 months, the Gross Fees for ARP rating purposes shall be the Insured Firm's best estimate of the Gross Fees likely to be received during its first 12 months of trading. However, where the expiry date of the Indemnity Period precedes the completion date of the first 12 months of trading, the Gross Fees for Assigned Risks Pool rating purposes shall be the Insured Firm's best estimate of the Gross Fees likely to be received during the period commencing with the starting date of the Practice and ending with the expiry date of the Indemnity Period.

In the event that the estimated amount of Gross Fees differs from the actual amount of Gross Fees for the relevant period, the Assigned Risks Pool premium shall be adjusted by reference to the actual amount of Gross Fees.

## 1.8 New Firms

In the case of a new Firm which commences Practice during the course of an Indemnity Period, the ARP Premium payable in relation to that Insured Firm shall be reduced pro rata according to the number of days elapsed in the relevant Indemnity Period prior to that Insured Firm commencing Practice.

## 1.9 Firms with limited eligibility

In the case of a Firm which will cease to be an Eligible Firm during the course of an Indemnity Period, the ARP Premium or ARP Default Premium (but not any ARP Run-off Premium) which would otherwise be payable in relation to that Insured Firm shall be reduced in accordance with the table below:

Point in Indemnity Period when Firm ceases to be an Eligible Firm	Reduction applied to ARP Premium payable
First calendar month	80%
Second or third calendar month	60%
Fourth, fifth or sixth calendar month	30%
Seventh, eighth or ninth calendar month	15%
Tenth, eleventh or twelfth calendar month	Nil

### 1.10 Premium payment

The ARP Premium shall be paid to the ARP Manager within 30 days of such premium being notified to the Insured Firm by the ARP Manager.

### 1.11 Cancellation

Where a Firm enters the Assigned Risks Pool during any Indemnity Period, but subsequently arranges Qualifying Insurance outside the Assigned Risks Pool before the end of that Indemnity Period, a return premium shall become due to the Insured Firm concerned. The return premium shall be calculated in accordance with the Short Period Scale shown below.

### 1.12 Short Period Scale

Cancellation effective in which calendar month of the Indemnity Period	Percentage of ARP Premium to be returned
First calendar month	80%
Second or third calendar month	60%
Fourth, fifth or sixth calendar month	30%
Seventh, eighth or ninth calendar month	15%
Tenth, eleventh or twelfth calendar month	Nil

However, there shall be no return premium due to the Insured Firm in the event that any claims, or circumstances that may give rise to claims, have been notified to the ARP Manager during the Indemnity Period concerned. Furthermore, in the event that the Assigned Risks Pool insurers are called upon to deal with a claim that was first made against the Insured Firm during the Indemnity Period concerned, but which claim the Insured Firm failed to notify to the ARP Manager, the amount of the return premium shall be repaid to the ARP Manager. The ARP Manager may set off any return premium due to the Insured Firm against any part of the ARP Premium which is due in respect of that Insured Firm but which remains unpaid.

### 1.13 Run-off premium

If an Insured Firm ceases to carry on a Practice during the course of any Indemnity Period in circumstances where the Assigned Risks Pool is required to provide run-off cover in respect of that Insured Firm under the

terms of an ARP Policy issued to that Insured Firm, no return premium shall be payable to that Insured Firm in respect of that ARP Policy.

In addition, in such circumstances the Insured Firm and every Principal of that Insured Firm (including, for these purposes, every person held out as a partner of a Sole Practitioner) shall be required to pay to the Assigned Risks Pool an additional premium equal to:

- 12/13 of the full annual ARP Premium (or, if applicable, the full annual ARP Default Premium) (and, for the avoidance of doubt, prior to any reduction applied under paragraph 1.9 above) payable in respect of that Insured Firm in relation to the last Indemnity Period for which such premium was payable, where such Indemnity Period was the period from 1 September 2003 to 30 September 2004; or
- 100 per cent of the full annual ARP premium (or, if applicable, the full annual ARP Default Premium) (and, for the avoidance of doubt, prior to any reduction applied under paragraph 1.9 above) payable in respect of that Insured Firm in relation to the last Indemnity Period for which such premium was payable, in the case of any other Indemnity Period.

Such additional premium shall be payable to the ARP Manager within 30 days of such premium being notified to the Insured Firm by the ARP Manager.

#### **1.14 Suspended Practices**

If:

- an Insured Firm ceases to carry on a Practice during the course of any Indemnity Period in circumstances where the Assigned Risks Pool is required to provide run-off cover in respect of that Insured Firm under the terms of an ARP Policy issued to that Insured Firm; and
- that Insured Firm's Practice subsequently restarts; and
- the ARP Manager agrees to cancel such run-off cover

the Insured Firm shall be entitled to such reimbursement of premium (if any), as the ARP Manager considers appropriate.

If, in addition, the ARP Manager agrees to provide continuing cover in accordance with paragraph 5.4(b)(ii) of the Minimum Terms and Conditions, the Insured Firm and every Principal of that Insured Firm (including, for these purposes, every person held out as a partner of a Sole Practitioner) shall be liable to pay such additional premium (if any) as the ARP Manager considers appropriate.

#### **1.15 Self-Insured excesses for ~~2009~~2010/2011**

The Self-Insured excess for each and every claim shall be calculated by multiplying the relevant number of Principals by £4,500, subject to a maximum of £225,000 each claim. The relevant number of Principals is the number of Principals (including, for these purposes, every person held out as a partner of a Sole Practitioner) as at the inception date of the Policy.

### **2 Method for calculation of the ARP Default Premium**

The ARP Default Premium shall be an amount equal to the ARP Premium calculated in accordance with Part 1 above, plus an additional default charge of 20% of the amount concerned.

### **3 Method for calculation of the ARP Run-off Premium**

The ARP Run-off Premium shall be an amount equal to **A + B – C**, where:

**A =** The amount that would have been payable as the ARP Default Premium calculated in accordance with Part 2 above in relation to each Indemnity Period in which the Firm has failed to obtain Qualifying Insurance prior to it becoming a Run-off Firm (including the Indemnity Period in which it ceased to practise)

- B** = A further amount equal to that which would have been payable as the ARP Default Premium calculated in accordance with Part 2 above in relation to the Indemnity Period during which the Firm ceased to practise
- C** = Any sum due under Rule 14.2

## Appendix 3

### Special provisions for Registered European Lawyers

1 If:

- (a) one or more of the Principals of an Insured Firm are Registered European Lawyers who claim that professional indemnity insurance, or a professional indemnity fund, under their home professional rules provides the Insured Firm's Practice with professional indemnity cover in all respects equivalent in its conditions and extent to that which would be provided under the Minimum Terms and Conditions (**Full Home State Cover**); and
- (b) the Council is so satisfied, (including, without limitation, by reason of any provider of the Full Home State Cover entering into such agreement as the Council may require from time to time but provided that the Council shall not be so satisfied if more than 25% of the Principals are Solicitors),

the Insured Firm and its Principals shall for so long as such cover continues (and, where the Council has required such agreement, for so long as such agreement remains in force and its requirements are complied with by the provider(s) of the Full Home State Cover that are party to it) be exempted from the obligation to take out and maintain Qualifying Insurance.

2 If on an application by one or more Registered European Lawyers who are Principals in an Insured Firm, the Council is satisfied that the Insured Firm's Practice has professional indemnity cover under home professional rules but that the equivalence is only partial (**Partial Home State Cover**) (including, without limitation, by reason of the provider of the Partial Home State Cover entering into such agreement as the Council may require from time to time), the Insured Firm and its Principals shall for so long as such cover continues (and, where the Council has required such agreement, for so long as such agreement remains in force and its requirements are complied with by the provider(s) of the Partial Home State Cover that are party to it) be exempted from the obligation to take out and maintain Qualifying Insurance, on condition that they take out and maintain a Difference In Conditions Policy, which shall provide cover including the Minimum Terms and Conditions as modified by the following changes (but not otherwise):

- (a) Clause 4.5 shall be deleted and replaced with the following:

#### **4.5 No 'other insurance' provision**

The insurance must not provide that the liability of the Insurer is reduced or excluded by reason of the existence or availability of any other insurance other than as contemplated by clauses 6.2 or 6.12. For the avoidance of doubt, this requirement is not intended to affect any right of the Insurer to claim contribution from any other insurer which is also liable to indemnify any Insured.

- (b) Clause 4.9 shall be deleted and replaced with the following:

#### **4.9 Resolution of disputes**

The insurance must provide that, if there is a dispute as to whether a Practice is a Successor Practice for the purposes of clauses 1.4, 1.6 or 5.3, the Insured and the Insurer will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party which has insurance complying with these minimum terms and conditions and that party's insurer, and in conjunction with the provider of the Partial Home State Cover.



- (c) Clause 4.10 shall be deleted and replaced with the following:

**4.10 Conduct of a Claim pending dispute resolution**

The insurance must provide that, pending resolution of any coverage dispute and without prejudice to any issue in dispute, the Insurer will, if so directed by the Society, conduct any Claim, advance Defence Costs and, if appropriate, compromise and pay the Claim (whether alone or in conjunction with the provider of the Partial Home State Cover). If the Society is satisfied that:

- (a) the party requesting the direction has taken all reasonable steps to resolve the dispute with the other party/ies; and
- (b) there is a reasonable prospect that the coverage dispute will be resolved or determined in the Insured's favour; and
- (c) it is fair and equitable in all the circumstances for such direction to be given;
- it may in its absolute discretion make such a direction.
- (d) Clause 4.12 shall be deleted and replaced with the following:

**4.12 Period of Insurance**

The Period of Insurance must not expire prior to the earlier of:

- (a) 30 September ~~2010~~2011; or
- (b) the date with effect on which the Partial Home State Cover expires or is avoided.
- (e) The following clause shall be added:

**6.11 Partial Home State Cover**

The insurance may exclude any liability of the Insurer to the extent that any such liability is covered under the terms of the Partial Home State Cover irrespective of whether recovery is actually made in respect of such liability.

and in clause 8.2 the following definition shall be added:

**Partial Home State Cover** has the meaning given in Appendix 3 to the Solicitors' Indemnity Insurance Rules ~~2009~~2010.

- 3 In the event of an Insured Firm which has the benefit of an exemption under paragraph 1 or paragraph 2 of this Appendix ceasing for whatever reason to enjoy that exemption but continuing to carry on a Practice it shall be treated for all the purposes of these Rules as though it had commenced the Practice on the date when such exemption ceased.
- 4 Rule 6 (Insolvency Event) shall apply to an Insured Firm which has the benefit of an exemption under paragraph 1 or paragraph 2 of this Appendix in like manner as though the insurance company or entity or fund providing professional indemnity cover under its home professional rules, on the basis of which exemption or partial exemption was granted, was a Qualifying Insurer.
- 5 In the case of an Insured Firm which has the benefit of an exemption under paragraph 2 of this Appendix all the provisions of these Rules shall apply to the additional professional indemnity insurance required under that paragraph to be taken out with a Qualifying Insurer.