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# Solicitors' Indemnity Insurance Rules 2005

With commentary

Professional Indemnity Section  
July 2005

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## Introductory commentary

### 1 Introduction

- 1.1 The Law Society introduced arrangements for solicitors' professional indemnity insurance with effect from 1 September 2000 which achieved broad coverage for the profession and its clients, whilst at the same time allowing the profession access to a competitive, commercial insurance market.
- 1.2 At its meeting on 13 April 2000, the Council of the Law Society resolved, among other matters, that:
  - 1 With effect from 1 September 2000, the regulated profession in private practice will be required under the Solicitors' Indemnity Insurance Rules 2000 to secure professional indemnity insurance complying with certain Minimum Terms and Conditions, from any of the Qualifying Insurers.
  - 2 Each Qualifying Insurer will be required to enter into a Qualifying Insurer's Agreement with the Law Society.
- 1.3 The Solicitors' Indemnity Insurance Rules 2005 were approved by the Council on 12 May 2005, and apply in respect of the indemnity period beginning on 1 October 2005.

### 2 Summary of the arrangements

- 2.1 Principals in private practice are free to secure professional indemnity insurance either by dealing direct with Qualifying Insurers or via their insurance brokers or other intermediaries. SIF has not underwritten new risks since 1 September 2000 but continues to run off the existing claims account.
- 2.2 Evidence of professional indemnity insurance that complies with the Minimum Terms and Conditions is a requirement for obtaining a practising certificate. Solicitors are not permitted to practise without current professional indemnity insurance in force.
- 2.3 Each firm is obliged to arrange its professional indemnity insurance with one or more Qualifying Insurers, or to be admitted to the Assigned Risks Pool (see paragraph 4 below). That insurance must comply with the Minimum Terms and Conditions set out in Appendix 1 to the Rules.
- 2.4 The Rules require firms to take out a policy which includes 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 located outside England and Wales (although the Solicitors' Overseas Practice Rules 1990 do 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 wherever in the world the claim is brought.

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- 2.5 Each firm which is not a body corporate is required to secure professional indemnity insurance with Qualifying Insurer(s) to a limit of indemnity of £2,000,000 any one claim. Most bodies corporate, such as LLPs, are required to obtain such insurance with Qualifying Insurer(s) to a limit of indemnity of £3,000,000 any one claim.
- 2.6 Cover in excess of these amounts (“top-up cover”) is not subject to the Rules, and firms are free to make whatever arrangements they wish. Firms should always consider whether the minimum level of cover is adequate for their needs. Arrangements for top-up cover may be made with any insurer, not just a Qualifying Insurer.
- 2.7 Firms are free to negotiate with Qualifying Insurer(s) the level of excess - i.e., the amount of each claim that the firm itself would have to meet - that applies to their policy. The Minimum Terms and Conditions provide that, if a firm does not pay the part of any claim covered by the excess, the insurer will pay that part of the claim, but recover that amount from the Principals of the firm.
- 2.8 The Minimum Terms and Conditions require that a policy of Qualifying Insurance must provide at least 6 years’ run-off cover if the firm’s practice ceases during an indemnity period. However, if there is a “successor practice” (as defined in clause 8.20 of the Minimum Terms and Conditions) to that firm’s practice, no run-off cover will be triggered. Instead, the Qualifying Insurance of the successor practice will be required to cover claims against the ceased practice. Under rule 23, the Council may determine the eligibility of any successor firm for the purposes of the Assigned Risks Pool (see paragraph 4 below).

### **3 Minimum Terms and Conditions**

- 3.1 In exercising its statutory functions the Law Society must act in such manner as it reasonably believes to be in the public interest. To this end the Council resolved on 23 June 1999 that the Society would, so far as possible, seek to replicate in the current arrangements the breadth of cover formerly provided by SIF.
- 3.2 The Minimum Terms and Conditions are not drafted as a policy, but rather as an expression of the scope of minimum coverage to be afforded to firms in respect of their regulated business. Qualifying Insurers are free to issue their own policy so long as they provide at least the coverage set out in the Minimum Terms and Conditions. As a safety net for both the public and for firms, Qualifying Insurers have committed to the Law Society that the coverage set out in the Minimum Terms and Conditions will apply as a minimum, regardless of the wording of the policy actually issued. The Minimum Terms and Conditions appear as Appendix 1 to the Rules.

### **4 The Assigned Risks Pool**

- 4.1 The Law Society recognises that some firms may not be able to secure terms from Qualifying Insurers, or may not be able reasonably to afford those terms which are available to them. This might be as a result of a

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poor claims record, a major claim being outstanding but not yet decided, or other risk factors. It is not the intention of the Law Society for such firms to be left without cover, at least in the short term. To this end, an Assigned Risks Pool (ARP) has been established to accept those risks which fall into this category.

- 4.2 Firms may be insured through the ARP for a maximum of 24 months in any five year period (or 25 months in the case of a firm insured through the ARP for the whole of the indemnity period from 1 September 2003 to 30 September 2004). Those firms receiving cover under the ARP will be required to pay a high premium, will be inspected and monitored (at the firm's expense), and may be required to attend courses approved by the Law Society and to implement specified practice management measures. It is envisaged that firms will apply for cover in the ARP only if they are unable to obtain insurance from a Qualifying Insurer in the open market. If a firm which has been insured through the ARP is unable to obtain cover with a Qualifying Insurer in the open market by the end of the maximum permitted period, the firm will have to cease practice.
- 4.3 The cover provided through the ARP is underwritten by each Qualifying Insurer in the same proportion as its proportion of premium income from underwriting the compulsory cover bears to the total of all premium income written by all the Qualifying Insurers for the compulsory cover in the indemnity period in question.
- 4.4 The premium for entry into the ARP is calculated in accordance with a formula set out in Appendix 2 to the Rules, and is based on a firm's gross fees. An additional premium is payable in the event that run-off cover is triggered.
- 4.5 In certain circumstances (for example, where a firm without Qualifying Insurance fails to apply to be insured through the ARP within the time period specified in the Rules), a default premium, 20% higher than the normal ARP premium, will be payable for the whole of the indemnity period in question.
- 4.6 In addition, in keeping with the Law Society's duty to safeguard the interests of the public, the ARP will cover claims against firms which do not, for whatever reason, secure their own insurance arrangements in accordance with the Rules, including run-off cover in the case of firms which have no policy of qualifying insurance in place when they cease practice. Where firms fail to effect cover, however, the ARP Manager is entitled to recover the amount of any claims and any associated costs, plus interest, from the principals of the firm concerned.
- 4.7 The ARP is managed by a manager appointed by the Law Society. The functions of the ARP manager are currently carried out by Capita London Market Services on behalf of the Law Society.

## **5 Arrangements with St Paul**

- 5.1 The Law Society has entered into a joint venture with St Paul Travelers Insurance Company Limited. The purpose of these arrangements is to

ensure that cover is offered to all sectors of the profession, alongside the commercial market. That does not mean that every firm will necessarily receive a quotation. The St Paul - like any other individual Qualifying Insurer - is free to reject firms with unacceptable claims records. But it will exclude firms only if their individual record is unacceptable, not because of the type of firm that they are, or the type of work that they do.

## **6 Changes for the 2005-2006 Indemnity Period**

In response to comments from Qualifying Insurers and the profession in general, a number of changes have been made to the arrangements for the Indemnity Period starting on 1 October 2005. Some of the key changes are summarised below.

- 6.1 The minimum level of cover which firms (other than most firms practising as a body corporate) are required to obtain under the Rules has been increased from £1,000,000 to £2,000,000 each and every claim.
- 6.2 For most firms practising as a body corporate, such as an LLP, the minimum level of cover they are required to obtain under the Rules has been increased from £1,500,000 to £3,000,000 each and every claim. The full £3,000,000 of cover is required to be in accordance with the minimum terms and conditions (previously, more limited requirements were placed on the top £500,000 of cover).
- 6.3 The Minimum Terms and Conditions contain new terms, in clause 2.5, on which Qualifying Insurers are permitted to treat two or more Claims as if they were one Claim for the purposes of the limit of indemnity under the policy. When considering the level of cover that is appropriate, firms should bear in mind the potential for a number of related claims to be treated as a single claim in the circumstances set out in clause 2.5.
- 6.4 The basis on which the premiums for the Assigned Risks Pool are calculated have been amended to reflect the higher level of cover provided.
- 6.5 The basis upon which insurance may be provided by more than one Qualifying Insurer has been described in more detail, in recognition of the fact that higher indemnity limits may make such arrangements more common.
- 6.6 Under paragraph 5.4 of the Minimum Terms and Conditions, Qualifying Insurers will be permitted (but not required) to cancel run-off cover and reinstate cover where a firm restarts, for example following the lifting of a suspension in relation to a sole practitioner.

## **7 About the Rules**

- 7.1 The Solicitors' Indemnity Insurance Rules 2005 were made by the Council of the Law Society on 12 May 2005, and the concurrence of the Master of the Rolls was obtained on 25 May 2005.

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- 7.2 The Rules appear in **bold** print to distinguish them from the commentary. Defined terms appear in *italics*. Commentary is provided after a number of provisions of the Rules where it is thought that this might be helpful. However, the commentary 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. The Law Society reserves the right to amend or supplement the commentary at any time. The Appendices to the Rules appear in normal type.
- 7.3 References in the Rules to the Council include any committee or person to whom any of the functions of the Council may be delegated by virtue of section 79 of the Solicitors Act 1974.

## **8 Contact details for further information**

- 8.1 If you are in doubt about any aspect of the indemnity insurance arrangements, you may contact the Professional Indemnity Section of the Law Society on 020 7320 5871. Information about the arrangements, including a list of Qualifying Insurers, is provided on the Law Society's website, at [www.indemnity.lawsociety.org.uk](http://www.indemnity.lawsociety.org.uk).

## Solicitors' Indemnity Insurance Rules 2005

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.

### Part 1 - General

#### 1 Authority and Commencement

- 1.1 These *rules* are made by the *Council* with the concurrence of the Master of the Rolls under sections 31 and 37 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985 and section 89(3) of the Courts and Legal Services Act 1990.
- 1.2 These *rules* come into force on 1 October 2005.
- 1.3 These *rules* require *solicitors, registered European lawyers, registered foreign lawyers* and *recognised bodies* in *private practice* in England and Wales to take out and maintain professional indemnity insurance with *qualifying insurers* with effect from 1 October 2005.

Commentary: These *rules* apply to:

- *solicitors*
- *registered European lawyers*
- *registered foreign lawyers* and
- *recognised bodies*

carrying on *private practice* in England and Wales as a *firm* at any time after 1 October 2005. 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 2005.

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 2000 to 2004. From 1 October 2005, *firms* must take out insurance in accordance with these *rules* with one or more *qualifying insurers*. Continuing arrangements dealing with past claims and the collection of the shortfall in the Solicitors Indemnity Fund are covered in the Solicitors' Indemnity Rules.

- 1.5 The Solicitors Indemnity Insurance Rules 2004 shall not apply in respect of any *indemnity period* beginning on or after 1 October 2005, but they shall remain in force in respect of the *indemnity period* from 1 October 2004 to

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**30 September 2005 inclusive subject to the provisions of rules 43(i), 43(ii), 43(iii) and 43(iv) 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 43(i) to 43(iv) in these *rules* in relation to time limits in respect of an application for a waiver of the provisions of the Solicitors' Indemnity Insurance Rules 2000 to 2004.

## **2 Citation**

**2.1 These *rules* may be cited as the Solicitors' Indemnity Insurance Rules 2005.**

## **3 Definition of terms**

**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 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.

**“*assigned risks pool*” means the arrangements by which an *eligible firm* may obtain professional indemnity insurance against civil liability by means of an *assigned risks pool 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 *assigned risks pool premium*.

**“*assigned risks pool 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 *assigned risks pool manager* or the Society and any such person.**

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**“assigned risks pool policy”** means a contract of professional indemnity insurance issued by the *assigned risks pool 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 *assigned risks pool policy* is available on the Law Society’s website at [www.indemnity.lawsociety.org.uk](http://www.indemnity.lawsociety.org.uk).

**“assigned risks pool premium”** means the premium calculated in accordance with Part 1 of Appendix 2 to these *rules*, **“assigned risks pool default premium”** means the premium calculated in accordance with Part 2 of Appendix 2 to these *rules* and **“assigned risks pool run-off premium”** means the premium calculated in accordance with Part 3 of Appendix 2 to these *rules*.

**“assigned risks pool run-off policy”** means a contract of professional indemnity insurance issued by the *assigned risks pool manager* on behalf of *qualifying insurers* to a *run-off firm* in the *assigned risks pool*.

**“authorised insurer”** means:

- (i) 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;
- (ii) a person who carries on an insurance market activity, within the meaning of section 316(3) of that Act;
- (iii) 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
- (iv) a person who does not fall within paragraph (i), (ii) or (iii) 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.

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Commentary: Under the Solicitors Act 1974, the Law Society 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* incepts, 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.

**“the 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 4 to these rules.**

**“eligible firm” means any *firm* which is eligible to be in the *assigned risks pool*, being any firm other than:-**

- (i) a *firm* that has at any relevant time been in the *assigned risks pool* for twenty four or more of the preceding sixty months, or twenty five or more of the preceding sixty months 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, without the prior written approval of *the Council*; or
- (ii) 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 23.1 or rule 23.2; or
- (iii) subject to rule 21, a *firm* that at the end of any *indemnity period* to which these *rules* apply is in *policy default*; or
- (iv) 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.

Commentary: *Firms* cannot remain insured through the *assigned risks pool* indefinitely. For example, a *firm* which has been insured through the *assigned risks pool* for the 2001/02 and 2002/03 *indemnity periods* will not be eligible to be insured through the *assigned risks pool* for the 2005/06 *indemnity period*. Subject to any waiver granted by *the Council* under rule 25, 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*.

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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:

- (i) any *partnership* of two or more persons (as constituted from time to time, whether before or during any relevant *indemnity period*),

consisting of:-

- (a) one or more *solicitors* and/or *registered European lawyers* and/or *recognised bodies*; or
  - (b) one or more *solicitors* and/or *registered European lawyers*, together with one or more *registered foreign lawyers*; or
  - (c) one or more *registered European lawyers* together with one or more *non-registered European lawyers*, with or without one or more *solicitors* and/or *registered foreign lawyers*, as permitted by rule 7(6)(c) of the Solicitors’ Practice Rules 1990; or
  - (d) one or more *registered European lawyers* together with one or more *non-registered European lawyers* and one or more *recognised bodies*, with or without one or more *solicitors*, as permitted by rule 7(6)(ca) of those rules; or
- (ii) any sole practitioner being either a *solicitor* or *registered European lawyer*; or
  - (iii) any *recognised body*.

Commentary: If you are unsure whether you or your business fall within this definition, you should consult the Law Society. 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,

- (i) in the case of an *eligible firm*, has failed to make an application in manner prescribed by these *rules* to be admitted into the *assigned risks pool* before the start of any *indemnity period* to which these *rules* apply or the commencement of a *practice* whichever is the later; or

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- (ii) 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
- (iii) in the case of a run-off firm, a run-off firm which has failed to make an application in manner prescribed by these rules to be issued with an assigned risks pool run-off policy.

Commentary: A *firm in default* will be required to pay the *assigned risks pool default premium*, and/or the *assigned risks pool 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*:-**

- (i) the appointment of a provisional liquidator, administrator, receiver or an administrative receiver; or
- (ii) 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
- (iii) 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
- (iv) the making of a winding up order by the court; or

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- (v) 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
- (vi) the occurrence of any event analogous to any of the foregoing *insolvency events* in any jurisdiction outside England and Wales.

**“*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 5 it remains the duty of each *firm* and each *principal* within that *firm* to ensure that the *policy* issued to it does comply with the *minimum terms and conditions*. The standard form *assigned risks pool 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 8.18 of the *minimum terms and conditions* indicates which recognised bodies this requirement applies to.

**“*partner*” and “*partnership*” refer to an unincorporated *firm*, and not to a *firm* incorporated as a limited liability 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 *assigned risks pool policy* and an *assigned risks pool run-off policy*.**

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**“policy default” means a failure:**

- (i) 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 33.1); or
- (ii) to pay for more than two months after the due date for payment all or any part of any *assigned risks pool premium*, any *assigned risks pool default premium*, or any assigned risks pool run-off premium, or any instalment payable in relation thereto whether payable to the *assigned risks pool manager* or otherwise; or
- (iii) to reimburse within two months a *qualifying insurer* (including the *assigned risks pool 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 *assigned risks pool 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*:

- (a) the date on which such payment fell due under the terms of the *policy* or any related agreement or arrangement; or
- (b) 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 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 *assigned risks pool 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 the Solicitors’ Overseas Practice Rules 1990 do 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 Law Society. 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 and any person held out as a partner of that practitioner;**
  - (ii) a *partnership* - each partner of that *firm* and any person held out as a *partner*;**
  - (iii) a *recognised body* which is a company with a share capital each director of that body and any person held out as a director and any person who:-**
    - (aa) beneficially owns the whole or any part of a share in such *recognised body*; or**
    - (bb) is the ultimate beneficial owner of the whole or any part of a share in such *recognised body*.**
  - (iv) a *recognised body* which is a company without a share capital – each director of that body and any person held out as a director and any person who:-**
    - (aa) is a member of such recognised body; or**
    - (bb) is the ultimate owner of the whole or any part of a body corporate which is a member of such *recognised body*;**
  - (v) a *recognised body* which is a limited liability partnership – each member of that body, and any person who is the ultimate owner of the whole or any part of a body corporate which is member of such recognised body.**
- (b) where a *recognised body* is a partner or held out as a partner, all such persons as are referred to in paragraph (a)(iii) of this definition (including sub paragraphs (aa) and (bb) thereof), paragraph (a)(iv) of**

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**this definition (including sub paragraphs (aa) and (bb) thereof), and paragraph a(v) of this definition.**

Commentary: It is the duty of each *principal*, under rule 5, 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, licensed insolvency practitioner or in any other role in conjunction with a *practice*, and includes services provided pro bono publico, but does not include:-**

- (i) practice carried on by a *solicitor* or *registered European lawyer* in the course of employment with an employer other than a *firm*; or**
- (ii) discharging the functions of any of the offices or appointments set out in Appendix 3 to these *rules*; or**
- (iii) practice consisting only of:-**
  - (a) 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**
  - (b) administering oaths and taking affidavits.**

Commentary: If you are unsure whether you or your *practice* fall within this definition, you should consult the Law Society. 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.**

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Commentary: A list of all *qualifying insurers* appears on the Law Society's website, at [www.indemnity.lawsociety.org.uk](http://www.indemnity.lawsociety.org.uk), and is also available from the Law Society. 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 Law Society. Contact details appear at the end of the introductory commentary.

**a “recognised body” means a body corporate for the time being recognised under section 9 of the Administration of Justice Act 1985.**

**a “registered European lawyer” means an individual registered with *the Society* under regulation 17 of the European Communities (Lawyer’s Practice) Regulations 2000.**

**a “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* 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*.**

**“*the 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.**

**“*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*.**

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## Interpretation

- 3.2 In these *rules*, unless the context otherwise requires:-
- (i) the singular includes the plural, and *vice versa*;
  - (ii) a reference to a person includes a body corporate, *partnerships*, and other unincorporated associations or bodies of persons;
  - (iii) a reference to a rule is to a *rule* forming part of these *rules*.
- 3.3 A reference to any statute, statutory provision, 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*.
- 3.4 Headings are for ease of reference only and shall not affect the interpretation of these *rules*.
- 3.5 Explanatory notes and commentary shall be ignored in interpreting these rules.
- 3.6 The appendices to these rules form part of these *rules*.
- 3.7 These *rules* will be governed by and interpreted in accordance with English law.

## Part 2 - Responsibility and Monitoring

### Responsibility

- 4 A *firm* is required to take out and maintain *qualifying insurance* under these *rules* if it carries on a *practice* during any *indemnity period* beginning on or after 1 October 2005, provided that a person (being either a *solicitor* or *registered European lawyer*) shall not be 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*.

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**A run-off firm is required to make an application in accordance with these rules to be issued with an assigned risks pool run-off policy.**

Commentary: Under these *rules*, each *firm* has a continuing obligation to ensure that it has *qualifying insurance* in place at all times with effect from 1 October 2005. Refer to the definitions of *practice*, amongst others, to establish whether a *firm* falls within the scope of these *rules*. A *firm* should also check that any insurance that it takes 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 Law Society’s website, at [www.indemnity.lawsociety.org.uk](http://www.indemnity.lawsociety.org.uk), and is also available from the Law Society. Contact details appear at the end of the introductory commentary.

Each *firm* which is carrying on a *practice* is required to take its own *policy* of *qualifying insurance*. It is not possible for more than one *firm* to be covered under a single *policy* of *qualifying insurance*.

*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:

- the *policy* is an *assigned risks pool policy* and the *firm* has replaced it with a *policy* of *qualifying insurance* outside the *assigned risks pool*; or
- the *firm* merges with another *firm* and a *policy* of *qualifying insurance* is in place for the merged *firm*; or
- 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*.

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 8.18 of the *minimum terms and conditions* indicates which *recognised bodies* this requirement applies to.

**5.1 It shall be the responsibility of a *firm* carrying on a *practice* and any person who is a principal of a *firm* which is carrying on a *practice* during any *indemnity period* beginning on or after 1 October 2005 to ensure:-**

- (i) 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*,

- (ii) that the *firm* has applied to enter the *assigned risks pool* in accordance with the procedure set out in rule 11;

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**in either case (i) or (ii) before the start of any relevant *indemnity period* or the commencement of *practice* whichever is the 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 It shall be the responsibility of 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* to ensure that the *run-off firm* has applied to enter the assigned risks pool in accordance with the procedure set out in rule 29.2(i), but the making of such an application shall 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 may still face action for a breach of rule 5.1 for practising without *qualifying insurance*.

**6 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* it shall, subject to any waiver under rule 43 be the responsibility of the *firm* and any person who is a *principal* of the *firm* to ensure:-**

**(i) 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*,**

**(ii) 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 11.**

Commentary: It is important to be aware that the arrangements for professional indemnity insurance put in place by the Law Society 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 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* must therefore 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*.

## Monitoring

- 7 **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*.

## Part 3 - The *assigned risks pool*

- 8 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 rule 11 to enter the *assigned risks pool*, subject to rule 9, 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 *assigned risks pool 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 *assigned risks pool policy* in these circumstances - refer to Appendix 2 for the basis on which the *assigned risks pool 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*".

- 9 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 rule 11 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 the *assigned risks pool*, before starting *practice*. Subject to this requirement, a new *firm* may start *practice* at any time during an *indemnity period*.

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- 10 By making an application to enter the *assigned risks pool* the applicant agrees and is required to:-**
- (i) pay the *assigned risks pool premium* in accordance with these rules; and**
  - (ii) submit to such investigation and monitoring and to pay *the Society's* costs and expenses as referred to in rule 18; and**
  - (iii) pay any costs and expenses incurred by the Society or the *assigned risks pool manager* incurred as a result of any failure or delay by the *firm* in complying with these rules; and**
  - (iv) implement at the expense of the *firm* any *special measures*.**

Commentary: *The Council* will determine the range of *special measures* which may be applied to *firms* within the *assigned risks pool*. The appointed inspectors (in the first instance, the Monitoring and Inspection 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 Compliance 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, in addition to paying the *assigned risks pool premium*.

- 11 The procedure for entering the *assigned risks pool* is as follows:-**
- (i) the application for admission to the *assigned risks pool* must be made to the *assigned risks pool manager* on the proposal form which is from time to time prescribed by *the Council*; and**
  - (ii) the applicant must state on the proposal form the date from which cover is sought which must not be a date earlier than the date on which the application is made for admission to the *assigned risks pool*, together with such other information as may be required by the ARP Manager for the purposes of setting a premium.**

Commentary: The *assigned risks pool 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 27, 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 *assigned risks pool default premium*.

- 12 It shall be the responsibility of a *firm* and any person who is a *principal* of a *firm* at the time to ensure that the *firm's* application has been made and to provide to the *assigned risks pool manager* all such information as the *assigned risks pool manager* may reasonably require in order to process the application.**

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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*.

- 13** In the event that no acknowledgement in writing of the *firm's* application has been received from the *assigned risks pool manager* within thirty days from the date when the application was made, or within such other period as is from time to time specified on the proposal form prescribed by *the Council*, then it shall be the responsibility of the *firm* and any person who is a *principal* of the *firm* to seek written confirmation that the *firm's* application has been received by the *assigned risks pool manager*. In the event that such written confirmation is not obtained within seven days after the end of the thirty days, or within seven days after such other period as is from time to time specified on the proposal form, the application shall be deemed not to have been made.
- 14** An applicant whose first application is deemed under rule 13 not to have been made must, within seven days of the day when under rule 13 the first application is deemed not to have been made, make a fresh application. It shall be the responsibility of the firm and any person who is a *principal* of the *firm* to 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 *assigned risks pool 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.
- 15** Provided that an application or, if necessary, a fresh application, has been made in accordance with rules 11 to 14, a *firm* which is an *eligible firm* will be covered in the terms of the *assigned risks pool policy* to be issued to it from the start of the relevant *indemnity period* or, in the case of a *firm* to which rule 9 applies, the date specified in the application, being the date specified in accordance with rule 11(ii), until whichever is the earlier of:-
- (i) the end of the relevant *indemnity period*; or
  - (ii) the date on which the *firm* obtains *qualifying insurance* outside the *assigned risks pool*; or
  - (iii) the date when the *firm* ceases to be an *eligible firm*.

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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 *assigned risks pool 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.

**16 Any firm in the assigned risks pool must pay to the assigned risks pool manager the assigned risks pool premium within thirty days of such premium being notified to it by the assigned risks pool manager.**

Commentary: It is a disciplinary offence to fail to pay the *assigned risks pool premium* (including the *assigned risks pool run-off premium*) to the *assigned risks pool manager* within the required 30 day period. A *firm* may enter into arrangements with, for example, a premium funding company (whether offered by the *assigned risks pool manager* or arranged independently) to enable it to make payments by instalments, provided that the premium is received in full by the *assigned risks pool manager* from the premium funding company within the required 30 day period.

**17 An eligible firm that has applied to enter the assigned risks pool in accordance with the procedure set out in rule 11 will be issued with an assigned risks pool policy by the assigned risks pool manager.**

Commentary: A copy of the standard-form *assigned risks pool policy* is available on the Law Society's website at [www.indemnity.lawsociety.org.uk](http://www.indemnity.lawsociety.org.uk) and is also available from the Law Society. Contact details appear at the end of the introductory commentary.

**18 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:-**

(i) to determine the reasons why *qualifying insurance* outside the *assigned risks pool* was not obtained;

(ii) 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. 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 Compliance 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

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implemented. It should be noted that the costs and expenses of investigation and monitoring by the Compliance Directorate and the implementation of the *special measures* (together with VAT if applicable) will be payable by the *firm* concerned, in addition to paying the *assigned risks pool premium*.

- 19** A *firm* may leave the *assigned risks pool* at any time after it has satisfied the *assigned risks pool 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*.

- 20** Subject to rule 24, 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 months in any five year period, 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 months in the last five years) must either obtain *qualifying insurance* on the open market or cease carrying on *practice*.

- 21** Subject to rule 25, 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 *assigned risks pool 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 Law Society as soon as possible before the start of the next indemnity period. Contact details appear at the end of the introductory commentary.

- 22** 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*.

- 23** 23.1 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*

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for the purposes of determining whether the successor *firms* or any of them are or remain an *eligible firm*.

**23.2** 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 Law Society. Contact details appear at the end of the introductory commentary.

**24** *The Council* shall have power in any particular case or cases to give prior written approval allowing 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 when such approval is given the *firm* shall continue to be an *eligible firm* for so long as *the Council* may from time to time permit.

Commentary: It is envisaged that this power would be exercised only in exceptional circumstances. Any application to *the Council* seeking its exercise of this power should be made at least three months before the *firm* in question would otherwise cease to be an *eligible firm*.

**25** *The Council* shall have power in any particular case or cases 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* provided that it complies with any such terms and conditions.

Commentary: It is envisaged that this power would be exercised only in exceptional circumstances. Any application to *the Council* seeking its exercise of this power should be made at least three months before the *firm* in question would otherwise cease to be an *eligible firm*.

**26** Any material misrepresentation made in an application for admission to the *assigned risks pool* shall, subject to any waiver under rule 43, render the *firm* a *firm in default* for the purposes of Part 4 of these *rules*. The provisions of that Part shall accordingly apply to the *firm* in the same manner as they would have

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applied if that *firm* had not been admitted to the *assigned risks pool* but the *firm* shall not be entitled to the refund of any *assigned risks pool premium* paid to the *assigned risks pool manager* save that any amount so paid shall be credited against any sums payable by it under Part 4 of these *rules*.

Commentary: Although an *assigned risks pool 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*.

#### **Part 4 - Firms in default**

**27** The *assigned risks pool 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:-

(i) a *firm in default*; and

(ii) 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 *assigned risks pool policy* and/or, as the case may require, an *assigned risks pool run-off policy*.

**28** Subject to rule 32, the penultimate sentence of rule 33.1 and the penultimate sentence of rule 33.2, *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 27 together with interest thereon at Barclays Bank Plc base rate plus three per cent from the date when such amounts were respectively paid. The *assigned risks pool manager* may and is hereby authorised to recover all sums due under this rule 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 *assigned risks pool 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 27 in respect of any claim (together with defence costs) made against the *firm* and relating to the period when it did not have *qualifying*

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*insurance* in force, less any amount due under rule 33 (where applicable); and

- pay an amount under rule 33 (where applicable) to *the Society* equivalent to the *assigned risks pool default premium* calculated for the whole of the *period of default*.

However, if a *firm* in these circumstances is eligible under rule 29.1 to be issued with an *assigned risks pool policy*, then, provided that it complies with rule 29.1 and is issued with an *assigned risks pool policy*, the liability of the *firm* and the *principals* of that *firm* will be limited, from that point on, to the *assigned risks pool default premium* and the excess payable under the terms of the *assigned risks pool policy*.

**29 29.1** At any time during the *period of default* a *firm in default* shall be entitled to be admitted to the *assigned risks pool* and to be issued with an *assigned risks pool policy* affording cover retrospectively from the commencement of the *period of default* and extending until the end of the then current *indemnity period* subject to the following conditions:-

- (i) the *firm* was an *eligible firm* at the commencement of the *period of default*;
- (ii) the *firm* has made an application to join the *assigned risks pool* in manner provided by rule 11(i) stating on the proposal form that it is a *firm in default* and giving the date of the commencement of the *period of default* from which retrospective cover is sought;
- (iii) the *firm* discharges in full the *assigned risks pool default premium* calculated for the whole of the *indemnity period* or *indemnity periods* for which cover is sought within thirty days of such premium being notified to it by the *assigned risks pool manager* or such longer period as *the Council* may allow;
- (iv) the *firm* was at the commencement of the *indemnity period* current at the date of its application an *eligible firm* and would still have been entitled to remain in the *assigned risks pool* had it entered the *assigned risks pool* at the commencement of the *period of default* and remained in the *assigned risks pool* throughout the *period of default* ignoring for these purposes its failure to pay the *assigned risks pool premium* or the *assigned risks pool default premium* throughout this *period of default*; and
- (v) the *firm* will be subject to and comply with rules 10(ii) to 10(iv) and 18.

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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 *assigned risks pool policy* provided that it meets all of the requirements of rule 29.1. However, each *principal* of the *firm* will have committed a disciplinary offence, and the *firm* will be required to pay the *assigned risks pool default premium* under any *assigned risks pool policy* issued.

**29.2 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 *assigned risks pool run-off policy*, subject to the following conditions:-**

- (i) the *run-off firm* has made an application to join the *assigned risks pool* in manner provided by rule 11(i) stating on the proposal form that it is a *run-off firm* and giving the date from which cover under an *assigned risks pool run-off policy* is sought;
- (ii) the firm discharges in full the *assigned risks pool run-off premium* within thirty days of such premium being notified to it by the *assigned risks pool manager* or such longer period as *the Council* may allow; and
- (iii) the *firm* will be subject to and comply with rule 10(iii).

Commentary: A *run-off firm* will be eligible to be issued with an *assigned risks pool policy* if it meets all of the requirements of rule 29.2. 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 *assigned risks pool run-off premium* under any *assigned risks pool run-off policy* issued.

**29.3 An *assigned risks pool 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:**

- (i) the start of the *indemnity period* in which it became a *run-off firm*; or
- (ii) 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.

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Commentary: *Run-off firms* which are issued with an *assigned risks pool 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 *assigned risks pool policy* while practising uninsured.

**30** For the purpose of satisfying condition 29.1(iv) in rule 29.1, rule 24 shall apply so as to enable *the Council* to extend the period during which the *firm* is to be regarded as eligible to remain in the *assigned risks pool* in like manner as though the *firm* was at the commencement of the *indemnity period* referred to in that condition already in the *assigned risks pool*.

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

**31** Any *firm* that has been admitted to the *assigned risks pool* under rule 29.1 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* as at the commencement 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.

**32** Rule 28 shall not apply to a *firm* which has under rule 29 been admitted to the *assigned risks pool* and which has been issued with an *assigned risks pool policy* or an *assigned risks pool run-off policy*, the liability of the *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 *assigned risks pool policy* under rule 29.1, or an *assigned risks pool run-off policy* under rule 29.2 then, provided that it complies with the relevant requirements under rule 29 and is issued with an *assigned risks pool policy* or an *assigned risks pool run-off policy*, the *firm* and the *principals* of that *firm* will only be required to pay to the *assigned risks pool manager* the relevant premium and the excess in the event of any claim.

**33** **33.1** A *firm in default* which is entitled to be admitted to the *assigned risks pool* and to be issued with an *assigned risks pool policy* in accordance with rule 29.1 but which does not make an application to join the *assigned risks pool* shall, notwithstanding, be liable to pay to *the Society* an amount equivalent to the *assigned risks pool default premium* calculated for the whole of the *period of default*.

**33.2** A *firm in default* which is entitled to be admitted to the *assigned risks pool* and to be issued with an *assigned risks pool run-off policy* in accordance with rules 29.2 and 29.3 but which does not make an application to join the *assigned risks pool* shall, notwithstanding, be liable to pay to *the Society*

an amount equivalent to the *assigned risks pool run-off premium* calculated for the whole of the period equivalent to that which would be provided by an *assigned risks pool run-off policy* in accordance with rule 29.3, or, if shorter and if it can be ascertained, the *period of default*.

**33.3** Any amount payable in accordance with rules 33.1 or 33.2 shall be determined by the *assigned risks pool manager* on the basis of such assumption as to the *firm's* gross fees and other matters as the *assigned risks pool manager* shall in its absolute discretion determine, and may be reviewed from time to time by the *assigned risks pool manager* in its absolute discretion on the basis of any further information provided to it. Any such amount paid under rule 33.1 or 33.2 shall be deducted from any amount payable pursuant to rule 28. The *assigned risks pool manager* may and is hereby authorised to recover all sums due under rules 33.1 or 33.2 on behalf of *the Society*.

**33.4** For the avoidance of doubt, a *firm* shall not be deemed to have been admitted to the *assigned risks pool* or to be covered in accordance with rule 27 solely by virtue of the fact that the *assigned risks pool 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 *assigned risks pool 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 *assigned risks pool default premium* calculated for the whole of the *period of default*; and
- reimburse to *the Society* in full under rule 28 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.

**34** The provisions in this Part 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 *assigned risks pool default premium* and/or the *assigned risks pool run-off premium* does not detract from the fact that the *firm* in

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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.

## **Part 5 - Administration of the *assigned risks pool***

**35** The *assigned risks pool* shall be managed by the *assigned risks pool manager*.

## **Part 6 - Disciplinary offences and reporting**

**36** 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*.

**37** By making an application for *qualifying insurance* a firm authorises any *qualifying insurer* to whom the application is made, including in the case of an application to enter the *assigned risks pool*, the *assigned risks pool manager*, to bring to the attention of *the Society*:-

- (i) any failure on the part of the *firm* to pay any sum, including an *assigned risks pool premium* or an *assigned risks pool default 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;
- (ii) the fact that a *firm* has become or is believed to have become a *run-off firm*; and
- (iii) any dishonesty or fraud suspected by a *qualifying insurer* on the part of any Insured as defined in the *minimum terms and conditions*.

**38** Rule 37 shall apply in the case of a *firm in default* as if an application to enter the *assigned risks pool* had been made by the *firm in default* so as to permit the *assigned risks pool manager* to bring to the attention of *the Society* any of the matters referred to in rule 37.

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

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*rules*, are deemed to have consented to their *qualifying insurer* or the *assigned risks pool manager* bringing to the attention of *the Society* any of the matters referred to rule 37 that may be applicable to the *firm*. Any such information is subject to the confidentiality provisions of rule 40.

- 39 ***The Council*** may require any *qualifying insurer* or the *assigned risks pool manager* to bring to the attention of *the Society* any of the matters referred to in rule 37 in any case where *the Council* reasonably believes there are matters which ought to be brought to the attention of *the Society* under rules 37 or 38.
- 40 In respect of any information that may be brought to the attention of *the Society* in accordance with rules 37 to 39:-
- (i) *the Society* shall keep all such information confidential;
  - (ii) *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
  - (iii) 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.
- 41 The provisions of rule 40 shall not prevent *the Society* making use of any information referred to in that rule for the purpose of bringing disciplinary proceedings against any person, or from disclosing, where *the Society* in its absolute discretion considers it appropriate, such information as it may have regarding the identity of a *firm's qualifying insurer* to any person asserting a claim against that *firm*.

#### **Part 7 - Registered European Lawyers**

- 42 The special provisions contained in Appendix 4 to these *rules* shall apply to a *firm* that has at least one *principal* who is a *registered European lawyer*.

#### **Part 8 - General powers of *the Council***

- 43 ***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*.
- (i) Any application by any person for a waiver of any *rule* or part of any *rule* under the Solicitors' Indemnity Insurance Rules 2001 to 2005 must be

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made in writing to the Society as soon as reasonably practicable, and in any event no later than the relevant date set out below:

Rules		Relevant date whichever is the later of:	
Solicitors' Indemnity Insurance Rules 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 <i>rule</i> or part of any <i>rule</i> in respect of which the waiver application is or was made, but in any event no later than:	30 November 2002
Solicitors' Indemnity Insurance Rules 2002	30 November 2002		30 November 2003
Solicitors' Indemnity Insurance Rules 2003	30 November 2003		31 December 2004
Solicitors' Indemnity Insurance Rules 2004	31 December 2004		31 December 2005
Solicitors' Indemnity Insurance Rules 2005	31 December 2005		31 December 2006

- (ii) 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.
- (iii) 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 2005) must be made in writing to *the Society* within 21 days from the date of the decision.
- (iv) An application for a waiver as contemplated by this rule 43 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 2005 pending the consideration 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. Unless and until any waiver is granted, the person concerned must comply with the requirements of these *rules* in full. *The Council* may attach such conditions as it thinks fit to any waiver, and may revoke any waiver that it has previously granted without notice.

- 44 (i) *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

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*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.

- (ii) 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 2004 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, *the Council* may, in its discretion, approve the issuing of a practising certificate to a person notwithstanding a technical and insignificant breach by that person or a *firm* of any provision of these *rules*.

## Part 9 - Accountants' reports

- 45 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 *assigned risks pool 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.

## Part 10 - Details of *Qualifying Insurer*

46 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*:

- (i) the name of the qualifying insurer(s) who issued the policy; and
- (ii) the policy number; and
- (iii) 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.

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 41, the Law Society has the power to disclose information regarding a *firm’s qualifying insurer* where it considers it appropriate to do so.

## **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 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, inquiry or disciplinary proceeding 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 Firm; and
- (b) each service, administration, trustee or nominee company owned as at the date of occurrence of relevant Circumstances by the Firm and/or the Principals of the Firm; and
- (c) each Principal, each former Principal and each person who becomes a Principal during the Period of Insurance of the 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 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 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.

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## **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 legal ombudsman**

The insurance must indemnify each Insured against any amount paid or payable in accordance with the recommendation of the Legal Services Ombudsman or any other regulatory authority to the same extent as it indemnifies the Insured against civil liability.

## **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 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.

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## **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 Firm agree. Subject to clause 3.4, the

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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 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.

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#### **4.3 No cancellation**

The insurance must provide that it cannot be cancelled other than if (and with effect from the date upon which) -

- (a) the 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; 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.

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

#### **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 6.2. 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 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

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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 Law Society of England and Wales, conduct any Claim, advance Defence Costs and, if appropriate, compromise and pay the Claim. The Society may in its absolute discretion make such a direction, but only if it 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.

#### **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 2006.

## **5 Run-off cover**

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

The insurance must provide that, if the Firm's Practice ceases during or on expiry of the Period of Insurance and the Firm has not obtained succeeding insurance in compliance with these minimum terms and conditions (a "Cessation"), the insurance will provide run-off cover.

### **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 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.

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

## **6 Exclusions**

### **6.1 No other 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.

### **6.2 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.

### **6.3 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.

### **6.4 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 Firm's Practice and not occupied or used in the course of the 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.

### **6.5 Partnership disputes**

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

### **6.6 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 Firm is a limited liability partnership or a company without a share capital, or in relation to any employment or training agreement or arrangement.

### **6.7 Debts and trading liabilities**

Any -

- (a) trading or personal debt of any Insured; or

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- (b) breach by any Insured of the terms of any contract or arrangement for the supply to, or use by, any Insured of goods or services in the course of the Firm's Practice; 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.

## **6.8 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.

## **6.9 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.

## **6.10 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.

## **6.11 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

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- (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 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 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 Council of the Law Society of England and Wales, or in the Law Society publication "Keeping Clients - a Client Care Guide for Solicitors" 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.

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### **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 Firm 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 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 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 Firm accepts including, without limitation, a basis which recognises Claims history, categories of work performed by the Firm, numbers of Principals and Employees, revenue derived from the Firm's Practice and other risk factors determined by the Insurer.

## **8 Definitions**

### **8.1 General**

In these minimum terms and conditions, 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) person includes a body corporate; and
- (d) a reference to a partnership does not include a limited liability partnership which is a body corporate; and
- (e) a reference to a director includes a member of a limited liability partnership; and

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- (f) headings are merely descriptive and not an aid to interpretation; and
- (g) words and expressions which begin with a capital letter in these minimum terms and conditions have the meaning set out in this clause 8; and
- (h) 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 2005.

## **8.2 'Circumstances'**

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

## **8.3 'Claim'**

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 a 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.

## **8.4 'Claimant'**

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

## **8.5 'Defence Costs'**

Defence Costs mean 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.

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

## **8.6 'Employee'**

Employee means any person other than a Principal -

- (a) employed or otherwise engaged in the 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 2005), office or clerical staff member or otherwise;
- (b) seconded to work in the Firm's Practice; or
- (c) seconded by the Firm to work elsewhere.

Employee does not include any person who is engaged by the Firm under a contract for services in respect of any work where that person is required, whether under the Solicitors' Indemnity Insurance Rules 2005 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.

## **8.7 'Excess'**

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

## **8.8 'The Firm'**

The Firm means -

- (a) the Partnership (as constituted as at commencement of the Period of Insurance) or Recognised Body which, or sole practitioner who, contracted with the Insurer to provide this insurance; and
- (b) the Partnership referred to in paragraph (a) as constituted from time to time, whether prior to or during the Period of Insurance.

## **8.9 'The Firm's Practice'**

The Firm's Practice means -

- (a) the legal practice carried on by the 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).

## **8.10 'Insured'**

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.

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#### **8.11 'The Insurer'**

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

#### **8.12 'Lead Insurer'**

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.

#### **8.13 'Partnership' and 'Partner'**

Partnership means an unincorporated Firm, and does not mean a Firm incorporated as a limited liability partnership, and Partner means a partner in an unincorporated Firm.

#### **8.14 'Period of Insurance'**

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

#### **8.15 'Principal'**

Principal means, in relation to -

- (a) a Recognised Body or other body corporate which is a company - each director or officer of that body and any person held out as a director or officer; and
- (b) a Recognised Body which is a limited liability partnership - each member of that body; and
- (c) a Partnership - each Partner of that firm and any person held out as a Partner (and where a Recognised Body is a Partner - each director and officer of that body and each person held out as a director or officer, if the body is a company; and each member of that body if the body is a limited liability partnership); and
- (d) a sole practitioner - that practitioner.

#### **8.16 'Prior Practice'**

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

#### **8.17 'Private Legal Practice'**

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 by rule 7(6) of the Solicitors' Practice Rules 1990, or a recognised body; and
- (b) the provision of such services as a secondee of the Firm; and

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- (c) any Insured acting as an executor, trustee, attorney, notary, insolvency practitioner or other personal appointment; and
- (d) the provision of such services by any Employee.

Private Legal Practice does not include practising as an Employee of an employer other than a solicitor, a registered European lawyer, a Partnership permitted by rule 7(6) of the Solicitors' Practice Rules 1990, or a Recognised Body.

### **8.18 'Relevant Recognised Body'**

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*.

### **8.19 'Recognised Body'**

Recognised Body means a body corporate for the time being recognised under Section 9 of the *Administration of Justice Act 1985*.

### **8.20 'Successor Practice'**

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

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- (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.

## **8.21 'Sum Insured'**

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

## Appendix 2: Rating schedule for 2005/2006

### Part 1 - Method for calculation of the assigned risks pool premium

The annual *assigned risks pool premium* is calculated by identifying the fee band appropriate to the Gross Fees (as defined below) of the *firm*. For a £2 million (£3 million RRB) primary policy, where the Gross Fees are £500,000 or less, the *assigned risks pool 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 *firm* are £500,001 or more, the *assigned risks pool 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 £1,100 irrespective of the level of Gross Fees, or the period of time spent in the *assigned risks pool* during an *indemnity period*.

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

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	27.5%	$27.5\% \times £500,000 = £137,500$	£137,500	27.50%
<b>2</b> £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 $22\% \times £1,000,000 = £220,000 = £357,000$  $£137,500 \text{ plus } (22\% \times £500,000 = £110,000) = £247,500$	£357,000	23.826%
<b>3</b> £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  $£357,000 \text{ plus } (16.5\% \times £750,000 = £123,750) = £481,250$	£605,000	20.163%
<b>4</b> £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  $£605,000 \text{ plus } (13.2\% \times £1,000,000 = £132,000) = £737,000$	£869,000	17.38%
<b>5</b> £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  $£869,000 \text{ plus } (11\% \times £5,000,000 = £550,000) = £1,419,000$	£2,519,000	12.595%
<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%	$5.5\% \times (\text{actual fees} - £20,000,000)$ plus £2,519,000 (maximum premium for fee band 5) = (annual premium)  $£2,519,000 \text{ plus } (5.5\% \times £10,000,000) = £550,000 = £3,069,000$  $£2,519,000 \text{ plus } (5.5\% \times £30,000,000 = £1,650,000) = £4,169,000$	—	—

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### Relevant Recognised Bodies (£3 million indemnity limit)

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	30%	$30\% \times £500,000 = £150,000$	£150,000	30.00%
<b>2</b> £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 $24\% \times £1,000,000 = £200,000 = £390,000$  $£150,000 \text{ plus } (24\% \times £500,000 = £120,000) = £270,000$	£390,000	25.992%
<b>3</b> £1,500,001 to £3,000,000  <i>e.g. if fees £2,250,000</i>	18%	$18\% \times £1,500,000 = £270,000$ plus £390,000 (maximum premium for fee band 2) = £660,000  $£390,000 \text{ plus } (18\% \times £750,000 = £135,000) = £525,000$	£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%	$14.4\% \times £2,000,000 = £288,000$ plus £660,000 (maximum premium for fee band 3) = £948,000  $£660,000 \text{ plus } (14.4\% \times £1,000,000 = £144,000) = £804,000$	£948,000	18.96%
<b>5</b> £5,000,001 to £20,000,000  <i>e.g. if fees £10,000,000</i>	12%	$12\% \times £15,000,000 = £1,800,000$ plus £948,000 (maximum premium for fee band 4) = £2,748,000  $£948,000 \text{ plus } (12\% \times £5,000,000 = £600,000) = £1,548,000$	£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%	$6\% \times (\text{actual fees} - £20,000,000)$ plus £2,748,000 (maximum premium for fee band 5) = (annual premium)  $£2,748,000 \text{ plus } (6\% \times £10,000,000) = £600,000 = £3,348,000$  $£2,748,000 \text{ plus } (6\% \times £30,000,000 = £1,800,000) = £4,548,000$	—	—

### Primary layer rates

Where an *assigned risks pool 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%	$25\% \times £500,000 = £125,000$	£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 $20\% \times £1,000,000 = £200,000 = £325,000$  $£125,000 \text{ plus } (20\% \times £500,000 = £100,000) = £225,000$	£325,000	21.66%
<b>3</b> £1,500,001 to £3,000,000  <i>e.g. if fees £2,250,000</i>	15%	$15\% \times £1,500,000 = £225,000$ plus £325,000 (Maximum Premium for fee band 2) = £550,000  $£325,000 \text{ plus } (15\% \times £750,000 = £112,500) = £437,500$	£550,000	18.33%

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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
4 £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%
5 £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%
6 £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>	—	—

### Excess layer rates

Where an *assigned risks pool 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%

### Co-insurance

Where an *assigned risks pool 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 x 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*

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### Definition of Gross Fees

For the purposes of the *assigned risks pool* rating, Gross Fees means all professional fees of the *firm* for the latest complete financial year including remuneration, retained commission, and income of any sort whatsoever of the *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 *firm*;
- (g) income and capital profits from reserved funds established or other investments made by the *firm*.

Where the *firm* has been in existence for less than 12 months, the Gross Fees for ARP rating purposes shall be the *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 *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.

### New firms

In the case of a new *firm* which commences *practice* during the course of an *indemnity period*, the *assigned risks pool premium* payable by that *firm* shall be reduced pro rata according to the number of days elapsed in the relevant *indemnity period* prior to that *firm* commencing *practice*.

### Premium payment

The *assigned risks pool premium* shall be paid to the *assigned risks pool manager* within 30 days of such premium being notified to the *firm* by the *assigned risks pool manager*.

### 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

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the *firm* concerned. The return premium shall be calculated in accordance with the Short Period Scale shown below.

### Short Period Scale

Cancellation effective in which calendar month of the <i>indemnity period</i>	Percentage of <i>assigned risks pool premium</i> 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 *firm* in the event that any claims, or circumstances that may give rise to claims, have been notified to the *assigned risks pool 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 *firm* during the *indemnity period* concerned, but which claim the *firm* failed to notify to the *assigned risks pool manager*, the amount of the return premium shall be repaid to the *assigned risks pool manager*. The *assigned risks pool manager* may set off any return premium due to the *firm* against any part of the *assigned risks pool premium* which is due from that *firm* but which remains unpaid.

### Run-off premium

If a *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 *firm* under the terms of an *assigned risks pool policy* issued to that *firm*, no return premium shall be payable to that *firm* in respect of that *assigned risks pool policy*.

In addition, in such circumstances the *firm* shall be required to pay to the *assigned risks pool* an additional premium equal to:

- 12/13 of the full annual *assigned risks pool premium* (or, if applicable, the full annual *assigned risks pool default premium*) payable by that *firm* in respect of the last *indemnity period* in respect of which the *firm* was liable to pay such premium, where such *indemnity period* was the period from 1 September 2003 to 30 September 2004; or
- 100 per cent of the full annual *assigned risks pool premium* (or, if applicable, the full annual *assigned risks pool default premium*) payable by that *firm* in respect of the last *indemnity period* in respect of which the *firm* was liable to pay such premium, in the case of any other *indemnity period*.

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Such additional premium shall be payable to the *assigned risks pool manager* within 30 days of such premium being notified to the *firm* by the *assigned risks pool manager*.

### Suspended practices

If:

- a *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 *firm* under the terms of an *assigned risks pool policy* issued to that *firm*; and
  - that *firm's practice* subsequently restarts; and
  - the *assigned risks pool manager* agrees to cancel such run-off cover
- the *firm* shall be entitled to such reimbursement of premium (if any), as the *assigned risks pool manager* considers appropriate.

If, in addition, the *assigned risks pool manager* agrees to provide continuing cover in accordance with paragraph 5.4(b)(ii) of the Minimum Terms and Conditions, the *firm* shall be liable to pay such additional premium (if any) as the *assigned risks pool manager* considers appropriate.

### Self-Insured excesses for 2005/2006

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* as at the inception date of the *policy*.

### Part 2 - Method for calculation of the *assigned risks pool default premium*

The *assigned risks pool default premium* shall be an amount equal to the *assigned risks pool premium* calculated in accordance with Part 1 above, plus an additional default charge of 20% of the amount concerned.

### Part 3 - Method for calculation of the *assigned risks pool run-off premium*

The *assigned risks pool run-off premium* shall be an amount equal to  $A + B - C$ , where:

- A =** The amount that would have been payable as the *assigned risks pool 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 *assigned risks pool default premium* calculated in accordance with Part 2 above in relation to the *indemnity period* during which the *firm* ceased to practise

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**C =** Any sum due under rule 33.2

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### **Appendix 3: Offices and Appointments (definition of “private practice”)**

Discharging the functions of the following offices:-

- (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.

#### Appendix 4: Special provisions for registered European lawyers

- 1 If:
- (a) one or more of the *principals* of a *firm* are *registered European lawyers* who claim that professional indemnity insurance, or a professional indemnity fund, under their home professional rules provides the *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 *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 a *firm*, *the Council* is satisfied that the *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 *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 Law Society of England and Wales, 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). The Society may in its absolute discretion make such a direction, but only if it 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.

- (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 2006; or
- (b) the date with effect on which the Partial Home State Cover expires or is avoided.

- (e) The following clauses shall be added:

**6.12 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.

**8.22 'Partial Home State Cover'**

Partial Home State Cover has the meaning given in Appendix 4 to the Solicitors' Indemnity Insurance Rules 2005.

- 3 In the event of a *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 a *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

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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 a *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*.