



STATUTORY INSTRUMENTS.

S.I. No. 441 of 2009

THE SOLICITORS ACTS, 1954 TO 2008 (PROFESSIONAL INDEMNITY
INSURANCE) (AMENDMENT (NO. 2)) REGULATIONS 2009

(Prn. A9/1546)

THE SOLICITORS ACTS, 1954 TO 2008 (PROFESSIONAL INDEMNITY INSURANCE) (AMENDMENT (NO. 2)) REGULATIONS 2009

THE LAW SOCIETY OF IRELAND, in exercise of the powers conferred on them by section 26 of the Solicitors (Amendment) Act 1994 hereby make the following Regulations:—

1. Preliminary and General

- (a) These Regulations may be cited as The Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) (Amendment (No. 2)) Regulations 2009.
- (b) These Regulations, the 2009 Regulations and the 2007 Regulations shall be construed together as one instrument. Terms used in these Regulations and defined in the 2007 Regulations (as amended by the 2009 Regulations) and in the 2009 Regulations shall, where the context so admits, have the respective meanings ascribed to them in those instruments.
- (c) These Regulations shall come into operation on the 1st day of December 2009.

2. Interpretation

- (a) In these Regulations, the following terms shall have the following meanings:—
 - “2007 Regulations” means The Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007; and
 - “2009 Regulations” means The Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) (Amendment) Regulations 2009.
- (b) Amendment to Regulation 2 of the 2007 Regulations
 - (i) Regulation 2(a) (as amended by the 2009 Regulations) is amended by the substitution of the following for the definitions of defaulting firm, defaulting run-off firm and run-off period:—

“ “defaulting firm” means:—

- (i) in respect of any indemnity period other than the suspended period, a firm that does not hold qualifying insurance outside the assigned risks pool

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and which falls within one of the following categories:—

- (A) in the case of a firm that is an eligible firm, it has failed to make an application to be admitted into the assigned risks pool prior to the start of any relevant indemnity period or prior to the start of the firm’s practice whichever is the later;
 - (B) in the case of a firm that is not an eligible firm, it is a firm that is carrying on a practice without qualifying insurance;
 - (C) a firm designated as a defaulting firm pursuant to Regulation 7(e);
- (ii) in respect of the suspended period, a firm that does not hold qualifying insurance and is carrying on a practice without qualifying insurance;”

“ “defaulting run-off firm” means:—

- (i) in respect of any indemnity period other than the suspended period, a firm that ceases a practice in circumstances where it is required pursuant to these Regulations to establish and maintain run-off cover in respect of a run-off period, but where it does not itself establish and maintain run-off cover either from qualified insurers or from the assigned risks pool (and a firm on whose behalf the ARP manager makes arrangements for that firm’s run-off period to be covered through the assigned risks pool because it has failed itself to establish and maintain run-off cover pursuant to these Regulations shall be regarded as a defaulting run-off firm); or
- (ii) in respect of the suspended period, a firm that ceases a practice in circumstances where it is required pursuant to these Regulations to establish and maintain run-off cover in respect of a run-off period, but where it does not itself establish and maintain run-off cover from qualified insurers;”

“run-off period” means the period of two years from the date of cessation of a firm’s practice (save that where a firm ceases practice during an indemnity period, the run-off period in respect of that firm shall be two years from the end of that indemnity period), and a firm’s practice shall not be deemed to

have ceased for the purposes of this definition where for the purposes of the minimum terms and conditions there is a succeeding practice to which coverage must extend pursuant to those terms and conditions;”

- (ii) Regulation 2(a) (as amended by the 2009 Regulations) is amended by the insertion of the following definitions of qualified insurers agreement, suspended period and suspension:—

“qualified insurers agreement” means an agreement in such terms as the PII Committee may from time to time designate setting out the terms and conditions on which a qualified insurer may provide qualifying insurance to firms in the State during the suspended period;

“suspended period” means the indemnity period commencing on 1 December 2009;

“suspension” has the meaning ascribed to it in Regulation 7A;

- (iii) Regulation 2 (as amended by the 2009 Regulations) is amended by the insertion of the following after Regulation 2(e) thereof as Regulation 2(f):—

“For all purposes of these Regulations, in respect of the suspended period references to a pool participation agreement shall be construed as references to a qualified insurers agreement.”

3. Amendment to Regulation 5 of the 2007 Regulations

- (a) The 2007 Regulations are amended:—

- (i) by substituting the following for Regulation 5(a)(ii):—

“where immediately prior to the commencement of a run-off period, the firm held an assigned risks pool coverage, and the firms’ practice ceases during any indemnity period other than the suspended period, the firm shall maintain in place run-off cover through the assigned risks pool during the run-off period in respect of the firm’s former practice;”

- (ii) by inserting the following as Regulation 5(a)(iii):—

“where a firm’s practice ceases during the suspended period, establish and maintain run-off cover in respect of the run-off period with qualified insurers.”

- (iii) by inserting the following as Regulation 5(j):—

“The operation of Regulations 5(*f*), 5(*g*), 5(*h*) and 5(*i*) shall be suspended during the suspended period having regard to the suspension of the assigned risks pool during that period by virtue of Regulation 7A, but the suspension thereof shall be without prejudice to any accrued rights and obligations of any party arising out of or related to the operation of the assigned risks pool in respect of any other indemnity period.”

- (*b*) For the avoidance of doubt, the substitution by Regulation 2(*b*) of these Regulations of a new definition of the term “run-off period” for that formerly contained in the 2007 Regulations shall not prejudice the obligation of any firm that ceases practice prior to 1 December 2009 to maintain run-off cover for a period of 6 years after ceasing practice or from the end of the indemnity period during which that firm ceases practice as the case may be.

4. Amendment to Regulation 6 of the 2007 Regulations

- (*a*) Regulation 6 of the 2007 Regulations is amended:—

- (i) by substituting the following for Regulation 6(*b*):—

“A firm to which Regulation 6(*a*) applies shall:—

- (i) where the insolvency event or non-performance event occurs during any indemnity period other than the suspended period, provide to the Society such evidence that it has established and is maintaining qualifying insurance or run-off cover or that it has applied to enter the assigned risks pool as the Society may from time to time require, or
- (ii) where the insolvency event or non-performance event occurs during the suspended period, provide to the Society such evidence that it has established and is maintaining qualifying insurance or run-off cover as the Society may from time to time require.”

- (ii) by substituting the following for Regulation 6(*c*):—

“Without prejudice to the generality of Regulation 6(*b*), a firm shall be required to provide to the Society, or procure that there is provided to the Society on its behalf, confirmation in any form designated by the Society that:—

- (i) where the insolvency event or non-performance event occurs during any indemnity period other than the suspended period, it has established and is maintaining qualifying insurance or run-off cover or that it has applied to enter the assigned risks pool within 30 working days of the insolvency event or non-performance

event that gives rise to the obligation to establish and maintain qualifying insurance or run-off cover pursuant to Regulation 6(a); or

- (ii) where the insolvency event or non-performance event occurs during the suspended period, it has established and is maintaining qualifying insurance or run-off cover within 30 working days of the insolvency event or non-performance event that gives rise to the obligation to establish and maintain qualifying insurance or run-off cover pursuant to Regulation 6(a).”

(iii) by substituting the following for Regulation 6(d):—

“Without prejudice to the generality of Regulation 12(a), every principal of a firm to which these Regulations apply, and in the case of a firm that has ceased its practice every person that is or was a principal of that firm at the relevant time as determined by the PII Committee in its discretion shall be responsible for ensuring:—

- (i) that the firm has established and maintains in place qualifying insurance or run-off cover following the occurrence of an insolvency event or a non-performance event in respect of its former qualified insurer or qualified insurers with a qualified insurer or qualified insurers that is or are unaffected by such an event, or (where the relevant insolvency event or non-performance event occurs in any indemnity period other than the suspended period) that it applied to enter the assigned risks pool; and
- (ii) that the firm provides any evidence that the firm has established and is maintaining qualifying insurance or run-off cover or (where the relevant insolvency event or non-performance event occurs in any indemnity period other than the suspended period) that it has applied to enter the assigned risks pool following the occurrence of an insolvency event or a non-performance event in respect of its former qualified insurer or qualified insurers that may be required under or pursuant to these Regulations in a timely manner.”

- (b) For the avoidance of doubt, having regard to the suspension of the operation of the assigned risks pool during the suspended period by virtue of Regulation 7A of the 2007 Regulations (inserted by these Regulations), any application made to enter the assigned risks pool during the suspended period, or the provision of evidence that such

an application has been made, shall not relieve any firm of its obligations under this Regulations 6(a), 6(c) and 6(d) or evidence the satisfaction of such obligations.

5. Amendment to Regulation 7 of the 2007 Regulations

- (a) Regulation 7 of the 2007 Regulations (as amended by the 2009 Regulations) is amended by inserting the following as Regulation 7(p):—

“The operation of Regulations 7(a), 7(b), 7(c), 7(d), 7(f), 7(g), 7(h), 7(i), 7(j), 7(k), 7(l) and 7(m) shall be suspended during the suspended period having regard to the suspension of the assigned risks pool during that period by virtue of Regulation 7A, but the suspension thereof shall be without prejudice to any accrued rights and obligations of any party arising out of or related to the operation of the assigned risks pool in respect of any other indemnity period.”

6. Insertion of new Regulation 7A of the 2007 Regulations

- (a) The following shall be inserted into the 2007 Regulations as new Regulation 7A:—

“7A Suspension of the assigned risks pool—

- (a) With effect from 1 December 2009 and for the duration of the suspended period, the assigned risks pool shall be suspended (such suspension to be known for the purposes of these Regulations as the “suspension”). The suspension shall be without prejudice to any accrued rights and obligations of any party arising out of or related to the operation of the assigned risks pool in respect of any other indemnity period, whether prior to or subsequent to the suspended period.
- (b) The effect of the suspension shall, without prejudice to the generality of Regulation 7A(a), be as follows:—
- (i) no qualified insurer shall have obligations or liabilities pursuant to the operation of any assigned risks pool in respect of any claims (as defined in the minimum terms and conditions) first made against a firm during the suspended period;
- (ii) no firm shall be entitled to obtain assigned risks pool coverage in respect of claims (as defined in the minimum terms and conditions) first made against a firm during the suspended period, nor shall any firm be regarded as having complied

with any obligations imposed by the 2007 Regulations in respect of the suspended period by virtue of having made any application to obtain such coverage.”

7. Amendment to Regulation 9 of the 2007 Regulations

(a) Regulation 9 of the 2007 Regulations (as amended by the 2009 Regulations) is amended:—

(i) by inserting the following as Regulation 9(f):—

“The operation of Regulations 9(a), 9(b), 9(c) and 9(e) shall be suspended during the suspended period having regard to the suspension of the assigned risks pool during that period by virtue of Regulation 7A, but the suspension thereof shall be without prejudice to any accrued rights and obligations of any party arising out of or related to the operation of the assigned risks pool in respect of any other indemnity period.”

(ii) by substituting the following for Regulation 9(d):—

“A defaulting firm may, at the discretion of the PII Committee, be required to cease its practice unless:—

- (i) where an assigned risks pool is in operation, it obtains qualifying insurance from a qualified insurer outside the assigned risks pool; or
- (ii) where no assigned risks pool is in operation, it obtains qualifying insurance from a qualified insurer.”

8. Amendment to Regulation 10 of the 2007 Regulations

(a) Regulation 10 of the 2007 Regulations is amended by inserting the following as Regulation 10(h):—

“The operation of Regulation 10 shall be suspended during the suspended period having regard to the suspension of the assigned risks pool during that period by virtue of Regulation 7A, but the suspension thereof shall be without prejudice to any risk management audits, which have commenced on or before the commencement of the suspended period and which the PII Committee, in its absolute discretion, permits or directs to continue.”

9. Amendment to Regulation 11 of the 2007 Regulations

- (a) Regulation 11 of the 2007 Regulations is amended by inserting the following as Regulation 11(h):—

“The operation of Regulation 11 shall be suspended during the suspended period having regard to the suspension of the assigned risks pool during that period by virtue of Regulation 7A, but the suspension thereof shall not affect the powers of the PII Committee in relation to any risk management audit reports received by the PII Committee in respect of risk management audits commenced on or before the commencement of the suspended period.”

10. Amendment to Regulation 13 of the 2007 Regulations

- (a) Regulation 13 of the 2007 Regulations is amended by substituting the following for Regulation 13(e)(ii):—

“making recommendations, issuing guidance (including for the avoidance of doubt the power to issue interpretative guidance with regard to the effect of the provisions of these Regulations regarding the suspension, in such forms as the PII Committee in its absolute discretion deems fit) or giving directions on behalf of the Society in relation to the management, administration and protection by the ARP manager of the assigned risks pool, including during the suspended period;”

11. Amendment to Regulation 14 of the 2007 Regulations

- (a) Regulation 14 of the 2007 Regulations is amended by substituting the following for Regulation 14(b):—

“The Society may maintain in such form or forms as it considers appropriate a register of firms showing such details of any qualifying insurance, assigned risks pool coverage or run-off cover maintained by those firms appearing on the register as the Society deems fit, together with details of any firms that have not maintained such insurance and/or cover, and may permit persons to enquire as to the registered status of firms and provide persons with the information contained in the register relating to firms in such manner and to such extent as the Society may determine.”

12. Amendment of Minimum Terms and Conditions

- (a) Schedule 1 (Minimum Terms and Conditions of Professional Indemnity Insurance) of the 2007 Regulations is hereby amended:—

- (i) in clause 1.1, by substituting the following for the definitions of Minimum Terms and Conditions and Regulations:—

“Minimum Terms and Conditions” mean these minimum terms and conditions, as amended from time to time;

“Regulations” mean the Solicitors Acts 1954 to 2002 (Professional Indemnity Insurance) Regulations 2007, as amended;

(ii) in clause 6.1, by substituting “two calendar years” for “six calendar years”;

(iii) by substituting the following for clause 6.4:—

“6.4 No Cancellation

The Insurance must provide that the run-off cover is not subject to cancellation on any basis whatsoever, save that:—

(a) it may be cancelled on terms to be agreed between the Insurer and the Firm where the following conditions are met:—

(i) the Firm has obtained Insurance in accordance with these Minimum Terms and Conditions as and to the extent prescribed by the Regulations on the date of cancellation of the relevant run-off cover; and

(ii) the Qualified Insurer or Qualified Insurers under the replacement Insurance referred to in paragraph (i) have confirmed in writing to the Firm and to the Qualified Insurer or Qualified Insurers under the relevant run-off cover that they are providing Insurance on the basis that the Firm’s Practice is to be treated as a continuation of the Firm’s Practice prior to the cessation thereof and that accordingly they will be liable for any Claims against the Firm arising from matters that occurred prior to the cessation; and

(iii) the Qualified Insurer or Qualified Insurers under the replacement Insurance referred to in paragraph (i) have provided any required confirmations of coverage to the Law Society pursuant to the Regulations;

(b) in respect of a Firm which ceases Practice after the commencement of the Indemnity Period beginning on 1 December 2009 or during any subsequent Indemnity Period, it may be cancelled by a Qualified Insurer or Qualified Insurers in circumstances where any additional premium required to be paid by the Firm pursuant to the terms of the Insurance in respect of the relevant run-off cover has not been paid by the Firm to the Qualified Insurer or Qualified Insurers when stated to be due pursuant to the terms of such Insurance.”

(iv) by the deletion of clause 6.5 in its entirety;

- (v) by the insertion after clause 17.16(b) (as inserted by Regulation 11(e)(iii) of the 2009 Regulations) of the word “and”;
- (vi) by substituting the following for clause 7.17 (as inserted by Regulation 11(g)(iv) of the 2009 Regulations):—

“7.17 Misrepresentation and Non-Disclosure

The Insurance may exclude liability of the Insurer to indemnify all Insureds under the relevant Insurance in respect of any Claim by a Financial Institution in circumstances where the Insurer can demonstrate (and for the avoidance of doubt, the burden of proof in this regard shall rest with the Insurer) that any Insured was guilty of any material misrepresentation or material non-disclosure in placing the Insurance, save that liability shall not be excluded on the grounds of innocent misrepresentation or innocent non-disclosure on the part of the Insured. For the avoidance of doubt, the effect of this clause 7.17 shall be that no such Claims shall be valid as against a Qualified Insurer.”

Dated this 5th day of November 2009.

SIGNED on behalf of the Law Society of Ireland pursuant to section 79 of the Solicitors Act 1954.

JOHN D. SHAW,
President of the Law Society of Ireland.

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