



STATUTORY INSTRUMENTS.

S.I. No. 433 of 2013



THE SOLICITORS ACTS 1954 TO 2011 (PROFESSIONAL INDEMNITY
INSURANCE) (AMENDMENT) REGULATIONS 2013.

THE SOLICITORS ACTS 1954 TO 2011 (PROFESSIONAL INDEMNITY INSURANCE) (AMENDMENT) REGULATIONS 2013.

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 2011 (Professional Indemnity Insurance) (Amendment) Regulations 2013.
- (b) These Regulations, the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011 (the “2011 Regulations”) and the Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) (Amendment) Regulations 2012 (the “2012 Regulations”), shall be construed together as one instrument. Terms used in these Regulations and defined in the 2011 Regulations and the 2012 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 2013.

2. Amendment of the 2011 Regulations

- (a) The 2011 Regulations are amended by substituting “participating insurer” for all references to “qualified insurer”;
- (b) The 2011 Regulations are amended by substituting “Participating Insurers Agreement” for all references to “Qualified Insurers Agreement”;

3. Amendment of Regulation 2 of the 2011 Regulations

- (a) Regulation 2 (Interpretation) is amended by substituting the following for the definition of “legal services”:

“legal services” means services of a legal or financial nature and includes any part of such services, and for the avoidance of doubt, includes (without limitation):—

- (i) any investment business services or investment advice provided by a firm,

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 19th November, 2013.

- (ii) acting as personal representative or trustee,
 - (iii) acting as notary public,
 - (iv) acting as a commissioner for oaths,
 - (v) acting as liquidator or receiver,
 - (vi) acting as company secretary,
 - (vii) acting as director of any body corporate owned by the principals of a firm that provides trustee, nominee, administration or other services,
 - (viii) acting as arbitrator or mediator,
 - (ix) acting on a pro bono basis, and
 - (x) acting as personal insolvency practitioner.”
- (b) Regulation 2 (Interpretation) is amended by inserting the following definition:
- “personal insolvency practitioner” has the meaning ascribed to such term in the Personal Insolvency Act 2012;”*
- (c) Regulation 2 (Interpretation) is amended by substituting the following definition for the definition of “preceding practice”:
- “preceding practice” means each practice:*
- (i) which has ceased practice; and
 - (ii) to which the firm’s practice is a succeeding practice;”
- (d) Regulation 2 (Interpretation) is amended by substituting the following for the definition of “succeeding practice”:
- “succeeding practice” means a practice that satisfies any one (1) or more of the following conditions in relation to another practice (such other practice being a preceding practice for these purposes):—*
- (i) it is held out as being a successor to the practice or part thereof of the preceding practice by whatever means such holding out occurs; or
 - (ii) it is conducted by a partnership where half or more of the principals are identical to those persons who were principals of any partnership that conducted the preceding practice,
 - (iii) it is conducted by a sole practitioner who was the sole practitioner conducting the preceding practice, or

- (iv) it is conducted by a sole practitioner who was one of the principals conducting the preceding practice; or
- (v) it is conducted by a partnership in which the sole practitioner conducting the preceding practice is a partner and where no other person has been held out as a successor to the preceding practice, or
- (vi) the partnership which, or sole practitioner who, conducts the practice has assumed the liabilities of the preceding practice;

but notwithstanding the foregoing a practice shall not be treated as a succeeding practice for the purposes of the minimum terms and conditions pursuant to paragraphs (ii), (iii), (iv), (v) or (vi) of this definition if another practice is or was held out by the owner of that other practice as the succeeding practice;”

4. Amendment of Appendix 1 of the 2011 Regulations

- (a) Appendix 1 (Minimum Terms and Conditions of Professional Indemnity Insurance for Solicitors and Registered Lawyers in Ireland) is amended by substituting “participating insurer” for all references to “qualified insurer”;
- (b) Appendix 1 (Minimum Terms and Conditions of Professional Indemnity Insurance for Solicitors and Registered Lawyers in Ireland) is amended by substituting “Participating Insurers Agreement” for all references to “Qualified Insurers Agreement”;

5. Amendment of Clause 1 of Appendix 1 of the 2011 Regulations

- (a) Clause 1 (Interpretation) is amended by substituting the following for the definition of “Amount Insured”:

“Amount Insured” means the limit of liability of each Insurer under the Insurance, including, for the avoidance of doubt, the aggregate limit of liability of all Insurers where the coverage is provided on the basis of co-insurance;”

- (b) Clause 1 (Interpretation) is amended by substituting the following for the definition of “Legal Services”:

“Legal Services” means services of a legal or financial nature and includes any part of such services, and for the avoidance of doubt, includes (without limitation):—

- (a) any Investment Business Services or Investment Advice provided by a Firm,
- (b) acting as personal representative or trustee,

- (c) acting as notary public,
 - (d) acting as a commissioner for oaths,
 - (e) acting as liquidator or receiver,
 - (f) acting as company secretary,
 - (g) acting as director of any body corporate owned by the principals of a firm that provides trustee, nominee, administration or other services,
 - (h) acting as arbitrator or mediator,
 - (i) acting on a pro bono basis, and
 - (j) acting as Personal Insolvency Practitioner.”
- (c) Clause 1 (Interpretation) is amended by inserting the following definition:
- “Personal Insolvency Practitioner” has the meaning ascribed to such term in the Personal Insolvency Act 2012;”*
- (d) Clause 1 (Interpretation) is amended by substituting the following for the definition of “Preceding Practice”:
- “Preceding Practice” means each Practice:*
- (a) which has ceased practice; and
 - (b) to which the Firm’s Practice is a Succeeding Practice;”
- (e) Clause 1 (Interpretation) is amended by substituting the following for the definition of “Regulations”:
- “Regulations” means the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011 as amended by the Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) (Amendment) Regulations 2012 and by the Solicitors Acts 1954 to 2011 (Professional Indemnity Insurance) (Amendment) Regulations 2013, as the same may be amended from time to time;”*
- (f) Clause 1 (Interpretation) is amended by substituting the following for the definition of “Succeeding Practice”:
- “Succeeding Practice” means a Practice that satisfies any one (1) or more of the following conditions in relation to another Practice (such other practice being a Preceding Practice for these purposes):—*

- (a) it is held out as being a successor to the practice or part thereof of the Preceding Practice by whatever means such holding out occurs; or
- (b) it is conducted by a Partnership where half or more of the Principals are identical to those persons who were Principals of any Partnership that conducted the Preceding Practice,
- (c) it is conducted by a sole practitioner who was the sole practitioner conducting the Preceding Practice, or
- (d) it is conducted by a sole practitioner who was one of the Principals conducting the Preceding Practice; or
- (e) it is conducted by a Partnership in which the sole practitioner conducting the Preceding Practice is a partner and where no other person has been held out as a successor to the Preceding Practice, or
- (f) the Partnership which, or sole practitioner who, conducts the practice has assumed the liabilities of the Preceding Practice;

but notwithstanding the foregoing a practice shall not be treated as a Succeeding Practice for the purposes of the Minimum Terms and Conditions pursuant to paragraphs (b), (c), (d), (e) or (f) of this definition if another practice is or was held out by the owner of that other practice as the Succeeding Practice;”

6. Amendment of Clause 2 of Appendix 1 of the 2011 Regulations

- (a) Clause 2 (Scope of Cover) is amended by inserting a new clause 2.3 as follows and by renumbering the subsequent clauses, as appropriate:

“2.3 Continuous Coverage

Historic claims

2.3.1 Notwithstanding the provisions of clause 2.2 and subject to the provisions of clause 2.3.2, the Insurance must indemnify the Insured against civil liability incurred by the Insured arising from any provision of Legal Services where:

- (a) a Claim in respect of such liability:
 - (i) is first made against the Insured during the coverage period (the “Relevant Period”) of a professional indemnity insurance policy (the “Relevant Policy”) held by the Firm with the Insurer in respect of an Indemnity Period commencing on or after 1 December 2013; and
 - (ii) is first notified to the Insurer during the Coverage Period;

(b) the Insured maintained Qualifying Insurance with the Insurer without interruption from the Relevant Period until the date of notification of the Claim to the Insurer; and

(c) the Claim would have been covered by the Relevant Policy,

such a Claim to be referred to herein as an “Historic Claim”.

2.3.2 Where the Insurance is underwritten on a co-insurance basis, the Insurance may provide that an Insurer shall only be liable in respect of an Historic Claim where the Insurer provided cover to the Insured continuously and without interruption from the Relevant Period until the date of notification of the Historic Claim.

Limit of liability

2.3.3 The liability of an Insurer in respect of any one Historic Claim referred to in clause 2.3.1 shall not exceed the lesser of the limit of liability of the Insured under the Insurance and the limit of liability of the Insured under the Relevant Policy.

2.3.4 In the case of co-insurance, the liability of an Insurer in respect of any one Historic Claim referred to in clause 2.3.2 shall not exceed the lesser of the Insurer’s proportion of the limit of liability of the Insured under the Insurance and the Insurer’s proportion of the limit of liability of the Insured under the Relevant Policy.

Self-insured excess

2.3.5 *Notwithstanding the provisions of clause 4, the self-insured excess payable by the Insured in respect of an Historic Claim referred to in clause 2.3.1 shall be the higher of the self-insured excess applicable to the Insurance and the self-insured excess applicable to the Relevant Policy.*

Historic circumstances

2.3.6 Notwithstanding the provisions of clause 2.2 and subject to the provisions of clause 2.3.7, the Insurance must indemnify the Insured against civil liability incurred by the Insured arising from any provision of Legal Services where a Claim in respect of such liability is first made against the Insured during or after the Coverage Period and:

(a) arises from Circumstances which:

(i) the Insured first became aware of, or ought reasonably to have become aware of, during the Relevant Period of the Relevant Policy held by the Firm with the Insurer in respect of an Indemnity Period commencing on or after 1 December 2013; and

(ii) are first notified to the Insurer during the Coverage Period;

(b) the Insured maintained Qualifying Insurance with the Insurer without interruption from the Relevant Period until the date of notification of the Circumstances to the Insurer; and

(c) the Claim would have been covered by the Relevant Policy,

such Circumstances to be referred to herein as “Historic Circumstances”.

2.3.7 Where the Insurance is underwritten on a co-insurance basis, the Insurance may provide that an Insurer shall only be liable in respect of a Claim arising from Historic Circumstances where the Insurer provided cover to the Insured continuously and without interruption from the Relevant Period until the date of notification of that Claim.

Limit of liability

2.3.8 The liability of an Insurer in respect of any one Claim referred to in clause 2.3.6 arising from Historic Circumstances shall not exceed the lesser of the limit of liability of the Insured under the Insurance and the limit of liability of the Insured under the Relevant Policy.

2.3.9 In the case of co-insurance, the liability of an Insurer in respect of any one Claim referred to in clause 2.3.7 arising from Historic Circumstances shall not exceed the lesser of the Insurer’s proportion of the limit of liability of the Insured under the Insurance and the Insurer’s proportion of the limit of liability of the Insured under the Relevant Policy.

Self-insured excess

2.3.10 Notwithstanding the provisions of clause 4, the self-insured excess payable by the Insured in respect of a Claim referred to in clause 2.3.6 arising from Historic Circumstances shall be the higher of the self-insured excess applicable to the Insurance and the self-insured excess applicable to the Relevant Policy.”

- (b) Clause 2.3 (Defence Costs) is amended by substituting “clauses 2.2, 2.5 and 2.6” for all references to “clauses 2.2, 2.4 and 2.5”;
- (c) Clause 2.4 (Preceding Practice) is amended by substituting “clause 2.5” for all references to “clause 2.4” and by substituting “clause 2.5.2” for the reference to “clause 2.4.2”;

- (d) Clause 2.5 (Succeeding Practice) is amended by substituting “clause 2.6” for all references to “clause 2.5” and by substituting “clause 2.6.2” for the reference to “clause 2.5.2”.



SIGNED on behalf of the Law Society of Ireland pursuant to section 79 of the Solicitors Act 1954.
14 November 2013.

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

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€3.05



Wt. (B30154). 285. 11/13. Clondalkin. Gr 30-15.