



STATUTORY INSTRUMENTS.

S.I. No. 384 of 2009

THE SOLICITORS ACTS, 1954 TO 2008 (PROFESSIONAL INDEMNITY
INSURANCE) (AMENDMENT) REGULATIONS 2009

(Prn. A9/1328)

S.I. No. 384 of 2009

THE SOLICITORS ACTS, 1954 TO 2008 (PROFESSIONAL INDEMNITY INSURANCE) (AMENDMENT) 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) Regulations 2009.
- (b) These Regulations and the 2007 Regulations shall be construed together as one instrument. Terms used in these Regulations and defined in the 2007 Regulations shall, where the context so admits, have the meanings ascribed to them in the 2007 Regulations.
- (c) These Regulations shall come into operation on the 1st day of December 2009.

2. *Interpretation*

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;

“additional ARP premium” has the meaning ascribed to it in Regulation 7(c)(ii);

“ARP contribution” has the meaning ascribed to it in Regulation 16(a);

“ARP fund” has the meaning ascribed to it in Regulation 17(a);

“claim” has the meaning ascribed to it in the minimum terms and conditions;

“initial ARP premium” has the meaning ascribed to it in Regulation 7(c)(ii);

“insurer reimbursement claim” means a claim maintained and upheld against a qualified insurer, by a claimant other than a financial institution, which have been paid by a qualified insurer:—

- (a) in circumstances where if that claimant had been a financial institution, the qualified insurer would have been entitled to exclude liability for the claim in accordance with clause 7.16 of the minimum terms and conditions; and

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 25th September, 2009.

- (b) the qualified insurer has not recovered the full extent of the sums paid by it by way of a claim for reimbursement pursuant to 8.2 of the minimum terms and conditions;

“financial institution” has the meaning ascribed to it in the minimum terms and conditions;

“minimum terms and conditions” mean the Minimum Terms and Conditions of Professional Indemnity Insurance attached as Appendix 1 to the 2007 Regulations;

“premium schedule” means the schedule to be determined by the PII Committee and published by the Society from time to time which sets out the terms pursuant to which premium levels, in respect of firms which obtain or are granted coverage in the assigned risks pool, are to be determined by the ARP manager in accordance with these Regulations;

“roll” has the meaning ascribed to it in the Solicitors Act 1954.

3. *Amendment of Regulation 2 of the 2007 Regulations*

Regulation 2(a) is amended by the substitution of the following for the definition of defaulting firm:—

“defaulting firm” means a firm that does not hold qualifying insurance outside the assigned risks pool and which falls within one of the following categories:—

- (i) 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;
- (ii) 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;
- (iii) a firm designated as a defaulting firm pursuant to Regulation 7(e);

4. *ARP Contribution*

The 2007 Regulations are amended by the insertion of the following after Regulation 15 thereof as Regulation 16:—

“16. ARP Contribution

- (a) With effect from 1 December 2010, every firm that maintains qualifying insurance or obtains or is granted cover through the assigned risks pool, or a firm in respect of which cover through the assigned risks pool is extended in any manner in an indemnity period, shall be required to pay to the Society a sum equal to 2% (two percent) (or such other percentage as may be determined in accordance with Regulation 16(b)) of the total premium payable by that firm (excluding any government levies or similar duties, taxes or levies) in respect of such qualifying insurance and/or

cover through the assigned risks pool by way of contribution to the liabilities, expenses and costs of administration of the assigned risks pool, such contributions to be known as the ARP contribution.

- (b) The Council may, prior to the commencement of any indemnity period, vary the percentage level of the ARP contribution chargeable in respect of that indemnity period (and any subsequent indemnity period if the Council so deem fit) above or below the level set forth in Regulation 16(a). The Society shall notify qualified insurers and the ARP manager of any such variation and of the Council's determination in that regard not less than 60 (sixty) days prior to the start of the relevant indemnity period.
- (c) The ARP contribution shall be collected by each qualified insurer and the ARP manager, as appropriate, acting as agents of the Society, from firms insured by such qualified insurers and/or the assigned risks pool and shall, on receipt, be paid over by each qualified insurer and the ARP manager, as appropriate, to the Society as soon as practicable and in accordance with such procedures, as may be notified to such qualified insurers and the ARP manager by the Society, for collection and verification thereof as the PII Committee may in its absolute discretion from time to time determine.

5. *The establishment of the ARP Fund*

The 2007 Regulations are amended by the insertion of the following after Regulation 16 thereof (inserted by Regulation 4 above) as Regulation 17:—

“17. ARP Fund

- (a) The Society shall establish a fund to be known as the ARP fund to assist with costs, expenses and liabilities incurred by or in any way relating to or connected with the assigned risks pool in any one or more indemnity periods. Payments out of the ARP fund relating such costs, expenses and liabilities shall be made at the absolute discretion of the PII Committee on the written application of the ARP manager. Sums standing to the credit of the ARP fund from time to time shall not be attributable or allocated to costs, expenses and liabilities of the assigned risks pool in any particular indemnity period but shall be generally subject to the disposition of the PII Committee as it may deem fit.
- (b) The Society may invest moneys of the ARP fund in securities in which trustees are authorised by law to invest trust funds.
- (c) The following shall be paid into the ARP fund:
 - (i) the ARP contribution imposed in accordance with Regulation 16;

- (ii) interest, dividends and other income and accretions of capital arising from investments of the ARP fund;
 - (iii) the proceeds of the realisation of investments of the ARP fund;
 - (iv) moneys borrowed for the ARP fund; and
 - (v) other moneys belonging to or accruing to the ARP fund or received by the Society in respect thereof.
- (d) The following shall be paid out of the ARP fund:
- (i) expenses incurred in establishing, maintaining or administering the ARP fund;
 - (ii) payments made from the ARP fund in accordance with Regulation 17(a);
 - (iii) repayments of moneys borrowed by the Society for the ARP fund and payments of interest on such moneys;
 - (iv) expenses incurred by the Society under or in exercise of powers conferred by or under this Regulation 17.
- (e) Any funds standing to the credit of the ARP fund shall be the property of the Society absolutely and no person shall be entitled to the return of any funds or payment out of the ARP fund, save if and to the extent determined by the PII Committee in its absolute discretion.

6. *Amendment to Regulation 5 of the 2007 Regulations*

Regulation 5 is hereby amended:—

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

“The premium payable by any defaulting run-off firm, in respect of whose former practice arrangements pursuant to Regulation 5(f) are made from time to time, shall be calculated by the ARP manager in accordance with the premium schedule determined by the PII Committee from time to time.”
- (ii) in Regulation 5(h), by substituting “as determined in accordance with Regulation 5(g)” for “as calculated by the ARP manager pursuant to Regulation 5(g)”;
- (iii) by the deletion of Regulations 5(j), (k) and (l) in their entirety.

7. *Amendment to Regulation 6 of the 2007 Regulations*

Regulation 6(a) of the 2007 Regulations is amended by substituting “30 working days” for “20 working days”.

8. *Amendment to Regulation 7 of the 2007 Regulations*

Regulation 7 is hereby amended:—

(i) by substituting the following for Regulation 7(c)(i):—

“it shall submit to the ARP manager a proposal form in a format designated from time to time by the PII Committee seeking to obtain assigned risks pool coverage and stating the date upon which such coverage should commence (not being a date earlier than the date upon which the application is made), together with such further information (if any) as may be required by the ARP manager for the purposes of considering the firm’s application and determining the applicable premium in accordance with Regulation 7(k);”

(ii) by substituting the following for Regulation 7(c)(ii):—

“it shall pay in advance of entry to the assigned risks pool such sum by way of an advance payment of premium to be known as the initial ARP premium as the ARP manager may determine in accordance with the premium schedule and it shall undertake to pay and shall pay such further sums, to be known as additional ARP premium, by way of premium calculated in accordance with the premium schedule on such further dates as the ARP manager may from time to time determine;”

(iii) by substituting the following for Regulation 7(e):—

“Where a firm has been issued with assigned risks pool coverage, the terms of the assigned risks pool coverage shall prescribe that, and the firm shall be deemed to agree that, any additional ARP premium determined in accordance with Regulation 7(k) to be applicable in respect of such an assigned risks pool coverage shall, as from the date upon which the additional ARP premium is due (as determined by the ARP manager pursuant to Regulation 7(c)(ii)) (if not already paid by the firm) constitute a debt due from the firm to the ARP manager as agent of all qualified insurers participating in the assigned risks pool. Failing payment of the additional ARP premium within 3 (three) days of the relevant due date, the ARP manager shall be entitled to treat the firm as a defaulting firm for the period during which the additional ARP premium remains outstanding, such that the premium payable by that firm for that period shall be calculated in accordance with Regulation 9(e).”

(iv) by substituting the following for Regulation 7(k):—

“The premium payable by any firm in respect of whose practice an assigned risks pool coverage is to be issued from time to time shall be calculated by the ARP manager in accordance with the premium schedule determined by the PII Committee from time to time.”

(v) by the deletion of Regulations 7(l), (m) and (n) in their entirety and the renumbering of former Regulation 7(o) as Regulation 7(l).

- (vi) by the insertion of the following after Regulation 7(*l*) thereof as Regulation 7(*m*):—

“The ARP manager shall make arrangements to procure that a qualified insurer shall, be reimbursed in respect of insurer reimbursement claims and shall ensure that the amount of such reimbursement is equal to the sums paid by that qualified insurer in respect of the relevant claim, provided however that the amount of such reimbursement shall be without prejudice to any sums to be paid by the qualified insurer following a demand being made by the ARP manager pursuant to the pool participation agreement for the purposes of settling liability in respect of the relevant claim. No qualified insurer shall be entitled to such reimbursement unless that qualified insurer can demonstrate, to the reasonable satisfaction of the ARP manager, that it has acted in a commercially reasonable manner and as though recourse to the assigned risks pool is not available to it and has used its best efforts to obtain reimbursement of amounts paid by it pursuant to its rights under clause 8.2 of the minimum terms and conditions.”

9. *Amendment to Regulation 9 of the 2007 Regulations*

Regulation 9 is hereby amended:—

- (i) by substituting the following for Regulation 9(*e*):—

“The amount of the ARP default premium payable by any defaulting firm in respect of whose practice arrangements pursuant to Regulation 9(*a*) are made from time to time shall be calculated by the ARP manager in accordance with the premium schedule determined by the PII Committee from time to time.”

- (ii) by the deletion of Regulations 9(*f*), (*g*) and (*h*) in their entirety.

10. *Amendment to Regulation 14 of the 2007 Regulations*

Regulation 14 is amended by inserting the following after Regulation 14(*b*) as Regulation 14(*c*):

“(c) The Society may, based on the information available to it, establish an information service to disclose certain information to qualified insurers in such a manner as it may in its absolute discretion deem fit, including the following:—

- (i) on or before 31 January in each indemnity period, provide a qualified insurer with details of the identity of firms which maintained qualifying insurance with that qualified insurer in the prior indemnity period, together with the identity of the current qualified insurer (including for the avoidance of doubt, the assigned risks pool) of any such firm;
- (ii) from time to time, to provide a qualified insurer with details of the identity of any firm, which has had all of its principals suspended or struck off the roll.

11. *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 the insertion of the following definitions:—

“1995 Act” means the Consumer Credit Act 1995 (as amended);

“1997 Act” means the Central Bank Act 1997 (as amended);

“Commercial Development” means the development (whether by construction or renovation) of a building, part of a building or land:—

(a) for use for or in connection with any trade, industry, retail or other business undertaking or the production or supply of goods or services;

(b) with a view to the earning of rental income; or

(c) with a view to the construction thereon or therein of multiple residential units;

“Commercial Property Transaction” means any transaction other than a Residential Property Transaction and includes, but is not limited to, the following:—

(a) the acquisition of a building, part of a building, or land, which is used, or set aside to be used, wholly or exclusively for, or in connection with:—

(i) any trade, industry, retail or other business undertaking;

(ii) the production or supply of goods or services;

(b) the acquisition of a building, or any part of a building, exclusively with a view to earning rental income or for capital appreciation or both;

(c) the acquisition of a building, part of a building, or land, which is in all the circumstances reasonably likely at the time of such acquisition to be used for, or in connection with Commercial Development;

“Direction” shall have the meaning ascribed to it in clause 9.3;

“Financial Institution” means any of the following:—

(a) a credit institution as defined in section 2(1) of the 1995 Act;

- (b) a credit institution that is the holder of an authorisation for the purposes of Article 4(1) of Directive 2006/48/EC;
- (c) a retail credit firm authorised pursuant to section 31 of the 1997 Act;
- (d) a home reversion firm authorised pursuant to section 31 of the 1997 Act;
- (e) any other party that engages on a professional basis in the business of providing financial accommodation of any nature to another person;
- (f) any assignee of debt from an entity that has been engaged in the business of providing financial accommodation of any nature to another person, including without limitation, NAMA;

“NAMA” means the National Asset Management Agency;

“Relevant Undertaking” means an Undertaking which relates to:—

- (a) an obligation undertaken by the Insured to discharge or procure the discharge of a mortgage or other security on, or a loan advanced on the security of, any land or buildings the subject of the relevant Commercial Property Transaction; or
- (b) an obligation undertaken by the Insured to furnish or procure the furnishing of the relevant Financial Institution or any director, officer, employee, agent or advisor of such Financial Institution, with a certificate relating to title to any land or buildings the subject of the relevant Commercial Property Transaction; or
- (c) an obligation undertaken by the Insured to furnish or procure the furnishing of the relevant Financial Institution or any director, officer, employee, agent or advisor of such Financial Institution, with title deeds to any land or buildings the subject of the relevant Commercial Property Transaction; or
- (d) an obligation undertaken by the Insured to pay or procure the payment of any stamp duty accruing due in connection with, or to register or procure the registration of title to any land or buildings the subject of, the relevant Commercial Property Transaction;

“Residential Property Transaction” means:—

- (a) the acquisition by an individual of any building, or part of a building, that is intended at the time of such acquisition to be used as a private dwelling place, including for the avoidance of doubt, a building or part of a building occupied or intended to be occupied on an occasional basis, whether as a holiday home or otherwise, save that the acquisition of a building or part of a building exclusively with a view to earning rental income shall not constitute a Residential Property Transaction; or
- (b) the acquisition of land by an individual that is intended at the time of such acquisition to be used to construct a building to be used as a private dwelling place, including for the avoidance of doubt, a building or part of a building to be occupied on an occasional basis, whether as a holiday home or otherwise, save that acquisition of land to construct a building exclusively with a view to earning rental income from that building or part of the building shall not constitute a Residential Property Transaction;

“Undertaking” means any unequivocal declaration of intention addressed to a person who reasonably places reliance on it, which is made by a solicitor in the course of his or her practice, either personally or by a member of the solicitor’s staff, whereby the solicitor, or in the case of a member of his or her staff, his or her employer, becomes personally bound.

(b) by substituting the following for clause 2.2:

“The Insurance must indemnify each Insured against civil liability incurred by an Insured arising from any provision of Legal Services provided that:—

- (a) a Claim in respect of such civil liability is first made against the Insured and notified to the Insurer during the Coverage Period; or
- (b) such civil liability arises from Circumstances first notified to the Insurer during the Coverage Period.”

(c) in clause 3.1, by substituting “€1,500,000 (one million five hundred thousand euro)” for “€2,500,000 (two million five hundred thousand euro)”;

(d) by substituting the following for clause 5.3:

“Without prejudice to clause 7.17, the Insurance must provide that the Insurer is not entitled to avoid or repudiate the Insurance on any grounds whatsoever including, without limitation, where there has been non-disclosure or misrepresentation by the Insured, whether such non-disclosure or misrepresentation is or is alleged to be innocent, negligent or fraudulent.”

(e) in clause 7:—

(i) by substituting the following for clause 7.5:—

“The Insurance may exclude liability of the Insurer to indemnify all Insureds under the relevant Insurance to the extent that any civil liability or related Defence Costs arise from the dishonesty of or a fraudulent act or omission committed or condoned by any Insured.”

(ii) by the insertion of the following after clause 7.14 thereof as clause 7.15:—

“7.15 Undertakings to Financial Institutions in respect of Commercial Property Transactions on or after 1 December 2009

The Insurance may exclude the liability of the Insurer to indemnify all Insureds under the relevant Insurance in respect of Claims arising directly or indirectly as a result of the provision by any Insured of a Relevant Undertaking in the course of a Commercial Property Transaction, on or after 1 December 2009, to a Financial Institution or to any director, officer, employee, agent or advisor of a Financial Institution, where the Relevant Undertaking was given by that Insured (acting either for a client borrower alone, or for a client borrower and a Financial Institution jointly) in connection with the provision by the relevant Financial Institution of financial accommodation to that Insured’s client to permit that client to effect the relevant Commercial Property Transaction. For the avoidance of doubt nothing in this clause 7.15 shall be construed to permit liability to be excluded in circumstances where any Relevant Undertaking is provided to a Financial Institution in the course of the Insured’s sole representation of that Financial Institution as the Insured’s own client.”;

(iii) by the insertion of the following after clause 7.15 thereof (inserted by Regulation 11(e)(ii) above) as clause 7.16:—

“7.16 Undertakings to Financial Institutions in respect of Commercial Property Transactions before 1 December 2009

“The Insurance may exclude the liability of the Insurer to indemnify all Insureds under the relevant Insurance in respect of Claims arising directly or indirectly as a result of the provision

by any Insured of a Relevant Undertaking in the course of a Commercial Property Transaction, before 1 December 2009, to a Financial Institution or to any director, officer, employee, agent or advisor of a Financial Institution, where:—

- (a) the Relevant Undertaking was given by that Insured (acting either for a client borrower alone, or for a client borrower and a Financial Institution jointly) in connection with the provision by the relevant Financial Institution of financial accommodation to that Insured's client to permit that client to effect the relevant Commercial Property Transaction; and
- (b) such Claims are made by a Financial Institution;
- (c) to the extent that the Insurer can demonstrate (and for the avoidance of doubt, the burden of proof in this regard shall rest with the Insurer) that any civil liability or related Defence Costs arise from any dishonest, fraudulent, criminal or malicious act or omission by that Insured, or any acts or omissions which were done by that Insured knowing them to be wrongful.

For the avoidance of doubt, nothing in this clause 7.16 shall be construed to permit liability to be excluded in circumstances where any Relevant Undertaking is provided to a Financial Institution in the course of the Insured's sole representation of that Financial Institution as the Insured's own client."

- (iv) by the insertion of the following after clause 7.16 thereof (inserted by Regulation 11(e)(iii) above) as clause 7.17:—

"7.17 Fraudulent Misrepresentation or Fraudulent Non-Disclosure

The Insurance may exclude liability of the Insurer to indemnify all Insureds under the relevant Insurance in respect of a 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 fraudulent misrepresentation or fraudulent non-disclosure in placing the Insurance. For the avoidance of doubt, the effect of this clause 7.17 shall be that no such Claim shall be valid as against a qualified insurer."

- (f) by substituting the following for clause 9.3:—

"The Insurance must provide that, pending resolution of any coverage dispute and without prejudice to any issue in dispute, the Insurer shall if so directed by the Society conduct any Claim against the Insured,

advance Defence Costs to the Insured and if appropriate compromise and/or pay any Claim against the Insured, such a direction by the Society to be known as a Direction. The Society may make such a Direction if it is satisfied, in its absolute discretion, that:—

9.3.1 the party requesting the Direction has taken all reasonable steps to resolve the dispute with the other party;

9.3.2 there is a reasonable prospect that the coverage dispute will be resolved or determined in the Insured's favour; and

9.3.3 it is fair and equitable in all the circumstances for such Direction to be given.

The Insurance may provide that the Insured shall be required to afford reasonable co-operation to the Insurer in relation to the handling of any Claim against the Insured, subject to the Insurer agreeing to meet the Insured's reasonable costs of such co-operation, and the Insurance may further provide that the Insurer shall be entitled to recover from the Insured by way of damages a sum equal to the Insurer's loss arising from or connected with the Insured's failure to co-operate as required by the Insurance. For the avoidance of doubt, the Insurance may not permit the Insurer to refuse to pay any claim, or to cancel, terminate or avoid the Insurance, due to the Insured's failure to co-operate as required by the Insurance."

Dated this 22nd day of September 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.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,
CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased directly from the
GOVERNMENT PUBLICATIONS SALE OFFICE
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2,
or by mail order from
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,
UNIT 20 LAKESIDE RETAIL PARK, CLAREMORRIS, CO. MAYO,
(Tel: 01 - 6476834 or 1890 213434; Fax: 094 - 9378964 or 01 - 6476843)
or through any bookseller.

€3.81



Wt. (B27126). 288. 9/09. Cahill. Gr. 30-15.