Law Society of Ireland

MINIMUM COMMON RISK MANAGEMENT STANDARD

Law Society of Ireland

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Introduction

The purpose of the Run-off Fund ("ROF") is to provide run-off cover to firms that meet the necessary criteria. Firms with succeeding practices cannot avail of run-off cover through the ROF.

Firms obtaining run-off cover through the ROF will not be required to bear any additional self-insured excesses for run-off cover provided that they meet the criteria as laid out in Regulation 8(f) of the Solicitors Acts 1954 to 2008 (Professional Indemnity Insurance) Regulations 2011 [S.I. No.409 of 2011], one of which is the requirement to meet a minimum common risk management standard as assessed by a risk management audit.

The minimum common risk management standard is defined in the regulations to mean "*the minimum common risk management standard or any equivalent by whatever name called published by the Law Society (in terms approved by the PII[1] Committee) from time to time or if none is published or in force then as shall be determined by the SPF[2] management committee"*. The minimum common risk management standard, as set out in this document, was approved by the PII Committee on 23rd January 2012.

Anne Neary Consultants and Outsource collaborated, with and at the request of the Law Society, to contribute to the design of the minimum common risk management standard required by the regulations as applicable to firms being provided with run off cover. The standard set out in this document is only a minimum standard and all firms are encouraged to aim for higher standards as soon as practically achievable.

The purpose of the minimum common risk management standard is to incentivise minimum acceptable risk management practices through establishing the risk posed by any firm to the ROF on a pass/fail basis by measuring firms against clear and transparent criteria through means of a risk management audit. The risk management audit will be undertaken using consistent reporting formats and evaluation criteria ensuring consistent assessment regardless of which auditor carries out the audit.

The audit will consist of a review of the systems, policies and procedures in place in the firm historically and a forensic review of a sample of the firm's open and closed files and undertakings.

The minimum common risk management standard for firms going into run-off has five basic requirements:

1. That a firm has had at least a formal commitment to good practice in the operation of its business.

2. That appropriate exit procedures have been put in place to deal with the orderly wind-down of the firm.

3. That the firm had collated its policies and procedures into an audit manual (or equivalent document or series of documents) which contains at a minimum the basic procedures set out below.

4. That the firm complied with any outstanding undertakings or has made alternative arrangements in accordance with the close of practice guidelines.

5. That the management and supervision of the firm has been competent and effective.

Where a firm fails to pass the audit, it may apply for a re-audit at its own expense. Where a firm does not pass the audit, an additional self insured excess as determined by the SPF manager in accordance with the run-off cover rules shall apply to that firm's run-off cover.

Practice notes and other documents which may be of assistance with regard to certain criteria have been appended to this document for information purposes only.

[1] Professional Indemnity Insurance ("PII")
[2] Special Purpose Fund ("SPF")

The criteria for the minimum common risk management standard are as follows:

1. Undertakings

(a) Undertakings procedures – *Should explain the terms on which the firm gives or receives undertakings, including who is authorised to give undertakings, best practice wordings and how undertakings are monitored.*

(b) Undertakings register[3] - *A record of all undertakings given and received.*

2. Critical dates

(a) Critical dates procedures – *Should explain what dates are noted, how they are noted and if specific critical dates for each type of work or generic dates are in place.*

(b) Critical dates register[4] - *List of critical dates and the procedures in place to ensure such critical dates are not missed.*

3. Other registers

(a) Wills register.

(b) Client complaints register[5] - *Should contain details of all client complaints, based on the firm's complaints policy.*

(c) Deeds register.

4. Engagement procedures[6]

(a) Core competencies and services of the firm – *Should specify exactly what areas the firm advises on and areas the firm would never advise on.*

(b) Limitation of liability procedures[7] - *Should include confirmation that adequate wording regarding limitation of liability has been incorporated into letters of engagement.*

(c) Money laundering requirements[8] - *Should include confirmation of how the firm is complying with these requirements, the details of the firm's designated money laundering reporting officer and the location of documents pertaining to money laundering.*

(d) Section 68 compliance procedures[9] - *Should include evidence of how the firm complies with Section 68.*

[3] See Appendix 1 – "*How to set up an undertakings policy"*
[4] See Appendix 2 – "*How to manage critical dates"*
[5] See Appendix 3 – "*How to avoid clients complaining to the Law Society"*
[6] See Appendix 4 – *"Solicitors' terms and conditions of engagement"*
[7] See Appendix 5 – *"Limitation of a solicitor's liability*
[8] See Appendix 6 – *"Checklist of 'actions' recommended to ensure compliance with AML obligations"*
[9] See Appendix 7 – *"Dos and don'ts of S68"*

(e) Conflict of interest procedures – *Procedures in place to ensure that no such conflicts arise, including identification and management of conflicts and potential conflicts between clients and between the firm and its clients.*

(f) Disengagement procedures – *Policy or letter setting out the circumstances in which the firm would have to disengage from a client.*

(g) Non-engagement procedures – *Policy or letter setting out the circumstances in which the firm would not take instructions from a client.*

5. File management procedures

(a) File opening: risk assessment procedures – *Procedures to ensure that money laundering, credit-worthiness and conflict of interest checks are carried out along with a confirmation that the matter is within the competence of the firm, and an assessment of risk involved in the work including matters such as value, complexity, innovation, transferred file, restricted role, etc. Standard file opening forms should be used and allocation controls should be in place.*

(b) List of current files.

(c) List of closed files.

(d) File maintenance procedures including:
- post opening procedures;
- email procedures;
- evidence of instructions;
- attendances procedures;
- file progress procedures; and
- precedent bank procedures.

(e) File closing procedures – *Procedures in place to ensure that all matters have been addressed at file closing stage.*

6. File reviews

This should include information on the systems for reviewing each fee earner's own files on a regular basis and a regular file peer review system using a standard checklist. Sole practitioners should explain the arrangements they have in place to deal with file reviews.

(a) Current file review – *For fee earner's own files, confirmation that regular reviews are carried out and how these are noted on the file. Information on whether peer reviews are carried out should be included and, if so, an explanation of the process.*

(b) File review procedures – *Should include information on the frequency of file reviews and criteria used for such reviews.*

7. Financial management[10]

(a) Management of client balances – *Confirmation that client balances are circulated regularly to all fee earners to ensure that they are accurate, that small balances are written off and that old balances are reviewed to ensure they are valid.*

[10] See Appendix 8 – *"Top tips for managing accounts"*

(b) Financial records recorded on files – *Confirmation that client accounting balances are kept up to date.*

(c) Solicitors' accounts regulations – *Should include confirmation that the firm is compliant with the solicitors' accounts regulations. Information on any issues disclosed in the most recent reporting accountant's report or investigating accountant's report should be listed, together with steps taken to rectify these matters. Information on any current regulatory or disciplinary process in which the firm is involved pertaining to solicitors' accounts regulations should be included.*

(d) Accounting procedures – *Confirmation that the firm has clearly laid out policies and procedures for managing its accounting function and the qualifications and experience of the person responsible for administering such accounts.*

8. Claims history and regulatory compliance

(a) Claims procedures – *Procedures carried out by the firm in the event of a claim or circumstances that could give rise to a claim.*

(b) Claims history register – *Register containing full details of all claims and notifications. Should also confirm the frequency with which this register is reviewed.*

(c) Regulatory history – *Should list all regulatory matters, confirm that all regulatory matters are up to date, including compliance with all obligations under the relevant regulations and acts, and include evidence that reporting accountants' reports are filed on time.*

9. Run-off procedures (orderly wind-down)

(a) Procedures to implement Law Society's close of practice guidelines including, but not limited to:
- dealing with outstanding undertakings;
- notification requirements;
- dealing with client files (including sale, transfer, destruction and/or storage procedures);
- disbursement of client monies;
- closing firm's bank accounts;
- filing a closing reporting accountant's report;
- dealing with wills; and
- communicating with clients.

(b) Certification from the partners/principals that:
- a full file review of all files, current and closed, has been carried out, and verification of the quality of that review to ensure high standards;
- confirmation that registers are accurate, comprehensive and up to date; and
- all outstanding administrative work is scheduled.

(c) Solicitors accounts regulations compliance procedures including:
- up to date bank account reconciliations;
- up to date client balancing statement;
- reduce client account balances to zero;
- reduce office account balances to zero; and
- file the closing reporting accountant's report.

Appendix 1: Practice note – How to set up an undertakings policy

From the perspective of good management and in particular in an endeavour to reduce risk and minimise insurance costs, it is generally recognised that all legal firms should maintain and have available for inspection (by the appropriate persons) a detailed register of all undertakings given by the firm. This register should include not only financial undertakings but any undertaking which involves the firm in, either a financial liability and/or an obligation to do something, either for another firm of solicitors, bank or other third party. It should also be remembered that accountable trust receipts are also classified as undertakings.

A template undertakings register can be downloaded from the new 'Practice and Risk Management' section in the members' area of the Society's website. Simply login to the members' area, select 'Best Practice and Guidance' and then visit 'Practice and Risk Management'. The template is not written in stone but contains most of the desirable elements, which give the firm and principals an overview of the undertakings outstanding at any particular time.

It should also be remembered that it is desirable to have a clear and defined office policy on the giving or accepting of undertakings. In giving any undertaking the person or persons authorised to issue said undertaking must be satisfied that the firm is in a position to comply unreservedly with the undertaking within a reasonable time. Again, in accepting an undertaking the person authorised to do so, on behalf of the firm, must be satisfied that the firm or person giving the undertaking is in a position to comply with same.

It is fairly obvious that the register should contain the name of the fee earner, the name of the client, the file reference or number, the date of the undertaking and to whom the undertaking is given. It would also be appropriate, however, to have a column dealing with the sanction for the undertaking. No undertaking should be given on behalf of the firm without the prior approval of the managing partner or, in the case of a one man practice, the principal of the firm. It is for this reason there is a column giving the date of prior approval of the managing partner for the undertaking. Once prior approval has been obtained, a sticker should be placed on the cover of the file indicating that there is an outstanding undertaking. The sticker should also contain sufficient space to sign off on this liability once the undertaking has been discharged. To make it even clearer that there is an undertaking on the file it would also be a good idea to have the undertaking colour coded.

Where financial undertakings are involved the value of the financial liability should also be ascertained if at all possible. Obviously this should be done with the advice of the managing partner at the time of approval of the undertaking. It is also advisable, particularly with financial undertakings, to have a note of same inserted in the client ledger since this can act as a reminder when payments are being made from the client account.

It will also be observed that there is a review date for undertakings. Obviously this is a matter for each individual firm but it would be good practice in the case of any undertakings that the fee earner report on the status of the undertaking to the managing partner on a monthly basis.

Finally, there is a column setting out the date of final review by the managing partner. This is the date on which the fee earner would present evidence of discharge of the undertaking to the managing partner and he would sign off on the file. The sticker on the file should then be endorsed and signed off by the managing partner. The file should then be retained in the office in the normal way and archived when all matters have been completed in addition to the discharge of the undertaking.

Appendix 2: Practice note – How to manage critical dates

Professional indemnity insurance companies have identified a key area of risk management to be a critical dates register.

Firms who allow deadlines to be missed and cases to be statute barred are bad risks. Insurance premiums will reflect this unless proper procedures are put in place to avoid it.

What a critical dates register consists of will depend on the nature of the work being carried out by the solicitor. It may include statute of limitation dates, closing dates, dates when tax may be due or payable. These dates may include dates for filing of documents, serving of documents, serving notice of appeals etc.

The first and most important step is to identify the critical dates for the particular type of work you are undertaking. The Society's Law Directory contains a useful compendium of relevant limitation dates, and so it is important to identify the particular critical date or dates, for the type of work you are undertaking.

Having identified the critical dates for the type of work you are involved in it is then vital that critical dates are managed with a proper controlled system.

The most basic critical dates register consists of a solicitors' diary, to keep track of critical dates, but it is far better to have a computer based calendar, where such critical dates can be monitored and implemented by others if necessary and data will not be lost presuming proper backup procedures are in place.

Each file should have a sheet with the relevant critical dates and should be completed as the file progresses.

In larger firms, a firm wide master calendar should be implemented and monitored.

Proper maintenance procedures are critical so as to ensure the integrity of the critical dates register. Procedures should be documented in writing, and the entire process monitored to ensure that deadlines are entered into the calendar and that regular reminders appear, and advance warnings given of critical dates.

It is also important that the client understands the critical dates involved, so that the client understands what action must be taken, in advance of a critical date.

As part of the monitoring process, firms should put in place a system whereby upcoming critical dates are identified with fee earners where there is an opportunity to identify particular risks and cases are managed so as to ensure critical dates are not missed, or indeed to identify fee earners who may have a lack of understanding of the critical dates involved.

You need to decide:-

- The critical dates
- The procedure for entering the critical dates
- Responsibility for maintaining the register
- Reviews and by whom
- Cross checking against physical file to ensure register is up to date and accurate.
- Procedures for monitoring while a fee earner may be absent

Templates for monitoring personal critical dates for personal injury cases and probate matters can be can be downloaded from the new 'Practice and Risk Management' section in the members' area of the Society's website. Simply login to the members' area, select 'Best Practice and Guidance' and then visit 'Practice and Risk Management'.

Appendix 3: Practice note – How to avoid clients complaining to the Law Society

At the risk of over-simplification, here are some simple steps which will certainly lessen your chances of having a complaint made against you.

1. At the outset of a transaction, set out clearly in writing what you are going to do for your client and who is going to do it. It may seem perfectly obvious to you, but your client may have a totally different perception of what you are going to provide.

2. In compliance with Section 68 of the *Solicitors (Amendment) Act, 1994*, send out a letter setting out the basis of your charge. If you are charging an hourly rate, let your client know when the clock is running by sending out timely interim bills.

3. Send your client copies of all relevant correspondence – both the letters that you are writing and the letters that you receive.

4. Don't be afraid of giving your client something to do. Often your client will get a better response directly from a Government department or agency when there is a delay in obtaining a particular document.

5. Let your client know as soon as there is a problem, and tell him how you are dealing with it.

Lack of communication with the client remains the single most common cause of complaints to the Law Society – and potentially the easiest to cure.

Appendix 4: Practice note – Solicitors' terms and conditions of engagement

The Guidance and Ethics Committee was asked to prepare a precedent document setting out a solicitor's general terms and conditions of engagement. The precedent set out below is published for the assistance of solicitors. A precedent letter of disengagement is also attached.

The business of solicitors' firms is to sell legal services. As with any business, the owners hope that members of the public who come to do business with the firm will have a good experience and a satisfactory result, so that they will recommend the firm to others and the business will thrive. This is more likely to happen if both parties are clear about the service that is being offered.

Often when difficulties arise between a solicitor and a client, this may be because there is a gap between the client's expectations of the level of service that was to be provided by the solicitor and the solicitor's intentions in that regard.

Objective
A letter of engagement formally sets out the terms and conditions on which the solicitor's firm will carry out work for the client. It should define the relationship between the client and the solicitor and will then form the basis of the contract between them.

It is important that the client is clear about the role of the solicitor – what it includes as well as what it excludes – and that there is agreement between the solicitor and the client as to the extent of the solicitor's duties. It may be obvious to the solicitor, but if a client has not dealt with a solicitor before, they may simply not know what to expect.

The letter of engagement helps ensure that there is no gap between the client's expectations of service and the reality of what is being offered. For instance, the client may expect a lot of contact with the solicitor, including frequent consultations and phone calls. The solicitor may intend to have much less contact because he/she knows from experience that that is all that is necessary.

The client may expect a result that the solicitor is unlikely to achieve. It is important that the solicitor deals with the client's expectations and ensures that the client has a realistic view of the possible outcomes.

Protection of the solicitor
It is also helpful to view the letter of engagement as a protection for the solicitor, in addition to being helpful for the client. In terms of potential negligence actions, a letter of engagement is a useful risk management tool, because it cuts down on misunderstandings. The reality is that when the solicitor does not achieve the client's unrealistic expectations, the disappointed client may subsequently take action against the solicitor.

The letter of engagement also helps cut down on the potential for complaints to the Law Society but, in the event of a complaint, it may provide significant protection for the solicitor.

The letter of engagement helps the solicitor address his/her own expectations in relation to the matter being taken on. Solicitors are sometimes their own worst enemies, because at the beginning of a case they may promise to do too much for the client. They have unrealistic expectations of what they can do. They may rashly undertake to achieve all the client's wishes. It is useful to consider, for instance, that most conveyancing cases seem straightforward when they commence, but few have been so when viewed at completion.

Unfair terms
It is illegal to issue contracts with unfair terms. If action is taken against the solicitor as a result of unfair terms in the contract, this will only result in problems for the solicitor.

Style of letter
All letters of engagement should be in plain language and be capable of being easily understood by the client. The precedent that is offered here is a simple statement of the terms and conditions on which business will be done by a firm.

Various approaches can be taken by a solicitor on the issue of whether the letter of engagement should be a stand-alone letter. This is a matter of choice for the individual solicitor. Some solicitors will also want to incorporate confirmation of the client's instructions in the particular case and to set out the steps that the solicitor will take immediately in that case. Some solicitors will wish to include their section 68 information in the same letter. (Precedents for section 68 letters have already been published by the Law Society and are available on the website.)

Other solicitors will prefer to have three separate letters:

- Firstly, they will issue the letter of engagement. This will be sent prior to confirming that the case is actually being taken on.
- Once it has been agreed in principle that the firm is interested in taking on the case – subject to the actual charges, an estimate of the charges, or the basis of charges being agreed – the section 68 letter will follow.
- Only then will the third letter be sent, which will be the first letter that deals substantively with the particular case.

Another option for a firm, rather than writing an actual letter, would be to incorporate the terms and conditions material into a printed pamphlet or brochure with the firm's logo. If this option is taken, it would be important that there are procedures in place to ensure that in every case it can be proved at a later date that the brochure was sent to the client.

In all cases, the solicitor should take appropriate steps to try to ensure that the client understands the terms and conditions set out. The amount of explanation necessary will vary, depending on factors such as the client's level of literacy, general vulnerability or lack of business acumen.

Topics to be covered

The headings that have been included in the precedent below were, in the opinion of the committee, the most important ones. However, the list is not exhaustive, and there are other issues that solicitors may wish to cover. A balance must be struck between ensuring that the letter is comprehensive, but that it is not so long that the client is discouraged from reading it.

Managing expectations – precedent clauses

The committee includes below some suggestions for clauses that might be used in the letter of engagement or in the first substantive letter to the client. The issues that are addressed for the various areas of practice are often misunderstood by clients and are an unnecessary cause of upset for them, but are also matters that may result in unjustified criticism of the solicitor.

Letter of disengagement

At the end of every case, a solicitor should write to the client to confirm that at that point the matter that has been dealt with on behalf of the client is at an end.

Letters of disengagement are even less commonly used by solicitors than letters of engagement. However, writing such a letter is sometimes very important for the solicitor's own protection. If, during the course of dealing with a particular matter for a client, a solicitor comes to the view that he/she should cease acting for a particular client, it is important to write to the client to say so. The committee offers below a precedent of a formal letter of disengagement. Once written, the solicitor is protected from further ongoing risk in relation to that particular case. If this is not done, the solicitor may find him/herself in a situation where no action was taken on the basis that the solicitor had no instructions but in fact the risk continued to be carried, and in due course the solicitor may be judged to have liability in relation to the particular matter.

This article and precedent can also be accessed on the Law Society website at www.lawsociety.ie Guidelines and precedents for solicitors representing claimants making applications to the Personal Injuries Assessment Board (PIAB) are also available on the website.

Copies of the money-laundering leaflet referred to in the letter are available for purchase from the Law Society. The leaflet can also be accessed on the Law Society's website.

Guidance and Ethics Committee

PRECEDENT LETTER OF ENGAGEMENT

Terms and conditions

AB Solicitors

[*Date*]

Dear [*client's name*],

You have asked us to act as your solicitor in relation to [*description of case*]. This letter explains our terms and conditions while we are working for you. It is important, to prevent any misunderstandings at a later stage, that you know what to expect and understand what our service involves. Please read the following terms and conditions carefully. We will be happy to answer any questions you may have.

1. Discussing your expectations
We will discuss your expectations and tell you whether we think they are realistic. It is important to us that you understand at all times what is happening in your case. To help prevent any confusion or stress on your part, we will give you general information and explain any procedures regarding your case as it progresses.

2. Instructing your solicitor
It is important that you give us clear and accurate instructions from the very beginning and when you get any new information as the case develops. We will do our best to carry out the agreed instructions and to give you a confidential and friendly service.

When we receive your instructions, we will explain your legal options to you. If there is anything you do not understand, please tell us right away so that we can answer your questions. We will then agree with you the actions to be taken.

3. Updating your instructions
We may need to update your instructions from time to time, for example, if:

- New issues or information arise,
- Events take an unexpected turn,
- We need more information from you, or
- Fees or expenses have not been paid.

It is important that you give us instructions when they are needed. If you fail to do this, we cannot make progress. This may affect the outcome and, in some cases, may mean we have no choice but to stop acting for you.

4. Acting on your behalf
When you give us instructions, we assume that you are giving us permission to take various actions on your behalf. For instance, our role as your solicitor may involve:

- Making a repayment to a bank or building society for you,
- Holding information for our records, including 'sensitive data', such as your Personal Public Service (PPS) number or medical reports,
- Making a claim for personal injuries under the terms of the Personal Injuries Assessment Board (PIAB),
- Employing barristers and other experts, such as doctors and engineers, on your behalf,
- Obtaining information from third parties to help us with your case, without seeking your permission in advance, and

- Using information technology (IT), including email, to guarantee the best quality and most efficient service.

Important:

- If you instruct us to repay money on your behalf, you cannot change these instructions later, if we have given a professional promise to others to do so.
- We will hold any money we receive on your behalf strictly in line with the *Solicitors' Accounts Regulations*.
- We will only use any personal or 'sensitive' information to help your case.
- We will only employ experts with your permission. We will select professionals who we believe to be competent, but we are not responsible for the negligence of anyone we employ on your behalf.

5. Cost of services

At the beginning of your case, as required by law, we will give you information, in writing, about our fees and other expenses that may be incurred. If we fail to agree the fees for our services with you, we will not act on your behalf.

If we agree to charge you based on the time spent on your case, remember that there will be a charge for all tasks carried out on your behalf, including letter writing, phone calls and so on. We will tell you if we believe that you, the client, could appropriately carry out some of the tasks.

The law allows us to keep a client's file as security for any costs until we have been paid for our services. We will issue our bill of costs to you without delay.

6. Timescale of case

We will estimate how long your case is likely to continue, including, as your case proceeds, what stage we have reached and what and when the next steps will be. This will save you having to inquire about your case. If any event occurs that will delay your case, we will let you know and give you our best estimate of a new timescale.

Please note that time limits may apply in the following two situations, so please make sure that we have all the correct information in good time to take any necessary actions:

- Litigation cases – certain actions must be taken by you or by us within a particular period or else your case will fail.

- Actions under the *Civil Liability and Courts Act 2004* – if you are making a claim under this act, you must write a letter outlining the details of your claim within two months of the date of the accident. Failing to do this may have a bad impact on your case and may also lead the court to award you only part, or none, of your costs.

7. Legal requirements

Under anti-money laundering regulations, we need to be sure of your identity and source of assets before we can take on your case.

- **Identity** – you will need to give us evidence of your identity, such as your driving licence or passport, even if we already know you. We will also need you to give us a document showing your permanent address, for example an ESB or telephone bill or a bank statement.
- **Source of assets** – any funds or property that you ask us to deal with must have been legally obtained. If we become aware or suspect that these assets come from an illegal source, we must notify the Gardaí and the Revenue Commissioners without telling you, except in limited circumstances. We will immediately stop acting for you if we have to report illegal assets.

Even when we are not obliged to report to the authorities, we cannot transfer any assets or property funded by the proceeds of crime. This includes funds that have not been declared for tax purposes or that have been obtained by false means. In this situation, you would have to legalise your position before we could act on your behalf.

For more information, see the enclosed copy of the Law Society leaflet *Money Laundering: Your Solicitor and You*.

8. Obtaining your file
Once you pay us for our services, and provided that we have done everything we promised to do, you can take your original file. We are entitled to copy this file to comply with solicitors' regulations. Usually we keep a client's file for at least six years and then destroy it. However, we never destroy deeds and wills.

If you need your file or information from the file, we can send this to you. We will charge you a fee for this service, based on the current rates at the time of your request.

9. Making a complaint
Good communication between us will guarantee the best possible outcome. If you wish to make a complaint about any aspect of our service, however, please send it in writing to us and we will review your file without delay. We will then send you a written reply to any requests for information, advising you of any actions that we will be taking in relation to your case.

10. Transferring to another solicitor
We hope to reach a successful result on your behalf. But if you decide for any reason to transfer to another solicitor's firm, we will require payment for any work done up to that point.

This requirement includes certain litigation cases, even if we might have agreed to seek a fee only if your case was successful. If you change to another solicitor, this agreement automatically ends and we will require payment for the work we have actually done.

11. Professional insurance
We confirm that we have the appropriate level of professional insurance in place, as required by law.

12. Acceptance clause
When we agree our fees or the basis of our charges with you, the terms and conditions described here will come into effect. Please note that we do not claim to have any particular expertise outside of a solicitor's general expertise.

We look forward to working with you and to bringing your case to a satisfactory conclusion. Once again, if you have any further questions, please contact us. We enclose a glossary of terms, which you may find useful.

Signed: _____
AB Solicitors

GLOSSARY OF TERMS

Anti-money-laundering regulations – a set of laws aimed at preventing and detecting money laundering by encouraging businesses to 'know the customer' before entering a business relationship with them. See 'money laundering'.

Civil law – an area of law concerned with settling disputes between individuals or groups to establish or enforce private rights.

Client – a person or group receiving the services of a professional, in this case the services of a solicitor.

Estate – the total assets of a person who is deceased.

Executor – a person who is named in a person's will to manage their estate.

File – all legal documents relating to a client's case, including any letters or emails.

Letter of disengagement – a letter informing a client that the solicitor is no longer acting for them.

Letter of engagement – a letter confirming that the solicitor is willing to act for the client and outlining the terms and conditions of business.

Money laundering – illegally hiding the true origin and ownership of the proceeds of a person's or group's activities.

Negligence – failure to exercise the care toward others that would reasonably be expected in the same circumstances or taking action that a reasonable person would not take, both of which causing loss or damage.

Personal injuries claim – a case in which a person claims to have been harmed by the action or inaction of another person or an organisation.

Property Registration Authority – a state body set up in 2006 that manages and controls the Registry of Deeds and Land Registry and promotes the registration of land ownership.

Title – ownership.

OPTIONAL CLAUSES TO INCLUDE IN LETTER OF ENGAGEMENT

1. Litigation case
A litigation case is one in which a person or group makes a complaint against another in court to enforce their rights. These cases aim to find a remedy, such as compensation, between the parties involved in the disagreement. The remedy may be decided by an agreement or a court order. You may have to accept, or the court may decide, less compensation than you had originally hoped for.

Often, the person you are complaining about will not cooperate and will constantly raise difficulties. As your solicitor, we will try to overcome these difficulties as much as possible.

Litigation cases always involve a financial risk for the person involved. We will tell you if the possible benefit of taking a case is worth the time and money involved. We will also discuss with you the risks involved in any action being taken, including the risk that you could lose the case.

2. Family law case
A family law case involves a dispute between family members, often between a husband and wife or between partners. In family law disputes, relations between each side can be difficult and traumatic. Our role is to help by advising you on the legal aspects of your case and by progressing the matter. Often, at the end of a family law case, neither side is completely satisfied with the outcome. We will try to make sure that any decisions are fair to you and are in the interests of your children, if any.

We advise all our family law clients to make every effort during the dispute to agree practical arrangements concerning their children with their spouse or partner and to avoid rows. This will allow everyone involved in the case to focus on the main long-term issues that need to be settled.

3. Conveyancing case
Conveyancing involves the legal steps to buy or sell a property. When acting for the buyer, we will investigate thoroughly the property's title (ownership), raising all necessary questions with the solicitor acting for the seller. If we are not satisfied with the answers to our questions, or with any other aspect of the sale, we may advise you not to buy the particular property. When acting for the seller, we prepare all of the documents needed by the buyer's solicitor.

In any property transaction, our job is to transfer the legal title from the seller to the buyer. Other matters may include planning issues or drawing or checking maps. You may be able to deal with these issues yourself or with the help of an architect or other professional.

When you sign a contract for the sale or purchase of a property, we will give you a date for when the sale should be closed and the keys handed over. However, unavoidable delays often arise and the sale may not close on that date. We will be able to advise you of an exact completion date closer to the date stated in the contract so that you can make the final arrangements.

If you are purchasing a property, you will need to supply funds to pay stamp duty, if it is required, and, in all cases, to pay Property Registration Authority (PRA) fees to register your property. You must pay these amounts before the sale is completed. If you are getting a loan from a bank or building society, they will not issue the loan cheque unless we give them our professional promise to stamp and register your deeds after the sale closes. We cannot promise this unless we already have the funds needed.

4. Probate case
Probate is a legal process involving the transfer of the legal title of a property from the estate of a deceased person. Usually, the person's will appoints an executor to deal with their estate when the time comes. The first step that you, the executor, must take is to give the Revenue Commissioners details of all of the estate's assets, including the value of each asset mentioned in the will. In many cases, the Revenue Commissioners will only accept a professional valuation, for instance, by an estate agent. This valuation will result in an extra cost, but we can only proceed with your business when we receive it.

You may also need to employ professional advisors if the deceased person's estate involves a lot of tax issues. Once again, this will involve an extra cost, but these issues may need to be resolved for us to continue with your case.

PRECEDENT LETTER OF DISENGAGEMENT

AB Solicitors

[*Date*]

Dear [*name of client*],

We refer to the matter of [*description of case*], which we have been handling for you.

1. Review of your instructions
[Solicitor should select relevant option]
As we do not have the necessary instructions to continue with your case… *or*
As you are not happy to continue based on the advice we have given you… *or*
Due to circumstances that have arisen…

…we are now formally letting you know that we will no longer be acting for you and that we are now closing your file.

2. Our bill
We will shortly send you a bill for our legal fees and for any other expenses that we incurred when handling your case.

3. Your file
Once you have paid us for our services and we have done everything we promised to do, you can take your original file. We are entitled to copy this file to comply with solicitors' regulations. Usually we keep a client's file for at least six years and then destroy it. However, we never destroy deeds and wills.

If you need your file, or information from the file, we can send this to you. We will charge you a fee for this service, based on the current rates at the time of your request.

If you have any further questions about this, please contact us.

Signed: _____
AB Solicitors

Appendix 5: Practice note – Limitation of a solicitor's liability

The law relating to the possibility of limiting the liability of a solicitor has changed with the introduction of the *Civil Law (Miscellaneous Provisions) Act 2008*. Section 44 of the act, which came into force on 20 July 2008, amended the *Solicitors (Amendment) Act 1994* so as to permit a solicitor to limit his liability by contract, and repealed the existing prohibition on such a limitation, which was contained in the *Attorney and Solicitors Act 1870*.

Under the new law, a limitation of liability is permitted in contracts between:

a) A solicitor and client,

b) A partner, clerk or servant of the solicitor and the client, and

c) A former partner, clerk or servant of the solicitor and the client.

A solicitor may now, by contract, limit his liability to a client to "an amount specified or referred to" in the contract with the client. That amount must not be less than the minimum level of professional indemnity insurance cover required by the *Solicitors (Amendment) Act 1994* and associated regulations; this is currently €2,500,000[11]. In the event that the amount specified or referred to in the contract is less than that minimum level of cover, the act operates to increase the limitation up to that level.

The new act expressly preserves the client's rights as a consumer under section 30 of the *Sale of Goods and Supply of Services Act 1980* (as amended) and also his rights under regulation 6 of the *European Communities (Unfair Terms in Consumer Contracts) Regulations 1995*, which prevents a consumer being bound to a contract containing an unfair term (that is, a clause that causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer, taking into account the nature of the services for which the contract was concluded).

In light of section 44, a solicitor may consider including in any letter of engagement a provision limiting his liability, such as the following:

"Limitation of our liability

Our liability (and that of our present and former partners and employees) to you arising out of, or in connection with, our engagement (whether for breach of contract or of statutory duty, negligence, or otherwise) will be limited to [the higher of

(a) the minimum amount of the professional indemnity insurance cover from time to time required to be maintained by us under applicable law; or

(b) €[ ]].*

Nothing in this letter shall limit our liability to you:

(a) for fraud or fraudulent concealment ;or

(b) to the extent that under any applicable law liability may not be limited."

**Insert amount.*

(Practitioners should note that the Guidance and Ethics Committee published a precedent letter of engagement in May 2008, prior to the coming into force of the new act.)

[11] This has now changed to €1,500,000

Appendix 6: Practice note – Checklist of 'actions' recommended to ensure compliance with AML obligations

1. Read the AML Guidance Notes (available for download at http://www.lawsociety.ie/Pages/Members-Advice-Guidance-and-Policy-CMS/Anti-Money-Laundering/)

2. Read the relevant legislation (links in the Guidance Notes or download in full from the AML web area).

3. Appoint an MLRO (see paras 8.38– 8.42 of the Guidance Notes).

4. Appoint a Compliance Officer (see para 10.16).

5. Review your Letter of Engagement and ensure that it makes reference to your anti-money-laundering obligations.

6. Assess your firm's risk profile (see paras 4.13 – 4.21).

7. Conduct a risk assessment (see paras 4.22 – 4.30).

8. Draft a formal written policy and procedure document to contain guiding principles and the firm's risk mitigation approach (see para 4.33) and to cover the following:-
    - Risk Assessment & Risk Management (see paras 4.1 – 4.32)
    - Internal Controls & Compliance Management (see paras 10.3 – 10.10)
    - Client Due Diligence (see paras 5.2 – 5.74)
    - Identification & Verification (see paras 6.1 – 6.50)
    - Third-party Reliance (see paras 7.1 – 7.19)
    - Record-keeping (see paras 11.1 – 11.23)
    - Reporting and Tipping Off (see paras 8.1 – 8.58)
    - Training (see paras 12.1 – 12.23)
    - Policy for dealing with directions, orders and authorisations from Gardaí (see paras 14.10).

9. Communicate the policy and procedures to all relevant staff.

10. Organise training.

Appendix 7: Practice note – Dos and don'ts of S68

Section 68(1) – information in writing about legal charges

Do:

- Recognise that all clients need to budget for all expenditure in relation to their legal business.
- Recognise that strict compliance with all aspects of s68 protects both consumers and solicitors and manages the client's expectations.
- In all cases, give the client information in writing in relation to legal charges that will be incurred in their case or transaction.
- Explain that charges include fees and any money that will be paid to another person or organisation on their behalf.
- Always include information in relation to VAT.
- Give the actual amount, if this is practical and possible:
    - If this is not practical and possible, give an estimate,
    - If this is not practical and possible, give the basis of charge,
    - If the basis of charge is being used, give the client details of how they will be charged in their particular case,
    - If time is the basis of charge, time records must be maintained and must be available for inspection in the event of a dispute.
- Inform the client if you intend asking for money up front, or for the discharge of costs and/or outlays at intervals, prior to the conclusion of the case or transaction.
- Check out the precedent s68 letters on the members' area of the Law Society website, www.lawsociety.ie.
- Check out the Law Society client information leaflet Information in Relation to Legal Charges in the public area of the Law Society website.
- Use the client leaflet in conjunction with an appropriate s68 letter to the client, so that the client receives all the information as required by the legislation.
- Purchase stocks of the client information leaflet from the Law Society (100 per pack, price €21.57 plus €8.50 p&p – contact Esther McCormack at the Law Society).
- Always include a clause allowing for a revised s68 letter if unforeseen complexities arise.
- Diary the s68 letter for review at regular intervals during the case or transaction, to check if unforeseen complexities mean that the first letter is no longer correct.
- Issue a revised s68 if the first letter is no longer correct.
- Be aware that failure to issue a revised letter, when this should have been done, is viewed as coming within the definition of "inadequate professional services" in terms of conduct.

A signed copy of an up-to-date s68 letter is the solicitor's best defence in the event of a complaint. Even though a s68 letter may have been sent, in the event of a dispute, it may be difficult to prove that the client received it, if a signed copy is not on file. Maintain your files in a way that makes compliance with s68(1) easy to check in the event of a Law Society accounts regulation inspection or of a complaint being made to the Law Society.

Section 68(3), (4), and (5) – dealing with the client's award or settlement

Do:

- Ask the client if they are agreeable to any outstanding costs being deducted from their award or settlement.
- Get the client's written authority to make the deduction.
- Explain that any monies that the solicitor, with the client's authority, formally undertook to pay to another party out of the proceeds of sale must be paid out, even if the client changes their mind when the award or settlement comes in.

Don't:

- Don't make a unilateral deduction from the client's award or settlement in a litigation or other contentious matter without the client's written consent.

Section 68(6) and s68(2) – litigation or bills for other contentious matters

Do:

- Charge a professional fee that is reasonable, and state it separately in the bill.
- State the charges for general expenses, such as stationery or postage.
- State the charges for people or organisations such as government agencies or experts.
- State the VAT.
- Give a summary of the legal work done for the client.
- Give the total amount of money, if any, recovered from the other side.
- Give details of any charges recovered from the other side.

Don't:

- Don't state the professional fee as a percentage of any award or settlement, except in debt collection cases.

S68(8) – disputes about bills

Do:

- Answer any questions the client may have.
- Discuss the matter with the client and try to resolve all issues.
- If the matter is not resolved, write to the client explaining their right to have the bill taxed or to make a complaint to the Law Society.

Effective office systems
Have a good office system in place, whether manual or electronic, which will trigger compliance with all parts of s68 automatically.

Appendix 8: Practice note – Top tips for managing accounts

Accounting Systems

Install an accounting system specifically designed for a solicitor's practice, preferably with capacity to include a case management system. Keep the books of account up to date at all times. Understand the books of account, in particular the significance of a client ledger debit balance and an office ledger credit balance.

Lodgements to the client accounts

Ensure clients' moneys are lodged to the client account without delay. Moneys other than client moneys, in particular solicitors own moneys should not be lodged to the client account. Ensure mixed moneys received in respect of fees, disbursed outlays and undisbursed outlays are lodged to the client account and then transferred to office account as appropriate. Control the receipt of client moneys from clients by members of staff by the issuance of duplicate pre-numbered receipts.

Withdrawals from the client accounts

Do not write cheques on the client account without checking the up-to-date client and office ledger accounts of the client concerned, to avoid making an overpayment to or on behalf of a client. Do not draw client account cheques against uncleared third party cheques.

Control the issuance of cheques made payable to banks. Ensure the payee details on the cheque include the name of the payee or other person who is to be credited with such payment.

Ensure bills of costs are issued to clients in advance of drawing down fees from the client account. Ensure moneys to which the solicitor is beneficially entitled are withdrawn from the client account within 3 months of the completion of a matter. Do not discharge personal or office expenditure from the client account. Pay all moneys received in respect of professional fees into client and office account as appropriate.

Balancing exercises

Ensure balancing statements, in particular bank reconciliation statements, client ledger control accounts and listings of client and office ledger balances are prepared and reviewed at regular intervals, preferably on a monthly basis. Investigate listings of client ledger balances regularly for, and deal with, long outstanding balances representing undischarged outlay, stamp duty, registration fees, and undrawn fees.

Cheques signatories

Control the number of cheque signatories on the client, trust and office accounts. Impose limits on the amount a sole signatory can withdraw. Obtain returned paid cheques and where there are multiple cheque signatories in the practice, ensure the detail on the cheque corresponds with the record per the books of account.

Estates

Ensure accounting records are maintained and kept up to date for all estates. Keep a register of all bank accounts, in particular controlled trust accounts relating to estates.

Undertakings

Maintain a formal record of undertakings to ensure that outstanding undertakings can be identified and followed up. Obtain stamp duty and registration fees from clients at the earliest opportunity to avoid problems complying with undertakings.

Documentation

Retain such relevant supporting documentation on the files as will enable client moneys handled and dealt with to be duly recorded and the entries relevant thereto in the books of account to be appropriately vouched. In particular, retain sufficient documentation on file to demonstrate due compliance with Section 68 of the Solicitors Amendment Act 1994.