



Guidance to profession on insolvency of a participating insurer

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ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

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1. Disclaimer and updates

Disclaimer

- 1.1. This guide is intended as general guidance and does not constitute a definitive statement or interpretation of the law. Whilst care has been taken to ensure the accuracy of the information in this guide as at the date of publication, the Society will not accept any legal liability nor warrant the accuracy of the information within.

Update notice

- 1.2. This guide will be updated on an ongoing basis. Readers are advised to check the Society's website to ensure that they are using the most up-to-date version of the guide.
- 1.3. This is the first publication of the guide. Subsequent updates will be noted in this section of the guide.

2. Insolvency of a participating insurer

What is a participating insurer?

- 3.1. A participating insurer is an insurer who has signed the participating insurers' agreement ("PIA") for the relevant indemnity period.
- 3.2. The PIA is a contract that is entered into each indemnity period that requires insurers to offer solicitors' PII policies in accordance with the minimum terms and conditions set out in the PII regulations.
- 3.3. Only participating insurers are permitted to write mandatory solicitors' PII in the market.
- 3.4. Insurers are not required to be participating insurers in order to write top-up cover for the firm. Top-up cover is not subject to the minimum terms and conditions, and is not regulated by the Society.

Who regulates participating insurers?

- 3.5. With regard to the regulation of participating insurers and the Society's role, the following should be noted:
 - a) The Society does not vet, approve, or regulate insurers.
 - b) Insurers are supervised and regulated by the Central Bank of Ireland.
 - c) The Society is obliged to permit any insurer who meets the following requirements to act as a participating insurer:
 - (i) the insurer is authorised by the Central Bank of Ireland to write non-life insurance in Ireland; and
 - (ii) the insurer has signed the PIA for the relevant indemnity period.
 - d) In accordance with EU law, the Central Bank of Ireland is obligated to permit insurers regulated in other EU member states to trade in Ireland through the 'passport system'. Where an insurer from another jurisdiction is passported into the Irish system, the insurer is regulated by the financial regulator in their home jurisdiction and subject to the minimum standards and requirements of that jurisdiction.
 - e) The Society is not responsible for policing the financial stability of any insurer and does not undertake any solvency checks on insurers.

What is an insolvency event?

- 3.6. An “insolvency event” is defined under regulation 2 of the Solicitors Acts 1954 to 2015 (Professional Indemnity Insurance) Regulations 2017 (S.I. No. 389 of 2017) (“the PII regulations”) as:
- a) the appointment of a liquidator, receiver, administrative receiver, administrator or examiner to the participating insurer (of an analogous appointment being made in respect of the participating insurer in any jurisdiction outside the State);
 - b) the passing by the members of a participating insurer of a resolution for a voluntary winding up (or an analogous step being taken in relation to a participating insurer in any jurisdiction outside the State);
 - c) the making of a winding up order in relation to a participating insurer (or an analogous order being made in relation to a participating insurer in any jurisdiction outside the State); or
 - d) the approval of a voluntary arrangement or similar form of composition with creditors in respect of a participating insurer (or an analogous event occurring in relation to a participating insurer in any jurisdiction outside the State).

What is a non-performance event?

- 3.7. A “non-performance event” in relation to a participating insurer is defined under section 2 of the PII regulations as the loss of the ability of the participating insurer to lawfully fulfil any obligations undertaken by the participating insurer in respect of qualifying insurance in the State, whether by withdrawal or qualification of its authorisation to do so or otherwise.

When are insolvency or non-performance events triggered?

- 3.8. Should circumstances occur where an insolvency or non-performance event arise in relation to a participating insurer, the insolvency or non-performance event are not deemed to be triggered until declared as such by the Society’s Professional Indemnity Insurance Committee.

What are the consequences if my insurer becomes insolvent?

- 3.9. Regulation 16 of the PII regulations sets out the requirements of firms in relation to the insolvency of their participating insurer. An insurer is considered to be insolvent for the purposes of the regulations where an insolvency event or non-performance event occurs in relation to that participating insurer.

- 3.10. Even firm covered by the insolvent insurer will be required to obtain replacement cover from another participating insurer from the date of the insolvency to the end of the indemnity period (or longer). This will require the payment of an additional premium to the new insurer.
- 3.11. It should be noted that the firm could seek extended cover from their new participating insurer. Rather than the cover only running from the insolvency date to the end of the indemnity period (30 November), the firm could seek cover for a period up to 18 months due to the availability of variable renewal dates.
- 3.12. If the firm is unable to obtain cover on the market, they may apply to be covered by the Assigned Risks Pool (“ARP”) if the firm is an ARP eligible firm and pays the required premium.
- 3.13. This alternative cover with a participating insurer or ARP must be obtained and confirmed to the Society within 30 working day of the date of the insolvency. The Society should be provided with confirmation of cover by the firm’s broker through the Society’s online portal.
- 3.14. If the firm fails to obtain and notify the Society of alternative cover with a participating insurer or the ARP within 30 working days of the insolvency, the firm will be declared a defaulting firm¹ and be required to close.
- 3.15. Firms that are unable to afford the premium for replacement cover will be unable to obtain replacement cover from the market or the ARP.

What is the Assigned Risks Pool?

- 3.16. The ARP is a safety net for firms unable to obtain cover in the market and provides cover at a lower level than that available in the market.
- 3.17. The ARP was established as the insurer of last resort for firms unable to obtain cover in the market, and was designed to protect consumers and prevent a situation where insurer could control what types of firm are, and are not, permitted to practice in the market.
- 3.18. The ARP is managed by the Special Purpose Fund Manager on behalf of the participating insurers. The ARP is not managed or owned by the Society.
- 3.19. Firms that are unable to obtain replacement cover in the market in the event of the insolvency of their insurer may apply to the ARP only if they are an ARP eligible firm, which is a firm that satisfied the ARP eligibility criteria or in respect of which an ARP eligibility dispensation is in effect.
- 3.20. ARP eligibility criteria are as follows:

¹ A defaulting firm is a firm that does not hold qualifying insurance with a participating insurer, the ARP or has failed to pay the ARP premium.

- a) The firm is not covered by a participating insurer.
- b) The firm has not been in the ARP for more than 12 months of the 60 months preceding the date of application to enter the ARP.
- c) The firm is not a succeeding practice² to a firm that has been in the ARP for more than 12 months of the 60 months preceding the date of application to enter the ARP.
- d) In respect of firms that commenced practice on or subsequent to the operative date (1 December in that indemnity period), the firm was covered by a participating insurer with effect from its date of commencement.
- e) The firm is not a defaulting run-off firm, that is a firm that ceases a practice in circumstances where it is required to establish and maintain run-off cover, but where the firm is neither a Run-off Fund (“ROF”) eligible firm³ nor an ARP run-off eligible firm⁴. A firm on whose behalf the SPF manager makes arrangements for run-off cover to be extended to that firm following the cessation of its practice, through the ROF, because it is neither an ROF eligible firm nor an ARP run-off eligible firm shall be regarded as a defaulting run-off firm.
- f) No direction has been made against the firm in accordance with regulation 17(g) of the PII regulations in relation to failure by the firm to comply with a risk management audit if required.
- g) No direction has been made against the firm in accordance with regulation 18(e)(iv) of the PII regulations that the firm should no longer be an ARP eligible firm due to the state of management of the firm as disclosed by the risk management audit report.

3.21. The PII committee, in its absolute discretion, has the power to grant a dispensation from the ARP eligibility criteria (or any part thereof) to a firm in an appropriate case.

3.22. If a firm is accepted by the ARP, their ARP premium will be calculated in accordance with the ARP premium schedule which is available on the Society’s website at www.lawsociety.ie/PII. Firms will be required to pay the proposed ARP premium in full. If the firm fails to pay the ARP premium, the firm can be declared a defaulting firm and will be required to close.

² As defined in the PII regulations and set out later in this guide

³ A ROF eligible firm is a firm that satisfies the ROF eligibility criteria including that the firm was practising and held PI cover from a participating insurer during the indemnity period in which the firm ceased, the firm held cover with a participating insurer immediately prior to becoming a run-off firm, the firm was not a defaulting firm immediately prior to the operative date (1 December in that indemnity period), and the firm has no succeeding practice as defined by the regulations.

⁴ An ARP run-off eligible firm is a firm which satisfies the Arp run-off eligibility criteria including that the firm was covered by the ARP as at its date of cessation, the firm has no succeeding practice, and the firm is not a defaulting firm

3.23. The ARP premium will normally significantly exceed normal market rates reflecting the high level of risk attached to a firm unable to obtain cover in the market. Any firm unable to afford market rates is therefore unlikely to be able to afford the ARP premium.

3.24. Applications to the ARP should be made to the SPF Manager as follows:

Manager: DWF Claims (Ireland) Limited, 5 George's Dock, IFSC, Dublin 1

Phone: +353 1 790 9444

Fax: +353 1 790 9401

Email: SPF@dwfclaims.com

Is the cover provided by the ARP at the same level as the market?

3.25. Cover provided by the ARP is significantly lower than that provided under the minimum terms and conditions in the market.

3.26. Cover in the market has a minimum level of €1.5 million each and every claim. ARP cover has an aggregate limit on claims of €1.5 million.

3.27. There is no cover for claims by financial institutions in the ARP.

3.28. New entrants to the ARP can only remain in the ARP for a maximum of 12 months.

3.29. There is a prohibition on start-up firms entering the ARP, unless they have already held cover with a participating insurer since their commencement in that indemnity period.

3.30. If firms fail to pay their ARP premium in full, they will be declared defaulting and required to close.

What if my firm fails to get alternative cover?

3.31. Any firm covered by an insolvent insurer is required to obtain alternative cover in the market from the date of the insolvency to the end of the indemnity period (30 November) or longer within 30 working days of the date of insolvency, and to provide the Society with confirmation of same through the Society's online portal. If the firm fails to obtain such cover or provide confirmation of same to the Society, the firm will be required to close.

3.32. If the firm fails the close, the Society will apply to the High Court for an order compelling the firm to close.

3.33. Claims made against the firm will not be fully covered with serious financial consequences for the principals of the firm who will be directly liable for any uncovered claims with possible consequential judgments and bankruptcies. It should be noted that the practising certificates of bankrupt solicitors are immediately and automatically suspended in accordance with the provisions of section 50 of the Solicitors Act 1954.

Will the Society obtain alternative PII cover for me?

3.34. The Society does not provide insurance to firms or apply for insurance on your behalf. It is the statutory responsibility of each principal of a firm to ensure that the firm has PII in place, and to obtain alternative cover in the event that their insurer becomes insolvent.

If my insurer goes insolvent, will the Society pay the claims?

3.35. The Society does not vet, approve or regulate insurers and has absolutely no legal responsibility for unpaid claims by either an insurer or an uninsured firm.

3.36. The Society will not provide any compensation or meet the claims of insurers or firms that are unable to honour their claim payments.

3.37. The choice of insurer is a business decision for the principals and partners of each firm, and they alone bear the responsibility for the consequences of that decision.

If my insurer goes insolvent, will the Insurance Compensation Fund pay the claims?

3.38. The Insurance Compensation Fund was established under the Insurance Act 1964 for the purpose of providing a fund from which certain liabilities of insolvent insurers can be met.

3.39. Should a participating insurer become insolvent, Irish policyholders should be able to benefit from the Insurance Compensation Fund should the need arise, subject to certain limitations. These limitations include:

a) a cap per claim on the amount of any payment which must not exceed 65% of the amount due under the policy or €825,000, whichever is the lesser; and

b) normally, no compensation where the client is a body corporate.

3.40. Consideration should be given to the restrictions in place on payments from the fund when considering the protections that may be afforded to your firm and clients in the event of the insolvency of your insurer, in particular due to the direct liability of each partner and principal of the firm for any unpaid claims.

3.41. Further information on the Insurance Compensation Fund can be found on the Central Bank's website at <https://www.centralbank.ie/regulation/industry-market-sectors/insurance-reinsurance/solvency-ii/insurance-compensation-fund>

Can I still provide legal services without PII in place?

3.42. Solicitors are prohibited from providing legal services of any kind unless the solicitor has valid PII cover in place.

3.43. The only exceptions are in-house solicitors and solicitors in the full-time service of the State.

3.44. The Society will make an application to the High Court to force any solicitor practising without insurance in place to cease practising with immediate effect.