
THE RUN OFF COVER RULES

Run-Off Cover Rules

Indemnity Period 2022/2023

Pursuant to the Solicitors Professional Indemnity Insurance Regulations 2020 as amended by the Solicitors Professional Indemnity Insurance (Amendment) Regulations 2021 and the Solicitors Professional Indemnity Insurance (Amendment) Regulations 2022, as may be amended from time to time (the “**Regulations**”), the Professional Indemnity Insurance Committee has published, pursuant to Regulation 7(h) of the Regulations, minimum terms and conditions that shall apply to the *run-off cover* offered to *firms* for the *indemnity period* or part thereof commencing 1 December 2022 subject to and in accordance with the Regulations. These minimum terms and conditions are referred to as Run-Off Minimum Terms and Conditions (which apply in respect of *Run-Off Cover*) and ARP Run-Off Minimum Terms and Conditions (which apply in respect of *ARP Run-Off Cover*). The PII Committee has further determined that the following rules, hereinafter Run-Off Cover Rules, shall also be adopted and shall apply in respect of run-off cover offered to *firms* for the *indemnity period* or part thereof commencing 1 December 2022. These Rules shall be included in Schedule 2 to the Run-Off Minimum Terms and Conditions and the ARP Run-Off Minimum Terms and Conditions.

These Run-off Cover Rules shall be read in accordance with the Regulations, the Run-Off Minimum Terms and Conditions and the ARP Run-Off Minimum Terms and Conditions applicable to any such cover and, insofar as there is any difference as between these Rules and the Regulations and/or the relevant Minimum Terms and Conditions, the Regulations and/or the relevant Minimum Terms and Conditions shall prevail.

For the purpose of these rules, *minimum common risk management standard questionnaire* means the minimum common risk management standard questionnaire or any equivalent by whatever name called published by the *Law Society* (in terms approved by the *PII committee*) from time to time or if none is published or in force then as shall be determined by the *SPF management committee*.

For the avoidance of doubt, undefined italicised terms herein shall have the meaning ascribed to such terms by the Regulations.

1. The Run-off Fund

The *ROF* shall be a constituent part of the *SPF* in the *indemnity period* commencing on 1 December 2022 and shall be contributed to by the *participating insurers* in proportion to their market share as calculated in accordance with Schedule 2 of *the participating insurers agreement*. It shall provide *run-off cover* to *ROF eligible firms* and to *ARP eligible firms*.

2. Notice of Closure

A *firm* which intends to cease *practice* shall provide the *SPF manager* with a written notice of its intention to cease *practice* by whichever is the earliest of the following:

- (i) at least 60 days prior to ceasing *practice*; or
- (ii) at least 60 days prior to the expiry of its *coverage period*.

Notice of closure can be provided by the *firm* to the *SPF manager* in the form of the Notice of Closure Form at Schedule 1 or in any written form provided that it includes the information contained in the Notice of Closure Form.

The *firm* shall provide to the *SPF manager* its most recent completed proposal form and its most recent policy of *qualifying insurance* with such notice of closure.

A *firm* which intends to cease *practice* shall be required to submit to and co-operate with a *ROF risk management audit* prior to entry to the ROF to be conducted by a risk management auditor selected and appointed by the *SPF management committee* on such terms, at such times and at such intervals as the SPF management committee may in its absolute discretion determine. The SPF Manager may waive the obligation to submit to and co-operate with a ROF risk management audit if the SPF Manager is satisfied that it is appropriate to do so in the prevailing circumstances.

3. Ceasing Practice

A *firm* which provides the *SPF manager* with written notice of its intention to cease *practice* pursuant to Regulation 9(a) shall cease practice on the date specified in such notice unless otherwise previously agreed in writing with the *Law Society*.

4. Run-off Cover

The SPF manager shall procure that, in respect of a *ROF eligible firm*, *ROF coverage* shall be issued to the firm with effect from the date of expiry of the coverage period in which its practice ceases, subject to the provisions of the *Regulations* and the relevant Minimum Terms and Conditions.

The SPF manager shall procure that, in respect of an *ARP run-off eligible firm*, *ARP run-off cover* shall be issued to that firm with effect from the date of expiry of its *ARP coverage period*, subject to the provisions of the *Regulations* and the relevant Minimum Terms and Conditions.

5. Paying for Run-off Cover

No *run-off firm* shall be required to pay a premium for *run-off cover*, unless such firm is a *distressed firm* as provided for under Regulation 7 of the *Regulations* and/or unless such firm is designated as a non-compliant run-off firm as provided for under Regulation 10 of the *Regulations*.

A *distressed firm* shall pay in advance of entry to the ROF such sum by way of an advance payment of premium to be known as the *distressed firm premium* as the SPF manager may determine in accordance with the *ROF premium schedule*.

A *non-compliant run-off firm* shall pay such sum by way of a payment of premium to be known as the *non-compliant firm premium*, as the SPF manager may determine in accordance with the *ROF premium schedule*.

6. Self-insured Excess

The *ROF cover* issued to *ROF eligible firms* shall have a self-insured excess equal to the self-insured excess applicable to the *qualifying insurance* held by the *firm* at the time it ceased *practice*.

ARP run-off cover issued to an *ARP run-off eligible firm* shall have a self-insured excess equal to the self-insured excess applicable under the *ARP coverage*.

The *SPF manager* shall pay any amount that is within the self-insured excess of any *run off firm's run-off cover* to a claimant but shall be entitled to recover any amount so paid from the principal(s) of the *run-off firm* at the date that the firm entered the ROF or where one or more of the principal(s) of the firm at the date the firm entered the ROF are deceased, the estate of any such deceased principal(s) but the SPF Manager shall not be entitled to recover any amount so paid from a practice manager that stands appointed to a firm at the date that the firm entered the ROF, as provided for in Regulation 9(f) of the *Regulations*.

7. Additional self-insured excess

Firms obtaining *run-off cover* through the *ROF* will not be required to bear any additional excess for *run-off cover* provided they meet the following obligations:

- (i) notification of closure to the *SPF manager* in accordance with Clause 2 above; and
- (ii) compliance with the *close of practice guidelines* as published by the *PII committee*; and
- (iii) return to the *SPF Manager* a fully-completed *minimum common risk management standard questionnaire* (accompanied by the *firm's* most recently completed proposal form submitted by the *firm* to a *participating insurer* in relation to an application for *qualifying insurance*) which questionnaire must not contain any fraudulent or misrepresentative information and which, in the *SPF manager's* opinion, demonstrates that the *firm* satisfies the *minimum common risk management standard*; and
- (iv) fully co-operate with the *SPF manager* in the conduct of claims and notify any claim or circumstances required to be notified to the *SPF manager* within the period prescribed in Clause 9 of these rules; and
- (v) comply with the *ROF risk management audit* under Regulation 9(a)(ii) of the *Regulations*.

Where a *firm* fails to comply with each of the obligations set out in Clause 7(i) and/or Clause 7(iii), the additional self-insured excess set out opposite that obligation in Schedule 2 shall apply to that *firm's run-off cover* in respect of its failure to comply with that obligation. For the avoidance of doubt, a *firm* will be found to have failed to comply with the obligation set out in Clause 7(iii) where a *firm* fails to comply with any requirement or any part of that obligation.

Where, in the opinion of the *SPF manager*, a *firm* fails to comply with the obligations set out in Clause 7(ii), Clause 7(iv), and/or Clause 7(v), the *SPF manager* shall determine the additional self-insured excess to apply to that *firm's run-off cover* in respect of its failure to comply with that obligation. The additional self-insured excess to apply to a *firm's run-off cover* in respect of its failure to comply with its obligations in Clause 7(ii), Clause 7(iv), and/or Clause 7(v) shall in each case not exceed the maximum amount set out opposite that obligation in Schedule 2.

The maximum additional self-insured excess that may apply to any one *firm's run-off cover* in respect of its failure to comply with its obligations in Clauses 7(i) to 7(v) is €90,000.

The additional self-insured excess to apply to any one *firm's run-off cover*, as determined in accordance with this Clause 7, shall be applied by the *SPF manager* on an aggregate basis.

The additional self-insured excess to apply to any one *firm's run-off cover*, as determined in accordance with this Clause 7, shall apply to that *firm's run-off cover* in each *indemnity period* in which that *firm* holds *run-off cover* from the *ROF* unless otherwise determined by the *SPF manager*, at its discretion, following a review carried out by the *SPF manager* in accordance with this Clause 7.

Where the *SPF manager* has imposed an additional self-insured excess pursuant to a failure of a *firm* to meet the obligations in Clause 7(ii), Clause 7(iv), and/or Clause 7(v), the *SPF manager* shall review the *firm's* compliance with these obligations on a regular basis in order to determine, at its discretion, whether there should be any revision of the additional self-insured excess amount. Any changes to be made shall be at the discretion of the *SPF manager*.

Where the *SPF manager* has imposed an additional self-insured excess pursuant to a failure of a *firm* to meet the obligations in Clause 7(iii) and where that *firm* subsequently provides to the *SPF manager* a fully-completed *minimum common risk management standard questionnaire* (accompanied by the *firm's* most

recently completed proposal form submitted by the *firm* to a *participating insurer* in relation to an application for *qualifying insurance*) which questionnaire must not contain any fraudulent or misrepresentative information and which, in the *SPF manager's* opinion, demonstrates that the *firm* satisfies the *minimum common risk management standard*, the *SPF manager* may, remove the additional self-insured excess amount from that *firm's run-off cover* such that the additional self-insured excess shall not apply to any future claims made against that *firm*.

For the avoidance of doubt, if at any time, the *SPF manager* becomes aware that the *firm* has included, in the opinion of the *SPF manager*, fraudulent or misrepresentative information in the *minimum common risk management standard questionnaire*, the *SPF manager* may impose an additional self-insured excess on that *firm's run-off cover* in accordance with the obligation set out in Schedule 2.

The *SPF manager* shall not be required to pay any amount that is within the additional self-insured excess in respect of claims made by *financial institutions*.

8. Minimum common risk management standard questionnaire

Following receipt of a *minimum common risk management standard questionnaire* from a *firm*, the *SPF manager* may, at its discretion, refer such *minimum common risk management standard questionnaire* to the *PII committee*.

9. Claims

Every *firm* that holds *run-off cover* must notify any claim or circumstance to the *SPF manager* as soon as is reasonably practicable after the *principal* of the *firm*, or any solicitor or registered lawyer employed by the *firm* at the time it ceased practice first becoming aware of such claim.

Any interested party may notify a claim or circumstance on behalf of a *run-off firm* to the *SPF manager* and neither the *SPF manager* nor any *participating insurer* may dispute the validity of such notification solely on the grounds that it was not made directly by the *firm*.

Every *firm* that holds *run-off cover* must confirm to the *SPF manager* at the end of each *indemnity period* that they are not aware of any claims or circumstances which have not been reported.

10. Provision of additional information

Every *run-off firm* shall provide to the *SPF manager* such information as the *SPF manager* may from time to time in its discretion reasonably require to deal efficiently and effectively with that *firm's* membership of the *run-off fund*.

11. Cancellation of run-off cover

Subject to Clause 12, *run-off cover* cannot be cancelled, except on terms agreed between the *SPF manager* and the *firm* and where the following conditions are met:

- (a) The *Firm* is or becomes a Defaulting Run-Off Firm and the *SPF Manager* makes arrangements pursuant to Regulation 8(a) and the Defaulting Run-Off Firm makes an application for authorisation under Section 125 of the Legal Services Regulation Act 2015; or
- (b)
- (i) The *firm* shall obtain replacement *qualifying insurance* in accordance with the minimum terms and conditions on the date of cancellation of the relevant *run-off cover*;

- (ii) The *participating insurer* under the replacement *qualifying insurance* shall confirm in writing to the *firm* and to the *SPF manager* that they are providing *qualifying insurance* on the basis that the *firm's practice* is to be treated as a continuation of the *firm's practice* prior to the cessation thereof and that the *participating insurer* shall be liable for any claims against the *firm* arising from matters that occurred prior to the cessation and that accordingly they will be liable for any claims against the *firm* arising from matters that occurred prior to the cessation; and
- (iii) The *participating insurer* under the replacement insurance shall provide any required confirmations of coverage to the *Law Society* pursuant to the Regulations; or
- (c) The *firm* ceases to be a ROF Eligible Firm.

12. Phoenix Firms

Run-off cover held by a *run-off firm* may be cancelled by the *SPF Manager* where, pursuant to Regulation 4(q) of the Regulations, the *PII committee* decides to treat another *firm* as a *phoenix firm* to the *run-off firm*.

In the event of such cancellation, the *SPF manager* shall honour and discharge any amount due and owing in respect of any claim or circumstance notified to the *SPF Manager* within the period from the commencement of the *run-off cover* until its cancellation by the *SPF Manager* but the *SPF Manager* shall be entitled to recover any amount so paid from the *run-off firm* or from those persons who were *principals* of the *run-off firm* immediately prior to the date it ceased practice.

Where the *PII committee* decides to treat another *firm* as a *phoenix firm* to a *run-off firm* the former *principals* for the *run-off firm* shall procure that the *phoenix firm* establishes and maintains professional indemnity insurance which includes cover in accordance with the *minimum terms and conditions* for claims made against the *run-off firm* from the date it ceased practice. A *phoenix firm* shall not be in compliance with its requirement to establish and maintain *qualifying insurance* with a *participating insurer* pursuant to the Regulations where it fails to comply with this requirement.

13. Management of the ROF

The *SPF manager* shall be responsible for managing and administering the *ROF* and its duties shall include, but shall not be limited to, the following:

- (i) Issue *run-off cover* and related documentation to *firms* in the *ROF* on behalf of the *participating insurers* participating in the *ROF*;
- (ii) Receive notice of, negotiate, settle and pay claims on behalf of all *participating insurers* participating in the *ROF*;
- (iii) Conduct any claims against a *firm* in the *ROF*, advance *defence costs* and, if appropriate, compromise and pay any such claim in the normal course on behalf of each relevant *participating insurer*; and
- (iv) Do all things necessary and incidental to any of the above and any other such things as may be necessary from time to time to facilitate the operation of the *ROF*.

14. Reporting to participating insurers

The *SPF manager* shall, on or about the end of each calendar quarter (or within 10 working days of the end of each such quarter) provide a bordereau to each *participating insurer* participating in the *ROF* setting out the claims made or notified in respect of that *indemnity period* (including claims made in respect of *financial*

institutions) and the establishment, administration and management costs and expenses incurred by the *SPF manager* relating to that *indemnity period*. The obligation to report on those matters will remain so long as any claims made on the *ROF* incepting in that *indemnity period* remain outstanding.

15. Reporting to the Law Society

The *SPF manager*, acting as an agent for the *participating insurers*, will provide such data to the *Law Society* as the *Law Society* may request from time to time in relation to the *run-off cover, firms* in the *ROF, run-off firms* where the *SPF manager* has arranged cover through the *ROF* and *defaulting run-off firms* in respect of which the *SPF manager* has arranged cover through the *ROF*.

16. Disclosure of information from the Law Society to the participating insurers

The *Law Society* may establish an information service to disclose certain information to the *participating 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 *participating insurer* with details of the identity of *run-off firms* which maintained insurance with that *participating insurer* in the prior indemnity period.
- (ii) Provide *participating insurers* with the details of the identity of any *run-off firm* which has had all of its principals suspended or struck off the roll.

SCHEDULE 1

Notice of Closure Form

Dear Sirs

Pursuant to Regulation 9(a) of the Solicitors Professional Indemnity Insurance Regulations 2020 (as amended) and as may be amended from time to time (the "**Regulations**"), we hereby give notice of our intention to cease practice on [*insert date*].

We hereby confirm that this notice is given at least 60 days prior to the earliest to occur of the following:

- (a) the cessation of the firm's practice; or
- (b) the expiry of the policy of professional indemnity insurance or ARP coverage held by the firm.

We further confirm that no person who is a principal of the firm at the time it ceases practice shall carry on a practice which is largely similar to the practice of the firm or which is a succeeding practice of the firm such that it could be treated as a phoenix firm pursuant to Regulation 4(q) of the Regulations.

We list as follows the name of each principal of the firm and their corresponding home address to which any correspondence from the SPF manager shall be sent:

[Name of Principal]

Home address: [●]

[Name of Principal]

Home address: [●]

[Name of Principal]

Home address: [●]

We enclose with this notice the firm's most recently completed proposal form for professional indemnity insurance and most recent policy of professional indemnity insurance.

Yours faithfully

SCHEDULE 2

Self-Insured Excess

| | Obligation: | Maximum Additional Excess per Indemnity Period |
|----|--|--|
| 1. | <p>Provide the <i>SPF manager</i> with a written notice of its intention to cease <i>practice</i> to include such information as contained in the Notice of Closure Form at Appendix 1 of these terms.</p> <p>This notice must be accompanied by the following:</p> <p>(i) the <i>firm's</i> most recent completed proposal form; and</p> <p>(ii) the policy of <i>qualifying insurance</i> held by the <i>firm</i> at the time it ceased <i>practice</i>.</p> | €15,000 |
| 2. | Comply with the <i>close of practice guidelines</i> as published by the <i>PII committee</i> . | €30,000 |
| 3. | Return to the <i>SPF manager</i> a fully-completed <i>minimum common risk management standard questionnaire</i> (accompanied by the <i>firm's</i> most recently completed proposal form submitted by the <i>firm</i> to a <i>participating insurer</i> in relation to an application for <i>qualifying insurance</i>) which questionnaire must not contain any fraudulent or misrepresentative information and which, in the <i>SPF manager's</i> opinion, demonstrates that the <i>firm</i> satisfies the <i>minimum common risk management standard</i> . | €15,000 |
| 4. | Fully co-operate with the <i>SPF manager</i> in the conduct of claims and notify any claim or circumstances required to be notified to the <i>SPF manager</i> within the period prescribed in Clause 9 of these rules. | €30,000 |
| 5. | Comply with the ROF risk management audit under Regulation 9(a)(ii). | [Insert] |