

## SRA Minimum Terms and Conditions of Professional Indemnity Insurance



### 1. Scope of cover

#### 1. Civil liability

Subject to the limits in clause 2, the insurance must indemnify each *insured* against civil liability to the extent that it arises from *private legal practice* in connection with the *insured firm's practice*, (including its *prior practice* and (unless run-off cover is provided in accordance with clause 5.3) any *successor practice*) provided that a *claim* in respect of such liability:

1. is first made against an *insured* during the *period of insurance*; or
2. is made against an *insured* during or after the *period of insurance* and arising from *circumstances* first notified to the *insurer* during the *period of insurance*.

#### 2. Defence costs

The insurance must also indemnify the *insured* against *defence costs* in relation to:

1. any *claim* referred to in clause 1.1; or
2. any *circumstances* first notified to the *insurer* during the *period of insurance*; or
3. any investigation or inquiry (save in respect of any disciplinary proceeding under the authority of the *SRA* and/or the *Tribunal*) during or after the *period of insurance* arising from any *claim* referred to in clause 1.1 or from *circumstances* first notified to the *insurer* during the *period of insurance*.

#### 3. The insured

For the purposes of the cover contemplated by clause 1.1, the *insured* must include:

1. the *insured firm*; and
2. each service, administration, trustee or nominee *company* owned as at the date of occurrence of relevant *circumstances* by the *insured firm* and/or the *principals* of the *insured firm*; and
3. each *principal*, each former *principal* and each *person* who becomes a *principal* during the *period of insurance* of the *insured firm* or a *company* referred to in paragraph (b); and

4. each *employee*, each former *employee* and each *person* who becomes during the *period of insurance* an *employee* of the *insured firm* or a *company* referred to in paragraph (b); and
5. the estate or legal personal representative of any deceased or legally incapacitated *person* referred to in paragraph (c) or (d).
4. Award by regulatory authority

The insurance must indemnify each *insured* against any amount paid or payable in accordance with the recommendation of the Office for Legal Complaints (including the *Legal Ombudsman* pursuant to section 137(2)(c) and section 137(4)(b) of the *LSA*) or any other regulatory authority to the same extent as it indemnifies the *insured* against civil liability provided that the *insurer* will have no liability in respect of any determination by the *Legal Ombudsman* pursuant to section 137(2)(b) of the *LSA* to refund any fees paid to the *insured*.

## 2. Limit of insurance cover

2. Any one claim The *sum insured* for any one *claim* (exclusive of *defence costs*) must be, where the *insured firm* is a *relevant recognised body* or a *relevant licensed body* (in respect of activities regulated by the *SRA* in accordance with the terms of the body's licence) at least £3 million, and in all other cases, at least £2 million.
3. Defence costs There must be no monetary limit on the cover for *defence costs*.
4. Proportionate limit on defence costs Notwithstanding clauses 2.1 and 2.2, the insurance may provide that liability for *defence costs* in relation to a *claim* which exceeds the *sum insured* is limited to the proportion that the *sum insured* bears to the total amount paid or payable to dispose of the *claim*.
5. No other limit The insurance must not limit liability to any monetary amount (whether by way of an aggregate limit or otherwise) except as contemplated by clauses 2.1 to 2.3 (inclusive).
6. One claim The insurance may provide that, when considering what may be regarded as one *claim* for the purposes of the limits contemplated by clauses 2.1 to 2.3 (inclusive):
  1. all *claims* against any one or more *insured* arising from:
    1. one act or omission;

2. one series of related acts or omissions;
  3. the same act or omission, in a series of related matters or transactions;
  4. similar acts or omissions, in a series of related matters or transactions, and
2. all *claims* against one or more *insured* arising from one matter or transaction will be regarded as one *claim*.

7. Multiple underwriters

2.6.1 The insurance may be underwritten by more than one *insurer*, each of which must be a *participating insurer*, provided that the insurance is fully underwritten.

2.6.2 Where the insurance is underwritten jointly by more than one *insurer*, the insurance:

1. must state which *participating insurer* shall be the *lead insurer*;
2. may provide that each *insurer* shall be severally liable only for its respective proportion of liability in accordance with the terms of the insurance; and
3. (in addition to any proportionate limit on *defence costs* in accordance with clause 2.3), may provide that each *insurer's* liability for *defence costs* is further limited to the extent or the proportion of that *insurer's* liability (if any) in relation to the relevant *claim*.

2.6.3 The *insurer* stated to be the *lead insurer* shall act as such including without limitation being responsible for the conduct of *claims*, advancing *defence costs* (subject to clause 2.6.2(c)) and compromising and arranging the payment of *claims*. The liability of any *insurer* shall not be increased by virtue only of the fact that it is acting as *lead insurer*.

3. Excesses

3. The insurance may be subject to an *excess* of such monetary amount and on such terms as the *insurer* and the *insured firm* agree. Subject to clause 3.4, the *excess* may be 'self-insured' or partly or wholly insured without regard to these *MTC*.
4. The insurance must provide that the *excess* deductible does not reduce the limit of liability contemplated by clause 2.1.
5. The *excess* must not apply to *defence costs*.

6. The insurance must provide that, if an *insured* fails to pay to a *claimant* any amount which is within the *excess* within 30 days of it becoming due for payment, the *claimant* may give notice of the *insured's* default to the *insurer*, whereupon the *insurer* is liable to remedy the default on the *insured's* behalf. The insurance may provide that any amount paid by the *insurer* to remedy such a default erodes the *sum insured*.
7. The insurance may provide for multiple *claims* to be treated as one *claim* for the purposes of an *excess* contemplated by clause 3.1 on such terms as the *insured firm* and the *insurer* agree.
8. In the case of insurance written on an excess of loss basis, there shall be no *excess* except in relation to the primary layer.

#### 4. Special conditions

##### 4. No avoidance or repudiation

The insurance must provide that the *insurer* is not entitled to avoid or repudiate the insurance on any grounds whatsoever including, without limitation, any breach of the duty to make a fair presentation of the risk, or any misrepresentation, in each case whether fraudulent or not.

##### 4. No adjustment or denial

The insurance must provide that the *insurer* is not entitled to reduce or deny its liability under the insurance on any grounds whatsoever including, without limitation, any breach of any term or condition of the insurance, except to the extent that one of the exclusions contemplated by clause 6 applies.

##### 5. No cancellation

The insurance must provide that it cannot be cancelled except (in the case of (a), (b) or (c) below) by the agreement of both the *insured firm* and the *insurer*, and in any event only in circumstances where:

1. the *insured firm's practice* is merged into a *successor practice*, provided that there is insurance complying with these *MTC* in relation to that *successor practice*, in which case cancellation shall have effect no earlier than the date of such merger; or
2. replacement insurance, complying with the *MTC* in effect at its commencement, commences, in which case cancellation shall have effect no earlier than the date on which such replacement insurance commences; or

3. it subsequently transpires that the *insured firm* is not required under the SRA Indemnity Insurance Rules to effect a *policy* of *qualifying insurance*, in which case cancellation shall have effect from the later of (a) the start of the relevant *policy period* and (b) the date on which the *insured firm* ceased to be required to effect a *policy* of *qualifying insurance*, or such later date as the *insured firm* and the *insurer* may agree.

Cancellation must not affect the rights and obligations of the parties accrued under the insurance prior to the date from which cancellation has effect.

6. No set off

The insurance must provide that any amount payable by the *insurer* to indemnify an *insured* against civil liability to a *claimant* will be paid only to the *claimant*, or at the *claimant's* direction, and that the *insurer* is not entitled to set-off against any such amount any payment due to it by any *insured* including, without limitation, any payment of premium or to reimburse the *insurer*.

7. No 'other insurance' provision

The insurance must not provide that the liability of the *insurer* is reduced or excluded by reason of the existence or availability of any other insurance other than: (i) as contemplated by clause 6.1; or (ii) where the *insured*, having entered the *extended policy period* or *cessation period*, obtains a *policy* of *qualifying insurance* that incepts from and with effect from the expiration of the *policy period*. For the avoidance of doubt and subject to the provisions of the *participating insurer's agreement*, this requirement is not intended to affect any right of the *insurer* to claim contribution from any other *insurer* which is also liable to indemnify any *insured*.

8. No retroactive date

The insurance must not exclude or limit the liability of the *insurer* in respect of *claims* arising from incidents, occurrences, facts, matters, acts and/or omissions which occurred prior to a specified date.

9. Successor practice - 'double insurance'

The insurance may provide that, if the *insured firm's practice* is succeeded during the *period of insurance* and, as a result, a situation of 'double insurance' exists between two or more *insurers* of the *successor practice*, contribution between *insurers* is to be determined in accordance with the relative numbers of *principals* of the owners of the constituent *practices* immediately prior to succession.

#### 10. Resolution of disputes as to insurer of successor practice

The insurance must provide that, if there is a dispute as to whether a *practice* is a *successor practice* for the purposes of clauses 1.1 or 5.5, the *insured* and the *insurer* will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party which has insurance complying with these *MTC* and that party's *insurer*.

#### 4.8A Conduct of a claim pending dispute resolution

The insurance must provide that, pending resolution of any coverage dispute and without prejudice to any issue in dispute, the *insurer* will, if so directed by the *SRA*, conduct any claim, advance *defence costs* and, if appropriate, compromise and pay the claim. If the *SRA* is satisfied that:

4. the party requesting the direction has taken all reasonable steps to resolve the dispute with the other party/ies;
5. there is a reasonable prospect that the coverage dispute will be resolved or determined in the *insured's* favour; and
6. it is fair and equitable in all the circumstances for such direction to be given, it may in its absolute discretion make such a direction.

#### 4. Advancement of defence costs

The insurance must provide that the *insurer* will meet *defence costs* as and when they are incurred, including *defence costs* incurred on behalf of an *insured* who is alleged to have committed or condoned dishonesty or a fraudulent act or omission, provided that the *insurer* is not liable for *defence costs* incurred on behalf of that *insured* after the earlier of:

1. that *insured* admitting to the *insurer* the commission or condoning of such dishonesty, act or omission; or
2. a court or other judicial body finding that that *insured* was in fact guilty of such dishonesty, act or omission.

#### 5. Variation of insurance terms

The terms of the insurance must provide that the *insurer* shall vary the terms of the

insurance to give effect to any variation to the SRA Indemnity Insurance Rules, the Glossary and the *MTC*, such variation to be implemented by the *insurer*:

1. on the date of any renewal or replacement of the insurance or any extension to the *period of insurance* occurring in that *indemnity period*; or
2. on each date falling in 18 month intervals from the commencement of the *policy period* where no variation has occurred by reason of clause 4.10(a) within the immediately preceding 18 month period.

save that no variation shall be required under clause 4.10(b) where the date on which variation would have been required is a date within the *extended policy period* or the *cessation period*.

6. MTC to prevail

The insurance must provide that:

1. the insurance is to be construed or rectified so as to comply with the requirements of these *MTC* (including any amendment pursuant to clause 4.10); and
2. any provision which is inconsistent with these *MTC* (including any amendment pursuant to clause 4.10) is to be severed or rectified to comply.

5. Extended policy period and run-off cover

5. Extended policy period

The insurance must provide cover complying with the *MTC* for the duration of the *extended policy period* where an *insured firm* has not, prior to the expiration of the *policy period*, obtained insurance complying with the *MTC* and incepting on and with effect from the day immediately following the expiration of the *policy period*.

6. Cessation period

The insurance must provide cover complying with the *MTC* for the duration of the *cessation period* where an *insured firm* has not, prior to the expiration of the *extended policy period*, obtained insurance complying with the *MTC* and incepting on and with effect from the day immediately following the expiration of the *policy period*.

7. Run-off cover

Subject to clause 5.7 the insurance must provide run-off cover:

1. in the event of a *cessation* that occurs during or on expiration of the *policy period*;

2. in the event of a *cessation* that occurs during the *extended policy period* or the *cessation period*; or
3. from the expiration of the *cessation period*;

and for the purposes of this clause 5.3 and clause 5.7, an *insured firm's practice* shall (without limitation) be regarded as ceasing if (and with effect from the date upon which) the *insured firm* becomes a *non-SRA firm*.

#### 8. Scope of run-off cover

The run-off cover referred to in clause 5.3 must:

1. indemnify each *insured* in accordance with clauses 1.1 to 1.4;
2. provide a minimum level of insurance cover in accordance with clauses 2.1 and 2.3;
3. be subject to the exclusions and conditions of the insurance applicable in accordance with the *MTC*; and
4. extend the *period of insurance* for an additional six years (ending on the sixth anniversary of the date upon which, but for this requirement, it would have ended, and for the avoidance of doubt, including the *extended policy period* and *cessation period*;) save that in respect of run-off cover provided under clause 5.3(c), such run-off cover shall not operate to indemnify any regulated *insured* for civil liability arising from acts or omissions of such *insured* occurring after the expiration of the *cessation period*.

#### 9. Succession

The insurance must provide that, if there is a *successor practice* to the ceased *practice*, the *insured firm* may elect before its *cessation*, whether it wishes the ceased *practice*:

1. to be insured under the run-off cover referred to in clause 5.3(a) or
2. provided that there is insurance complying with these *MTC* in relation to that *successor practice*, to be insured as a *prior practice* under such insurance.

If the *insured firm* fails to make an election and/or fails to pay any premium due under the terms of the *policy*, before its *cessation*, clause 5.5(b) above shall apply.

10. Suspended practices The insurance must provide that, where run-off cover has been activated in accordance with this clause 5, but where the *insured firm's*



*practice* restarts, the *insurer* may (but shall not be obliged to) cancel such run-off cover, on such terms as may be agreed, provided that:

1. there is insurance complying with these *MTC* in relation to that *insured firm* in force on the date of cancellation;
2. the *participating insurer* providing such insurance confirms in writing to the *insured firm* and the *insurer* (if different) that:
  1. it is providing insurance complying with these *MTC* in relation to that *insured firm* for the then current *indemnity period*; and
  2. it is doing so on the basis that the *insured firm's practice* is regarded as being a continuation of the *insured firm's practice* prior to *cessation* and that accordingly it is liable for *claims* against the *insured firm* arising from incidents, occurrences, facts, matters, acts and/or omissions which occurred prior to *cessation*.

#### 11. Transfer to another approved regulator

Clause 5.3 above does not apply where the *insured firm* becomes an *authorised non-SRA firm* provided that the *approved regulator*, with which the *authorised non-SRA firm* is authorised, is a signatory to a protocol on terms agreed by the *SRA* which relates to switching between *approved regulators*.

#### 6. Exclusions

The insurance must not exclude or limit the liability of the *insurer* except to the extent that any *claim* or related *defence costs* arise from the matters set out in this clause 6.

#### 6. Prior cover

Any *claim* in respect of which the *insured* is entitled to be indemnified under a professional indemnity insurance contract for a period earlier than the *period of insurance*, whether by reason of notification of *circumstances* under the earlier contract or otherwise.

#### 7. Death or bodily injury

Any liability of any *insured* for causing or contributing to death or bodily injury, except that the insurance must nonetheless cover liability for psychological injury or emotional distress which arises from a breach of duty in the performance of (or failure to perform) legal work.

8. Property damage

Any liability of any *insured* for causing or contributing to damage to, or destruction or physical loss of, any property (other than property in the care, custody or control of any *insured* in connection with the *insured firm's practice* and not occupied or used in the course of the *insured firm's practice*), except that the insurance must nonetheless cover liability for such damage, destruction or loss which arises from breach of duty in the performance of (or failure to perform) legal work.

9. Partnership disputes

Any actual or alleged breach of the *insured firm's partnership* or shareholder agreement or arrangements, including any equivalent agreement or arrangement where the *insured firm* is an *LLP* or a *company* without a share capital.

10. Employment breaches, discrimination, etc.

Wrongful dismissal, repudiation or breach of an employment contract or arrangement, termination of a training contract, harassment, discrimination or like conduct in relation to any *partnership* or shareholder agreement or arrangement or the equivalent where the *insured firm* is an *LLP* or a *company* without a share capital, or in relation to any employment or training agreement or arrangement.

11. Debts, trading liabilities and funding arrangements

Any:

1. trading or personal debt of any *insured*; or
2. legal liability assumed or accepted by an *insured* or an *insured firm* under any contract or agreement for the supply to, or use by, the *insured* or *insured firm* of goods or services in the course of the *insured firm's practice*, save that this exclusion 6.6(b) will not apply to any legal liability arising in the course of an *insured firm's practice* in connection with its or any *insured's* use of or access to the HM Land Registry network (including, without limitation, access under a Network Access Agreement made under the Land Registration (Network Access) Rules and the Land Registration (Electronic Communications) Order 2007) other than an obligation to pay search fees or other charges for searches or services provided by HM Land Registry to the *insured firm*; or
3. guarantee indemnity or undertaking by any particular *insured* in connection with the provision of finance, property, assistance or other benefit or advantage directly or indirectly to that *insured*.

12. Fines, penalties, etc

Any:

1. fine or penalty; or
2. award of punitive, exemplary or like damages under the law of the United States of America or Canada, other than in respect of defamation; or
3. order or agreement to pay the costs of a complainant, regulator, investigator or prosecutor of any professional conduct complaint against, or investigation into the professional conduct of, any *insured*.

13. Fraud or dishonesty

The insurance may exclude liability of the *insurer* to indemnify any particular *person* to the extent that any civil liability or related *defence costs* arise from dishonesty or a fraudulent act or omission committed or condoned by that *person*, except that:

1. the insurance must nonetheless cover each other *insured*; and
2. the insurance must provide that no dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a *company*, all *directors* of that *company*, or in the case of an *LLP*, all *members* of that *LLP*.

14. Directors' or officers' liability

The insurance may exclude liability of the *insurer* to indemnify any natural person in their capacity as a *member* of an *LLP* or *director* or officer of a body corporate (other than a *recognised body*, *licensed body* (in relation to the activities regulated by the *SRA* in accordance with the terms of the body's licence) or a service, administration, trustee or nominee *company* referred to in clause 1.3(b) except that:

1. the insurance must nonetheless cover any liability of that *person* which arises from a breach of duty in the performance of (or failure to perform) legal work; and
2. the insurance must nonetheless cover each other *insured* against any vicarious or joint liability.

15. War and terrorism, and asbestos

The insurance may exclude, by way of an exclusion or endorsement, liability of the *insurer* to indemnify any *insured* in respect of, or in any way in connection with:

1. terrorism, war or other hostilities; and/or
2. asbestos, or any actual or alleged asbestos-related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos,

provided that any such exclusion or endorsement does not exclude or limit any liability of the *insurer* to indemnify any *insured* against civil liability or related *defence costs* arising from any actual or alleged breach of duty in the performance of (or failure to perform) legal work or failure to discharge or fulfil any duty incidental to the *insured firm's practice* or to the conduct of *private legal practice*.

#### 16. International trade sanctions

The *insurer* shall be deemed not to provide cover and shall not be liable to pay any *claim* or provide any benefit under the insurance to the extent that the provision of such cover, payment of such *claim* or provision of such benefit would expose the *insurer* to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, Australia or United States of America.

#### 7. General conditions

##### 7. As agreed

The insurance may contain such general conditions as are agreed between the *insurer* and the *insured firm*, but the insurance must provide that the special conditions required by clause 4 prevail to the extent of any inconsistency.

##### 8. Reimbursement

The insurance may provide that each *insured* who:

1. committed or condoned (whether knowingly or recklessly):
  1. any breach of the duty to make a fair presentation of the risk, or misrepresentation;  
or
  2. any breach of the terms or conditions of the insurance; or
  3. dishonesty or any fraudulent act or omission; or
2. undertakes, either itself or by any of its *principals*, *employees*, consultants or agents or any *person* on its behalf, any activity during the *cessation period* in connection

with *private legal practice* save to the extent that the activity is undertaken to discharge any of its obligations within the scope of its *existing instructions* or is necessary in connection with the discharge of any such obligation,

will reimburse the *insurer* to the extent that is just and equitable having regard to the prejudice caused to the *insurer's* interests by such failure to make a fair presentation of the risk, misrepresentation, breach, dishonesty, act or omission, provided that no *insured* shall be required to make any such reimbursement to the extent that any such breach of the terms or conditions of the insurance was in order to comply with any applicable *regulatory arrangements* of the *SRA*.

The insurance must provide that no failure to make a fair presentation of the risk, misrepresentation, breach, dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a *company*, all *directors* of that *company*, or in the case of an *LLP*, all *members* of that *LLP*.

The insurance must provide further that any right of reimbursement contemplated by this clause 7.2 against any *person* referred to in clause 1.3(d) (or against the estate or legal personal representative of any such *person* if they die or become legally incapacitated) is limited to the extent that is just and equitable having regard to the prejudice caused to the *insurer's* interests by that *person* having committed or condoned (whether knowingly or recklessly) the failure to make a fair presentation of the risk, misrepresentation, breach, dishonesty, act or omission.

#### 9. Reimbursement of defence costs

The insurance may provide that each *insured* will reimburse the *insurer* for *defence costs* advanced on that *insured's* behalf which the *insurer* is not ultimately liable to pay.

#### 10. Reimbursement of the excess

The insurance may provide for those *persons* who are at any time during the *period of insurance principals* of the *insured firm*, together with, in relation to a *sole practitioner*, any *person* held out as a *partner* of that practitioner, to reimburse the *insurer* for any *excess* paid by the *insurer* on an *insured's* behalf. The *sum insured* must be reinstated to the extent of reimbursement of any amount which eroded it as contemplated by clause 3.4.

#### 11. Reimbursement of moneys paid pending dispute resolution

The insurance may provide that each *insured* will reimburse the *insurer* following resolution of any coverage dispute for any amount paid by the *insurer* on that *insured's* behalf which, on the basis of the resolution of the dispute, the *insurer* is not ultimately liable to pay.

#### 12. Withholding assets or entitlements

The insurance may require the *insured firm* to account to the *insurer* for any asset or entitlement of any *person* who committed or condoned any dishonesty or fraudulent act or omission, provided that the *insured firm* is legally entitled to withhold that asset or entitlement from that *person*.

#### 13. Premium

The premium may be calculated on such basis as the *insurer* determines and the *insured firm* accepts including, without limitation, a basis which recognises *claims* history, categories of work performed by the *insured firm*, numbers of *principals* and *employees*, revenue derived from the *insured firm's practice* and other risk factors determined by the *insurer*.

#### 8. Law and Jurisdiction

These *MTC* and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales and subject to the jurisdiction of the courts of England and Wales.

## Glossary terms

### **insured**

means each person and entity named or described as a person to whom the insurance extends and includes, without limitation, those referred to in clause 1.3 in the MTC

### **private legal practice**

means the provision of services in private *practice* as a *solicitor* or *REL* in an *authorised body* including, without limitation:

- a. providing such services in England, Wales or anywhere in the world in a *recognised sole practice*, a *recognised body* or a *licensed body* (in respect of an activity regulated by the SRA in accordance with the terms of the body's licence);
- b. the provision of such services as a secondee of the *insured firm*;
- c. any insured acting as a personal representative, *trustee*, attorney, notary, insolvency practitioner or in any other role in conjunction with a *practice*;
- d. the provision of such services by any *employee*; and
- e. the provision of such services pro bono;

but does not include:

- a. discharging the functions of any of the following offices or appointments:
  1. judicial office;
  2. Under Sheriffs;
  3. members and clerks of such tribunals, committees, panels and boards as the Council may from time to time designate but including those subject to the Tribunals and Inquiries Act 1992, the Competition Commission, Legal Services Commission Review Panels, Legal Aid Agency Review Panels and Parole Boards;
  4. Justices' Clerks; or
  5. Superintendent Registrars and Deputy Superintendent Registrars of Births, Marriages and Deaths and Registrars of Local Crematoria

### **insured firm's practice**

means:

- a. the legal *practice* carried on by the *insured firm* as at the commencement of the *period of insurance*; and
- b. the continuous legal *practice* preceding and succeeding the *practice* referred to in paragraph (i) (irrespective of changes in ownership of the *practice*)

**prior practice**

means each *practice* to which the *insured firm's practice* is ultimately a *successor practice* by way of one or more mergers, acquisitions, absorptions or other transitions, but does not include any such *practice* which has elected to be insured under run-off cover in accordance with clause 5.5 of the MTC

**successor practice**

- a. means a *practice* identified in this definition as 'B', where:
  1. 'A' is the *practice* to which B succeeds; and
  2. 'A's owner' is the owner of A immediately prior to transition; and
  3. 'B's owner' is the owner of B immediately following transition; and
  4. 'transition' means merger, acquisition, absorption or other transition which results in A no longer being carried on as a discrete legal *practice*.
- b. B is a successor practice to A where:
  1. B is or was held out, expressly or by implication, by B's owner as being the successor of A or as incorporating A, whether such holding out is contained in notepaper, business cards, form of electronic communications, publications, promotional material or otherwise, or is contained in any statement or declaration by B's owner to any regulatory or taxation authority; and/or
  2. (where A's owner was a *sole practitioner* and the transition occurred on or before 31 August 2000) - the *sole practitioner* is a *principal* of B's owner; and/or
  3. (where A's owner was a *sole practitioner* and the transition occurred on or after 1 September 2000) - the *sole practitioner* is a *principal* or *employee* of B's owner; and/or
  4. (where A's owner was a *recognised body* or a *licensed body* (in respect of an activity regulated by the SRA in accordance with the terms of the body's licence)) - that body is a *principal* of B's owner; and/or
  5. (where A's owner was a *partnership*) - the majority of the *principals* of A's owner have become *principals* of B's owner; and/or
  6. (where A's owner was a *partnership* and the majority of *principals* of A's owner did not become *principals* of the owner of another legal *practice* as a result of the transition) - one or more of the *principals* of A's owner have become *principals* of B's owner and:
    1. B is carried on under the same name as A or a name which substantially incorporates the name of A (or a substantial part of the name of A); and/or
    2. B is carried on from the same premises as A; and/or
    3. the owner of B acquired the goodwill and/or assets of A; and/or
    4. the owner of B assumed the liabilities of A; and/or
    5. the majority of staff employed by A's owner became *employees* of B's owner.



- c. notwithstanding the foregoing, B is not a successor practice to A under paragraph (b) (ii), (iii), (iv), (v) or (vi) if another *practice* is or was held out by the owner of that other *practice* as the successor of A or as incorporating A, provided that there is insurance complying with the *MTC* in relation to that other *practice*

**claim**

means a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages. For these purposes, an obligation on an *insured firm* and/or any *insured* to remedy a breach of the SRA Accounts Rules, or any rules which replace them in whole or in part, shall be treated as a claim, and the obligation to remedy such breach shall be treated as a civil liability for the purposes of clause 1 of the *MTC*, whether or not any *person* makes a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages as a result of such breach, except where any such obligation may arise as a result of the insolvency of a bank (as defined in section 87 of the *SA*) or a *building society* which holds client money in a client account of the *insured firm* or the failure of such bank or *building society* generally to repay monies on demand

**period of insurance**

means the period for which the insurance operates

**circumstances**

means an incident, occurrence, fact, matter, act or omission which may give rise to a *claim* in respect of civil liability.

**insurer**

means:

- a. for the purposes of the SRA Financial Services (Conduct of Business) Rules 2001 a firm with permission to effect or carry out *contracts of insurance* (other than a bank); and
- b. for the purposes of the *SRA Indemnity Insurance Rules* and the *MTC* the underwriter(s) of the insurance

**defence costs**

means legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the consent of the *insurer* in:

- a. defending any proceedings relating to a *claim*; or
- b. conducting any proceedings for indemnity, contribution or recovery relating to a *claim*; or

- c. investigating, reducing, avoiding or compromising any actual or potential *claim*; or
- d. acting for any *insured* in connection with any investigation, inquiry or disciplinary proceeding (save in respect of any disciplinary proceeding under the authority of the *SRA* or the *Tribunal*),

and does not include any internal or overhead expenses of the *insured firm* or the *insurer* or the cost of any *insured's* time.

**SRA**

means the Solicitors Regulation Authority

**Tribunal**

means the Solicitors Disciplinary Tribunal which is an independent statutory tribunal constituted under section 46 of the *SA*

**insured firm**

means the *authorised body* which contracted with the *insurer* to provide the insurance

**company**

means a company incorporated in a state to which the Establishment of Lawyers Directive 98/5/EC applies and registered under the *Companies Acts* or a *societas Europaea*

**principal**

means:

- a. where the *authorised body* is or was:
  - 1. a *recognised sole practice* - the *sole practitioner*;
  - 2. a *partnership* - each *partner*;
  - 3. a *company* with a share capital - each *director* of that *company* and any *person* who:
    - 1. is held out as a *director*; or
    - 2. beneficially owns the whole or any part of a share in the *company*; or
    - 3. is the ultimate beneficial owner of the whole or any part of a share in the *company*;
  - 4. a *company* without a share capital - each *director* of that *company* and any *person* who:
    - 1. is held out as a *director*; or
    - 2. is a *member* of the *company*; or

3. is the ultimate owner of the whole or any part of a body corporate or other legal *person* which is a *member* of the *company*;
5. an *LLP* - each *member* of that *LLP*, and any *person* who is the ultimate owner of the whole or any part of a body corporate or other legal *person* which is a *member* of the *LLP*;
- b. where a body corporate or other legal *person* is a *partner* in the *authorised body*, any *person* who is within paragraph (a)(iii) of this definition (including sub-paragraphs (A) and (C)), paragraph (a)(iv) of this definition (including sub-paragraphs (A) and (C)), or paragraph (a)(v) of this definition

**person**

includes a body of persons (corporate or unincorporated)

**employee**

means an individual who is:

- a. engaged under a contract of service by a *person*, firm or organisation or its wholly owned service company;
- b. engaged under a contract for services, made between a firm or organisation and:
  1. that individual;
  2. an employment agency; or
  3. a *company* which is not held out to the public as providing legal services and is wholly owned and directed by that individual, or

under which the *person*, firm or organisation has exclusive control over the individual's time for all or part of the individual's working week, save that:

1. for the purposes of the SRA Financial Services (Scope) Rules, means an individual who is employed in connection with the firm's *regulated financial services activities* under a contract of service or under a contract for services such that he or she is held out as an employee or consultant of the firm
2. for the purposes of the SRA Indemnity Insurance Rules and the *MTC*, means any *person* other than a *principal*:
  1. employed or otherwise engaged in the *insured firm's practice* (including under a contract for services) including, without limitation, as a solicitor, lawyer, trainee solicitor or trainee lawyer, consultant, associate, locum tenens, agent, appointed *person*, office or clerical staff member or otherwise;
  2. seconded to work in the *insured firm's practice*; or
  3. seconded by the *insured firm* to work elsewhere,

but does not include any person who is engaged by the insured firm under a contract for services in respect of any work where that person is required, whether under the SRA Indemnity Insurance Rules or under the rules of any

other professional body, to take out or to be insured under separate professional indemnity insurance in respect of that work

and the term "employer" is to be construed accordingly

**Legal Ombudsman**

means the scheme administered by the Office for Legal Complaints under Part 6 of the *LSA*

**LSA**

means the Legal Services Act 2007

**sum insured**

means the *insurer's* limit of liability under a *policy* in respect of any one *claim* (exclusive of *defence costs*)

**relevant recognised body**

means a *recognised body* other than:

- a. an unlimited company, or an *overseas* company whose members' liability for the company's debts is not limited by its constitution or by the law of its country of incorporation; or
- b. a nominee company only, holding *assets* for clients of another *practice*; and
  1. it can act only as agent for the other *practice*; and
  2. all the individuals who are *principals* of the *recognised body* are also *principals* of the other *practice*; and
  3. any fee or other income arising out of the *recognised body* accrues to the benefit of the other *practice*; or
- c. a *partnership* in which none of the *partners* is a limited company, an *LLP* or a legal person whose *members* have limited liability; or
- d. a *sole practitioner* that is a *recognised body*

**relevant licensed body**

means a *licensed body* other than:

- a. an unlimited company, or an *overseas* company whose members' liability for the company's debts is not limited by its constitution or by the law of its country of incorporation; or
- b. a nominee company only, holding *assets* for clients of another *practice*; and
  1. it can act only as agent for the other *practice*; and
  2. all the individuals who are *principals* of the *licensed body* are also *principals* of the other *practice*; and

3. any fee or other income arising out of the *licensed body* accrues to the benefit of the other *practice*; or
4. a *partnership* in which none of the *partners* is a limited company, an *LLP* or a legal person whose *members* have limited liability

**participating insurer**

means an *authorised insurer* which has entered into a *participating insurer's agreement* with the SRA which remains in force for the purposes of underwriting new business at the date on which the relevant contract of *qualifying insurance* is made

**lead insurer**

means the insurer named as such in the contract of insurance in accordance with clause 2.6 of the *MTC*

**excess**

means the first amount of a *claim* which is not covered by the *insurance*

**MTC**

means the minimum terms and conditions with which a policy of *qualifying insurance* is required by the SRA Indemnity Insurance Rules to comply, a copy of which is annexed as an annex 1 to those rules.

**claimant**

means:

- a. a person making a *claim* to *statutory trust monies*; and
- b. in the SRA Indemnity Insurance Rules and the *MTC*, a person or entity which has made or may make a claim including a claim for contribution or indemnity

**policy**

means:

- a. for the purposes of the SRA Financial Services (Conduct of Business) Rules 2001 the meaning given in the *FCA Handbook*; and
- b. for the purposes of the SRA Indemnity Insurance Rules and the *MTC* a contract of professional indemnity insurance made between one or more *persons*, each of which is a *participating insurer*, and an *authorised body*

**qualifying insurance**

means a policy that provides professional indemnity insurance cover in accordance with the *MTC* but only to the extent required by the *MTC*

**policy period**

means the *period of insurance* in respect of which risks may attach under a *policy*, but excluding the *extended policy period* and the *cessation period*

**extended policy period**

means the period commencing at the end of the *policy period* and ending on the date which is the earlier to occur of:

- a. the date, if any, on which the firm obtains a *policy of qualifying insurance* incepting on and with effect from the day immediately following the expiration of the *policy period*;
- b. the date which is 30 days after the end of the *policy period*; or
- c. the date on which the *insured firm's practice* ceases

**cessation period**

means the period commencing on the expiry of the *extended policy period* where, during the *extended policy period* the relevant *authorised body* has not ceased *practice* or obtained a *policy of qualifying insurance* incepting with effect on and from the day immediately following expiration of the *policy period*, and ending on the date which is the earlier to occur of:

- a. the date, if any, on which the *authorised body* obtains a *policy of qualifying insurance* incepting with effect on and from the day immediately following expiration of the *policy period*;
- b. the date which is 90 days after the commencement of the *extended policy period*; or
- c. the date on which the *insured firm's practice* ceases

**participating insurer's agreement**

means an agreement in such terms as the *SRA* may prescribe setting out the terms and conditions on which a *participating insurer* may provide professional indemnity insurance to *solicitors* and others in *private legal practice* in England and Wales

**practice**

means the whole or such part of the *private legal practice* of an *authorised body* as is carried on from one or more offices in England and Wales

**indemnity period**

means in the *SRA Indemnity Insurance Rules* and the *MTC*, the period of one year starting on 1 September 2000, 2001 or 2002, the period of 13 calendar months starting on 1 September 2003, or the period of one year starting on 1 October in any subsequent calendar year

**cessation**

means where the *insured firm's practice* ceases during the *period of insurance* or after the *period of insurance* in circumstances where the *insured firm* has not obtained insurance complying with the *MTC* and incepting on and with effect from the day immediately following the expiry of the *policy period*

**non-SRA firm**

means a sole practitioner, partnership, LLP or company which is not authorised to practise by the SRA, and which is either:

- a. authorised or capable of being authorised to practise by another approved regulator; or
- b. not capable of being authorised to practise by any approved regulator

**authorised non-SRA firm**

means a firm which is authorised to carry on legal activities as defined in section 12 of the *LSA* by an *approved regulator* other than the *SRA*

**approved regulator**

means any body listed as an approved regulator in paragraph 1 of Schedule 4 to the *LSA* or designated as an approved regulator by an order under paragraph 17 of that Schedule

**partnership**

means a body that is not a *body corporate* in which persons are, or are held out as, *partners*

**LLP**

means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000

**director**

means a director of a *company*; and in relation to a *societas Europaea* includes:

- a. in a two-tier system, a *member* of the management organ and a *member* of the supervisory organ; and
- b. in a one-tier system, a *member* of the administrative organ

**member**

means:

- a. in relation to a *company*, a person who has agreed to be a member of the *company* and whose name is entered in the *company's* register of members; and
- b. in relation to an *LLP*, a member of that *LLP*

**recognised body**

means a body recognised by the *SRA* under section 9 of the *AJA*

**licensed body**

means a body licensed by the SRA under section 71(2) of the *LSA* in accordance with the SRA Authorisation of Firms Rules

**existing instructions**

means instructions to carry out legal activities as defined in section 12 of the *LSA* received by an *authorised body* from a client, which the body has accepted, on terms that have been agreed by the client, prior to the body becoming subject to cover under the *cessation period*

**regulatory arrangements**

has the meaning given to it by section 21 of the *LSA*

**sole practitioner**

means a *solicitor* or a *REL* who is the sole principal in a practice (other than an incorporated practice)

**partner**

means a *person* who is or is held out as a partner in a *partnership*