

SRA Indemnity Insurance Rules

Introduction

These rules require firms that are authorised by the SRA to take out and maintain professional indemnity insurance. They do not apply to solicitors, RELs and RFLs that practise outside SRA authorised firms.

Part 1: General

Rule 1: Application

1.1 These rules apply to *authorised bodies* and their *principals*.

Part 2: Responsibility and monitoring

Rule 2: Obligation to effect insurance

2.1 An *authorised body* carrying on a *practice* during any *indemnity period* beginning on or after [commencement date] must take out and maintain *qualifying insurance* under these rules.

2.2 An *authorised body* that provides, or has provided, *conveyancing services* must obtain and maintain the *endorsement* for the extension of cover for such services.

2.3 In respect of its obligation under rules 2.1 and 2.2, an *authorised body* must obtain a *policy* of *qualifying insurance* prior to the expiry of the *policy period*, that provides cover incepting on and with effect from the expiry of the *policy period*.

2.4 If the *authorised body* has been unable to comply with rule 2.3, the *authorised body* must obtain a *policy* of *qualifying insurance* during or prior to the expiry of the *extended policy period* that provides cover incepting on and with effect from the expiry of the *policy period*.

2.5 If the *authorised body* has been unable to comply with either rule 2.3 or rule 2.4, the *authorised body* must cease *practice* promptly, and by no later than the expiry of the *cessation period*, unless the *authorised body* obtains a *policy* of *qualifying insurance* during or prior to the expiry of the *cessation period* that provides cover incepting on and with effect from the expiry of the *policy period* and covers all activities in connection with *private legal practice* carried out by the *authorised body* including, without limitation, any carried out in breach of rule 4.2.

Rule 3: Adequate and appropriate insurance

3.1 Notwithstanding rules 2.1 and 2.2 above, an *authorised body* must:

- (a) take out and maintain professional indemnity insurance that provides adequate and appropriate cover in respect of current or past practice taking

into account any alternative arrangements the body or its *clients* may make;
and

(b) comply with rule [] of the [SRA Financial Services (Scope) Rules] if the body carries on *insurance distribution activities* under those rules.

3.2 An *authorised body* must ensure that its *clients* have the benefit of the indemnity insurance required under these rules and must not exclude or attempt to exclude liability below the minimum level of cover required under these rules.

Rule 4: Responsibility

4.1 Each *authorised body*, and any *principal* of such a body, must ensure that the *authorised body* complies with these rules.

4.2 Each *authorised body* that has been unable to obtain a *policy* of *qualifying insurance* prior to the expiration of the *extended policy period*, and any *principal* of such a body, must ensure that the *authorised body*, and each *principal* or *employee* of the body, undertakes no activities in connection with *private legal practice* and accepts no instructions in respect of any such activities during the *cessation period* save to the extent that the activity is necessary in connection with the discharge of its obligations within the scope of the *authorised body's existing instructions*.

Rule 5: Insolvency of participating insurer

5.1 If an *authorised body* is carrying on a *practice* which is being provided with *qualifying insurance* by a *participating insurer* (whether alone or together with another *participating insurer*) and that *participating insurer* is the subject of an *insolvency event* then the *authorised body* and any *principal* of the body must ensure that the *authorised body* has in place *qualifying insurance* with another *participating insurer* as soon as may be reasonably practicable and in any event within four weeks of such *insolvency event*.

Rule 6: Monitoring

6.1 The *SRA* may require from an *authorised body* or any *principal* in an *authorised body*, information and evidence it may reasonably require to satisfy itself that the body has complied with these rules.

Rule 7: RELs

7.1 The provisions contained in appendix 2 to these rules apply to an *authorised body* that has at least one *principal* who is an *REL*.

Part 3: Reporting

Rule 8: Use of information

- 8.1 Each *authorised body* must notify the *SRA* (or such *person* as the *SRA* may notify to the *authorised body* from time to time) and its *participating insurer* in writing as soon as reasonably practicable and in any event no later than five business days after the date on which:
- (a) the *authorised body* enters an *extended policy period*;
 - (b) the *authorised body* has entered the *cessation period*; and
 - (c) where the *authorised body* is in the *extended policy period* or the *cessation period*, the *authorised body* has obtained a *policy* of *qualifying insurance*, and in such case the notification must include the name of the *participating insurer* who has issued the *policy* of *qualifying insurance* and the *policy* number.
- 8.2 The *SRA* may, without limitation and in its absolute discretion, disclose and make available for public inspection the identity of an *authorised body's participating insurer*.

Rule 9: Details of participating insurer

- 9.1 If a *claimant* asserts a *claim* against an *authorised body* or any person insured under that *authorised body's policy*, and the *claim* relates to any matter within the scope of cover of the *MTC*, the *authorised body*, and any person who is at the relevant time a *principal* in that *authorised body* must, upon request by that *claimant*, by any person insured under that *authorised body's policy*, or by any other person with a legitimate interest, provide the following details in relation to that *authorised body's policy*:
- (a) the name of the *participating insurer(s)* who issued the *policy*;
 - (b) the *policy* number; and
 - (c) the address and contact details of the *participating insurer(s)* for the purpose of making a *claim* under the *policy*,
- in each case in respect of the *policy* which it is reasonably believed to be the relevant *policy* to respond to the *claim*, or, if applicable, the fact that the *authorised body* or person against whom the *claim* is asserted is covered by *supplementary run-off cover*.
- 9.2 In the case of an *authorised body* which has *ceased practice*, any person who was a *principal* in that *authorised body* immediately before that body *ceased practice* must comply with rule 9.1.

Part 4: Transitionals

Rule 10: Transitionals and savings

10.1 For the purposes of the **SA** (including without limitation section 10 of that Act), any person who is in breach of any rule or part of any rule under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 to 2013 will be deemed, for so long as that person remains in breach, not to be complying with these rules.

Supplemental notes

Made by the SRA Board on [date] 2018.

Made under sections 31, 37, 79 and 80 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, and section 83 of, and paragraph 19 of Schedule 11 to the Legal Services Act 2007.

Approved by the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007, on [date] 2018.

Commencing on [date]. These rules will apply to any *indemnity period* beginning on or after [commencement date].

The SRA Indemnity Insurance Rules 2013 do not apply in respect of any *indemnity period* beginning on or after [commencement date] but they remain in force in respect of the *indemnity period* from 1 October 2013 to [day before commencement date] inclusive.

Appendix 1

SRA Minimum Terms and Conditions of Professional Indemnity Insurance

1 Scope of cover

1.1 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:

- (a) is first made against an *insured* during the *period of insurance*; or
- (b) 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*.

1.2 Defence costs

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

- (a) any *claim* referred to in clause 1.1; or
- (b) any *circumstances* first notified to the *insurer* during the *period of insurance*; or
- (c) 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*.

1.3 The insured

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

- (a) the *insured firm*; and
- (b) 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
- (c) 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
- (d) 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
- (e) the estate or legal personal representative of any deceased or legally incapacitated *person* referred to in paragraph (c) or (d).

1.4 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

2.1 *Any one claim*

The *sum insured* for any one *claim* (exclusive of *defence costs*) must be at least £500,000 or, if the *claim* arises from or is any way connected with *conveyancing services*, at least £1 million.

2.2 *Defence costs*

The insurance may provide for a monetary limit on the cover for *defence costs*.

2.3 *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*.

2.4 *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).

2.5 *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):

(a) all *claims* against any one or more *insured* arising from:

- (i) one act or omission;
 - (ii) one series of related acts or omissions;
 - (iii) the same act or omission, in a series of related matters or transactions;
 - (iv) similar acts or omissions, in a series of related matters or transactions
- and

(b) all *claims* against one or more *insured* arising from one matter or transaction will be regarded as one *claim*.

2.6 *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:

- (a) must state which *participating insurer* shall be the *lead insurer*;
- (b) 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

- (c) (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

- 3.1 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*.
- 3.2 The insurance must provide that the *excess* deductible does not reduce the limit of liability contemplated by clause 2.1.
- 3.3 The insurance may provide that an *excess* applies to *defence costs*.
- 3.4 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. Such payment by the *insurer* to a *claimant* will not erode the *sum insured*. The *insurer* may subsequently seek to recover the amount of *excess* paid to a *claimant* from the *insured* by means other than by reducing the *sum insured*.
- 3.5 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.

4 Special conditions

4.1 *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.

4.2 *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.

4.3 *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:

- (a) 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

- (b) 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
- (c) 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.

4.4 *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*.

4.5 *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*.

4.6 *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.

4.7 *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.

4.8 *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 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*. If the *insured*, the *insurer* and any relevant other party are unable to settle the dispute by agreement, the dispute shall be referred to a mutually agreed Queen's Counsel for resolution (and in the absence of such agreement to a Queen's Counsel nominated by the chairman for the time being of the Bar Council), whose decision shall be final and binding on the parties. Responsibility for the costs of such referral and resolution shall be allocated by the deciding Queen's Counsel.

4.9 *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:

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

4.10 *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*:

- (a) 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
- (b) 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*.

4.11 *MTC to prevail*

The insurance must provide that:

- (a) 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
- (b) 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

5.1 *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*.

5.2 *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*.

5.3 *Run-off cover*

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

- (a) in the event of a *cessation* that occurs during or on expiration of the *policy period*;
- (b) in the event of a *cessation* that occurs during the *extended policy period* or the *cessation period*; or
- (c) 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*.

5.4 *Scope of run-off cover*

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

- (a) indemnify each *insured* in accordance with clauses 1.1 to 1.4;
- (b) provide a minimum level of insurance cover of £1.5 million, unless the *insured firm* has at any time previously either (i) obtained the *endorsement* for the extension of coverage for *conveyancing services* or (ii) provided *conveyancing services*, in which case the minimum level of cover required shall be £3 million;
- (c) be subject to the exclusions and conditions of the insurance applicable in accordance with the *MTC*; and
- (d) 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 *insured* for civil liability arising from acts or omissions of such *insured* occurring after the expiration of the *cessation period*.

5.5 *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*:

- (a) to be insured under the run-off cover referred to in clause 5.3(a) or
- (b) 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.

5.6 *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:

- (a) there is insurance complying with these *MTC* in relation to that *insured firm* in force on the date of cancellation;

- (b) the *participating insurer* providing such insurance confirms in writing to the *insured firm* and the *insurer* (if different) that:
 - (i) it is providing insurance complying with these *MTC* in relation to that *insured firm* for the then current *indemnity period*; and
 - (ii) 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*.

5.7 *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.

6.1 *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.

6.2 *Conveyancing services*

Any liability of the *insurer* to indemnify any *insured* in respect of or in any way in connection with *conveyancing services* unless the *insured firm* has obtained the *endorsement* for extension of cover for *conveyancing services*, in which case such liability may not be excluded.

6.3 *Turnover*

Any liability of the *insurer* to indemnify any *insured* in respect of or in any way in connection with the provision of services to an *insured's client* if that *client's turnover* for its most recent financial year exceeds £2 million.

6.4 *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.

6.5 *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.

6.6 *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.

6.7 *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.

6.8 *Debts, trading liabilities and funding arrangements*

Any:

- (a) trading or personal debt of any *insured*; or
- (b) loans or other funding arrangements of the *insured* or an *insured firm* where such funding arrangements are provided for its personal benefit and/or as part of its business model; or
- (c) 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
- (d) 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*.

6.9 *Fines, penalties, etc*

Any:

- (a) fine or penalty; or
- (b) 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
- (c) 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*.

6.10 *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:

- (a) the insurance must nonetheless cover each other *insured*; and

- (b) 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*.

6.11 *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 respect of its *regulated activities*) or a service, administration, trustee or nominee company referred to in clause 1.3(b) except that:

- (a) 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
- (b) the insurance must nonetheless cover each other *insured* against any vicarious or joint liability.

6.12 *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:

- (a) terrorism, war or other hostilities; and/or
- (b) 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*.

6.13 *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

7.1 *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.

7.2 *Reimbursement*

The insurance may provide that each *insured* who:

- (a) committed or condoned (whether knowingly or recklessly):

- (i) any breach of the duty to make a fair presentation of the risk, or misrepresentation; or
 - (ii) any breach of the terms or conditions of the insurance; or
 - (iii) dishonesty or any fraudulent act or omission; or
- (b) 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(b) (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.

7.3 *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.

7.4 *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.

7.5 *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.

7.6 *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*.

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.

9 Endorsements

The following *endorsement* may be added in accordance with agreed insurance terms:

- ***Endorsement for the extension of coverage for conveyancing services***

The *MTC* shall be amended by the deletion of clause 6.2

Appendix 2

Special provisions for RELs

1 If:

- (a) one or more of the *principals* of an *insured firm* are *RELs* who claim that professional indemnity insurance, or a professional indemnity fund, under their home professional rules provides the *insured firm's practice* with professional indemnity cover in all respects equivalent in its conditions and extent to that which would be provided under the *MTC (Full Home State Cover)*;
- (b) no more than 25% of the *principals* of the *insured firm* are *solicitors*; and
- (b) the *SRA* is so satisfied, (including, without limitation, by reason of any provider of the Full Home State Cover entering into such agreement as the *SRA* may require from time to time),

the *insured firm* and its *principals* shall for so long as such cover continues (and, where the *SRA* has required such agreement, for so long as such agreement remains in force and its requirements are complied with by the provider(s) of the Full Home State Cover that are party to it) be exempted from the obligation to take out and maintain *qualifying insurance*.

2 If on an application by one or more *RELs* who are *principals* in an *insured firm*, the *SRA* is satisfied that the *insured firm's practice* has professional indemnity cover under home professional rules but that the equivalence is only partial (**Partial Home State Cover**) (including, without limitation, by reason of the provider of the Partial Home State Cover entering into such agreement as the *SRA* may require from time to time), the *insured firm* and its *principals* shall for so long as such cover continues (and, where the *SRA* has required such agreement, for so long as such agreement remains in force and its requirements are complied with by the provider(s) of the Partial Home State Cover that are party to it) be exempted from the obligation to take out and maintain *qualifying insurance*, on condition that they take out and maintain a *difference in conditions policy*, which shall provide cover including the *MTC* as modified by the following changes (but not otherwise):

- (a) Clause 4.5 shall be deleted and replaced with the following:

4.5 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 as contemplated by clauses 6.1 or 6.14. For the avoidance of doubt, 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*.

- (b) Clause 4.9 shall be deleted and replaced with the following:

4.9 Resolution of disputes

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 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, and in conjunction with the provider of the *Partial Home State Cover*.

(c) Clause 4.12 shall be added:

4.12 Period of insurance

The *period of insurance* must not expire prior to the date with effect on which the *Partial Home State Cover* expires or is avoided.

(d) The following clause shall be added:

6.14 Partial Home State Cover

The insurance may exclude any liability of the *insurer* to the extent that any such liability is covered under the terms of the *Partial Home State Cover* irrespective of whether recovery is actually made in respect of such liability.

- 3 In the event of an *insured firm* which has the benefit of an exemption under paragraph 1 or paragraph 2 of this Appendix ceasing for whatever reason to enjoy that exemption but continuing to carry on a practice it shall be treated for all the purposes of these rules as though it had commenced the practice on the date when such exemption ceased.
- 4 Rule 5 (Insolvency of Participating Insurer) shall apply to an *insured firm* which has the benefit of an exemption under paragraph 1 or paragraph 2 of this Appendix in like manner as though the insurance company or entity or fund providing professional indemnity cover under its home professional rules, on the basis of which exemption or partial exemption was granted, was a *participating insurer*.
- 5 In the case of an *insured firm* which has the benefit of an exemption under paragraph 2 of this Appendix all the provisions of these rules shall apply to the additional professional indemnity insurance required under that paragraph to be taken out with a *participating insurer*.