

Annex 3b - Proposed SRA Indemnity Fund Rules (showing changes from existing rules)

Text to be removed or added is shown as a track changes below

SRA Indemnity Fund Rules ~~2012~~

Introduction

These rules govern the way that we operate the SRA Indemnity Fund.

Part 1: General provisions and interpretation

~~Rule 1: Authority~~

~~i~~

- ~~1. These Rules are made on 22 June 2012 by the Solicitors Regulation Authority Board under sections 37, 79 and 80 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, and paragraph 19 of Schedule 11 to the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.~~
- ~~2. These Rules regulate indemnity provision in respect of the practices of solicitors, recognised bodies, RELs, RFLs, and licensed bodies in respect of their regulated activities and certain other European lawyers, carried on wholly or in part in England and Wales.~~

~~Rule 2: Citation~~

~~i~~

~~These Rules may be cited as the SRA Indemnity Rules 2012.~~ **Rule 31: Definitions and interpretation**

- 1.1 The SRA ~~Handbook~~ Glossary ~~2012 (the Glossary)~~ shall apply and unless the context otherwise requires:
 - a) all italicised terms shall be defined in accordance with the Glossary;
 - b) terms shall be interpreted in accordance with the Glossary;

- c) a reference to a Rule is to a Rule forming part of these Rules, except in relation to Schedule 1 where a reference to a rule is to a rule in the Solicitors' Indemnity Rules 1999;
- d) the Schedule to these Rules forms part of these Rules; and
- e) these Rules will be governed by and interpreted in accordance with English law.

Rule 42: Establishment and maintenance of fund

~~4.1~~ 2.1 The ~~Society~~**SocietySRA** shall maintain the *fund* in accordance with these Rules.

2.2 The purpose of the *fund* is to provide indemnity against loss as mentioned in section 37 of the **SA** as extended by section 9 of the **AJA**, Schedule 4 paragraph 1(3) of the European Communities (Lawyer's Practice) Regulations 2000 and section 89 of the Courts and Legal Services Act 1990 in the circumstances, to the extent and subject to the conditions and exclusions specified by the Solicitors' Indemnity Rules 1987 as the same have been and are in force and amended and applied from time to time and by any future Rules continuing, amending, adding to, applying or re-enacting such or other Rules to provide such indemnity in respect of annual *indemnity periods* (starting in 1987) unless and until otherwise determined by future Rules.

2.3 The *fund* shall be maintained by *contributions* previously made by or on behalf of *solicitors*, *recognised bodies*, *REs* and *RFLs* in respect of each *indemnity period* in accordance with Part III of the SRA Indemnity Rules 2011 (or any earlier corresponding provisions), and by any additional *contributions* in accordance with Rule ~~46~~14.

2.4 The ~~Society~~**SRA** may maintain the *fund* as a single continuous *fund*, and any deficiency in respect of one *indemnity period* may be met in whole or part from *contributions* in respect of another *indemnity period* or *indemnity periods* and any balance in respect of one *indemnity period* may be applied to the benefit of any other *indemnity period* or *indemnity periods*.

~~4.~~ 2.5 The *fund* shall be held, managed and administered in accordance with Part IV ~~of these Rules of these Rules by Solicitors Indemnity Fund Limited, a company set up~~ by the ~~Society~~**SRA** for this purpose, or by such other *person* or *persons* (including the ~~Society~~ itself) as the ~~Society~~**SRA** may designate for such purpose, ~~in place of Solicitors Indemnity Fund Limited. References in these Rules to Solicitors Indemnity Fund Limited shall include any such other person or persons.~~

Rule 35: Indemnity Periods before 1 September 1987

~~5.3.1~~ The policies taken out and maintained and the certificates issued by the **Society** pursuant to the Solicitors' Indemnity Rules 1975 to 1986 shall continue to provide cover subject to and in accordance with their terms in respect of their respective periods up to and including 31 August 1987. They shall not provide cover in respect of any subsequent period.

Rule 64: Application of the Rules

~~6.4.1~~ These Rules shall apply to a **practice** carried on by:

~~1.a)~~ a sole **solicitor**;

~~2.b)~~ an **REL** practising as a **sole practitioner**;

~~3.c)~~ a **recognised body**;

~~4.d)~~ a **partnership** consisting of one or more **solicitors** and/or **RELs** and/or **recognised bodies** and/or **licensed bodies**;

~~5.e)~~ a **partnership** consisting of one or more **solicitors** and/or **RELs**, together with one or more **RFLs**;

~~6.f)~~ a **partnership** consisting of one or more **RELs** with or without one or more **RFLs**, together with one or more **non-registered European lawyers** practising from one or more offices in any state to which the **Establishment Directive** applies, but outside England and Wales; and

~~7.g)~~ a **licensed body** in respect of its **regulated activities**.

Rule 75: Scope of indemnity

~~7.5.1~~ The following **persons**, namely:

~~1.a)~~ **solicitors**, former **solicitors**, **RELs**, **persons** formerly practising as **RELs**, **RFLs** practising in **partnership** with **solicitors** or **RELs**, **persons** formerly practising as **RFLs** in **partnership** with **solicitors** or **RELs**, **non-registered European lawyers** practising in **partnership** with **RELs**, and **persons** formerly practising as **non-registered European lawyers** in **partnership** with **RELs**;

~~2.b)~~ employees and former employees of the above;

~~3.c)~~ **recognised bodies** and former **recognised bodies**;

4.d) officers and employees and former officers and employees of *recognised bodies* and former *recognised bodies*;

5.e) *licensed bodies* and former *licensed bodies* in respect of their *regulated activities*; and

6.f) *regulated persons* , including officers and employees and former officers and employees of *licensed bodies*,

shall be provided with indemnity out of the *fund* against loss arising from claims in respect of civil liability incurred in *private practice* in their aforesaid capacities or former capacities in the manner set out in Rule 8.10 and in the circumstances, to the extent and subject to the conditions and exclusions set out in Part II of these Rules and not otherwise.

Part 2: Indemnity cover

Rule 8.6: Indemnity

Indemnity for ceased practices

8.6.1 Any *member* of a *previous practice* which ceased on or before 31 August 2000 who has at any time been either:

1.a) an assured as a result of the issue of a certificate under one or more of the *master policies*, or

2.b) a *person* entitled to be indemnified by virtue of the issue of a receipt under the Solicitors' Indemnity Rules 1987-1990 or a payment of Contribution and Value Added Tax thereon as stated in the Solicitors' Indemnity Rules 1991-1999,

and who is not, at the time during the *indemnity period* when a claim is first made or intimated against him or her or when circumstances which might give rise to such a claim are first notified *in the prescribed form* by him or her to ~~Solicitors Indemnity Fund Limited~~ *the SRA*, a *person* entitled or required to be indemnified in respect of claims arising from that *previous practice* by a policy of *qualifying insurance* or otherwise under the *SIIR*,

and the *previous practice*

shall be entitled to indemnity out of the *fund* in the manner, to the extent and subject to the conditions and exclusions set out in these Rules against:

3.c) all loss (including liability for third party claimants' costs) incurred by the *previous practice* or any *member* thereof at any time arising directly from:

1.i) any claim(s) first made or intimated against the *previous practice* or any *member* thereof during the *indemnity period* in respect of any description of civil liability whatsoever which may have been incurred in *private practice* by the *previous practice* or by a *member* as a *member* of such *previous practice*;

~~2.ii.~~ any claim in respect of any such description of civil liability as aforesaid, made or intimated against the *previous practice* or any *member* thereof, whether during or subsequent to the *indemnity period* arising out of circumstances notified in the prescribed form to ~~Solicitors Indemnity Fund Limited~~the SRA during the *indemnity period* as circumstances which might give rise to such a claim; and

~~4.d)~~ all costs and expenses incurred with the consent of ~~Solicitors Indemnity Fund Limited~~the SRA (such consent not to be unreasonably withheld) in the defence or settlement or compromise of any such claim as aforesaid.

Eligible former principals

~~6.2~~ Rule ~~86.1~~ shall apply in addition in respect of any *principal* of a *previous practice* that is an *eligible former principal*.

~~8.~~

~~9.6.3~~ In respect of any claim referred to in Rule ~~86.2~~ made by an *eligible former principal*, the extent of the indemnity (if any) to be provided by ~~Solicitors Indemnity Fund Limited~~the SRA shall be limited to an amount equal to the lesser of:

~~1.a)~~ the Due Proportion of the Deductible (excluding any Penalty Deductible) in respect of the *eligible former principal* that would have been disregarded by ~~Solicitors Indemnity Fund Limited~~the SRA in relation to the claim had it been made under the Solicitors' Indemnity Rules 1999; and

~~2.b)~~ such amount if any which the *relevant successor practice* is entitled to and seeks to recover from the *eligible former principal* in relation to the claim.

~~10.6.4~~ For the purposes of Rule ~~86.3~~, "Due Proportion", "Deductible" and "Penalty Deductible" shall have the meanings respectively given to them by the Solicitors' Indemnity Rules 1999, as set out in Schedule 1 to these Rules.

Expired run-off claims

~~8.6.5~~ Any firm or *person* shall be entitled to indemnity out of the *fund* in the manner, to the extent and subject to the conditions and exclusions set out in this Rule ~~86.5~~, in relation to an *expired run-off claim*, provided that:

~~1.a)~~ such claim is first notified to ~~Solicitors Indemnity Fund Limited~~the SRA in the prescribed form at any time ~~between~~since 1 September 2007 ~~and 30 September 2023~~; and

~~2.b)~~ there is no *preceding qualifying insurance* which provides cover for such claim; and

~~3.c)~~ such claim does not relate to or arise out of any *claim* first made against an *insured* or *circumstances* first notified to the provider of such *preceding qualifying insurance*, in either case at a time when such *preceding qualifying insurance* was required to provide cover in respect thereof; and

~~4.d)~~ such *person* was an *insured* under the relevant *preceding qualifying insurance*.

Notwithstanding any other provision of these Rules:

~~5.e)~~ the obligations of the *fund* and/or any *insured* in respect of an *expired run-off claim* shall be in accordance with, and limited to, the *expired run-off cover*; and

~~6.f)~~ any obligation owed by any *insured* under the *preceding qualifying insurance* to the qualifying insurer which issued such insurance shall be deemed to be owed to ~~Solicitors Indemnity Fund Limited~~the SRA in place of such qualifying insurer, unless and to the extent that ~~Solicitors Indemnity Fund Limited~~the SRA in its absolute discretion otherwise agrees.

Rule 97: Exclusions from cover

~~9.7.1~~ The *fund* shall not afford any indemnity in respect of any loss arising out of any claim:

~~1.a)~~ for death, bodily injury, physical loss or physical damage to property of any kind whatsoever (other than property in the care, custody and control of the *previous practice* or *member* thereof in connection with its, his or her *private practice* for which it, he or she is responsible, not being property occupied or used by it, him or her for the purposes of the *previous practice*);

~~2.b)~~ for any alleged breach or other relief in respect of any *partnership* or *partnership* agreement between the *principals* in the *previous practice* or between any *principal* therein and any other *person* as *principals* in any other *previous practice*;

~~3.c)~~ for wrongful dismissal or termination of articles of clerkship or training contract or any other alleged breach or any other relief by either party in respect of any contract of employment by the *previous practice* or any *member* thereof; and/or for wrongful termination or any other alleged breach or any other relief by either party in respect of any contract for supply to or use by the *previous practice* or any *member* thereof of services and/or materials and/or equipment and/or other goods;

~~4.d)~~ for the payment of a trading debt incurred by the *previous practice* or any *member* thereof;

~~5.e)~~ in respect of any undertaking given by any *principal* in the *previous practice* or by a *recognised body* or *licensed body* or on his, her or its behalf (whether in his, her or its own name or in the name of the *previous practice*) to any *person* in connection with the provision of finance, property, assistance or other advantage whatsoever to or for the benefit of such *principal* or any other *principal* or of his or her or any other *principal's* spouse or children or of such *recognised body* or *licensed body* or of any business, firm, company, enterprise, association or venture owned or controlled by him, her or it or any other *principal* or in a beneficial capacity whether alone or in concert with others, EXCEPT to the extent that the *person* seeking indemnity shall establish that he, she or it was unaware that the undertaking was or was likely to be connected with the provision of any such finance, property, assistance or other advantage;

- ~~6.f)~~ in respect of any dishonest or fraudulent act or omission, but nothing in this exclusion shall prevent any particular *member* of the *previous practice* who was not concerned in such dishonesty or fraud being indemnified in accordance with these Rules in respect of any loss arising out of any claim in respect of any dishonest or fraudulent act or omission by any other such *member*;
- ~~7.g)~~ in respect of any liability incurred in connection with an *overseas practice*. In relation to a *previous practice* having any *overseas* offices deemed by paragraph (ii) of the definition of *separate practice* in Rule ~~31~~.1 to form a *separate practice*, a liability shall be deemed to have been incurred in connection with the office where or from which the major part of the work out of which the loss arose in respect of which indemnity is sought was being done. In the event of doubt as to which (if any) office satisfies this requirement, the liability shall be deemed to have been incurred in connection with the office to which the *person* who accepted the initial instructions was most closely connected;
- ~~8.h)~~ in respect of any liability incurred in connection with a *previous practice* in relation to which the obligation to pay *contribution* has been exempted under Rule 27 of the Solicitors' Indemnity Rules 2006 (or any earlier corresponding Rule) ~~or, unless otherwise provided by the terms of the waiver, waived by the Council under Rule 19 (or under any corresponding earlier Rule);;~~
- ~~9.i)~~ arising out of any circumstances or occurrences which have been notified under the *master policy* or any certificate issued under the *master policy* or any other insurance existing prior to 1 September 1987;
- ~~10.j)~~ in respect of any adjustment by way of claims loading or loss of discount which may at any future date or in respect of any future period be made by reference to any claim or claims first made or intimated during any *indemnity period*;
- ~~11.k)~~ in respect of any liability incurred by any *person* in his, her or its capacity as a shareholder or beneficial owner of a share in a body corporate that is either a *recognised body* or *licensed body* notwithstanding the definition of *principal* in Rule ~~31~~.1;
- ~~12.l)~~ in respect of any act or omission on the part of any *principal* whilst acting on behalf of the *previous practice* or any *member* thereof in connection with any matter affecting the business of the *previous practice* provided that at the time of such act or omission such *principal* was a *principal* in the *previous practice*;
- ~~13.m)~~ where the *previous practice* or any *member* thereof is entitled to indemnity under any insurance except in respect of any amount greater than the amount which would have been payable under such insurance in the absence of the indemnity provided by the *fund*.

7.2 For the avoidance of doubt, any claim or claims by any *member* or former *member* of any *previous practice* against any *member* or former *member* of any such *previous practice* for the payment of the whole or any part of the deductible paid or due in respect of a claim already notified or made under

these Rules or any previous Rules is not a loss arising within the meaning of Rule ~~8-6~~ and shall in no event be recoverable hereunder.

~~10.~~

~~11-7.3~~ The exclusions set out in this Rule ~~9-7~~ shall not apply in relation to an *expired run-off claim*, in respect of which the provisions of Rule ~~86~~.5 shall apply.

Rule ~~108~~: Manner of indemnity

~~10-8.1~~ Such indemnity shall be provided, according to the decision of ~~Solicitors Indemnity Fund Limited~~the SRA as set out in Rule ~~108~~.2, in any one or any combination of the following ways:

~~1-a)~~ by payment, in or towards satisfaction of the claim and/or claimant's costs and expenses, to or to the order of the claimant making the claim;

~~2-b)~~ by payment, in respect of the claim and/or claimant's costs and expenses and/or costs and expenses incurred in respect of the defence or settlement or compromise of the claim, to or to the order of the *person* against whom the claim is made;

~~3-c)~~ by payment, in or towards discharge of costs and expenses incurred in respect of the defence or settlement or compromise of the claim, to or to the order of the legal advisers, adjusters or other persons by whom or in respect of whose services such costs and expenses were incurred;

~~4-d)~~ by payment to any firm or *person* in relation to an *expired run-off claim* who was an *insured* under the relevant *preceding qualifying insurance*.

~~11-8.2~~ ~~Solicitors Indemnity Fund Limited~~The SRA shall in any particular case, and notwithstanding the insolvency or bankruptcy of any *person* for whom indemnity is provided, have the sole and absolute right to decide in which way or combination of ways indemnity is provided.

Rule ~~119~~: Source of indemnity

~~9.1~~—Any such indemnity shall be provided and any claim thereto shall lie and be made exclusively out of and against the *fund*.

~~9.1~~

~~9.2~~—~~Solicitors Indemnity Fund Limited~~The SRA shall have no obligation to provide indemnity save to the extent that the same can be provided out of the *fund*.

~~9.2~~

~~9.3~~—In no circumstances shall any claim to indemnity lie or be made against the SRA or the *Society* or the *Council* or the Legal Services Board.

~~9.3~~

~~9.4~~—Save as provided in Rule ~~2116~~, the *fund* shall be available exclusively for the purpose specified in Rule ~~42~~.2.

~~9.4~~

~~44.9.5~~ In no circumstances shall the *fund* or any part thereof be available or be treated by any *person* as available (whether by virtue of any claim, attachment, execution or proceeding or otherwise howsoever) for or in connection with any other purpose.

Rule ~~42~~10: Maximum liability of the fund

~~10.1~~ The liability of the *fund* as stated in Rule ~~86~~.1(c) shall in no event exceed in respect of each such claim the indemnity limit for the *relevant indemnity period*.

~~12.~~

~~10.2~~ All claims arising from the same act or omission (whether or not made or intimated or arising out of circumstances notified during the same *indemnity period* and whether or not involving the same or any number of different *practices* or *previous practices* and/or *members* of such *practices* or *previous practices*) shall be regarded as one claim.

~~13.~~

~~10.3~~ If a payment exceeding the indemnity limit is made to dispose of any such claim (or, in circumstances within Rule ~~42~~10.2, claims) for loss (including claimants' costs) such as stated in Rule ~~86~~.1(c), then any liability of the *fund* for costs and expenses under Rule ~~86~~.1(d) shall be limited to such proportion of such costs and expenses as the indemnity limit bears to the amount of the payment so made.

~~14.~~

~~45-10.4~~ The provisions of this Rule ~~42-10~~ shall not apply in relation to an *expired run-off claim*, in respect of which the provisions of Rule ~~86~~.5 shall apply.

Rule ~~43~~11: Indemnity limit

~~43-11.1~~ Save in relation to an *expired run-off claim*, in respect of which the provisions of Rule ~~86~~.5 shall apply, the indemnity limit shall be £1,000,000 each and every claim (including claimants' costs).

Rule ~~44~~12: Conditions

~~44-12.1~~ The *previous practice* and each *member* thereof shall procure that notice to ~~Solicitors Indemnity Fund Limited~~ the SRA shall be given in writing as soon as practicable of:

~~1.~~ any claim(s) the subject of Rule ~~8-6~~ made or intimated during the *relevant indemnity period* against it, him or her of any claim for or likely to be for more than £500; or

~~a)~~

~~2-b)~~ the receipt by it, him or her of notice of any intention to make any such claim(s).

12.2 The *previous practice* and any *member* thereof may also give notice in writing to ~~Solicitors Indemnity Fund Limited~~the SRA of any circumstances of which it, he or she shall become aware which may (whether during or after the *relevant indemnity period*) give rise to any such claim(s).

~~15.~~—

12.3 Any notice given under Rule 4412.2, will be effective only if, at the date when such notice was given, the circumstances known to and notified by the *previous practice* and/or *member* thereof, represent sufficient ground for a genuine and reasonable supposition on the part of the *previous practice* or *member* that those circumstances may give rise to a claim the subject of indemnity under Rule 86.

~~16.~~

12.4 If notice is given to ~~Solicitors Indemnity Fund Limited~~the SRA under Rule 4412.1(b) or 4412.2, any claim subsequently made (whether during or after the *relevant indemnity period*) pursuant to such an intention to claim or arising from circumstances so notified shall be deemed to have been made at the date when such notice was given.

~~17.~~—

~~18.~~12.5 The *previous practice* and each *member* thereof shall not admit liability for, or settle, any claim falling within Rule 8-6 or incur any costs or expenses in connection therewith without the prior consent of ~~Solicitors Indemnity Fund Limited~~the SRA (such consent not to be unreasonably withheld).

~~19.~~12.6 Subject to Rule 4412.7:

1.a) the *previous practice* and each *member* thereof shall procure that ~~Solicitors Indemnity Fund Limited~~the SRA shall be entitled at the *fund's* own expense at any time to take over the conduct in the name of the *previous practice* or *member* of the defence or settlement of any such claim, including any claim in respect of which the *previous practice* or *member* may become entitled to partial indemnity under any insurance with any insurers; and

2.b) ~~Solicitors Indemnity Fund Limited~~The SRA may after taking over the defence or settlement of any such claim conduct the same as it may in its absolute discretion think fit notwithstanding any dispute or difference, whether or not

referred to arbitration under Rule ~~45~~13, which may exist or arise between it and the *previous practice* or *member*.

~~12.7~~ No *previous practice* or *member* thereof shall be required to contest any legal proceedings unless a ~~Queen's-King's~~ Counsel (to be mutually agreed upon or failing agreement to be appointed an authorised decision maker by the ~~President of the Society for the time being~~) shall advise that such proceedings should be contested.

~~20.~~—

~~21-12.8~~ Without prejudice to Rules ~~4412.5, 4412.6 and 4412.7~~, the *previous practice* and each *member* thereof shall keep ~~Solicitors Indemnity Fund Limited~~the SRA informed in writing at all times, whether or not ~~Solicitors Indemnity Fund Limited~~the SRA shall specifically so request, as to the development and handling of any claim, intimated claim, notice or circumstances the subject of or arising subsequent to any notice given to ~~Solicitors Indemnity Fund Limited~~the SRA under Rule ~~4412.1 or 4412.2~~; and shall consult and co-operate with ~~Solicitors Indemnity Fund Limited~~the SRA in relation thereto as ~~Solicitors Indemnity Fund Limited~~the SRA may request, whether or not ~~Solicitors Indemnity Fund Limited~~the SRA shall take over the conduct thereof.

~~22-12.9~~ The *fund* waives any rights of subrogation against any *member* of the *previous practice* save where those rights arise in connection with

~~1.a)~~ a dishonest or criminal act by that *member*; or

~~2.b)~~ the provision of indemnity under the exception to Rule 9.1(e); or

~~3.c)~~ a claim to indemnity in circumstances where that *member* has received a net benefit to which he or she was not entitled as a consequence of another *member* being provided with indemnity out of the *fund*;

and save as otherwise expressly provided in these Rules.

~~12.1~~—If the *previous practice* or any *member* thereof shall prefer any claim to indemnity out of the *fund* knowing the same to be false or fraudulent as regards amount or otherwise, it, he or she shall forfeit any claim to any such indemnity in respect of any claim or future claim against the *previous practice* or *member* to which the false or fraudulent claim to indemnity out of the *fund* may have related or relate.

12.10

23.12.11 Where there has been a failure to pay any instalment of any **contribution** due or any Value Added Tax payable in accordance with the Solicitors' Indemnity Rules 1987 to 2007 or the SRA Indemnity Rules 2011 or 2012 and a claim has been made or intimated against the **previous practice** or any **member** thereof in respect of which such **previous practice** or **member** would otherwise have been entitled to be provided with indemnity, ~~Solicitors Indemnity Fund Limited~~ the SRA shall provide such indemnity by payment (up to the indemnity limit) in or towards satisfying, or enabling the **previous practice** or **member** concerned to satisfy, the claim and claimants' costs and such **previous practice** shall thereafter upon request reimburse to ~~Solicitors Indemnity Fund Limited~~ the SRA on behalf of the **fund** the whole or such part as ~~Solicitors Indemnity Fund Limited~~ the SRA may request of any payment so made and of any costs and expenses incurred in its defence, settlement or compromise, and each **principal** therein shall be jointly and severally responsible to ~~Solicitors Indemnity Fund Limited~~ the SRA for such reimbursement accordingly. Provided always that ~~Solicitors Indemnity Fund Limited~~ the SRA shall require such reimbursement only to the extent of (a) any increase which in its opinion may have occurred in the total payable out of the **fund** (including costs and expenses) as a result of such failure, together with (b) such amount as may be necessary to satisfy any unpaid **contribution** and Value Added Tax and interest thereon at the rate of 4% above Barclays Bank base rate with quarterly rests or at such other rate as ~~the~~ prescribed by the Society ~~SRA may~~ from time to time ~~publish in the Law Society's Gazette~~.

24.12.12 Where non-compliance with any provision of these Rules by any **previous practice** or any **member** thereof claiming to be entitled to indemnity out of the **fund** has resulted in prejudice to the handling or settlement of any claim in respect of which such **previous practice** or **member** is entitled to indemnity hereunder, such **previous practice** or **member** shall reimburse to ~~Solicitors Indemnity Fund Limited~~ the SRA on behalf of the **fund** the difference between the sum payable out of the **fund** in respect of that claim and the sum which would have been payable in the absence of such prejudice. Provided always that it shall be a condition precedent of the right of the **fund** to such reimbursement that it shall first have provided full indemnity for such **previous practice** or **member** by payment (up to the indemnity limit) in or towards satisfying, or enabling such **previous practice** or **member** to satisfy, the claim and claimants' costs in accordance with the terms hereof.

25.12.13 In respect of any loss arising from any claim or claims as described by Rule ~~86~~.1(c) arising out of any dishonest or fraudulent act or omission of any **member** of the **previous practice**, the **fund** shall nonetheless be available to afford indemnity in accordance with these Rules to the **previous practice** and any **member** thereof, other than and excluding in each case the particular **member** concerned in such

dishonesty or fraud. Provided always that at the request of ~~Solicitors Indemnity Fund Limited~~the SRA, the *previous practice* or *member* being indemnified shall:

~~1.a)~~ 1.a) take or procure to be taken at the *fund's* expense all reasonable steps to obtain reimbursement for the benefit of the *fund* from or from the personal representatives of any such *member* concerned in such dishonesty or fraud, and

~~2.b)~~ 2.b) procure that any reimbursement so obtained together with any monies which but for such fraud or dishonesty would be due to such *member* concerned in such dishonesty or fraud shall be paid to the *fund* up to but not exceeding the amounts paid by the *fund* in respect of such claim together with any expenditure reasonably incurred by the *fund* in obtaining such reimbursement.

~~26.12.14~~ 26.12.14 In the event of indemnity being afforded under the exception to Rule ~~97.1(e)~~, the *previous practice* or *member* being indemnified shall take or procure to be taken at the *fund's* expense all reasonable steps to obtain reimbursement for the benefit of the *fund* from any *person* to whom any benefit arising from the giving of any undertaking accrues in the circumstances set out in Rule ~~97.1(e)~~. Provided always that such reimbursement shall not exceed:

~~1.a)~~ 1.a) the amount paid by the *fund* by way of indemnity together with any expenditure reasonably incurred by the *fund* in obtaining such reimbursement, or

~~2.b)~~ 2.b) the amount of any benefit accruing to such *person*,

whichever is the lesser.

~~27.12.15~~ 27.12.15 In respect of any claim to indemnity, ~~Solicitors Indemnity Fund Limited~~the SRA may appoint *panel solicitors* to act on its behalf and on behalf of the *previous practice* or any *member* thereof, and *panel solicitors* shall:

~~1.12.16~~ 1.12.16 act at the sole direction of the *fund* for any purpose falling within the scope of these Rules, including acting on the Court record for the *previous practice* or any *member* thereof, and

~~2.12.17~~ 2.12.17 disclose to ~~Solicitors Indemnity Fund Limited~~The SRA as required any statement or information given to or which becomes known to *panel solicitors* in the

course of so acting, and such disclosure shall be treated as having been made directly to ~~Solicitors Indemnity Fund Limited~~The SRA by the *previous practice* or *member*.

28.12.18 The provisions of this Rule 14.12 shall not apply in relation to an *expired run-off claim*, in respect of which the provisions of Rule 86.5 shall apply.

Rule 1513: Arbitration

13.1 If a dispute arises between:

- a) a *person* who seeks indemnity from the *fund* in accordance with these Rules,
and
- b) the *SRA*

concerning any claim or the quantum of any claim that is the subject of the indemnity being sought from the *fund* by the *person*, the *person* and the *SRA* shall endeavour to resolve the dispute amicably. If, however, the dispute remains unresolved within [thirty (30) days] of that dispute first arising, the dispute shall be referred to a sole arbitrator for determination, whose decision shall be final and binding on the *person* and the *SRA*. The *person* and the *SRA* shall endeavour to agree to a suitable arbitrator. In the event the *person* and the *SRA* cannot agree a choice of arbitrator, then an *authorised decision maker* shall appoint an arbitrator to make a final and determination on the dispute.

~~15. Any dispute or difference concerning any claim or the quantum of any claim to be provided with indemnity in accordance with these Rules shall be referred to the sole arbitrament, which shall be final and binding, of a *person* to be appointed on the application of either party in default of agreement by the President of the *Society* for the time being. Any such arbitration shall take place and be conducted between, on the one hand, the *person* for whom indemnity is provided, the party to the dispute or difference and, on the other hand, Solicitors Indemnity Fund Limited for and in respect of the *fund*.~~

Part 3: Contributions

Rule 1614: Power to require contributions

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~~The *Society* shall have power to require *principals* to make *contributions* of such amount and on such basis as the *Society* may from time to time determine. Value Added Tax, to the extent chargeable on any relevant supply which takes or may be treated as taking place under or by virtue of these Rules, will be charged and payable in addition to and at the same time as any *contributions* payable hereunder.~~

14.1—*Solicitors, RELs, RFLs, recognised bodies* and *licensed bodies* must make contributions to the *Fund* in such amounts and at such times as may be *prescribed*.

~~Solicitors Indemnity Fund Limited may at any time give to any *practice* written notice correcting any inaccuracy in the calculation of any *contribution* under these Rules. Any reimbursement or any payment of *contribution* hereby required shall be made forthwith upon, respectively, issue or receipt of such a notice, together with any Value Added Tax applicable and (in the case of any amount payable to Solicitors Indemnity Fund Limited upon correction of an inaccuracy in calculation) interest at a rate of 4% above Barclays Bank base rate with quarterly rests or at such other rate as the *Society* may from time to time determine and publish in the Law Society's Gazette.~~

14.1

~~14.2~~ The SRA may at any time, to the extent that it is reasonably practicable for it to do so, recalculate any claims adjustment applicable to any *practice* under the Solicitors' Indemnity Rules ~~2006-2012~~ (or any earlier corresponding Rules) as a result of the receipt by ~~Solicitors Indemnity Fund Limited~~ the SRA of any sum from any third party relating to any indemnity provided to that *practice* out of the *fund* under these Rules or any earlier corresponding Rules, after deduction of the reasonable costs and expenses incurred by ~~Solicitors Indemnity Fund Limited~~ the SRA.

14.2

~~14.3~~ The SRA shall not be entitled, at any time after 30 September 2008, to require any *practice* to make any *contribution* under the Solicitors' Indemnity Rules 2006 (or any earlier corresponding Rules) which would otherwise be payable by reason of an inaccuracy in calculation, unless that inaccuracy is attributable to a failure to provide information or to a material inaccuracy in information provided by or on behalf of that *practice* under Part III of the Solicitors' Indemnity Rules 2006 (or any earlier corresponding Rules).

14.3

~~14.4~~ The SRA's decision shall be final and binding on all affected on any question arising as to:

1.a) any obligation to make a *contribution*; or

2.b) any sum due to any *person* out of the *fund*;

under this Rule ~~14~~ 14.

Part 4: Management and administration of the fund

Rule ~~17~~ 15: Powers of the ~~Society~~ SRA

~~17.15.1~~ ~~Solicitors Indemnity Fund Limited~~ The SRA shall hold, and have full power to manage and administer, the *fund*, subject only to:

~~1.a)~~ such directions, conditions and/or requirements as the Society SRA may from time to time issue to or impose upon it expressly pursuant to this provision, and/or

~~2.b)~~ such further detailed arrangements as the Society SRA may from time to time agree with it.

~~18.15.2~~ Without limiting the generality of Rule ~~17.15.1~~, the management and administration of the *fund* shall include power to:

~~1.a)~~ collect and recover *contributions* due to the *fund* in accordance with these Rules;

~~2.b)~~ deposit or invest in such manner as ~~Solicitors Indemnity Fund Limited~~ the SRA may determine all or any part of the *fund*, including any interest, dividends, profits, gains or other assets accruing to or acquired by the *fund*;

~~3.c)~~ arrange such insurances as ~~Solicitors Indemnity Fund Limited~~ the SRA may determine in respect of the *fund* and/or its assets and/or the *fund's* liability under these Rules to afford indemnity in respect of claims and costs and expenses; and to handle all aspects of any such insurances, including the payment of premiums thereon out of the *fund* and the making and recovery of claims thereunder;

~~4.d)~~ receive, investigate and handle claims to indemnity and other notices prescribed to be given to ~~Solicitors Indemnity Fund Limited~~ the SRA by these Rules, including settlement and compromise and making of ex gratia payments out of the *fund* in respect thereof and conduct of any dispute or difference referred to arbitration under Rule ~~1345~~;

~~5.e)~~ receive, investigate and handle any claim made or intimated against any *person* in respect of which they are or may be entitled to be provided with indemnity out of the *fund* (whether or not a claim to indemnity hereunder has been made) and/or in respect of which the conduct is by these Rules assigned to ~~Solicitors Indemnity Fund Limited~~ the SRA, including settlement and compromise and making of ex gratia payments and conduct of any proceedings arising in respect of such claim;

~~6.f)~~ claim and recover reimbursement in respect of any sums paid by way of indemnity in any circumstances in which such reimbursement may under these Rules be claimed;

~~7.g)~~ exercise any right of subrogation save where such rights are waived in accordance with these Rules;

- ~~8.h)~~ maintain full and proper records and statistics (~~which subject to Rule 18, shall at all reasonable times be available on request to the **Society** for inspection and copying~~) as to the **fund** and all aspects of its management and administration;
- ~~9.~~ make to and review with the Council of the **Society** annually and at any other time that the **Council** may require, written and (if the **Council** so requires) oral reports as to the **fund** and, subject to Rule 18, its management and administration, including inter alia recommendations as to the **contributions** which are or may be required in respect of past, present and/or future **indemnity periods** and the circumstances in which, extent to which and conditions and exclusions subject to which indemnity should in any future **indemnity period** be afforded out of the **fund**;
- ~~10.i)~~ engage the assistance of any third party in respect of all or any aspect(s) of the management and administration of the **fund**;
- ~~11.j)~~ delegate to any third party all or any aspect(s) of the management and administration of the **fund**;
- ~~12.k)~~ institute and/or conduct such proceedings as it may consider necessary or appropriate for the due management and administration of the **fund** in its own name or (subject to prior consent of the **SocietySRA**) in the name of the **SocietySRA**;
- ~~13.l)~~ disburse and/or reimburse out of the **fund** all administrative and legal and other costs, overheads, fees and other expenses and liabilities incurred in respect of the **fund**, including without prejudice to the generality of the foregoing any such costs, overheads, fees and other expenses and liabilities incurred by the **SocietySRA** in respect of the establishment or maintenance, or the management, administration or protection, of the **fund**;
- ~~14.m)~~ disburse and/or reimburse out of the **fund** payments for any educational, charitable or other useful purpose which in its opinion is likely directly or indirectly to lead to the reduction or prevention of claims on the **fund** or otherwise to further the purpose or interests of the **fund**;
- ~~15.n)~~ disburse and/or reimburse out of the **fund** the costs, fees and expenses of the handling after 31 August 1987 of claims and potential claims against assureds notified under the **master policies** and **master policy** certificates;
- ~~16.o)~~ effect out of the **fund** or by arrangement with third parties the funding pending reimbursement by master policy insurers of such claims and potential claims and to bear out of the **fund** the costs, fees and expenses incurred thereby.

Rule 18: Use of information

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~~18.~~ Without prejudice to the **Society's** power under Rule 4.5 to designate itself as the **person** responsible for holding, managing and administering

~~the fund, information and documents obtained by Solicitors Indemnity Fund Limited about any particular practice or member thereof in the course of investigating and handling any claim made or intimated or any circumstances notified as mentioned in Rule 21, may be utilised by Solicitors Indemnity Fund Limited for the purpose of preparation of general records, statistics, reports and recommendations (not identifying the particular practice or member) for or to the Society.~~

- ~~19. Solicitors Indemnity Fund Limited may bring to the attention of the Society at any time and without notice to the practice or person concerned:~~
 - ~~1. any failure to provide information in respect of any practice as required by Part III of the Solicitors' Indemnity Rules 2006 (or any earlier corresponding provisions) or any material omission or inaccuracy in such information;~~
 - ~~2. any failure to pay any contribution or other sum due when required to do so under these Rules (or any earlier corresponding Rules) or to reimburse any amount due by way of a Deductible, Due Proportion or Penalty Deductible, or (in the case of an expired run-off claim) which falls within a policy excess;~~
 - ~~3. a material inaccuracy in any proposal form submitted by or on behalf of a practice;~~
 - ~~4. (in the case of an expired run-off claim) any matter or circumstances that would permit the expired run-off cover to be avoided or but for the provisions of clause 4.1 of the MTC (and/or the corresponding of the expired run-off cover);~~
 - ~~5. any dishonesty or fraud suspected on the part of any person in relation to any practice or member thereof, or any other person subject to these Rules or any earlier corresponding Rules, or any insured; and~~
 - ~~6. any claim of inadequate professional services of which it becomes aware made against any such practice, member or person or any insured.~~
- ~~20. Such information and documents shall not otherwise be disclosed or available to the Society without the prior consent of the practice (or any subsequent or successor practice thereto) or member concerned, except where Solicitors Indemnity Fund Limited or the Society have reason to suspect dishonesty on the part of any practice, previous practice, subsequent or successor practice or any member or former member thereof, or insured.~~
- ~~21. Any information and documents held by Solicitors Indemnity Fund Limited about a particular practice or member thereof may be disclosed or available to the Society without the prior consent of the practice (or any subsequent or successor practice thereto) or member concerned where the Society has been requested by any practice, subsequent or successor practice or member thereof to grant, amend or revoke any waiver under Rule 19 or to make a determination under Rule 20.~~
- ~~22. Solicitors Indemnity Fund Limited may pass to the Society the name of any practice (including any subsequent, successor or previous practice) or any member or former member thereof in circumstances where Solicitors Indemnity Fund Limited has cause for concern having regard to:~~
 - ~~1. the nature, incidence or value of paid and/or reserved claims in respect of any such practice or member; or~~
 - ~~2. the existence of circumstances which are considered by the fund to create an increased risk of claims occurring in respect of that practice or member; or~~

- ~~3. failure on the part of a *practice* or *member* thereof, or any *insured*, to comply with their obligations under these Rules (or any earlier corresponding Rules); and for the purposes of paragraphs (b) and (c) above Solicitors Indemnity Fund Limited shall have the power to determine criteria which would indicate the likelihood of an increased risk of claims occurring and to specify those obligations in respect of which a failure to comply could form the basis for Solicitors Indemnity Fund Limited to pass on information.~~
- ~~23. In the exercise of the powers set out in Rule 18.5 Solicitors Indemnity Fund Limited may give details to the *Society* of the reasons for the decision to pass the name of the *practice* or *member* thereof to the *Society* including, in appropriate cases, releasing documentary information provided that no such documentary information will be released which could breach the general duty of confidentiality owed by a *practice* or *member* thereof to a client or former client.~~
- ~~24. In respect of any information that may be brought to the attention of the *Society* in accordance with Rules 18.1 to 18.6:~~
- ~~1. the *Society* shall keep all such information confidential;~~
 - ~~2. the *Society* shall not (except where and to the extent required by law or in the proper performance by the *Society* of its regulatory functions) at any time reveal any such information to any *person* other than a duly authorised employee of the *Society* or any of its subsidiaries; and~~
 - ~~3. any privilege attaching to such information shall not be regarded as having been waived whether by virtue of such information having been provided to the *Society* or otherwise;~~
- ~~but the provisions of this Rule 18.7 shall not prevent the *Society* from making use of any such information for the purpose of bringing disciplinary proceedings against any *person*.~~

Rule 19: Waivers

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- ~~19. The *Society* shall have power in any case or class of cases to waive in writing prospectively or retrospectively any obligation on any *solicitor*, *recognised body*, *licensed body* or *foreign lawyer* under these Rules and to amend or revoke any such waiver.~~
- ~~20. Any application by any *person* for:~~
- ~~1. a waiver of any obligation under these Rules or under the Solicitors' Indemnity Rules 2001 or any Rules subsequent thereto; or~~
 - ~~2. a correction or recalculation of any sum paid or payable to the *fund* under these Rules, or under the Solicitors' Indemnity Rules 2001 or any Rules subsequent thereto;~~
- ~~must be made in writing to the *Society* no later than 3 calendar months from the date on which the relevant obligation has effect in relation to that *person*, or the date on which that *person* is notified thereof by Solicitors Indemnity Fund Limited, whichever is the earlier.~~
- ~~21. No application by any *person* for:~~

- ~~1. a waiver of any obligation under the Solicitors' Indemnity Rules 2000 or any Rules made prior thereto; or~~
- ~~2. a correction or recalculation of any sum paid or payable to the *fund* under the Solicitors' Indemnity Rules 2000 or any Rules made prior thereto;~~

~~may be considered unless it was made in writing to the Society as soon as practicable, and in any event no later than 28 February 2002.~~

~~22. Any appeal against any decision made by the Society in respect of any application for a waiver of any obligation under these Rules or any previous Rules, or in respect of any correction or recalculation of any sum paid or payable to the *fund* under these Rules or any previous Rules, must be made in writing to the Society within 21 days from the date of the decision.~~

~~23. An application for a waiver as contemplated by this Rule 19 or the making of an appeal against any decision made by the Society in respect of such application shall not relieve any person from any obligation under these Rules or any previous Rules pending the determination of any such application or appeal.~~

~~Rule 20: Decisions by the Society~~

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~~20. The Society shall have power to treat any person as complying with any provision of these Rules for the purposes of the SA notwithstanding that the person has failed to comply with any provision of these Rules where such non-compliance is regarded by the Society in a particular case or cases as being insignificant.~~

Part 5: Maintenance and termination of the fund

Rule ~~21~~16: Maintenance and termination of the fund

~~21. The *fund* shall continue to be held, managed and administered by Solicitors Indemnity Fund Limited~~the SRA for so long as and to the extent that the ~~Society~~SRA, in the light of the reports made to it by Solicitors Indemnity Fund Limited, may consider necessary or appropriate for the purpose of providing indemnity in respect of any claim(s) made or intimated during any *indemnity period* and/or during or subsequent to any *indemnity period* arising out of circumstances notified during any *indemnity period* as circumstances which might give rise to such claim(s).

16.1

~~16.1~~16.2 As and when the ~~Society~~SRA no longer considers it necessary or appropriate that all or any part of the *fund* should be so held, managed and administered, the ~~Society~~SRA ~~may require all or any part of~~will use the *fund* ~~required to be released to the Society which shall apply the same if and to the extent the Society considers it reasonably practicable~~ for the purpose of providing indemnity in any other way permitted by section 37(2) of the SA and otherwise for the overall benefit of ~~the~~the *solicitors'* profession in such manner as it may decide~~.~~