

## **Summary of the principal provisions of the**

### **4<sup>th</sup> Draft of the QIS Rules**

(Please note that the following is a summary of the principal provisions and the effect of those provisions of the 4<sup>th</sup> Draft of the QIS Rules and should only be used in conjunction with the 4<sup>th</sup> Draft as they may be subject to further change and modification. The draft Rules contain the full terms including the definitions used in this Summary and should be referred to for those definitions and wherever there is doubt as to the effect of the Rules.)

1. The intention of the Rules is that each Firm and each Principal of a Firm has a continuing obligation to ensure that it has Qualifying Insurance in place at all times with effect from the date set by the Council (presently 1<sup>st</sup> October 2005) from a list of Qualifying Insurers available from the Law Society.
2. The insurance may take two forms:
  - an insurance contract with one or more Qualifying Insurers on terms negotiated between the Firm and that insurer but which include the Minimum Terms and Conditions negotiated by the Law Society; or
  - an insurance contract with all the Qualifying Insurers by way of an Assigned Risk Pool Policy on terms negotiated between the Law Society and those insurers which also include the Minimum Terms and Conditions.
3. Under the Minimum Terms and Conditions, the insurance must include Run-off Cover for a Firm's liabilities for a minimum number of years (anticipated to be 6) after it has ceased Practice. If such cover does not exist for any reason, then the Firm must obtain either Qualifying Insurance re the Run-off Cover whether in the market or by way of an Assigned Risk Pool Run-off Policy.
4. Each Firm carrying on a Practice is required to take out its own Policy of Qualifying Insurance. It is not possible for more than one Firm to be covered under a single Policy of Qualifying Insurance.
5. If a Firm cannot obtain a Policy from a Qualifying Insurer it should apply to join the Assigned Risks Pool in accordance with the Rules, if it is an Eligible Firm. If it is not an Eligible Firm, it must cease Practice.

6. Under the Minimum Terms and Conditions, a Policy, once taken out, cannot be cancelled before the end of an Indemnity Period unless:
  - the Policy is an Assigned Risk Pool Policy and the Firm has replaced it with a Policy of Qualifying Insurance outside the Assigned Risk Pool; or
  - the Firm merges with another Firm and a Policy of Qualifying Insurance is in place for the merged Firm; or
  - the Qualifying Insurer which issues the Policy becomes the subject of an Insolvency Event, and the Firm has replaced the Policy with another Policy of Qualifying Insurance.
7. The arrangements for professional indemnity insurance put in place by the Society do not seek to protect Firms against the insolvency of a Qualifying Insurer. If an Insolvency Event occurs in respect of an Insurer, that Insurer will cease to be a Qualifying Insurer for the purposes of these Rules. This is because, in such circumstances, the Insurer may not be in a position to pay claims in full. Any Firm which has Qualifying Insurance with a Qualifying Insurer which is the subject of an Insolvency Event must obtain replacement cover as soon as possible, and in any event within 4 weeks of the Insolvency Event occurring by either obtaining Qualifying Insurance from another Qualifying Insurer or, if an Eligible Firm, by applying to enter the Assigned Risk Pool.
8. A Firm which for any reason does not have Qualifying Insurance in place should apply to the Assigned Risk Pool before the start of the relevant Indemnity Period if it is an Eligible Firm. Premiums payable to the Assigned Risk Pool are high.
9. Application for admission to the Assigned Risk Pool must be made to the Assigned Risk Pool Manager on the proposal form which is from time to time prescribed by the Council.
10. It is the Firm's responsibility to ensure that its application has been made and to provide to the Assigned Risk Pool Manager all such information as the Assigned Risk Pool Manager may reasonably require in order to process the application. Where a Firm does not receive acknowledgment of its application within 30 days it is obliged to seek confirmation that it has been received by the Assigned Risk Pool Manager.
11. An Assigned Risk Pool Policy can be cancelled if it is replaced by a Policy with a Qualifying Insurer.
12. Firms should also be aware that there are other consequences of being insured through the Assigned Risk Pool, including the need to comply with any Special Measures and the limitations on eligibility set out in the definition of "Eligible Firm".

13. The Council may determine the range of Special Measures which may be applied to Firms within the Assigned Risk Pool. Firms may be subject to investigation and monitoring in order to determine what Special Measures are appropriate for that Firm, and to ensure that those measures are fully implemented. The costs of investigation and monitoring, the costs and expenses incurred through any failure or delay by the Firm to comply and the implementation of the Special Measures are intended to be payable by the Firm concerned, in addition to paying the Assigned Risk Pool Premium. The amount of such costs and expenses will be determined by the Society. A Firm may request a breakdown of the costs as determined by the Society and, where such a request is made, the Society must provide a breakdown subject to the costs of providing that breakdown being paid by the Firm. In the event of a dispute as to the costs determined by the Society, the matter shall be referred to the Standing Committee on Policy and Resources for determination. The Standing Committee's decision is intended to be binding and final.
14. Except in an exceptional case, a Firm may only remain in the Assigned Risk Pool so long as it is an Eligible Firm or if it becomes a Run-off Firm. Firms, other than Run-off Firms, cannot remain insured through the Assigned Risk Pool for more than 24 months in any 5 year period, and should therefore seek insurance in the open market with a Qualifying Insurer as soon as practicable. A Firm which is no longer an Eligible Firm (because, for example, it has already been insured through the Assigned Risk Pool for 24 months in the last 5 years) must either obtain Qualifying Insurance on the open market or cease carrying on Practice.
15. The Assigned Risk Pool Manager, on behalf of the Society, shall make arrangements with Qualifying Insurers to cover any Claim against a Firm in Default and a Run-off Firm, including any Defence Costs relating to a Claim, in like manner and to the like extent as the Claim and the Defence Costs would have been covered had that Firm during the Period of Default been in the Assigned Risk Pool and been issued with an Assigned Risk Pool Policy and/or, as the case may require, an Assigned Risk Pool Run-off Policy.
16. If a Firm fails to make an application to the Assigned Risk Pool at the start of an Indemnity Period, and does not have any other Policy of Qualifying Insurance in force for that Indemnity Period, it may still be eligible to be issued with an Assigned Risk Pool Policy provided that it meets all of the requirements of Rule 5.3. However, each Principal of the Firm will have committed a disciplinary offence, and the Firm will be required to pay the Assigned Risk Pool Default Premium under any Assigned Risk Pool Policy issued.

17. If a Firm fails to make an application to the Assigned Risk Pool, but carries on Practice without having obtained Qualifying Insurance, each Principal in that Firm will have committed a disciplinary offence. The same is true if a Run-off Firm fails to apply to be issued with an Assigned Risk Pool Run-off Policy. In each case, that Firm, and each Principal in that Firm, will also be liable under these Rules to:-
- pay an amount to the Society equivalent to the Assigned Risk Pool default premium calculated for the whole of the Period of Default; and
  - reimburse to the Society in full the amount of any Claim (together with Defence Costs) made against the Firm and relating to the period when it did not have Qualifying Insurance in force.
18. The Assigned Risk Pool is intended to be managed by the Assigned Risk Pool Manager who under the Rules is given authorisation to release information to the Society relating to certain matters including suspected professional misconduct and fraud.
19. Provision is made for the Society to waive any Rule but it is expected that waiver will only be granted in exceptional circumstances. The Rules set out the procedure and time limits in which an application for waiver can be made. The Council may attach such conditions as it thinks fit to any waiver, and may revoke any waiver that it has previously granted without notice. Unless and until any waiver is granted, the person concerned must comply with the requirements of these Rules in full.
20. Appendix 1 to the Rules sets out the Minimum Terms which any Qualifying Insurance Policy must contain.
21. Appendix 2 sets out the method for calculating the Assigned Risk Pool Premium, Assigned Risk Default Premium and Assigned Risk Run-Off Premium.

**Dated 12<sup>th</sup> May 2005**