



## Summary of Decision

The following table is a high level summary of the decision of the Legal Services Board. It is not a formal part of the decision notice.

<b>Purpose of notice</b>
To grant an application from CILEx Regulation, approving alterations to its regulatory arrangements in respect of its Professional Indemnity Insurance (PII) Minimum Wording.
<b>Alterations that are being approved by this decision</b>
Revisions to CILEx Regulation's PII Minimum Wording concerning firms that switch approved regulator. The overall purpose of the changes is to remove a barrier to switching with regards to run-off cover, whilst maintaining consistent standards of insurance provision for firms in order to protect consumers. The main changes are outlined in the notice itself.

## Decision notice

**Issued by the Legal Services Board (LSB) under Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act)**

**The Chartered Institute of Legal Executives (CILEx) Regulation rule change application for approval of alterations to the regulatory arrangements relating to its Professional Indemnity Insurance (PII) Minimum Wording.**

The LSB has granted an application from CILEx Regulation to make alterations to its regulatory arrangements relating to its Professional Indemnity Insurance (PII) Minimum Wording.

The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications for approval by approved regulators who make alterations to their regulatory arrangements. The Chartered Institute of Legal Executives (CILEx) is an approved regulator and CILEx Regulation is the regulatory arm to which CILEx has delegated its regulatory functions.

This decision notice sets out the decision taken, including a brief description of the changes. The notes at the end of the notice explain the statutory basis for the decision. The notice also sets out the chronology for the LSB's handling of this application.

## Proposed changes

1. The amendments proposed (shown as track changes in **Annex A** to this notice) are to CILEx Regulation's PII Minimum Wording. The PII Minimum Wording sets out minimum terms of insurance that CILEx Regulation Qualifying Insurers<sup>1</sup> are required to provide to firms<sup>2</sup> regulated by CILEx Regulation. The three main outcomes from the proposed changes will be to:
  - Allow firms to switch regulator to or from CILEx Regulation without the need for additional run-off cover
  - Allow firms to maintain any existing PII cover they have when switching to CILEx Regulation as long as the cover complies with CILEx Regulation's minimum terms
  - Ensure that the run-off cover required for CILEx Regulation firms no longer practising, also covers any period of practice under a former approved regulator.

---

<sup>1</sup> In order to provide insurance to entities regulated by CILEx Regulation an insurer must agree to become a Qualifying Insurer. Insurers do this by committing themselves to the terms of the Qualifying Insurers Agreement set out by CILEx Regulation.

<sup>2</sup> 'Firms' means Authorised Entities, sole practitioners, partnerships or bodies(as constituted from time to time) authorised by CILEx Regulation

2. The application makes clear that the proposed changes will only apply to those firms regulated by an approved regulator with which CILEx Regulation has a bilateral protocol agreement. The bilateral protocol agreements require approved regulator signatories to share information so that the approved regulator receiving the firm can assess the adequacy of the firm's indemnity arrangements before agreeing to authorise that firm.
3. Additional minor technical drafting amendments are also proposed, such as correction of typographical errors and tidying of definitions.

### **Purpose of changes**

4. CILEx Regulation said it has made this application to the LSB in order to bring its rules on PII Minimum Wording in line with other approved regulators with whom it signs bilateral protocol agreements. This is so that its standards of PII can be maintained at a consistent level with those approved regulators. CILEx Regulation says these changes will ensure consistency in the protection of consumers, while allowing firms to switch regulator without the automatic requirement for the firm to hold run-off cover. In addition, providing that the Minimum Wording is met, CILEx Regulation authorised firms will have the freedom to choose or negotiate their own cover with Qualifying Insurers. CILEx Regulation considers that this will also allow firms the flexibility to obtain higher levels of protection, if they so wish.

### **Issues raised in the assessment**

5. The alterations approved by the LSB in September 2017<sup>3</sup> in respect of the Solicitor's Regulation Authority's (SRA's) Indemnity Insurance Rules are pertinent to this application. The SRA changes introduced a new rule to the SRA's regulatory arrangements which stated that run-off cover will not apply where the insured firm becomes regulated by another approved regulator that has signed a bilateral protocol agreement with the SRA. The policy purpose of that change was to remove a barrier to firms wishing to switch to another approved regulator. However, it also raised issues around the protection of clients of firms that switch. With this in mind, a key aspect of our assessment of this CILEx Regulation application is the extent to which CILEx Regulation will ensure that its proposals will afford clients of firms that switch regulators an adequate level of protection.
6. As we said in our decision notice for the SRA application, the LSB generally welcomes changes which remove barriers to firms wishing to switch approved regulators, provided that there are appropriate and proportionate safeguards in place for consumers. For example, it is important to ensure that consumers who would no longer be protected by run-off cover would instead be adequately protected by the firms' new PII arrangements under the receiving regulator. The LSB therefore sought

---

<sup>3</sup>[http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/2017/SRA\\_PII\\_Switching\\_Regulators\\_Decision\\_Notice\\_FINAL.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2017/SRA_PII_Switching_Regulators_Decision_Notice_FINAL.pdf)

additional information from CILEx Regulation to ascertain how, in implementation of the changes, it will manage any potential risks to consumers from firms switching to it. In response, CILEx Regulation provided the following assurances:

- CILEx Regulation said it will ensure that the potential risks from firms without run-off cover will be identified and managed through its authorisation and supervision systems. For example, its risk register will be extended to assess the risk presented by incoming firms, such as whether they have a history of complaints and PII claims. The assessment will include a requirement for the firm to submit a copy of its last PII proposal.
  - CILEx Regulation also said that its Strategic Risk Committee will, as part of its annual review of authorisations, consider whether clients have been adequately considered when a firm has switched to CILEx Regulation.
  - CILEx Regulation is prepared to undertake a review after five years, of how the arrangements have worked in order to assess the impact on consumer protection over that period.
7. The LSB welcomes these plans for CILEx Regulation to ensure that the implementation of the rules is properly monitored, and that it has an authorisation and supervision framework to manage any potential risks to consumers. We also welcome its intentions with regards to assessing the impact of these changes.

## **Decision**

8. The LSB has considered CILEx Regulation's application against the criteria in paragraph 25(3) of Schedule 4 to the Legal Services Act 2007 (the Act) and has decided to grant the application.
9. The Annex to this decision notice contains the regulations approved by the LSB.

## **Chronology**

- The LSB confirmed receipt of an application from CILEx Regulation on 25 May 2018
- Submission of additional material by CILEx Regulation on 15 June 2018
- This decision notice is effective from 20 June 2018
- The decision notice will be published on our website on 20 June 2018

**Caroline Wallace, LSB Strategy Director**  
**Acting under delegated authority granted by the Board of the Legal Services Board**

*Notes:*

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that:
  - (a) granting the application would be prejudicial to the regulatory objectives
  - (b) granting the application would be contrary to any provision made by or by virtue of this Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
  - (c) granting the application would be contrary to the public interest
  - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
  - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
  - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are:
  - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
  - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
  - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules<sup>4</sup> about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

---

<sup>4</sup> Rules for Rule Change Applications – Version 2 (November 2010)





**PROFESSIONAL INDEMNITY  
INSURANCE  
MINIMUM WORDING**

## **Professional Indemnity Insurance (entities authorised by the Chartered Institute of Legal Executives and its regulatory body CILEx Regulation)**

### **1. Coverage**

The Insurer to the extent and in the manner hereinafter provided hereby agrees:

#### **1.1 Civil Liability**

To indemnify the Insured against any Civil Liability to the extent that it arises from Private Legal Practice in connection with the Firm's Practice, a Prior Practice or a 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 Extended Indemnity Period and Cessation Period**

To indemnify the Insured for the Extended Indemnity period and the Cessation Period against any Civil Liability as defined in clause 1.1 above, strictly subject to payment of additional premium as follows:

- a) The premium payable for the Extended Indemnity Period shall be 1/12 of the premium payable for the Period of Insurance under this policy such payment to be made before the expiry of the Extended Indemnity Period;
- b) The premium payable for the Cessation Period shall be 2/12 of the premium payable for the Period of Insurance under this policy such payment to be made within 14 days of the commencement of the Cessation Period

Provided that in the event that the Insured obtains alternative cover during the Extended Indemnity Period or Cessation Period then cover under this clause will be cancelled ab initio and premium returned to the Insured less any payments made by the Insured in respect of the cover under this clause.

#### **1.3 Run-off Cover**

- a) To indemnify the Insured if the Firm's Practice ceases during or on expiry of the Period of Insurance or Extended Indemnity Period or Cessation Period and the Firm has not obtained succeeding insurance in compliance with the Minimum Terms against any Civil Liability as defined in clause 1.1 above (a 'Cessation') during a period ending on the sixth anniversary of the date upon which the Period of Insurance ends. Indemnity under this clause will only be available if there is no Successor Practice

- b) Notwithstanding sub-clause a) above, an Insured which is ceasing during the Period of Insurance and which, but for this provision, would be succeeded to, may elect before its Cessation to be insured under run-off cover provided such election and payment in full of any run-off premium due under this policy is made prior to its Cessation.
- c) Where run-off cover has been activated in accordance with this Policy but the Firm's Practice restarts, the Insurer may cancel such run-off cover on such terms as the Insurer in its sole discretion requires, provided that:
  - i) there is insurance complying with the Minimum Terms in relation to that Firm in force on the date of cancellation; and
  - ii) the Insurer providing such insurance confirms in writing to the Firm and the Insurer (if different) that:
    - aa) it is providing the Firm with insurance that complies with the Minimum Terms for the current indemnity period; and
    - bb) it is doing so on the basis that the Firm's Practice is regarded as being a continuation of the Firm's Practice prior to Cessation and that accordingly it is liable for Claims against the Firm arising from incidents, occurrences, facts, matters, acts and/or omissions that occurred prior to Cessation.
- d) Subject to sub-clause (e) below, for these purposes a Firm's Practice shall (without limitation) be regarded as ceasing if (and with effect from the date upon which) the Firm ceases to be regulated by CILEx Regulation.
- e) A Firm's Practice shall not be regarded as ceasing where the Firm has become a Non-CILEx Firm, provided that CILEx Regulation and the Approved Regulator and/or the Independent Regulatory Body which authorises the Non-CILEx Firm in question have in place an agreed protocol relating to practices switching between Regulators.

#### 1.4 Defence Costs

To 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 CILEx Regulation) 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.

#### 1.5 Minimum Wording

- a) This policy shall be construed and modified so far as is necessary to incorporate the Minimum Wording in force from time to time from the date on which any change in the Minimum Wording comes into effect.
- b) Where clause 1.5 (a) applies:
  - i) unless the Minimum Wording expressly provides to the contrary, any change in them shall not confer any increased cover or benefit on the Insured in relation to:
    - aa) Claims already made or intimated; or

bb) Claims arising from Circumstances already notified to the Insurer at the time the change in the Minimum Wording takes effect.

ii) the Insurer may charge such additional premium as the Insurer in its sole discretion considers would have applied had the change in the Minimum Wording been known at the time the premium for the Policy was agreed.

## **2. Limit of Indemnity**

2.1 The limit of the Insurer's liability under this Policy shall be the sum specified in the Schedule for any One Claim, exclusive of Defence Costs, save that the Limit of Indemnity under this Policy shall not exceed the minimum required limit of indemnity as required by The Chartered Institute of Legal Executives if cover is provided pursuant to clause 1.3 above.

2.2 The Insurer shall indemnify the Insured in respect of all Defence Costs under clause 1.4 provided that, if payment in excess of the amount of indemnity available under this Policy has to be made to dispose of any Claim or Claims against the Insured, the Insurer's liability for such Defence Costs shall be such proportion thereof as the amount of indemnity available under this Policy bears to the amount required to dispose of such Claim or Claims.

2.3 Where this Policy is underwritten jointly with any other insurer:

- a) the Insurer shall be severally liable only for its respective proportion of liability as set out in the Schedule; and
- b) in addition to the proportionate limit of Defence Costs set out in clause 2.2, the Insurer's liability for Defence Costs shall be further limited to the extent or proportion of the Insurer's liability in relation to the Claim.

## **3. Excess**

3.1 The amount of the Excess (including any Excess applicable in the event that run-off is triggered) specified in the Schedule shall be borne by the Insured for any One Claim save that, where cover is provided pursuant to clause 1.3, the Excess shall be nil. The amount of the Excess shall not be applicable to Defence Costs under clause 1.4 of this Policy.

3.2 In the event of non-disclosure by the Insured of any Circumstances existing at the date of inception of the Policy that subsequently lead to a Claim, the Excess payable by the Insured shall be 5% of gross fees for the last financial year (subject to a cap of £10,000) or twice the Excess specified in the Schedule, whichever is the greater, save that for the purpose of calculating any aggregate Excess the amount specified in the Schedule shall apply.

3.3 If the Insured fails to pay to a Claimant any amount which is within the Excess within 30 days of it becoming due for payment, and the Claimant gives notice of the Insured's default to the Insurer, the Insurer shall remedy the default on the Insured's behalf, and the sum specified in the Schedule in respect of the relevant Claim shall be reduced by the amount so paid by the Insurer.

#### **4. Exclusions**

This Policy shall not indemnify the Insured against any Claim or for any Defence Costs:

##### **4.1 Prior cover**

In respect of which the Insured is entitled to be indemnified in whole or in part under a professional indemnity contract for a period earlier than the Period of Insurance, whether by reason of notification of Circumstances under the earlier contract or otherwise.

##### **4.2 Death or bodily injury**

In respect of causing or contributing to death or bodily injury, but this exclusion is not to apply to liability for psychological injury or emotional distress that arises from a breach of duty in the performance of or failure to perform Private Legal Practice.

##### **4.3 Property damage**

In respect of 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 Firm's Practice and not occupied or used in the course of the Firm's Practice), but this exclusion is not to apply to liability for damage, destruction or loss that arises from breach of duty in the performance of or failure to perform Private Legal Practice.

##### **4.4 Partnership disputes**

Arising from any actual or alleged breach of the Firm's partnership or shareholder agreement or arrangements, including an equivalent agreement or arrangement where the Firm is a Limited Liability Partnership or a company without a share capital.

##### **4.5 Employment breaches, discrimination etc.**

Arising from 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 Firm is a Limited Liability Partnership or a company without a share capital, or in relation to any employment or training agreement or arrangement.

#### **4.6 Debts and trading liabilities**

Arising out of or in connection with any:

- a) trading or personal debt of any Insured; or
- b) 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, have that this exclusion 4.6(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
- c) guarantee, indemnity or undertaking by an Insured in connection with the provision of any finance, property, assistance or other benefit or advantage directly or indirectly to that Insured.

#### **4.7 Fines and penalties**

In respect of 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.

#### **4.8 Fraud or dishonesty**

In respect of or arising from dishonesty or a fraudulent act or omission committed or condoned by the Insured, except that:

- a) this exclusion is not to apply to any other Insured who did not commit or condone the dishonesty or fraudulent act or omission; and
- b) no dishonesty or fraudulent 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 a Limited Liability Partnership, all members of that Limited Liability Partnership.

#### **4.9 Directors' or officers' liability**

In respect of or arising from the Insured's capacity as a director or officer of a body corporate except that this exclusion is not to apply to:

- a) any liability of that Insured that arises from a breach of duty in the performance of or a failure to perform legal work; and
- b) any vicarious or joint liability of any other Insured.

#### **4.10 Overseas practice**

In respect of any liability incurred in connection with the provision of professional services by the Firm that is carried on from an office outside England and Wales.

#### **4.11 Other insurance**

If an Insured is entitled to claim, or but for the existence of this Policy would be entitled to claim, against any other policy of insurance, the Insurer shall not be liable to indemnify under this Policy except:

- a) to the extent required by the Minimum Wording; and
- b) in respect of any sum in excess of the amount that would have been payable under the other policy had this Policy not been effected. For the purposes of this clause, 'policy' and 'insurance' shall include cover provided by any mutual or other similar fund.

#### **4.12 War and terrorism and asbestos**

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 this exclusion does not apply to any Civil Liability or related Defence Costs arising from any actual or alleged breach of duty in the performance of or failure to perform Private Legal Practice or a failure to discharge or fulfil any duty incidental to the Firm's Practice or to the conduct of Private Legal Practice.

#### **4.13 New Instructions during the Cessation Period**

In respect of any liability arising out of work new instructions accepted by the Insured during the Cessation Period.

### **5. Special conditions**

#### **5.1 Failure to make a fair presentation or misrepresentation**

Insurers will not:

- a) seek to avoid or repudiate this Policy for any breach of the duty to make a fair presentation of the risk or misrepresentation other than the failure to make a fair presentation of the risk or misrepresentation being fraudulent ; or
- b) seek damages for or seek to reject any claim on the grounds of any breach of the duty to make a fair presentation of the risk or misrepresentation during the course of negotiating this Policy or on the grounds of a breach of any warranty save where such a failure to make a fair presentation or misrepresentation is fraudulent or where such breach of warranty was made with an intent to deceive.

The Insured shall establish to the reasonable satisfaction of the Insurer that any alleged failure to make a fair presentation, misrepresentation or breach of warranty was free of any fraudulent conduct or intent to deceive.

Provided always that the insurer will be able to adjust the premium and the terms and conditions to those which would have applied had the circumstances of the misrepresentation or failure to make a fair presentation been disclosed'.

## 5.2 Cancellation

This Policy may not be cancelled except by the agreement of both the Firm and the Insurer, and in any event only in circumstances where:

- a) the Firm's Practice is merged into a Successor Practice which has the benefit of insurance complying with the Minimum [Wordingx](#), in which case cancellation shall have effect no earlier than the date of such merger; or
- b) replacement insurance complying with the Minimum [xWording](#) 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 Firm is not required to effect a policy complying with the Minimum [xWording](#), in which case cancellation shall have effect from the start of the relevant Indemnity Period or such later date as agreed between the Firm and the Insurer.

Any cancellation of this Policy shall not affect the rights and obligations of the parties that have accrued under this Policy prior to the date from which cancellation has effect.

## 5.3 Double insurance

- a) Where the 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 shall be determined in accordance with the relative numbers of Principals of the constituent practices immediately prior to succession.
- b) The Insured shall:
  - i) give notice in writing to the other insurer(s) immediately of all matters referred to in clauses 6.1 and 6.2; and
  - ii) comply with the terms of the other policy/policies.

#### **5.4 No set-off**

Any amount payable by the Insurer to indemnify an Insured against Civil Liability to a claimant will only be paid to the claimant, or at the claimant's direction, and the Insurer is not entitled to set-off against any such amount any payment due to the Insurer including, without limitation, any payment of premium or reimbursement due to the Insurer.

#### **5.5 Advancement of Defence Costs**

The Insurer shall pay Defence Costs incurred in the defence or settlement of any Claim at the time 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, except that the Insurer shall not be liable for Defence Costs incurred on behalf of the Insured after the earlier of:

- a) the Insured admitting to the Insurer the commission or condoning of a dishonest or fraudulent act or omission; or
- b) a court or arbitrator or other judicial body finding that the Insured was in fact guilty of a dishonest or fraudulent act or omission.

#### **5.6 Resolution of disputes regarding whether a firm is a Successor Practice**

If there is a dispute as to whether a firm is a Successor Practice for the purpose of clauses 1.1 and 1.2, the Insured and the Insurer will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party that has insurance complying with the Minimum Terms and that party's insurer.

### **6. General Conditions**

#### **6.1 Notice of Circumstances**

The Insured shall give notice in writing to the Insurer immediately of any Circumstance of which the Insured shall become aware that may give rise to a Claim against the Insured. Provided such notice has been given during the Period of Insurance, any Claim arising from that Circumstance that is subsequently made after the expiry of the Period of Insurance shall be deemed for the purpose of this Policy to have been made on the date of notification of the Circumstance.

#### **6.2 Notice of Claim**

The Insured shall give notice in writing to the Insurer immediately in the event of:

- a) any Claim made against the Insured;

- b) the receipt of notice from any party of an intention to make a Claim against the Insured.

### 6.3 Contents of notice

Any notice given under clauses 6.1 or 6.2 must contain full particulars including all material facts, dates and persons involved and, in the case of notice of a Circumstance, the reasons for anticipating that the Circumstance may give rise to a Claim.

### 6.4 Notice of changes

- a) The Insured shall give prior notice in writing that it is going to merge, acquire or absorb any other legal practice or change its name or address during the Period of Insurance. The Insurer shall have the right to charge such additional premium as the Insurer in its sole discretion considers arises from the change.
- b) The Insured shall give notice in writing of Cessation of, or intervention in, the Firm and shall pay such additional premium as may be due for run-off cover on or before the date of Cessation.
- c) The Insured shall give notice in writing immediately after obtaining any replacement insurance complying with the Minimum [Wording](#).

### 6.5 Co-operation of the Insured

- a) The Insured shall not make any express or implied admission or denial of liability, or any other arrangement, offer, promise or payment or incur any costs and expenses without the prior written consent of the Insurer.
- b) The Insured shall, at its own expense, provide the Insurer or any solicitor appointed by the Insurer with all information, evidence, documents and assistance as the Insurer may reasonably require for the proper and efficient investigation of any Circumstance or Claim and for the conduct of any Claim, investigation or inquiry.
- c) The Insurer shall be entitled, as it may in its absolute discretion think fit, at any time, to take over the conduct in the name of the Insured or the Firm of the defence or settlement of any Claim or proceedings (including any investigation or inquiry) or to prosecute in the name of the Insured or the Firm for the Insurer's own benefit any claim for indemnity or otherwise, and the Insured shall, at all times, give full information, co-operation and assistance for these purposes. The Insured authorises any solicitor appointed by the Insurer to go on the court record in any proceedings. This provision shall apply even to:
  - i) the conduct of Claims;
  - ii) the defence and prosecution of any proceedings; and
  - iii) any claims against any other party that:
    - aa) are within the Excess; or
    - bb) include uninsured losses;whether or not the Insured seeks indemnity under this Policy.

- d) The Insured shall, in the conduct of any Claim or claim against any third party for indemnity or otherwise, comply with all rules of court and orders made by the court, follow all reasonable advice given by any solicitor appointed by the Insurer, attend any hearings, meetings or conferences as may reasonably be required and sign any documents as may reasonably be required.
- e) The Insured agrees that any solicitor appointed by the Insurer shall disclose to the Insurer any information, evidence or documents that the Insured has provided to that solicitor whether privileged or not.
- f) In order to ascertain whether full and accurate information has been provided in accordance with this Policy and to obtain such information in so far as it may not have been, the Insurer may appoint any person whom it thinks fit and may require the Insured or the Firm to produce to that person at such times and places as he may request all such accounting and other records and documents, and to supply him in relation thereto with such information and explanations, as he may from time to time require.
- g) The Insured shall pay forthwith on demand any Value Added Tax incurred in relation to Defence Costs insofar as the Insured can recover such Value Added Tax from HM Revenue & Customs.

#### **6.6 Requirement to contest legal proceedings**

- a) The Insured shall not be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the Insured and the Insurer or failing agreement to be appointed by the CILEx Regulation Board) shall advise that, taking due account of the interests of both the Insurer and the Insured, such proceedings should be contested.
- b) The Queen's Counsel's fee will be payable by the party against whose contention Queen's Counsel advises.

#### **6.7 Reimbursement**

- a) Any Insured who:
  - i) committed; or
  - ii) condoned (whether knowingly or recklessly);any breach of the duty to make a fair presentation of the risk, misrepresentation, breach of the terms or conditions of this Policy, dishonesty or any fraudulent act or omission is obliged to reimburse the Insurer to the extent that is just and equitable having regard to the prejudice caused to the Insurer's interest by such duty to make a fair presentation of the risk, misrepresentation, breach, dishonesty or fraud.
- b) However, any breach of the duty to make a fair presentation of the risk, misrepresentation, breach, dishonesty, fraudulent act or omission shall not 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 a Limited Liability Partnership, all members of that Limited Liability Partnership.

- c) The Insurer shall not be entitled to obtain reimbursement pursuant to this clause from an Insured as defined by clause [7.17\(d\)](#) of this Policy who is employed in connection with the Firm's Practice or his estate or personal representatives unless that Insured:
  - i) committed; or
  - ii) condoned (whether knowingly or recklessly); dishonesty or any fraudulent act or omission.
- d) The Insured shall not be required to make any reimbursement under this condition to the extent that any such breach of the terms or conditions of the insurance was in order to comply with any applicable rules or codes laid down from time to time by The Chartered Institute of Legal Executives
- e) The Insured shall reimburse to the Insurer any sums that the Insurer has paid but for which it has no liability to indemnify under the terms of this Policy. The Insured shall also pay interest at the rate of LIBOR plus 1%.
- f) Reimbursement with interest shall apply, but is not limited, to:
- g) Defence Costs, whether relating to a Claim that is not covered, or a proportion of Defence Costs by virtue of clause 2.2 or clause [5.3](#);
  - i) sums paid pending resolution of a coverage dispute;
  - ii) sums for which other insurers are liable;
  - iii) sums for which an Insured is liable.

#### **6.8 Recoveries**

- a) Where any payment is made by the Insurer and any sums are recovered from any other party, those sums shall be applied in the following order:
  - i) reimbursement of payments by the Insurer with interest at the rate of LIBOR plus 1%; then
  - ii) Defence Costs and costs of any claim for recovery, whether litigated or not; then
  - iii) any surplus shall be paid to the Insured.
- b) Subject to clause 6.7(c) above, upon notification of any Claim or Circumstance, the Insurer will be subrogated to all rights of the Insured of indemnity, contribution or recovery to the extent of any payment made by the Insurer. The Insured will not surrender any such right, or settle any such claim for indemnity, contribution or recovery without the prior consent in writing of the Insurer.
- c) Any unrecovered costs incurred in pursuing recovery claims that comprise both insured and uninsured losses shall be shared by the Insurer and the Insured in the ratio of the respective recovery claims.

#### **6.9 Requirement to obtain reimbursement**

Where a loss or Claim involves dishonesty or a fraudulent act or omission committed or condoned by an Insured, any other Insured shall at the request and expense of the Insurer take all reasonable steps to obtain reimbursement from the Insured who committed or condoned such dishonesty or fraud.

**6.10 Withholding assets or entitlement**

The Insurer may require the Firm to account to it for any asset or entitlement of any Insured who has committed or condoned dishonesty or any fraudulent act or omission, provided the Firm is legally entitled to hold that asset or entitlement.

**6.11 Funding of the Excess**

The Firm shall pay the Excess to the Insurer or any solicitor appointed by the Insurer forthwith upon request in connection with any payment into court, interim payment, tender or settlement of any Claim or Claimant's costs.

**6.12 Arbitration**

Save as provided in clause 6.6, any dispute or disagreement between the Insured and the Insurer arising out of or in connection with this Policy shall be referred to arbitration in accordance with the Arbitration Act 1996 before a sole arbitrator to be mutually agreed upon by the Insured and the Insurer or failing agreement to be appointed by the CILEx Regulation Board.

**6.13 Special conditions to prevail**

To the extent that there exists any inconsistency between the general conditions provided under clause 6 of this Policy and the special conditions provided under clause 5 of this Policy, the special conditions shall prevail.

**6.14 Contracts (Rights of Third Parties) Act 1999**

It is hereby noted and agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that the parties do not intend any term of this Policy to be enforceable by any third party.

**6.15 Governing law**

This policy of insurance is governed by and is to be interpreted in accordance with English law.

**6.16 Waiver**

The terms of this Policy shall not be waived or changed except by endorsement issued by the Insurer to form part of this policy.

**[6.17 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. Interpretation and Definitions**

In this Policy, unless the context otherwise requires:

### **7.1. General**

- a) the singular includes the plural, and vice versa;
- b) the male gender includes the female and neuter genders;
- c) a reference to a person includes bodies corporate, partnerships, and other unincorporated associations or bodies of persons;
- d) a reference to any statute, statutory provision, code or regulation includes:
  - (i) any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made under it; and
  - (ii) any provision which it has superseded or re-enacted (with or without modification) or amended, and any provision superseding it or re-enacting it (with or without modification) or amending it either before, or at or after the inception of this Policy;
- e) headings are for ease of reference only and shall not affect interpretation.

### **7.2. Approved Regulator**

means a body listed as an approved regulator in paragraph 1 of Schedule 4 to the Legal Services Act 2007 or designated as an approved regulator by an order under paragraph 17 of that Schedule.

### **7.3. Authorised Entity**

Authorised Entity means a body for the time being authorised by CILEx Regulation.

### **7.4. Cessation Period**

Cessation Period means the period commencing on the expiry of the Extended Indemnity Period in circumstances where the Firm has not ceased practice or obtained a policy in accordance with the Minimum Wording for a Period of Insurance, and ending on the date which is the earlier to occur of:

- i) the date upon which the Firm obtains a policy in accordance with the Minimum Wording; or

ii) the date which is 90 days after the commencement of the Extended Indemnity Period; or  
iii) the date on which the Firm's Practice ceases.

**7.5. Circumstance**

Circumstance means an incident, occurrence, fact, matter, act or omission that may give rise to a Claim in respect of Civil Liability.

**7.6. Civil Liability**

Civil Liability includes liability to pay an amount in accordance with the recommendation of the Legal Ombudsman pursuant to sections 137(2)(c) and section 137(4)(b) of the Legal Services Act 2007 or any regulatory authority by whose rules the Insured is bound 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 Legal Services act 2007 to refund any fees paid to the Insured.

**7.7. Claim**

Claim means a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages. For these purposes an obligation on the Firm and or any Insured to remedy a breach of the accounts rules published by The Chartered Institute of Legal Executives (as amended or replaced from time to time) shall be treated as a Claim and the obligation to remedy such breach shall be treated as a Civil Liability for the purposes of clause 1, whether or not any person makes a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages as a result of such breach, except where any such obligation may arise as a result of the insolvency of a bank (as defined in section 87 of the Solicitors Act 1974) or a building society (within the meaning of the Building Societies Act 1986) which holds client money in a client account of the Firm or the failure of such bank of building society generally to repay monies on demand,

**7.8. Claimant**

Claimant means a person or entity that has made or may make a Claim, including a Claim for contribution or indemnity.

**7.9. Defence Costs**

Defence Costs mean legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the Insurer's prior consent (such consent not to be unreasonably withheld):

- a) in defending any proceedings relating to a Claim; or
- b) in conducting any proceedings for indemnity, contribution or recovery relating to a Claim; or

- c) in investigating, reducing, avoiding or compromising any actual or potential Claim; or
- d) in acting for an Insured in connection with any investigation or inquiry arising from any Claim referred to in clause 1.1 or from Circumstances first notified to the Insurer during the Period of Insurance.

Defence Costs do not include any internal or overhead expenses of the Firm or the Insurer or the cost of the Insured's time or any Value Added Tax insofar as the Insured can recover such Value Added Tax from HM Revenue & Customs.

#### 7.10. **Employee**

Employee means any person other than a Principal:

- a) employed or otherwise engaged in the Firm's Practice (including under a contract for services).
- b) seconded to work in the Firm's Practice; or
- c) seconded by the Firm to work elsewhere.

Employee does not include any person who is engaged by the Firm under a contract for services in respect of any work where that person is required under the rules of The Chartered Institute of Legal Executives or any other professional body, to take out or to be insured under separate professional indemnity insurance in respect of that work.

#### 7.11. **Excess**

The Excess means the first amount of a Claim that is not covered by the Policy.

#### 7.12. **Extended Indemnity Period**

Extended Indemnity Period means the period commencing at the end of the last Period of Insurance to which the policy relates and ending on the date whichever is the earlier of:

- i) the date which is 30 days after the end of the last Period of Insurance;
- ii) the date of inception of a policy complying with the Minimum Wording in respect of the Firm for the year commencing immediately following the Period of Insurance; or
- iii) the date upon which the Firm's Practice ceases.

#### 7.13. **Firm**

The Firm means the Authorised Entity, the sole practitioner, partnership or body (as constituted from time to time) authorised by CILEx Regulation and specified in the Schedule.

#### 7.14. **Firm's Practice**

The Firm's Practice means the Private Legal Practice carried on by the Firm, any Prior Practice and/or any Successor Practice.

**7.15. Incoming Firm**

Incoming Firm means a Firm which was, immediately before it first became a Firm, authorised by a Regulator other than CILEx Regulation.

**7.16. Independent Regulatory Body**

Independent Regulatory Body means a body exercising the regulatory functions of an Approved Regulator, whether as a division of that Approved Regulator or as a separate legal entity.

**7.17. Insured**

Insured means each and all of the following persons or legal entities each being severally insured hereunder:

- a) the Firm; and
- b) each trustee or nominee company owned by the Insured Firm and/or the Principals of the Insured Firm and regulated by CILEx Regulation; and
- c) each Principal, each former Principal, and each person who becomes a Principal of the Firm during the Period of Insurance; and
- d) each Employee, each former Employee and each person who during the Period of Insurance becomes an Employee of the Firm or a company referred to in sub-clause (c); and
- e) the estate or legal personal representatives of any deceased or legally incapacitated person referred to in sub-clause (c) or (d).

The Insured as defined at sub-clause (a) above shall act as agent on behalf of all Insureds for the purposes of giving and receiving notices and for the purposes of endorsements to and cancellation of the Policy.

**7.18. Insurer**

The Insurer means XXXXXXXX Insurance plc.

**7.19. Limited Liability Partnership**

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

**7.20. Minimum Wording**

Minimum Wording means the Minimum Wording specified by The Chartered Institute of Legal Executives.

Deleted: 7.1211

**7.21. Non-CILEx Firm**

Non-CILEx Firm means a practice which is authorised by a Regulator other than CILEx Regulation.

**7.22. One Claim**

All Claims or series of Claims arising from or in connection with or attributable to one originating cause or one originating source will be deemed to be one Claim for the purposes contemplated by clause 2.1.

**7.23. Partner**

Partner means a person who is or is held out to be a partner in a Partnership.

**7.24. Partnership**

Partnership means an unincorporated firm in which persons are or are held out as Partners and does not include a firm incorporated as a Limited Liability Partnership.

**7.25. Period of Insurance**

The Period of Insurance means the period specified in the Schedule or any endorsement thereto.

**7.26. Principal**

Principal means:

- a) where the Firm is or was:
  - i) a sole practitioner – that practitioner;
  - ii) a Partnership – each Partner;
  - iii) a company with a share capital – each director of that company and any person who:
    - (a) is held out as a director; or
    - (b) beneficially owns the whole or any part of a share in the company; or
    - (c) is the ultimate beneficial owner of the whole or any part of a share in the company.
  - iv) a company without a share capital – each director of that company and any person who:
    - (a) is held out as a director; or
    - (b) is a member of the company; or
    - (c) is the ultimate owner of the whole or any part of a body corporate or other legal person which is a member of the company;

- v) a Limited Liability Partnership – each member of that Limited Liability Partnership, and any person who is the ultimate owner of the whole or any part of a body corporate or other legal person which is a member of the Limited Liability Partnership.
- b) where a body corporate or other legal person is a Partner in the Firm, any person who is within paragraph (a)(iii) of this definition (including sub paragraphs (a) and (c) thereof), paragraph (a)(iv) of this definition (including sub paragraphs (a) and (c) thereof), or paragraph a(v) of this definition.

#### 7.27. **Prior Practice**

Prior Practice means (a) each practice to which the Firm is ultimately a Successor Practice by way of one or more mergers, acquisitions, absorptions or other transitions, and (b) the Private Legal Practice of an Incoming Firm, but does not include any such practice or Incoming Firm which has elected and has paid to be insured under run-off cover in accordance with the rules of an Approved Regulator.

#### 7.28. **Private Legal Practice**

Private Legal Practice means the provision of services in private practice as a professional authorised by CILEx Regulation, (or, in the case of an Incoming Firm, while authorised by a Regulator other than CILEx Regulation) including, without limitation:

:

- a) providing such services in England, Wales or anywhere in the world, whether alone or with other lawyers in a Partnership, an Authorised Entity or a licensed body (in respect of its regulated activities); and
- b) the provision of such services as a secondee of the Firm; and
- c) the acceptance and performance of obligation as a personal representative, trustee, attorney, insolvency practitioner or in any other role in conjunction with a Firm's Practice to the extent that any fees or other income accrue to the benefit of the Firm's Practice; and
- d) the provision of such services by any Employee; and
- e) the provision of such services pro bono publico.

Private Legal Practice does not include:

- i) practising as an Employee of an employer other than a Firm regulated by CILEx Regulation; or
- ii) discharging the functions of any of the following offices or appointments:
  - a) judicial office;
  - b) Under Sheriffs;

- c) members and clerks of such tribunals, committees, panels and boards as the CILEx Regulation Board may from time to time designate but including those subject to the Tribunals and Inquiries Act 1992, the Competition Commission, Legal Services Commission Review [x](#) and Parole Boards;
- d) Justices' Clerks; or
- e) Superintendent Registrars and Deputy Superintendent Registrars of Births, Marriages and Deaths and Registrars of Local Crematoria.

#### **7.29. Regulator**

Regulator means an Independent Regulatory Body or, in the case of an Approved Regulator which has not delegated its regulatory functions to an Independent Regulatory Body, that Approved Regulator when exercising its regulatory functions under the Legal Services Act 2007.

#### **7.30. Successor Practice**

Successor Practice means a Firm resulting from a merger, acquisition, absorption or other transition following which the Firm succeeded to is no longer being carried on as a discrete Firm where:

- a) the owners of the succeeding Firm hold or held the Firm out, expressly or by implication, as being the successor of the other Firm, or as incorporating the other Firm, whether the holding out is contained in notepaper, business cards, electronic communication, publications, promotional material, or otherwise, or is contained in any statement or declaration by the Firm to any regulatory or taxation authority or
- b) the Firm succeeded to was a partnership and either:
  - i) the majority of the Principals of the Firm succeeded to have become Principals of the successor Firm; or
  - ii) the majority of the Principals of the Firm succeeded to have not become Principals of another practice but one or more of the Principals of the Firm succeeded to have become Principals of the successor Firm and one or more of the following apply:
    - aa) the successor Firm is carried on under the same name as the Firm succeeded to or under a name that substantially incorporates the name of the Firm succeeded to (or a substantial part of the name of the Firm);
    - bb) the successor Firm is carried on from the same premises as the Firm succeeded to;
    - cc) the successor Firm acquired the goodwill and/or assets of the Firm succeeded to;
    - dd) the successor Firm assumed the liabilities of the Firm succeeded to;
    - ee) the majority of staff employed by the Firm succeeded to became Employees of the successor Firm; or
- c) the Firm succeeded to was a sole practitioner and the sole practitioner is a Principal or Employee of the successor Firm; or
- d) the Firm succeeded to was an entity that is now a Principal of the successor Firm.

Except that a Firm shall not be a Successor Practice under sub-clause (b), (c), (d) or (e) if another Firm holds or held itself out as the successor or as incorporating the Firm succeeded to provided that other Firm has insurance complying with the Minimum Wording

[x \(move as this is an exclusion and logically belongs under exclusions\)](#)

