



Summary of Decision

The purpose of this summary sheet is to provide a high level and accessible overview of the Legal Services Board's ("LSB") decision. Readers are recommended to read the formal decision notice below for further details. **This summary is not and should not be taken as a formal part of the LSB's decision notice under the Legal Services Act 2007 ("the Act")**

The LSB's decision is to grant in full the application from the Institute of Chartered Accountants in England and Wales ("ICAEW") for approval of alterations to its regulatory arrangements relating to its PII minimum approved wording for insurers ("minimum approved wording").

The key changes are:

- to set out exclusions for relevant first party loss (loss to the insured firm and not their consumers) in the minimum approved wording arising from cyber events, namely
 - a "cyber act"
 - partial or total failure of any computer system, or
 - transmission of malware, malicious code or similar
- to include new definitions related to cyber security, and
- some minor drafting amendments.

Following assessment of ICAEW's application, the LSB has concluded that the changes do not meet the conditions for refusal under paragraph 25(3) of Schedule 4 to the Act.

The decision notice explains our assessment of the main issues that we considered in reaching our decision. It also outlines the commitments made by ICAEW that were relied upon in our assessment and our expectations for ICAEW as it implements, monitors and evaluates the impact of the alterations.

Decision notice

The Institute of Chartered Accountants in England and Wales application for approval of alteration to its regulatory arrangements relating to its PII minimum approved wording for insurers

1. The Legal Services Board (“**LSB**”) has granted an application from the Institute of Chartered Accountants in England and Wales (“**ICAEW**”) for approval of alterations to its PII minimum approved wording for insurers (“minimum approved wording”).
2. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the “**Act**”) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. ICAEW is an approved regulator. The notes at page 7 of this notice explain the statutory basis for the decision.
3. This decision notice sets out the decision taken, including a brief description of the changes. The chronology for the LSB’s handling of this application is also set out below.

Chronology

- The LSB confirmed receipt of an application from ICAEW on 07 July 2021.
- The 28-day initial decision period for considering the application ends on 02 August 2021.
- This decision notice is effective from 28 July 2021.
- The decision notice will be published on our website on 30 July 2021.

Background

4. ICAEW regulates more than 152,000 chartered accountant members in over 160 countries. It is designated as an Approved Regulator and Licensing Authority for probate under the Act, currently accrediting approximately 340 firms to undertake this reserved legal activity.
5. As set out in paragraph 3 of the application, ICAEW requires that accredited firms hold ‘qualifying insurance’ with an ICAEW participating insurer, which is set out in the terms of the minimum approved wording. In addition to specifying the minimum levels of cover firms must hold, ICAEW also sets out the eligibility requirements of participating insurers; the constitution and responsibilities of ICAEW’s PII Committee and the Joint Advisory Pool; and arrangements for the Assigned Risks Pool (‘ARP’). The ARP provides cover for up to 2 years for firms that are unable to obtain PII cover that complies with the minimum approved wording from the commercial market.
6. As set out in paragraphs 8 and 9 of the application, ICAEW proposes to make changes to its minimum approved wording in response to the Prudential Regulation Authority’s (PRA) direction to insurers that there should be more clarity on whether losses caused, or partially caused, by a cyber-related event or trigger are covered by PII policies. This

direction is intended to ensure that insurers suitably identify, assess and manage their cyber liabilities. Existing PII policies often do not expressly reference cyber-related issues, which can result in ambiguity as to whether and to what extent cyber-related issues may be covered. The deadline for insurers to comply is 1 October 2021.

7. Paragraph 10 of the application and paragraph 2 of the Significance, Impact and Risk assessment section of the application notes that, in 2019/20 the International Underwriters Association (“IUA”) drafted a model “cyber clause” to ensure traditional PII losses are covered but contained exclusions/restrictions in respect of third party losses, which would either fall under a stand-alone cyber policy (e.g. loss of client money due to a cyber event) or would be uninsurable (e.g. systemic risks arising from failure of a utility provider).
8. ICAEW used the model clause as a basis for the proposed amendments but has amended the minimum approved wording to exclude only first party losses arising from a cyber event. It maintains all existing cover for third party claims (i.e., even if the losses are caused by cyber related events) and in doing so it preserves consumer protection.
9. In March 2021 ICAEW held meetings with seven leading insurers (which account for almost half the capacity underwriting the ARP) to understand the potential impact of the proposed changes versus the impact of implementing the IUA model exclusions. The outcome of these meetings is set out in paragraph 16 below. ICAEW publicly consulted on the proposed changes between 12 April and 21 May 2021. Feedback to the consultation¹ and from the meetings were mixed, with many responses to the consultation claiming that the proposed approach may affect some insurers’ appetite to underwrite certain risks. For example, some insurers considered that third party losses should sit within a separate standalone cyber security policy. They also commented that insurers may require more information from insured practitioners and firms around their cyber security and controls at renewal. Although ICAEW did make some minor drafting amendments as a result of consultation responses, no substantive changes were made to the proposed minimum approved wording.
10. Subject to the LSB’s approval, ICAEW intends to implement these changes from September 2021, to coincide with the renewal of insurance policies with participating insurers.

Summary of proposed changes

Key changes

11. Paragraph 13 of the application sets out that ICAEW proposes to insert the following into its minimum approved wording:

¹ There were 13 respondents, which comprised insurers, the IUA and one ICAEW regulated firm.

- exclusions in relation to relevant first party loss arising from cyber security in clauses E20, E21 and E22.
- new definitions (for computer system, “cyber act”, data, data protection law and relevant first party loss) at clauses B5 to B8 and B24

12. ICAEW also proposes to make a minor drafting amendment to Section E, to incorporate the wording ‘any Claim’ in all exclusions, save for E20 and E22, having deleted it from the introduction of Section E.

Key issues considered in the assessment of the application

13. In carrying out our assessment of the current application, the LSB has considered the following issues and taken account of feedback provided by ICAEW.

The balance between the need to maintain existing consumer protection and ensuring ICAEW firms can access the insurance through the ARP or the commercial insurance market

14. Paragraph 12 of the application explains that ICAEW consider that maintaining existing cover for third parties under the minimum approved wording is important because:

- there are no regulatory requirements on ICAEW members or firms to hold a separate cyber policy, which would cover third party losses caused by cyber events
- even where stand-alone cyber policies are held the terms can be highly variable
- some of third-party claims would not be covered by a stand-alone cyber policy.

15. To better understand the risks of ICAEW departing from IUA’s model cause, the LSB asked ICAEW to explain how it had reassured itself about the potential negative impacts if it were to affect insurers’ willingness to provide PII at affordable prices.

16. ICAEW clarified that the direct engagement they had in March 2021, had reassured it that the proposal would not result in fewer insurers seeking to participate in the arrangements from September 2021. Only one insurer, who has a small market share, has indicated that they will not renew, but one new insurer has requested to become a participating insurer and a further two have expressed interest. Further, ICAEW has received advice from its insurance broker that, while these changes may result in some insurers assessing more critically their appetite to provide cover for individual risks, there was no indication that they would leave the PII market entirely.

17. ICAEW has also stated that if these changes are not approved, then insurers would be free to either adopt the IUA model clause (thereby excluding third-party cover for

cyber-related issues) or draft their own clauses, which may also restrict or exclude third-party losses.

18. On these grounds, we are satisfied that ICAEW can evidence that it has struck an appropriate balance between ensuring its regulated community can access the PII market on reasonable terms while maintaining consumer protections.

Equality Impact Assessment

19. We asked ICAEW to explain the equality impact of its proposed changes. ICAEW confirmed that it had considered this, and expressed the view set out in paragraph 17 above. ICAEW accordingly considers that its proposed changes will have a positive impact on third parties generally, however its analysis has not identified any separate impact on third parties with protected characteristics. ICAEW has also stated that, even if insurers do review more critically the risks that they are willing to underwrite, it does not consider that this will impact differently on probate practitioners with protected characteristics.
20. As we set out in our Decision note on the ICAEW Disciplinary Committee from 19 July 2021, we expect all future applications to set out that the consideration of equality and diversity impact has been undertaken and informed policy development.

Meaningful consultation

21. We acknowledge the steps ICAEW has taken to engage and consult with stakeholders in respect of its proposed changes. This is a welcome response to the comments we made in our decision notice from March 2021 concerning changes to ICAEW's Disciplinary Bye Laws in March 2021.

Evaluation and monitoring.

22. Paragraph 18 of the Significance, Impact and Risk Assessment in the application sets out that ICAEW will keep under review the number of insurers participating in the arrangements from September 2021 and the reasons for any insurers electing to cease their participation. Furthermore, ICAEW will continue to engage with the leading insurers on this issue through its Joint Advisory Panel, which meets twice per year.
23. We are aware of the challenging conditions of the PII market and would emphasise the need for the impact of these proposals to be closely monitored to ensure that ICAEW's regulated community continue to have access to PII on reasonable terms. Our regulatory performance framework sets out our expectation in outcome RA2, which requires that, 'regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base'.

24. We expect ICAEW to keep the LSB apprised of this through the ongoing relationship management process.

Decision

25. The LSB has considered the ICAEW application against the criteria in paragraph 25(3) of Schedule 4 to the Act. It considers that there is no reason to refuse this application, and accordingly, the application is granted.

Matthew Hill, Chief Executive

**Acting under delegated authority granted by the Board of the Legal Services Board
28 July 2021**

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 rules² 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.

² Rules for Rule Change Applications – Version 2 (November 2010)

Annex A

Institute of Chartered Accountants in England and Wales

Institute of Chartered Accountants of Scotland

Institute of Chartered Accountants in Ireland

The Institutes' minimum approved policy wording effective from 1 September 2021
October 2018.

SECTION A - INSURING CLAUSES

In consideration of the payment or the promise of payment to Insurers of the premium specified in the Schedule, and subject to the provisions set out below, Insurers agree to indemnify the Insured:

A1 Civil Liability

in respect of any Claim first made against the Insured during the Period of Insurance in respect of any civil liability (including liability for Claimant's costs, expenses and disbursements) in connection with Professional Business;

A2 Awards by Ombudsmen

against any amounts that an Ombudsman requires to be paid by the Insured, and/or the costs of any steps that an Ombudsman directs or recommends that the Insured takes, in respect of a complaint made to the Ombudsman during the Period of Insurance; and

A3 Defence Costs

in respect of Defence Costs.

SECTION B - DEFINITIONS

- B1 **"ALTERNATE"** means any individual practitioner, partnership, limited liability partnership, Isle of Man limited liability company or company who or which is acting in connection with the arrangements to cover the incapacity or death of a sole practitioner.
- B2 **"AUTHORISED WORK"** shall have the meaning given by the Probate Regulations of the Relevant Institute, in force at the date of the inception of this policy.
- B3 **"CLAIM"** means any written or oral demand for compensation or damages from, or the assertion of a right against, any Insured, and includes any complaint or reference to any Ombudsman.
- B4 **"CLAIMANT"** means a person or entity which has made or may make a Claim including (without limitation) a Claim for contribution or indemnity, and includes a complainant to the Ombudsman.
- B5 **"COMPUTER SYSTEM"** means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility.
- B6 **"CYBER ACT"** means an unauthorized, malicious or criminal act or series of related unauthorized, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof, involving access to, processing of, use of or operation of any Computer System.
- B7 **"DATA"** means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.
- B8 **"DATA PROTECTION LAW"** means any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data relating to personal data issued by any data protection regulator or governmental authority from time to time (all as amended, updated or re-enacted from time to time).
- B5B9 **"DEFENCE COSTS"** means any costs, disbursements and expenses incurred by the Insured in:
- (a) defending any Claim or any proceedings relating to any Claim;
 - (b) conducting any proceedings for an indemnity, contribution, damages or other recovery relating to a Claim;

- (c) investigating, reducing, avoiding or settling any actual or potential Claim; or
- (d) investigating any circumstance which is notified to Insurers in accordance with the terms of this policy.

B6B10 "**DIRECTOR**" shall have the meaning given by sections 250 and 251 of the Companies Act 2006, section 2 of the Companies Act 1963 of the Republic of Ireland or section 27 of the Companies Act 1990 of the Republic of Ireland (as appropriate) or any amendment or re-enactment thereof.

B7B11 "**EXTENDED POLICY PERIOD**" means the period starting from the day immediately following the expiration of the original Period of Insurance and ending with the earliest to occur of:

- (a) the date that the Insured obtains a replacement insurance policy that complies with the provisions of the Professional Indemnity Insurance Regulations of the Relevant Institute; or
- (b) 30 days from receipt by the Relevant Institute and the Firm(s) of written notice from the Insurer of the commencement of the Extended Policy Period.

B8B12 "**FIRM(S)**" means the firm(s) (ie partnership(s), sole practitioner(s), company(ies) (limited or otherwise), limited liability partnership(s), Isle of Man limited liability company(ies)) and any other entity(ies) named in the Schedule, including the predecessors in business of the said firm(s).

B9B13 "**INSURANCE DISTRIBUTION WORK**" shall have the meaning given by the Designated Professional Body (Investment Business) Handbook of the Relevant Institute, in force at the date of the inception of this policy.

B10B14 "**INSURED**" means each and all of the following persons, each of whom shall be severally insured hereunder:

- (a) any Firm(s);
- (b) Partners or Directors or Members of the Firm(s) (or persons named as the principal where, although the trading style of the Insured is such that it appears to be a Firm, in fact the Insured is a sole practitioner) and any other person who may at any time during the Period of Insurance become a Partner or Director or Member in the Firm(s);

- (c) any former Partner or Director or Member of the Firm(s) including any such former Partner or Director or Member whilst acting as a consultant to the Firm(s);
- (d) any person who is or has been under a contract of service with the Firm(s);
- (e) any person who is or has been under a contract for services with the Firm(s), save that such person shall only be an Insured for the purpose of this policy if and insofar as any Claim or Claims arise out of Professional Business carried on by such person for or on behalf of the Firm(s);
- (f) the estates and/or legal representatives of any Insured Person noted under (b), (c), (d) or (e) hereof in the event of death, incapacity, insolvency or bankruptcy; and
- (g) any person who is acting on behalf of the Firm(s) as an "Alternate".

B14B15 **"INSURED PERSON"** means any natural person insured hereunder.

B12B16 **"INSURERS"** means the underwriter or underwriters (as the case may be) of this policy as specified in the Schedule.

B13B17 **"MEMBER"** means any member of a limited liability partnership, including, without limitation, a designated member.

B14B18 **"OMBUDSMAN"** means any ombudsman to whose jurisdiction the Insured is subject by virtue of contract or law.

B15B19 **"PARTNER"** shall have the meaning given by the Partnership Act 1890 or any amendment or re-enactment thereof.

B16B20 **"PERIOD OF INSURANCE"** means the period of insurance specified in the Schedule.

B17B21 **"PROFESSIONAL BUSINESS"** means advice, services or other business activities provided for or on behalf of others at any time anywhere in the world by or on behalf of the Insured or any person for whom the Insured is or is alleged to be liable, irrespective of whether or not a fee is charged, but provided that if a fee is charged then that fee is taken into account in ascertaining the income of the Firm(s).

The above definition of "Professional Business" extends to:

- (a) any Insured whilst holding any individual personal appointment (including, but without prejudice to the generality of the foregoing, any appointment as a trustee or personal representative made or accepted in the course of the Insured's business), but whilst holding an appointment as company secretary or registrar or Director of a company which is not a Firm it only extends to the performance of Services as defined herein; and
- (b) the provision, sale, licence, lease, amendment or adaptation by the Insured of any computer software, hardware, solution, package or publication.

B18B22 **"PROFESSIONAL INDEMNITY INSURANCE REGULATIONS"** means the Professional Indemnity Insurance Regulations of the Relevant Institute, in force at the date of the inception of this policy.

B23 **"QUALIFYING INSURANCE"** shall have the meaning given by the Professional Indemnity Insurance Regulations.

B24 **"RELEVANT FIRST PARTY LOSS"** shall mean that part of any costs, disbursements or expenses incurred by the Insured in investigating, reducing, avoiding or settling any potential Claim or circumstance for which there is cover under clause B9(c) and/or (d) of this policy.

B19B25 **"RELEVANT INSTITUTE"** shall mean the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland or the Institute of Chartered Accountants in Ireland, as applicable.

B20B26 **"SCHEDULE"** means the schedule to this policy.

B24B27 **"SERVICES"** provided whilst holding the appointment of company secretary, registrar or Director as referred to in the definition of "Professional Business" herein shall mean all services performed or advice given by the Insured in connection with tax matters, secretarial work, share registration, financial advice to management, book-keeping, management accounting, financial investigation and reports, the negotiation and settlement of financial claims, company formations, investment advice, insurance and pension scheme advice and computer consultancy.

SECTION C – GENERAL CONDITIONS

C1 Limit of Indemnity

C1.1 Unless a higher amount is specified in the Schedule, Insurers shall not be liable to make any payment of indemnity under this policy (other than in respect of Defence Costs) that exceeds the following minimum amounts:

- (a) for Authorised Work, such limit on Insurers' liability shall apply on an each and every claim basis, and shall be the minimum level of professional indemnity insurance cover required under the Probate Regulations of the Relevant Institute;
- (b) for Insurance Distribution Work, such limit shall be the minimum level of professional indemnity insurance cover required under the Designated Professional Body Handbook; and
- (c) for the Insured's Professional Business, such limit shall be the minimum level of professional indemnity insurance cover required under the Professional Indemnity Insurance Regulations.

C1.2 The limit of indemnity under clause C1.1 is exclusive of Defence Costs. Accordingly:

- (a) Defence Costs shall be paid by Insurers in addition to other payments due under this policy, and regardless of the limit on Insurers' liability under clause C1.1; but
- (b) if a payment in excess of the amount of indemnity available under this policy has to be made to dispose of any Claim against the Insured, Insurers' liability for Defence Costs shall be only that proportion that the limit of indemnity available under this policy bears to the total amount which is required to be paid to dispose of such Claim.

C2 **Notification**

C2.1 The Insured shall give to Insurers notice in writing as soon as reasonably practicable of:

- (a) any Claim; or
- (b) the discovery during the Period of Insurance of reasonable cause for suspicion of dishonesty or fraud on the part of any former or present Partner, Director, Member, employee, consultant, sub-contractor or Alternate of the Firm(s), whether giving rise to a Claim under this policy or not.

C2.2 If during the Period of Insurance the Insured becomes aware of any circumstance which may give rise to a Claim, the Insured shall give notice in writing of such circumstance to Insurers as soon as reasonably practicable. However, such notice shall in no event be given any later than the last day of the Period of Insurance.

C2.3 Cover under this policy shall be extended to a Claim against the Insured that is made after expiry of the Period of Insurance if that Claim arises from a circumstance notified under clause C2.2 or from a notification under clause C2.1(b), but only if the Insured complied with the requirements of such clause/s (and subject in any event to all other provisions of this policy). Any dispute about such compliance shall be resolved in accordance with clause C9.

C3 **Excess**

C3.1 If an amount is specified in the Schedule by way of an excess, this amount shall be borne by the Insured at their own risk and Insurers' liability to indemnify the Insured shall only be in excess of this amount.

C3.2 The amount specified in the Schedule by way of an excess shall not be applicable to Defence Costs (unless the Claim arises from the conduct of Professional Business which required authorisation by the Financial Conduct Authority or any relevant successor body).

C3.3 Notwithstanding any amount specified in the Schedule the maximum amount to be borne by the Insured at their own risk in relation to a Claim or Claims made during the Period of Insurance shall not exceed the maximum calculated in accordance with the relevant provisions of the Professional Indemnity Insurance Regulations.

C4 **Advancement of Defence Costs**

Subject to clauses C1.2(b) and C3.2, Insurers will indemnify the Insured in respect of Defence Costs as and when they are incurred.

C5 **Conduct of Claims**

C5.1 The Insured shall:

- (a) not admit liability for, or settle, any Claim without the written consent of Insurers (such consent not to be unreasonably withheld or unreasonably delayed); and
- (b) not incur any Defence Costs without the written consent of Insurers (such consent not to be unreasonably withheld or unreasonably delayed).

C5.2 Insurers shall be entitled at their own expense at any time to take over and conduct in the name of the Insured the defence, investigation or settlement of any Claim and to conduct an investigation into circumstances notified under clause C2.2 and to receive at all times the full co-operation of the Insured for this purpose. The Insured shall be entitled to any and all information and/or documentation regarding the defence, investigation or settlement of any Claim and/or the investigation into any circumstances as they may reasonably request from Insurers.

C5.3 Where evidenced by the Insured, compliance by the Insured with any rules, requirements, directions or guidance of any Ombudsmen, regulator, law enforcement agency or other official body having authority in respect of the Insured, or generally any rule or requirement of law, will not constitute a breach of any clause of this policy.

C6 **Queen's Counsel Clause**

Neither the Insured nor Insurers shall be required to contest any legal proceedings unless a Queen's Counsel or in the Republic of Ireland a Senior Counsel (to be mutually agreed upon by the Insured and Insurers or failing agreement to be appointed by the President of the Institute of Chartered Accountants in England and Wales/of Scotland/in Ireland as applicable) shall advise that, taking due account of the interests of both Insurers and Insured, such proceedings should be contested.

C7 **General Subrogation Rights**

Insurers shall not exercise any right of subrogation against any other Insured, except in relation to an Insured against whom the exclusion in clause E8 has taken effect.

C8 **Fraudulent Claims**

- C8.1 If any Insured shall make a claim for indemnity under this policy knowing the same to be false or fraudulent as regards amount or otherwise, then, in respect of that Insured only:
- (a) Insurers shall not be liable to pay the claim;
 - (b) Insurers may recover from the Insured making the false or fraudulent claim any sums paid by Insurers in respect of the claim; and
 - (c) Insurers may by notice to the Insured treat the policy as having been terminated in respect of the Insured making the false or fraudulent claim with effect from the time of the fraudulent act.
- C8.2 If the Insurers do treat the policy as having been terminated in respect of the Insured making the false or fraudulent claim:
- (a) Insurers may refuse all liability to such Insured under the policy in respect of any Claim or potential Claim notified after the time of the fraudulent act; and
 - (b) Insurers need not return any of the premiums paid under the policy in respect of the cover for the Insured making the false or fraudulent claim.
- C8.3 Treating the policy as having been terminated under this clause C8 in respect of an Insured making a false or fraudulent claim does not affect the rights and obligations of the parties to the policy with respect to a Claim or potential Claim notified before the time of the fraudulent act.
- C8.4 The policy shall continue in full force and effect for the benefit of all other Insureds as if such false or fraudulent claim had not been made.

C9 Dispute Resolution

- C9.1 Any dispute between the Insured and/or Insurers arising out of or in connection with this policy shall be referred to arbitration before a sole arbitrator (to be mutually agreed upon by the Insured and Insurers, or, failing agreement, to be appointed by the President of the Relevant Institute) whose decision shall be final and binding on the parties.
- C9.2 In the event of any dispute concerning liability to indemnify the Insured (including without limitation a dispute as to the policy year under which any Claim or

circumstance might fall to be dealt with between (a) Insurers and (b) any insurer(s) subscribing to the policy corresponding to this policy in respect of a previous period of insurance), the Insured and the Insurers agree that Insurers will advance Defence Costs and indemnify the Insured in accordance with clauses A1 - A3 and clause C4 above pending resolution of any such dispute.

C9.3 To the extent that any of the provisions of this clause C9 may fail and/or for the purposes of any application under the Arbitration Act 1996, the courts of the country identified in clause C10 shall have exclusive jurisdiction to hear and determine any disputes, suits, actions or proceedings that may arise out of or in connection with this policy.

C10 Choice of Law

This policy shall be governed by and construed in accordance with the laws of the country in which the Firm has its headquarters; provided that:

- (a) if none of the Relevant Institutes is based in that country, then the country whose laws shall apply shall instead be whichever of the countries of the Relevant Institutes that has the closest connection with the Firm; and
- (b) where the Firm is comprised of more than one entity, the headquarters or the country with the closest connection shall be determined as a single location for the Firm taken as a whole.

C11 Cancellation

C11.1 Subject to clause C8, this policy may not be cancelled unless the Insured and Insurers agree mutually in writing to cancel the policy.

C11.2 In the event of such agreement, Insurers shall within 7 days of the date upon which such agreement in writing is reached, write to:

- (a) the Insured at the address shown in the Schedule notifying the Insured that the policy will be cancelled with effect from a date not less than 30 days after the date of such agreement; and
- (b) the Relevant Institute, notifying it of the agreement, the effective date of cancellation and the name of the Insured.

C12 No Set-Off

Any amount payable by Insurers by way of indemnity under this policy in respect of the Insured's civil liability to a Claimant will be paid only to the Claimant. Insurers are not entitled to set off against any sums which are payable under this policy any payment due to them from any Insured including, without limitation, any payment of premium or any payment due to Insurers by way of reimbursement. This clause shall not apply where the Claimant confirms in writing that the Insured has paid in full any civil liability direct to the Claimant, or the Insured otherwise provides evidence to the Insurers of such payment.

C13 Third Party Rights

A person who is not a party to this policy has no rights under the Contracts (Rights of Third Parties) Act 1999 or any equivalent legislation in the Republic of Ireland or any amendment or re-enactment thereof to enforce any terms of this policy. This condition does not affect any right or remedy of a third party which exists or is available other than by virtue of the Contracts (Rights of Third Parties) Act 1999.

C14 Other Insurance

The liability of Insurers under this policy is not reduced or excluded by reason of the existence or availability of any other insurance. This clause does not affect any right of Insurers to claim contribution from any other insurer which is also liable to indemnify any Insured.

SECTION D - SPECIAL CONDITIONS

D1 Non Avoidance and Prejudice

D1.1 Insurers will not:

- (a) avoid this policy;

- (b) claim to be discharged from any or all liability to provide any indemnity (in whole or in part) under this policy; or
- (c) (subject to clause D1.3 and clause D2) seek to reduce the indemnity due under this policy

on the grounds of a breach of the duty of fair presentation of the risk to Insurers, provided always that such breach was free of any fraudulent conduct or intent to deceive. It shall be for Insurers to establish that such breach resulted from any fraudulent conduct or intent to deceive.

D1.2 Nothing in this policy shall be construed as a warranty.

D1.3 In the event that any circumstance is notified to Insurers and the Insured had knowledge prior to the Period of Insurance of such circumstance, and the Insured should have notified it under any previous policy (whether with other insurers or not), Insurers shall not seek to exclude any Claim arising out of such circumstance, but the indemnity hereunder shall be limited to the indemnity which would have been available under the earliest such previous policy if such circumstance had been properly notified.

D2 **Non-Compliance**

Where the Insured's breach of, or non-compliance with, any condition of this policy has resulted in prejudice to the Insurers:

- (a) in the handling or settlement of any Claim against the Insured; or
- (b) in the obtaining of reimbursement from any dishonest or fraudulent person as referred to in clause E8(c)

and the indemnity is payable direct to the Claimant in accordance with clause C12, Insurers will pay the indemnity in full and the Insured shall reimburse Insurers in respect of any amount (including liability for Claimant's costs, expenses and disbursements) which would not have been payable by them in the absence of such prejudice.

D3 **Extended Policy Period**

The Period of Insurance shall be extended by the Extended Policy Period where the Insured has not, prior to the expiration of the Period of Insurance, obtained Qualifying Insurance, incepting on and with effect from the day immediately following the expiration of the Period of Insurance. This special condition shall not apply to policies of insurance issued by the Assigned Risks Pool which shall have the meaning given by the Professional Indemnity Insurance Regulations.

D4 Run-Off Cover

If a Firm ceases during or on expiration of the Period of Insurance or, if applicable, the Extended Policy Period, then Insurers shall provide run-off cover in accordance with the Professional Indemnity Insurance Regulations for a minimum of two years from the date of cessation. The provision of run-off cover may be conditional on payment of an additional premium by a specified date. In the event that run-off cover does not incept for reasons of non-payment, Insurers shall give notice to the Relevant Institute within 7 days of the specified date and the Insured shall be deemed to consent to such notification being made.

SECTION E - EXCLUSIONS

This policy shall not indemnify the Insured against ~~any Claim~~:

E1 any Claim arising from Professional Business carried out from any office of the Insured situated in the United States of America or Canada;

E2 any Claim which is the subject of proceedings brought in any court of the United States of America or Canada arising from any other Professional Business carried out from any office of the Insured that is not situated in the United States of America or Canada;

provided that this exclusion shall not apply if there was no reasonable basis for the Insured to believe or suspect there was any prospect of such proceedings arising from the Professional Business carried out;

where there is cover available under this policy because the proviso has disapplied this Exclusion E2, then (but only to the extent of such cover) the terms of this insurance shall be modified as follows:

- (a) Defence Costs shall be included within the limit of indemnity under clause C1.1 (and accordingly clause C1.2 shall be deleted);
- (b) the Insurer shall not be liable for punitive or exemplary damages;
- (c) the Insurer shall not be liable for seepage, pollution or contamination of any kind;
- (d) the Insurer shall not be liable for any violation of:
 - any responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act 1974 or any amendment thereto;
 - any of the provisions of the Securities Act 1933, the Securities Exchange Act 1934 or any similar federal or state law;
 - the Racketeer Influenced and Corrupt Organisations Act 18 USC Section 1961 et seq and any amendments thereto or any rules or regulations promulgated thereunder;

E3 any Claim by any person in respect of a contract of service that such person is, has been or has made an application to be under with the Insured;

E4 any Claim for death of or bodily injury to or psychological injury, emotional distress or anguish, shock, sickness or disease of any person; provided that this exclusion shall not apply to any Claim for psychological injury, emotional distress or anguish or shock which arises from any actual or alleged breach of duty in the performance of (or failure to perform) Professional Business;

E5 any Claim for physical loss of or damage to property; provided that this exclusion shall not apply to any Claim for loss of or damage to property which arises from any actual or alleged breach of duty in the performance of (or failure to perform) Professional Business;

E6 any Claim arising directly or indirectly from the ownership, possession or use by the Insured of land, buildings, aircraft, watercraft, vessels or mechanically propelled vehicles;

E7 any Claim arising out of any:

- (a) Claim; or
- (b) circumstance

which has been notified under any other policy of insurance attaching prior to the inception of this policy;

E8 any Claim if the Insured seeking indemnity for such Claim has committed or condoned any dishonest or fraudulent act or omission that is material to the amounts payable as a result of such Claim;

provided that:

- (a) this exclusion will not take effect unless and until such Insured admits to Insurers that such Insured did commit or condone such dishonest or fraudulent act or omission, or a final and unappealable judgment or adjudication establishes that such Insured committed or condoned such dishonest or fraudulent act or omission;
- (b) in the event that this exclusion does take effect, then the Insured against whom it does so take effect shall reimburse Insurers for any Defence Costs paid to such Insured in relation to such Claim prior to the exclusion applying;
- (c) any monies which the Firm is entitled to retain as a result of the conduct of an Insured against whom this exclusion takes effect, which would otherwise have been paid or payable to such Insured, shall be deducted from any amount payable under this policy to such Firm; and
- (d) for the purposes of applying this exclusion, no dishonest or fraudulent act or omission shall be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company, or in the case of an LLP, all members of that LLP; or to a partnership unless it was committed or condoned by all of the partners;

E9 any Claim arising out of or in connection with any trading losses or trading liabilities incurred by any business managed by or carried on by the Insured, but this exclusion shall not apply to any claims made against the Insured for negligence in the normal course of their conduct of any receivership or procedures under (as applicable) the Insolvency Act 1986, the Bankruptcy & Diligence (Scotland) Act 2007, the Insolvency (Northern Ireland) Order 1989 or in the Republic of Ireland any receivership or insolvency procedures under the Companies Acts 2014 or the Bankruptcy Act 1988 or any amendment or re-enactment thereof;

- E10 any Claim arising out of the giving of any express or implied warranty or guarantee relating to the financial return of any investment or portfolio of investments;
- E11 any Claim directly or indirectly caused by, or contributed to by, or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof or from war, invasions, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- E12 any Claim by one Insured against another Insured;
- E13 any Claim for any fine or penalty, the multiple part of any damages, exemplary, punitive or aggravated damages;

provided that this exclusion will not apply to:

- (a) any Claim relating to any actual or alleged defamation arising out of Professional Business; and
- (b) exclude or limit any indemnity afforded by clause A2;

- E14 any Claim arising from any claim made against an Insured directly or indirectly caused by, resulting from or in any way in connection with terrorism. For the purpose of this exclusion an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear;

provided that any such exclusion does not exclude or limit any liability of Insurers to indemnify any Insured against civil liability or related Defence Costs arising from any actual or alleged breach of duty in the performance of (or failure to perform) Professional Business;

E15 any Claim arising out of or relating directly or indirectly to or in consequence of seepage, pollution or contamination of any kind, save that this exclusion will not apply to any Claim which arises from any actual or alleged breach of duty in the performance of (or failure to perform) Professional Business;

E16 any Claim for defect in, lack of fitness of or failure to conform with description of goods sold or supplied by the Insured or by any person acting for or on behalf of the Insured;

provided that this exclusion shall not apply in connection with activities covered under clause B2147(b);

E17 any Claim arising directly from any liability assumed by the Insured under any express warranty or guarantee unless such liability would have attached to the Insured notwithstanding such express warranty, or guarantee;

E18 any Claim to the extent that payment of such Claim would expose the Insurers 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, or United States of America; or

E19 any Claim arising out of any act or omission prior to any Retroactive Date specified in the Schedule, provided always that the Retroactive Date complies with at least the minimum required by the Professional Indemnity Insurance Regulations;

E20 Relevant First Party Loss caused by, resulting from, or arising out of:

(a) a Cyber Act; or

(b) any partial or total unavailability or failure of any Computer System;

provided the Computer System is owned or controlled by the Insured or any other party acting on behalf of the Insured in either case; or

(c) the receipt or transmission of malware, malicious code or similar by the insured or any other party acting on behalf of the Insured;

E21 any Claim directly or indirectly caused by, directly or indirectly resulting from or directly or indirectly arising out of any failure or interruption of service provided:

(a) to the Insured or any other party acting on behalf of the insured by an internet service provider, telecommunications provider or cloud provider but not including the hosting of hardware and software owned by the Insured;

(b) by any utility provider, but only where such failure or interruption of service impacts a Computer System owned or controlled by the insured or any other party acting on behalf of the Insured;

provided that this exclusion shall not apply to any Claim for loss or damage which arises from any actual or alleged breach of duty in the performance of (or failure to perform) Professional Business;

E22 Relevant First Party Loss for breach of Data Protection Law in respect of Data by the Insured or any other party acting on behalf of the Insured.