



Historic Licensing Consultation Documents

CILEx Regulation carried out the following consultations as part of the work on making an application to become a Licensing Authority. The consultations were launched on 8 December 2015 and closed on 18 March 2016.

1. Consultation on the proposed CILEx Licensing Rules for Licenced Bodies (ABS)
2. Consultation on extending the Code of Conduct to Alternative Business Structures
3. Consultation on extending the CILEx Accounts Rules to Alternative Business Structures
4. Consultation on extending the CILEx Regulation Professional Indemnity Insurance (PII) Scheme Rules to Alternative Business Structures
5. Consultation on extending the Investigation, Disciplinary and Appeals Rules (IDAR) to Alternative Business Structures
6. Consultation revisions to the CILEx Authorisation Rules
7. Consultation on extending the CILEx Compensation Fund to Alternative Business Structures

CONSULTATION ON PROPOSED CILEx LICENSING RULES FOR ALTERNATIVE BUSINESS STRUCTURES (ABS)

1. The Chartered Institute of Legal Executives (CILEx) is an approved regulator under the Legal Services Act 2007 (the Act). In accordance with the requirements of the Act it has separated its regulatory and representative functions. The regulatory functions have been delegated to CILEx Regulation Ltd. CILEx Regulation Ltd is the regulatory body for Chartered Legal Executives, other grades of CILEx membership, CILEx Practitioners and entities.
2. CILEx Regulation takes a risk based and outcomes focused approach to regulation. This approach focuses on working constructively with those entities it regulates to ensure that they deliver the best outcomes for their clients. This provides a balanced approach to regulation by delivering value for money support to entities that engage with CILEx Regulation, whilst also allowing it to focus investigation and enforcement in a proportionate manner against those who do not engage constructively and/or fail to deliver the outcomes expected of them. It looks at the processes and procedures entities have in place to manage risk proportionate to the size of the firm and areas of law in which they operate.
3. The CILEx Code of Conduct comprises nine Principles, supported by Outcomes, which form the basis of regulation. CILEx Regulation authorises and supervises entities through assessing the risks to delivery of the Principles and Outcomes in the Code of Conduct. CILEx Regulation proposes to apply the same regulatory approach to Licensed Body applicants, as it does to non-Licensed Bodies.
4. CILEx Regulation is making an application for CILEx to become a Licensing Authority. This will allow it to regulate and grant a licence to an applicant to become a Licensed Body, also commonly known as an Alternative Business Structure (ABS). The application to become a Licensing Authority will be made to the Legal Services Board (LSB) under the Act.
5. This consultation seeks your views on the proposed CILEx Licensing Rules.
6. This consultation will run for 6 weeks, closing on 18 March 2016.

INTRODUCTION

7. CILEx Regulation is able to regulate entities whose owners and managers comprise authorised persons. The Legal Services Act enables regulators to become Licensing Authorities and to regulate Licensed Bodies (known as ABS). CILEx Regulation proposes to regulate Licensed Bodies (ABS) under the Act.
8. A Licensed Body (ABS) is a regulated entity which provides legal services and has some form of non-lawyer involvement. This involvement can either be at management level, as an owner or shareholder.
9. CILEx Regulation is consulting on the Licensing Rules which will enable it to regulate and grant a licence to an applicant to become a Licensed Body. At the same time it has consulted on changes to other CILEx Rules relating to the granting of a licence to a Licensed Body. In those consultations it has referred primarily to Alternative Business Structure (ABS) for simplicity but within this consultation, it has referred to Licensed Body as this wording is used throughout the Licensing Rules.

OUR APPROACH TO THE CILEx LICENSING RULES

10. The Licensing Rules will set out the arrangements for a body seeking a licence as a Licensed Body and an individual seeking approval as an owner, designated officer or manager of a Licensed Body.
11. They will cover the requirements for complying with these Rules, how CILEx Regulation will licence or approve an application, how the Licensed Body will be supervised, in what circumstances CILEx Regulation may suspend or revoke a licence, the granting of temporary licences and how decisions may be reviewed or appealed.
12. The Licensing Rules are founded on Schedules 11 and 13 of the Act. They are designed to work alongside the existing CILEx Code of Conduct and Rules.
13. The specialist approach to authorisation of non-ABS entities also features in the granting of a licence to a body. Applicant bodies are licensed for the specialist area in which their managers are approved. There must be at least one manager approved for each practice area. In determining the granting of a licence to an applicant body and carrying out its

supervision, CILEx Regulation takes a risk based approach, assessing the risks to the delivery of the Principles and Outcomes in the Code of Conduct.

14. A copy of the rules can be found at Annex 1.

LICENCE APPLICATIONS

15. CILEx Regulation will ensure it continues to apply its risk based and outcomes focused approach to regulating Licensed Bodies. This approach focuses on working constructively with those bodies it regulates to ensure that they deliver the best outcomes for their clients.
16. The licence application is where CILEx Regulation conducts the assessment of whether the applicant body has the structure, processes and procedures necessary to deliver adequately the outcomes and to meet the wider regulatory objectives. The assessment is aligned with the assessment of the managers, owners and designated officers of the body, as each manager and owner must be assessed as a fit and proper person to be involved in the management of a body licensed by CILEx Regulation. The body will be required to evidence its capabilities.
17. CILEx Regulation will be using its existing risk assessment framework to assess any application. It looks at the processes and procedures bodies have in place to manage risk proportionate to the size of the firm and areas of law in which they operate.
18. The assessment will understand the nature of the services being provided by the applicant body and how these fit with any Regulated Legal Activity or other legal services being provided. Alongside the assessment of the owners and managers, this will be proportionate to the risks posed. This is to protect consumer's interests.
19. Once licensed, bodies and the individuals employed by them will be expected to abide by and adhere to the CILEx Code of Conduct and any other CILEx or CILEx Regulation Rules, and will also be required to submit to on-going supervision.
20. CILEx Regulation believes that having clear and proportionate Licensing Rules is in both applicants' and consumers' interests.

21. The Licensing Rules ensure that entities applying to be licensed by CILEx Regulation are capable of delivering the outcomes expected of them. These outcomes are reflected in the Code of Conduct. The application of the licensing process is supported by the Licensing Rules. They ensure that the Licensed Body is capable of delivering the outcomes consumers of legal services would expect.

LICENCE DURATION, SCOPE AND CONDITIONS

22. The Licensing Rules adopt the provisions in the Act for the duration, scope and conditions of a licence. These allow a licence to be granted subject to special conditions to protect the public and consumers.
23. The approach of CILEx Regulation will be that licenses are granted indefinitely. Licensed Bodies will pay an annual subscription and are subject to supervision.

DESIGNATED OFFICERS AND MANAGEMENT

24. CILEx Regulation will ensure that the Licensed Body must at all times have an individual who is designated as the Head of Legal Practice (HoLP) and an individual who is designated as the Head of Finance and Administration (HoFA). It will ensure that those designated have sufficient seniority and skills to carry out each role.
25. It will use the existing assessment framework to ensure that they have the necessary skills required to fulfill the roles and protect both clients and the public.
26. The HoLP will be required to ensure compliance by the Licensed Body, its managers and employees with the CILEx regulatory arrangements including the Code of Conduct, which comprises 9 Principles, supported by Outcomes and other CILEx Rules.
27. The HoFA must ensure compliance with the CILEx Accounts Rules, prescribing the arrangements for managing client and office money, because of the significant risks which arise if the necessary controls are not clearly in place.
28. They will need to be aware of the ninth core Principle in the Code of Conduct which states that those subject to regulation by CILEx Regulation must protect client money and assets. This Principle protects and promotes the interests of the public and consumers.

29. In addition all individuals in the Licensed Body must comply with the Code of Conduct and other CILEx Rules.
30. CILEx Regulation will define an owner in a Licensed Body as a person with a restricted interest in that body. They will follow the Act in saying that a restricted interest has the same meaning as in Schedule 13 of the Act.

LICENCE MODIFICATION, SUSPENSION AND REVOCATION

31. CILEx Regulation will adopt the powers granted in the Act to modify, suspend or revoke a licence. This allows it to take action to protect consumers and the public from the actions of a Licensed Body, manager or employee.
32. Modification, suspension or revocation of a licence is likely to take place where the Licensed Body has not complied with the CILEx Code of Conduct or other Rules.

APPROVALS

33. CILEx Regulation will adopt the powers granted in the Act to approve a licence application and to grant approval as an owner, designated officer or manager. The Rules set out the basis for granting approval, including reference to whether a person is a fit and proper person.
34. They will also grant to powers to disqualify a person from being involved in any Licensed Body. This provides protection to the public.

TEMPORARY LICENSING & APPROVALS

35. CILEx Regulation will have in place procedures to grant a temporary licence or approval of designated officers or owners. This may occur if there are changes in the status of the body, the designated officers and/or the owners as a consequence of unforeseen events.
36. It will prescribe the form of the application required in such circumstance, the information required and any fee. It will determine the timescale for such a temporary licence to be in place.

37. This provides protection to a Licensed Body affected by an unforeseen circumstance in that it can continue to provide the regulated legal activity for which it is licensed subject to approval by CILEx Regulation. It also provides protection to the clients of the Licensed Body as it enables continuity in a matter. By requesting information in a prescribed form and subject to these Rules, then the public interest can be considered in granting a temporary licence.

REVIEWS AND APPEALS

38. CILEx Regulation will ensure that there is an appropriate system in place to deal with reviews and appeals of decisions made under the Licensing Rules.
39. A person will have the right to request the review of a decision by CILEx Regulation, to make an appeal to the Appeals Panel and to make a final appeal to the appellate body. These rights will fall under the CILEx Investigation, Disciplinary and Appeals Rules.
40. This assists in ensuring that such decisions are proportionate and are being correctly and consistently applied. This is important in maintaining public confidence. It also avoids uncertainty amongst applicants as to the consistency between decisions that are being made.

REGISTER

41. CILEx Regulation will maintain a register of CILEx Licensed Bodies including names of the designated officers and managers of each Licensed Body. It will provide information to inform and protect the public and consumers, as well as other legal professionals.

CONSULTATION QUESTIONS

Question 1

What are your views on the proposed CILEx Licensing Rules?

Question 2

Do you have any other comments on the proposed CILEx Licensing Rules?

Question 3

Do you agree that CILEx Regulation should take the same outcomes focused and risk based approach to the approval and regulation of a licensed body as they do for non-licensed bodies?

Question 4

Do you agree CILEx Regulation should be able to modify, suspend or revoke a licence?

Question 5

Do you agree CILEx Regulation can grant temporary licences or approvals to cover unforeseen events?

Question 6

Do you agree that there should be reviews and appeals against licensing decisions?

HOW TO RESPOND

Please send your response to this consultation to CILEx Regulation through one of the following methods:

- By email to consultations@cilexregulation.org.uk Mark it for the attention of David Pope.
- By post to CILEx Regulation Ltd, Kempston Manor, Kempston, Bedford MK42 7AB.
- By DX to CILEx, DX 124780 Kempston 2.

SUBMISSION DEADLINE

The deadline for the submission of responses is 18 March 2016.

CILEx REGULATION CONSULTATION ON PROPOSALS TO REVISE THE CODE OF CONDUCT

1. The Chartered Institute of Legal Executives (CILEx) is an approved regulator under the Legal Services Act 2007 (the Act). In accordance with the requirements of the Act it has separated its regulatory and representative functions. The regulatory functions have been delegated to CILEx Regulation Ltd (CILEx Regulation). CILEx Regulation is the regulatory body for Chartered Legal Executives, other grades of CILEx membership, CILEx Practitioners, CILEx Approved Managers and CILEx Authorised Entities (regulated community).
2. CILEx Regulation takes a risk based and outcomes focused approach to regulation. This approach focuses on working constructively with its regulated community to ensure that they deliver the best outcomes for their clients. CILEx Regulation considers this provides a balanced approach to regulation by stipulating clear principles within the CILEx Code of Conduct (the Code) to the regulated community of the standards expected of them and informing the public what standards they can expect of them.
3. CILEx Regulation is making an application for CILEx to become a Licensing Authority. This will allow it to regulate and grant a licence to an applicant to become a Licensed Body, also commonly known as an Alternative Business Structure (ABS). This consultation seeks your views on the proposal to extend the Code to ABS.
4. This consultation will run for 6 weeks, closing on 18 March 2016.

INTRODUCTION

5. CILEx Regulation is able to regulate entities whose owners and managers comprise authorised persons. The Legal Services Act enables regulators to become Licensing Authorities and to regulate Licensed Bodies (known as ABS). CILEx Regulation proposes to regulate of Alternative Business Structures (ABS) under the Act.
6. An ABS is a regulated entity which provides legal services and has some form of non-lawyer involvement. This involvement can either be at management level, as an owner or shareholder. A non-lawyer is a person who is not authorised under the Legal Services Act 2007 to carry out reserved or regulated legal activities. We will refer to ABS that we authorise as Licenced Bodies.
7. CILEx Regulation proposes some minor amendments to the Code to incorporate Licensed Bodies. These changes will reflect CILEx Regulation's extended regulatory remit to ABS.
8. The Code was implemented on 5 January 2015 after the LSB approved CILEx Regulation's application for CILEx to authorise entities and applications to award practice rights in respect of Conveyancing, Probate, Litigation and Immigration.
9. The Code is applicable to all members of CILEx, regardless of the grade in which they are registered, CILEx Practitioners and CILEx Authorised Entities. It is intended to apply equally to all, regardless of the types of work they undertake or the mode through which they practice, i.e. employed, self-employed or an owner or manager of an entity. There are other regulatory provisions that will also apply to those who are subject to the Code, dependent upon the type of work in which they are engaged in.
10. The Code comprises nine Principles that incorporate behaviours required of someone who may own a CILEx Regulated Entity and for those who had gained Practice Rights in addition those who are employed. The Principles are supported by Outcomes that provide the regulated community with information on how to adhere to each Principle. The Code is attached at Annex 1.
11. The Code informs clients and helps the public to understand the standards expected of those subject to the Code. It provides the basis for regulation by CILEx Regulation, forming the foundation for risk based authorisation and supervision and also where necessary enforcement action.

12. The Code is applicable to those subject to it both in the professional work they undertake and, where relevant, in their personal conduct.
13. The Code meets the Regulatory Objectives, as applicable, and the Professional Principles set out in the Act. The Code was drafted to ensure that the client and public interest are at the forefront of the work of those subject to it.
14. Where a complaint is made about the conduct of anyone subject to the Code, CILEX Regulation will assess whether the alleged conduct has breached the Code. Whenever it is necessary to bring a case before the Disciplinary Tribunal, charges will be drafted with reference to the Code. The Principles and Outcomes in the Code also underpin authorisation and supervision decisions made by CILEX Regulation. CILEX Regulation will use the same approach to ABS that have been licenced by CILEX Regulation including their personnel.

PROPOSED CHANGES TO THE CODE OF CONDUCT

15. CILEX Regulation proposes to make minor changes to the Code to incorporate ABS. The view of CILEX Regulation is that the Principles and Outcomes in the Code are the same standards that should apply to ABS for the protection of the public, using the same standards maintains consistency in regulation across CILEX Regulation's regulated community. The Code with the proposed amendments is attached at Annex 1.
16. CILEX Regulation has also made some minor amendments throughout the Code which are aimed at clarifying the text. The outline below sets out the substantive changes.
17. At paragraph one of page two of the Code, at line one the word "CILEX" which appears before the word "Code" has been removed as duplication. The Code will therefore read "This is the Code of Conduct (the Code) of the Chartered Institute of Legal Executives". See Annex 1. This provides consistency in approach for all of CILEX Regulation's regulatory arrangements.
18. CILEX Regulation proposes to include the word "authorisation" at paragraph two, line two of page two. The change will be from "Membership and regulated practice..." to "Membership, authorisation and regulated practice". This change was required to bring an entity that has been authorised to practice as an ABS by CILEX Regulation within the ambit of the Code.

19. CILEx Regulation proposes to include the word “must” at paragraph two, line three of page two. This change will enforce the requirement to adhere to the Principles of the Code.
20. At paragraph one of the “Core Principles” section of page two, at line three we propose to remove the word “behaviour” and substitute it with “conduct and professional performance”. We also make the same amendment at paragraph 2 of “The Principles Explained” section of page four. The Code will therefore read “the principles also help the public to know the standards of conduct and professional performance expected of you” This change has been made to maintain consistency throughout the Code which is focused on the conduct of the regulated community and the conduct that the public can expect of the regulated community.
21. CILEx Regulation proposes to amend Principle 3 Outcome 3.3 lines one and two of that Outcome. Firstly the word “another” has been substituted with “a person”. Secondly the word “bound” has been removed and thirdly the word “apply” has been added to the end of line three of that Outcome. The Code will therefore read “report to CILEx Regulation without delay any suspicion that a person has breached the Code unless legal professional privilege or client confidentiality apply”. These changes have been made to provide clarity to the public and the regulated community about what is expected of them by Outcome 3.3.
22. CILEx Regulation proposes to amend Principle 3 Outcome 3.4 lines one and two. These amendments are the same as that described at paragraph 24 of this consultation paper. The code will therefore read “report to the relevant authority any misconduct of a person which falls to be regulated by that authority unless legal professional privilege or client confidentiality apply”
23. CILEx Regulation proposes to amend Principle 8 Outcome 8.6 at line one. The words “Comply with” have been substituted with “adhere to”. The Code will therefore read “adhere to effective procedures to ensure compliance with your legal and regulatory obligations”. This change has been made to provide consistency within Principle 8 of the Code.
24. In conclusion the changes proposed are to provide consistency and clarity for its current regulated community and for when it extends its regulated community to include ABS. It is also to provide the public with certainty as to the standards expected of CILEx Regulation’s regulated community.

CONSULTATION QUESTIONS

Question 1

Do you agree that the Code of Conduct be extended to ABS?

Yes/No?

Please provide any other comments.

Question 2

Do you agree that no revisions are required to the standards of conduct set out in the Code of Conduct to extend its application to ABS?

Yes/No?

Please provide any other comments.

Question 3

Do you have any other comments on our proposal to extend the Code of Conduct to ABS?

Yes/No?

Please provide any other comments.

HOW TO RESPOND

Please send your response to this consultation to CILEx Regulation through one of the following methods:

- By email to consultations@cilexregulation.org.uk. Mark it for the attention of Saadia Siddiqui.
- By post to CILEx Regulation Ltd, Kempston Manor, Kempston, Bedford MK42 7AB.
- By DX to CILEx, DX 124780 Kempston 2.

You may use our response which can be found at

<http://www.cilexregulation.org.uk/about-us/consultations/open-consultations>

SUBMISSION DEADLINE

The deadline for the submission of responses is **18 March 2016**.

ANNEX 1



The CILEx Code of Conduct

This is the ~~CILEx~~ Code of Conduct (the **Code**) of the Chartered Institute of Legal Executives (**CILEx**) and its regulatory body, CILEx Regulation. It sets out the principles to which CILEx members, CILEx practitioners and CILEx Authorised Entities must adhere in their conduct, ~~practice~~ practise and professional performance, and the outcomes they must meet.

Membership, authorisation and regulated practice carry both privileges and responsibilities. They require that in your conduct, ~~practice~~ practise and professional performance you must:

- develop and use your professional knowledge and skills for the benefit of those who use your services
- maintain good professional relationships with others
- act in a way that promotes confidence and trust in the legal professions and the provision of legal services.

Core Principles

You must adhere to the following core principles in the work you do and the decisions you make. The principles also help the public to know the standards of ~~behaviour~~ conduct and professional performance that are expected of you.

You must:

1. uphold the rule of law and the impartial administration of justice;

2. **m**Maintain high standards of professional and personal conduct and justify public trust in you, your profession and the provision of legal services;:-
3. **b**Behave with honesty and integrity;:-
4. **c**Comply with your legal and regulatory obligations and deal with **your** regulators and ombudsmen openly, promptly and co-operatively;:-
5. **a**Act competently, in the best interests of your client and respect client confidentiality;:-
6. **T**treat everyone fairly and without prejudice;:-
7. **E**ensure your independence is not compromised;:-
8. **A**act effectively and in accordance with proper governance and sound financial and risk management principles;:-
9. **P**protect client money and assets.

Application

You must comply with the Code whenever it applies to you. Your professional and personal conduct will be judged against it and a breach may lead to action being taken against you. Compliance with the Code will be taken into account in considering information which raises a question about your conduct, ~~practice~~ practise or professional performance.

The Principles Explained

Each core principle is supported by a series of outcomes. You must adhere to the principles and meet the outcomes.

Where CILEx Regulation provides guidance ~~to-on~~ the CILEx Code of Conduct, this is not exhaustive but is intended to help you to understand our expectations of you. Compliance with any guidance may not be an absolute requirement but you may be called upon to justify a departure from it if your conduct or professional performance behaviour is called into question.

Definitions

In the Code: **You** and **your** means a CILEx member, CILEx practitioner or CILEx Authorised Entity.

1. Uphold the rule of law and the impartial administration of justice.

You must:

- 1.1 Understand and comply with your primary and overriding duty to the court, obey court orders and do nothing which would place you in contempt:-
- 1.2 not knowingly or recklessly allow the court to be misled.

2. Maintain high standards of professional and personal conduct and justify public trust in you, your profession and the provision of legal services.

You must:

- 2.1 advise your client of your professional status and that you are authorised to practise and/or regulated by CILEx Regulation. Where your practice is regulated by CILEx Regulation your business communications must confirm that:-
- 2.2 Not engage in any conduct that could undermine or affect adversely the confidence and trust placed in you and your profession by your client, your employer, professional colleagues, the public and others.

3 Behave with honesty and integrity.

You must:

- 3.1 ~~b~~Be honest in all your dealings and in all financial matters~~:-~~
- 3.2 ~~n~~Not intentionally mislead anyone you deal with~~:-~~
- 3.3 ~~R~~report to CILEx Regulation without delay any suspicion that a person another has breached the Code unless ~~bound by~~ legal professional privilege or client confidentiality apply~~:-~~
- 3.4 ~~R~~report to the relevant authority any misconduct of a person another which falls to be regulated by that authority unless ~~bound by~~ legal professional privilege or client confidentiality apply~~:-~~
- 3.5 ~~n~~Not hold yourself out as having a qualification or professional status that you do not possess.

4 Comply with your legal and regulatory obligations and deal with regulators and ombudsmen openly, promptly and co-operatively.

You must:

- 4.1 ~~u~~Understand and comply with the law and regulation applicable to you~~:-~~
- 4.2 ~~T~~ake all practicable steps to ensure you can demonstrate that you have adhered to the ~~Core~~ core Principles and met the associated Outcomes~~:-~~
- 4.3 ~~N~~ot place others in breach of any regulatory requirement or rule of professional conduct~~:-~~
- 4.4 ~~r~~espond openly, promptly and co-operatively to communications from your regulators and ombudsmen.

5 Act competently, in the best interests of your client and respect client confidentiality.

You must:

- 5.1 **M**aintain a high level of competence in your legal work and ensure that your legal knowledge is current and of sufficient depth for your role.
- 5.2 **I**dentify and address any deficiencies in your knowledge or training, or that of your staff, so as to maintain a level of competence and knowledge appropriate to the work and level of responsibility in which you or your staff are engaged.
- 5.3 **A**ct only on matters that are within your competence.
- 5.4 **N**ot act for a client in an area of law where you have insufficient knowledge or experience.
- 5.5 **A**ct on your client's instructions except when to do so would involve a breach of the law or this Code.
- 5.6 **N**ot act in a matter where you do not have the right or are not authorised to act.
- 5.7 **A**dequately explain and agree with your client the terms upon which your services are to be provided, including the extent of the services, payment and the likely or anticipated cost, outcome and timescale for the advice and services to be provided.
- 5.8 **P**rovide prompt, clear and accurate information and advice to your client, advise them openly and honestly and keep them up to date with information they need about the work you are performing for them within agreed timescales.
- 5.9 **I**nform your client fully as to your complaints procedure including their right to refer a complaint to the Legal Ombudsman or CILEx Regulation where appropriate.
- 5.10 **N**ot charge a client for the cost of handling a complaint.
- 5.11 **W**here your practice is regulated by CILEx Regulation, include in the terms of business with your client, a statement that CILEx Regulation is your regulator and may seek access to their papers and that, in these circumstances, you will grant CILEx Regulation access unless the client objects.

- 5.12 **M**aintain confidentiality in respect of your client's affairs except where to do so would conflict with the law or the Code or where your client explicitly authorises you to disclose confidential information.

6 Treat everyone fairly and without prejudice.

You must:

- 6.1 **e**nsure your business or your role within it, your business model, processes and practices adequately:
- o assist consumers and clients to access justice and the full range of legal services; and
 - o provide each client with equal opportunity to secure a favourable outcome in their matter, irrespective of their vulnerability or susceptibility to discrimination.

7 Ensure your independence is not compromised.

You must:

- 7.1 **n**ot act or continue to act where there is a conflict of interest or a significant risk that a conflict may arise;:-
- 7.2 **N**ot act or continue to act for a client if you reasonably consider that they are providing instructions under duress or undue influence, except where to withdraw from acting would be detrimental to the client's interests;:-
- 7.3 **W**here instructions are provided by a third party, confirm them with your client to ensure they are your client's own instructions;:-
- 7.4 **E**nsure that none of your commercial interests or financial arrangements adversely affect the independence of your advice or your ability to act impartially.

8 Act effectively and in accordance with proper governance and sound financial and risk management principles.

You must:

- 8.1 **m**Maintain proper standards of work and keep accurate records. In matters such as communications with clients, professional colleagues and others, your records should be contemporaneous and in any event must be made as soon as practicable thereafter.
- 8.2 **e**Ensure that you properly supervise tasks that you have asked others to perform on your behalf, recognising that you remain accountable for any such work.
- 8.3 **e**Ensure that anyone you ask to perform work on your behalf is appropriately qualified and authorised to perform it.
- 8.4 **e**Ensure that clients' matters are supervised and regularly checked by those with sufficient competence and experience to assess the quality of the work and to ensure issues identified are addressed.
- 8.5 **a**Adhere to effective management, oversight and reporting structures.
- 8.6 ~~Comply with~~**a**Adhere to effective procedures to ensure compliance with your legal and regulatory obligations.

9 Protect client money and assets.

You must:

- 9.1 **i**Identify, assess, manage and promptly address risks to money and assets entrusted to you by clients and others.
- 9.2 **E**ffectively monitor the financial stability of your business or your role within it, so as to protect client money and assets from risks associated with the financial position of your business or the business of your employer.

Further Help and Guidance

If you are unsure how this Code applies to you, contact CILEx Regulation on 01234 845770 or email info@cilexregulation.org.uk.

CONSULTATION ON EXTENDING THE CILEx ACCOUNTS RULES TO ALTERNATIVE BUSINESS STRUCTURES (ABS)

1. The Chartered Institute of Legal Executives (CILEx) is an approved regulator under the Legal Services Act 2007 (the Act). In accordance with the requirements of the Act it has separated its regulatory and representative functions. The regulatory functions have been delegated to CILEx Regulation Ltd. CILEx Regulation Ltd is the regulatory body for Chartered Legal Executives, other grades of CILEx membership, CILEx Practitioners and entities.
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3. The CILEx Code of Conduct comprises 9 Principles, supported by Outcomes, which form the basis of regulation. The ninth core Principle states that those subject to regulation by CILEx Regulation must protect client money and assets. This Principle protects and promotes the interests of the public and consumers.
4. CILEx Accounts Rules prescribe the arrangements for managing client and office money because of the significant risks which arise if the necessary controls are not clearly in place.
5. CILEx Regulation is making an application for CILEx to become a Licensing Authority. This will allow it to regulate and grant a licence to an applicant to become a Licensed Body, also commonly known as an Alternative Business Structure (ABS). The application to

become a Licensing Authority will be made to the Legal Services Board (LSB) under the Act.

6. This consultation seeks your views on the proposal to extend the CILEx Accounts Rules to ABS.
7. This consultation will run for 6 weeks, closing on 18 March 2016.

INTRODUCTION

8. CILEx Regulation is able to regulate entities whose owners and managers comprise authorised persons. The Legal Services Act enables regulators to become Licensing Authorities and to regulate Licensed Bodies (known as ABS). CILEx Regulation proposes to regulate Alternative Business Structures (ABS) under the Act.
9. An ABS is a regulated entity which provides legal services and has some form of non-lawyer involvement. This involvement can either be at management level, as an owner or shareholder.
10. CILEx Regulation proposes to extend the Accounts Rules to the client and office monies held by Licensed Bodies. It will also require the individual acting as the Head of Finance and Administration to have completed a course in accounts which covers knowledge of the Accounts Rules and skills in managing financial elements.

AIMS OF THE CILEx ACCOUNTS RULES

11. The Accounts Rules prescribe the arrangements for managing client and office money. CILEx Regulation takes the view that it is justified in this prescriptive approach because of the significant risks which arise if the necessary controls are not clearly in place.
12. The Accounts Rules ensure that Authorised Entities keep client and office monies separated and that there is a clear audit trail of transactions that are undertaken on behalf of each client. Authorised Entities are expected to maintain a ledger for each client, which will ensure that clear and unequivocal financial records are held for each client.
13. The Accounts Rules also contain provisions about how and by whom money can be withdrawn from client account and when interest should be paid on money held in a client account.
14. Authorised Entities are required to carry out regular reconciliations so that they can maintain accurate records and undertake a regular review of the financial status of each matter on which they are instructed.

15. Authorised Entities are expected to obtain annual Accountants' Reports from a Reporting Accountant. The reports ensure that an independent assessment is carried out of compliance by the Authorised Entity with the Accounts Rules. The Reporting Accountant is required to carry out various test procedures that are set out in the Accounts Rules. The Authorised Entity must provide a copy of the report to CILEx Regulation. Where the report raises a concern CILEx Regulation is able to monitor or inspect the entity to assess and address those matters as necessary.
16. The Reporting Accountant is under a duty to report directly to CILEx Regulation any concerns that they have when they undertake the audit of the entity. This again enables CILEx Regulation to take action in the interests of protecting clients' monies.

PROPOSED CHANGES

17. CILEx Regulation intends to extend the application of its existing Accounts Rules to ABS. It considers that there should be the same level of protection for client money and other assets held by an ABS as for non-ABS.
18. ABS (known as Licensed Bodies) are organisations comprising lawyers and non-lawyers. CILEx Regulation believes that the same level of monitoring of the financial stability of a regulated legal practice should apply to an ABS as to non-ABS, so as to protect client money and assets from risks associated with the financial position of the business.
19. CILEx Regulation believes that extending the application of the Accounts Rules is in both applicants' and consumers' interests and avoids uncertainty as to the protection that the Accounts Rules provide. It believes that ensuring that Principle 9 of the Code of Conduct and the Accounts Rules are applied to ABS protects and promotes the interests of the public and consumers. It encourages an independent, strong, diverse and effective legal profession and promotes the maintenance of the professional principles that authorised persons should act with integrity and independence and in the best interests of their clients.

ACCOUNTS RULES

20. The Accounts Rules ensure that entities keep client and office monies separated and that there is a clear audit trail of transactions that are undertaken on behalf of each client.
21. A track change copy of the rules can be found at Annex 1.
22. CILEx Regulation will clarify within the rules that they only apply to the provision of any Regulated Legal Activity or other legal service by an ABS. They will not apply to other complimentary non-legal services provided by an ABS.
23. CILEx Regulation will add the following new definition in Rule 1.3 to provide greater clarity to the rules:
 - CILEx Regulation; and
 - Client;
24. CILEx Regulation will amend the following existing definitions to include ABS:
 - Authorised Entity; and
 - You and Your.
25. CILEx Regulation will amend the timescale in Rule 2.1 in which Client Money must be paid into a Client Account from 'as soon as is practicable' to 'within two working days'. This brings this timescale in line with that already quoted in Rule 2.1.2 and ensures prompt action is taken.
26. CILEx Regulation will amend the wording in Rule 2.5 to give greater clarity on the need to advise a client of costs, by submitting an account in writing, when transferring a client's money from Client Account to Office Account.
27. CILEx Regulation will amend the wording from 'practice' to 'providing any Regulated Legal Activity or other legal services' in Rule 5.1, Rule 7.1 and Rule 15.1 to give greater clarity for both non-ABS and ABS.
28. CILEx Regulation will amend the wording in Rule 16.1 to include the implications of a regulated practice making use of an escrow arrangement approved by CILEx Regulation to

hold Client Monies. This will enable CILEx Regulation to decide on those Accounts Rules which will still apply to entities making use of an escrow.

CONSULTATION QUESTIONS

Question 1

What are your views on the proposal to extend the CILEx Accounts Rules to Alternative Business Structures?

Question 2

Do you have any comments on the proposal to clarify the extent to which the CILEx Accounts Rules apply to an ABS, where the ABS is offering other complimentary non-legal services?

Question 3

Do you agree with the proposal to extend the definitions in the Accounts Rules to include ABS and to provide greater clarity?

Question 4

Do you agree with the proposal to change the timescale in Rule 2.1 in which Client Money must be paid into a Client Account from 'as soon as is practicable' to 'within two working days'?

Question 5

Do you agree with the proposal to extend the wordings in Rule 2.5, Rule 5.1, Rule 7.1 and Rule 15.1 to provide greater clarity?

Question 6

Do you agree with the proposal to amend the wording in Rule 16.1 to include the implications of a regulated practice making use of an escrow to hold Client Monies?

Question 7

Provide your comments on the redrafted rules.

HOW TO RESPOND

Please send your response to this consultation to CILEx Regulation through one of the following methods:

- By email to consultations@cilexregulation.org.uk Mark it for the attention of David Pope.
- By post to CILEx Regulation Ltd, Kempston Manor, Kempston, Bedford MK42 7AB.
- By DX to CILEx, DX 124780 Kempston 2.

SUBMISSION DEADLINE

The deadline for the submission of responses is 18 March 2016.

CONSULTATION ON EXTENDING THE CILEx REGULATION PROFESSIONAL INDEMNITY INSURANCE (PII) SCHEME RULES TO ALTERNATIVE BUSINESS STRUCTURES (ABS)

1. The Chartered Institute of Legal Executives (CILEx) is an approved regulator under the Legal Services Act 2007 (the Act). In accordance with the requirements of the Act it has separated its regulatory and representative functions. The regulatory functions have been delegated to CILEx Regulation Ltd. CILEx Regulation is the regulatory body for Chartered Legal Executives, other grades of CILEx membership, CILEx practitioners and entities.
2. All entities authorised and regulated by CILEx Regulation must have Professional Indemnity Insurance (PII) in place that complies with the rules and terms and conditions prescribed by CILEx Regulation.
3. The CILEx PII Rules and Minimum Wording have been designed to provide entities regulated by CILEx Regulation with cover against civil liability and professional negligence.
4. PII delivers an important degree of financial protection and is in the interest of all stakeholders, particularly consumers of legal services, for whom the security afforded by the arrangement is essential. PII is provided to entities authorised by CILEx Regulation through the open market and helps protect consumer interests whilst promoting the regulatory objectives set out in the Act.
5. CILEx Regulation is making an application for CILEx to become a Licensing Authority under the Act. This will allow CILEx Regulation to regulate and grant a license to a Licensing Body, also commonly known as an Alternative Business Structure (ABS). The application to become a Licensing Authority will be made to the Legal Services Board (LSB) under the Act.
6. CILEx Regulation is consulting on its intention to extend the operation of the CILEx PII scheme rules to ABS.
7. The consultation is open until **18 March 2016**.

INTRODUCTION

8. CILEx Regulation proposes to regulate ABS under the Act.
9. An ABS is a regulated entity which provides legal services and has some form of non-lawyer involvement. This involvement can either be at management level or as an owner or shareholder.
10. In developing its proposal to become a Licensing Authority CILEx Regulation intends to extend its current PII scheme to ABS.

CURRENT PII SCHEME

11. PII claims most commonly involve civil liability or professional negligence. CILEx Regulation operates an open market scheme of PII and aims to provide financial protection to consumers where they have suffered a loss due to the acts or omissions of an entity regulated by CILEx Regulation.
12. All entities authorised by CILEx Regulation are required to take out and maintain qualifying PII in accordance with the rules administered by CILEx Regulation.

CILEx PII Rules

13. The CILEx PII Rules are at annex 1.
14. These rules have been drafted to impose obligations on entities regulated by CILEx Regulation to comply with PII requirements. These obligations include that an entity is unable to practise unless PII is in place and this cover must remain in place throughout all of the time that an entity is authorised and regulated by CILEx Regulation.
15. The CILEx PII Rules also require an entity regulated by CILEx Regulation to only obtain PII from a CILEx Regulation Qualifying Insurer.

Qualifying Insurers

16. In order to provide insurance to entities regulated by CILEx Regulation insurers must agree to become a Qualifying Insurer. Insurers will do this by committing themselves to the terms of the Qualifying Insurers Agreement (QIA), set out by CILEx Regulation.
17. The QIA requires Qualifying Insurers to have a credit rating from AM Best of at least B+ or, Standards & Poor's rating of at least Category BBB. Qualifying Insurers are also required to adopt the Minimum Wording (see below) as prescribed by CILEx Regulation and to offer a minimum level of cover of £2million. This minimum level of cover applies regardless of the actual wording of the policies issued.
18. In order to protect consumers and to ensure that there is a consistent level of insurance amongst entities regulated by CILEx Regulation the QIA has a 'difference in conditions' clause. This clause stipulates that where there is a dispute in connection with the cover, conditions, exclusions or limits of a policy, it will be specifically understood and agreed that the CILEx Minimum Wording shall take precedence over any cover, conditions, exclusions or limit which are less favourable to the insured entity or their clients.

CILEx Minimum Wording

19. The CILEx Minimum Wording is the minimum terms of insurance that Qualifying Insurers are required to provide to entities regulated by CILEx Regulation. The CILEx Minimum Wording is at annex 2.
20. The CILEx Minimum Wording requires all entities regulated by CILEx Regulation to obtain insurance to at least the same level of cover; and to deal with all claims consistently. On this basis Qualifying Insurers are under an obligation to adopt this wording. This provides consistent protection for consumers who seek assistance from an entity regulated by CILEx Regulation.
21. Provided that the CILEx Minimum Wording is met entities have the freedom to choose or negotiate cover with Qualifying Insurers individually. This provides entities the opportunity to bargain for cover on the open market from a Qualifying Insurer of their choice. It also allows entities the flexibility to provide higher levels of protection, if they so wish.

PROPOSED CHANGES

22. CILEx Regulation intends to extend the operation of its existing PII scheme rules to ABS. CILEx Regulation considers that there is no need for different levels of protection for ABS and non-ABS. Extension of the current scheme is in consumers' interests and avoids uncertainty amongst consumers as to the level of protection afforded to them.
23. A single scheme of PII will also provide clarity to regulated entities.
24. The changes that are intended to be made to the CILEx PII Rules are to extend the definition of Authorised Entity to include ABS. In addition a slight amendment has been made to Rule 9 to ensure that Compliance Managers comply with these rules. The applicable track changes have been made to the rules at annex 1.
25. The remaining rules will stay the same.

CONSULTATION QUESTIONS

Question 1

What are your views on the proposal to extend the PII scheme rules to ABS?

Question 2

Do you agree that the limit of indemnity of £2million be the same for ABS as non-ABS?

Question 3

Do you have any other comments on the proposal to extend the PII scheme rules to ABS?

Annex 1

Annex 2

HOW TO RESPOND

Please send your response to this consultation to CILEx Regulation through one of the following methods:

- By email to consultations@cilexregulation.org.uk. Mark it for the attention of Mandeep Nagra.
- By post to CILEx Regulation Ltd, Kempston Manor, Kempston, Bedford MK42 7AB.
- By DX to CILEx, DX 124780 Kempston 2.

SUBMISSION DEADLINE

The deadline for the submission of responses is **29th January 2016**.

CONSULTATION ON PROPOSALS TO REVISE THE INVESTIGATION, DISCIPLINARY AND APPEALS RULES

1. The Chartered Institute of Legal Executives (CILEx) is an approved regulator under the Legal Services Act 2007 (the Act). In accordance with the requirements of the Act it has separated its regulatory and representative functions. The regulatory functions have been delegated to CILEx Regulation Ltd (CILEx Regulation). CILEx Regulation is the regulatory body for Chartered Legal Executives, other grades of CILEx membership, CILEx Practitioners, CILEx Approved Managers and CILEx Authorised Entities (regulated community).
2. CILEx Regulation takes a risk based and outcomes focused approach to regulation. This approach focuses on working constructively with its regulated community to ensure that they deliver the best outcomes for their clients. CILEx Regulation considers this provides a balanced approach to regulation by stipulating clear principles within the CILEx Code of Conduct (the Code) to the regulated community of the standards expected of them and informing the public what standards they can expect of them.
3. There are Investigation, Disciplinary and Appeals Rules (IDAR) which outline how complaints made about the conduct of CILEx members, authorised persons and entities regulated by CILEx Regulation are investigated. It also outlines the past conduct and fitness to own declarations made by applicants and the regulated community. The IDAR sets out the disciplinary powers available to CILEx Regulation, which are those available to the Professional Conduct Panel, the Disciplinary Tribunal and the Appeals Panel.
4. CILEx Regulation is making an application for CILEx to become a Licensing Authority. This will allow it to grant a licence to an applicant to become a Licensed Body, also commonly known as an Alternative Business Structure (ABS). This consultation seeks your views on the proposal to extend the application of the IDAR to ABS.
5. This consultation will run for 6 weeks, closing on 18 March 2016.

INTRODUCTION

6. CILEx Regulation is able to regulate entities whose owners and managers comprise authorised persons. The Legal Services Act enables regulators to become Licensing Authorities and to regulate Licensed Bodies (known as ABS). CILEx Regulation proposes to regulate Alternative Business Structures (ABS) under the Act.
7. An ABS is a regulated entity which provides legal services and has some form of non-lawyer involvement. This involvement can either be at management level, as an owner or shareholder. A non-lawyer is a person who is not authorised under the Legal Services Act 2007 to carry out reserved or regulated legal activities. We will refer to ABS that we authorise as Licenced Bodies.
8. The IDAR was implemented on 5 January 2015 following LSB approval of CILEx Regulation's application for CILEx to authorise entities and to award practice rights in respect of Conveyancing, Probate, Litigation and Immigration. CILEx Regulation proposes to extend the IDAR to incorporate ABS, its owners, managers, designated officers and employees.
9. The current version of the IDAR is applicable to all members of CILEx, regardless of the grade in which they are registered, CILEx Practitioners and CILEx Authorised Entities. It is intended to apply equally to all, regardless of the types of work they undertake or the mode through which they practice, i.e. employed, self-employed or an owner or manager of an entity. The IDAR set out how allegations of misconduct and declarations of prior conduct are dealt with. The IDAR also set out the powers of sanction available to CILEx Regulation where a matter of misconduct is proved.
10. The IDAR is set out in five parts that comprise rules for how the investigation of allegations and complaints must be dealt with; how the Panels and Tribunals are established and must conduct themselves; how matters of prior conduct and fitness to own are dealt with; and how other incidental matters are dealt with such as publication, maintenance of documents; and transitional provisions.
11. CILEx Regulation proposes to make amendments to the IDAR to incorporate Licensed Bodies; such that the investigative and disciplinary procedures and the powers available to CILEx Regulation under the IDAR in regard to its Regulated Community apply to ABS as well. These changes will reflect CILEx Regulation's extended regulatory remit to include

ABS and its owners, managers, designated officers and employees, and will make reference to the powers conferred to it under the Licensing Rules.

12. The Licensing Rules will give CILEx Regulation the power to: require ABS and its owners, managers, designated officers and employees to declare fitness to own matters, (known as fit and proper declarations within the Licensing Rules); to investigate allegations of misconduct; disqualify a person in an ABS and anyone who owns or is employed by the ABS where an allegation of misconduct is proved; review decisions made by CILEx Regulation in regard to disqualifications of individuals; and consider appeals from the Strategic Risk Committee (SRC) in regard to a decision made about licence. These powers will apply to all employees of Licensed Bodies, whereas the powers under the IDAR do not extend to all employees of entities that CILEx Regulation regulates. The application of IDAR to employees of Licensed Bodies accords with the powers granted to licensing authorities under the Act.
13. The IDAR will be referenced within the Licensing Rules to provide the PCP, DT and AP with the power to investigate or decide matters that fall within their remit through the Licensing Rules.
14. The IDAR, with the amendments that CILEx Regulation proposes in track change, is attached at Annex 1 of this consultation. The Licensing Rules which are being consulted on separately are attached at Annex 2 of this consultation for reference purposes when considering this consultation. Should you wish to respond to the consultation on the Licensing Rules the consultation can be found at <http://www.cilexregulation.org.uk/about-us/consultations/open-consultations>

DEFINITIONS

15. CILEx Regulation has updated the IDAR definitions to incorporate licensing and to provide clarity to CILEx Regulation's regulated community and the public, where required.
16. The definitions have been updated to include the key positions of persons owning or working at an ABS, which are required by the Act, in order for an entity to be licensed as an ABS.
17. The definitions appear at Rules 3, 7, 21 and 33 of the IDAR.

Question 1

Do you agree that revisions to the definitions in the IDAR are necessary to incorporate licensing and to provide clarity to CILEx Regulation's regulated community and the public, where required? Yes/No? Please provide any other comments.

MISCONDUCT ALLEGATIONS

18. CILEx Regulation proposes to broaden the application of the IDAR to cover investigations into misconduct allegations and disciplinary proceedings against ABS and all persons employed or holding relevant positions in an ABS. This will include the owners, designated officers and managers. The Licensing Rules will require ABS to meet the criteria and standards set out in the Code of Conduct and the Licensing Rules.
19. In particular Rule 24 of the Licensing Rules provides CILEx Regulation with the power to investigate any failure of the Licensing Rules as misconduct. This failure to comply will be called a "default" of the Licensing Rules. CILEx Regulation has therefore reviewed and updated the IDAR to allow complaints or allegations of misconduct received against all of these people and the ABS to be considered.
20. It is intended that the process and powers for investigating complaints or allegations of misconduct about an ABS and anyone who works at an ABS, by CILEx Regulation will remain the same as for other parts of the regulated community. However they will include additional powers conferred to it by the Licensing Rules, such as disqualification or the power to consider reviews of some decisions made on licensing.
21. Broadening the scope of the IDAR ensures that the procedures that apply to ABS are the same as those that apply to Authorised Entities for the protection of the public and to maintain consistency in regulation and decision making.
22. The amendments made to the IDAR will continue to allow CILEx Regulation to meet Regulatory Objectives and the Professional Principles set out in the Act. The IDAR has been drafted to ensure that the client and public interest are at the forefront of the work of those subject to it and those procedures are transparent for all those that use them.

Question 2

Do you agree that the procedure and powers set out under IDAR for investigation of misconduct allegations be extended to ABS, its owners, designated officers, managers and employees? Yes/No? Please provide any other comments.

PRIOR CONDUCT

23. All CILEx members, CILEx Practitioners and owners of an entity are required to make prior conduct declarations in an application for authorisation and thereafter each year on an annual subscription renewal form or on an annual return form.
24. A similar approach will be taken in regard to ABS where any owner, designated officer or manager will be required to declare prior conduct. Prior Conduct encompasses past criminal convictions, financial orders and matters relating to whether a person is fit to own or manage an entity. Under the Licensing Rules these individuals will be required to submit a declaration that they are a fit and proper person to be an owner, designated officer or manager of the ABS. The procedure for dealing with whether someone is fit and proper will be the same as the procedure set out in IDAR for dealing with fitness to own declarations.
25. Under the Licensing Rules the Professional Conduct Panel considers whether someone is a fit and proper person. The Professional Conduct Panel will therefore have the power to decide whether or not someone is a fit and proper person to become an owner, designated officer or manager in an ABS. This will be deemed a decision on fitness to own.
26. CILEx Regulation will develop guidance to panellists to guide them in considering fit and proper declarations. This will take the same approach as the current fitness to own declarations.

Question 3

Do you agree that the IDAR be extended to allow fit and proper declarations to be decided by the Professional Conduct Panel under the same procedure as fitness to own declarations? Yes/No?

Please provide any other comments.

REVIEW AND APPEALS

27. The IDAR has also been broadened by the Licensing Rules to allow CILEx Regulation to consider two additional processes. These are a review of decisions made under Rule 19 and 25 (h) of the Licensing Rules and an appeal against decisions made under Rule 25 (i) to (g) of the Licensing Rules.

28. Rule 19 allows CILEx regulation to disqualify any person working at an ABS; which includes the owners, designated officers, managers and employees. Rule 25 (h) requires CILEx to review any disqualification decision. Rule 25 (i) to (g) requires CILEx Regulation to review decisions in regard to the granting of, revocation of or other change to an ABS licence.
29. The procedure for review of decisions made under Rules 19 and 25 (h) of the Licensing Rules will be dealt with under part III of the IDAR which allow the Disciplinary Tribunal to consider and review the decisions made by CILEx Regulation. They will both be called a "disqualification review". As with current decisions of the Disciplinary Tribunal there will be an appeal available under part IV of the IDAR to the Appeals Panel.
30. The availability of the appeals procedure allows for an independent review of the decision made. This delivers fairness and impartiality. Rule 26 of the Licensing Rules provides for a decision made under Rule 25 (i) to (g) of the Licensing Rules to be appealed under part IV of the IDAR. This approach is to maintain consistency in decision making and to deliver the same fairness and impartiality.
31. Where an owner of an ABS considers that an unfavourable decision has been made, under Rule 26 of the Licensing Rules by the Appeals Panel, a further right of appeal exists. The further right of appeal is available under Rule 27 of the Licensing Rules. CILEx Regulation has opted for these appeals to be made to the General Regulatory Chamber of the First Tier Tribunal.

Question 4

Do you agree that the IDAR procedure be used for a review of disqualification decisions?

Yes/No?

Please provide any other comments.

Question 5

Do you agree that CILEx Regulation should select the General Regulatory Council Chamber to deal with licensing appeals?

Yes/No?

Please provide any other comments.

CONSULTATION QUESTIONS

Question 1

Do you agree that revisions to the definitions in the IDAR are necessary to incorporate licensing and to provide clarity to CILEx Regulation's regulated community and the public, where required?

Yes/No?

Please provide any other comments.

Question 2

Do you agree that the procedure and powers set out under IDAR for investigation of misconduct allegations be extended to ABS, its owners, designated officers, managers and employees? Yes/No?

Please provide any other comments.

Question 3

Do you agree that the IDAR be extended to allow fit and proper declarations to be decided by the Professional Conduct Panel under the same procedure as fitness to own declarations?

Yes/No?

Please provide any other comments.

Question 4

Do you agree that the IDAR procedure be used for a review of disqualification decisions?

Yes/No?

Please provide any other comments.

Question 5

Do you agree that CILEx Regulation should select the General Regulatory Council Chamber to deal with licensing appeals?

Yes/No?

Please provide any other comments.

HOW TO RESPOND

Please send your response to this consultation to CILEx Regulation through one of the following methods:

- By email to consultations@cilexregulation.org.uk. Mark it for the attention of Saadia Siddiqui.
- By post to CILEx Regulation Ltd, Kempston Manor, Kempston, Bedford MK42 7AB.
- By DX to CILEx, DX 124780 Kempston 2.

You may use our response which can be found at

<http://www.cilexregulation.org.uk/about-us/consultations/open-consultations>

SUBMISSION DEADLINE

The deadline for the submission of responses is **18 March 2016**.



**CILEx INVESTIGATION, DISCIPLINARY
AND APPEALS RULES
2015**

CILEx INVESTIGATION, DISCIPLINARY AND APPEALS RULES

PART I: GENERAL

Application of Rules, Establishment of Panels and Tribunal

1. (1) These Rules apply to any:
 - (a) allegation of misconduct made against a Relevant Person; or
 - (b) declaration of prior conduct made by an Applicant or Relevant Person.
- (2) In these rules **misconduct** means any breach of the CILEx Code of Conduct.
- (3) The Professional Conduct Panel is established for the purposes set out in Part II.
- (4) The Disciplinary Tribunal is established for the purposes set out in Part III.
- (5) The Appeals Panel is established for the purposes set out in Part IV.
- (6) Responsibility for the application and administration of these Rules is delegated by CILEx to CILEx Regulation.

Panellists

2. (1) CILEx Regulation must appoint and maintain lists of lay and professional members to act as panellists on:
 - (a) the Professional Conduct Panel;
 - (b) the Disciplinary Tribunal; and
 - (c) the Appeals Panel.
- (2) A person must not at any one time be included in more than one list maintained under paragraph (1).
- (3) CILEx Regulation must remove from the relevant list the name of any panellist:
 - (a) whose term of appointment has ended and not been renewed;
 - (b) who has resigned by giving notice in writing to that effect to CILEx Regulation; or
 - (c) who in the opinion of CILEx Regulation has ceased to be a suitable person to act as a panellist.
- (4) The term of appointment of a panellist must be not more than five years and no panellist may serve for more than ten years.

Interpretation

3. ~~(1) 3.~~ In these Rules, unless otherwise provided:

allegation has the meaning given in Rule 15(1);

Appeals Panel means the Appeals Panel established under Rule 1(5) as constituted from time to time;

Applicant means a person applying for Membership or Authorisation;

Approved Manager has the meaning given in the CILEx Authorisation Rules~~means a person approved by CILEx Regulation to be a Manager of an Authorised Entity;~~

Authorisation means

(a) authorisation or licensing by CILEx Regulation as an ~~Approved Manager,~~ Authorised Entity; or

(a**b**) authorisation by CILEx Regulation as a ~~or~~ CILEx Practitioner; or Relevant person;

Authorised Entity means a partnership (including a limited liability partnership), company or sole principal authorised or licensed by CILEx under the Legal Services Act 2007 to

(a) carry on an activity which is a reserved legal activity; or

~~(a)~~ (b) provide immigration advice or immigration services;

CILEx means the Chartered Institute of Legal Executives;

CILEx Member means a person who has been admitted to membership of CILEx in any grade;

CILEx Regulation means CILEx Regulation Limited;

CILEx Practitioner means a practitioner authorised by CILEx to provide one or more regulated legal activity;

complainant means a person who has made a complaint against a Relevant Person to CILEx Regulation;

Compliance Manager has the meaning given in the CILEx Authorisation Rules;

Designated Officer has the same meaning as in the CILEx Licensing Rules;

Disciplinary Tribunal means the Disciplinary Tribunal established by Rule 1(4) as constituted from time to time;

lay member means a person who is not and who has never been an authorised person (within the meaning of section 18 of the Legal Services Act 2007) or registered by

CILEx in any grade;

Membership means enrolment or reinstatement as a CILEx Member;

misconduct has the meaning given in Rule 1(2);

~~Person~~ person includes an individual, body corporate or other entity;

Practice Management Agreement has the meaning given in Rule 30(6);

Professional Conduct Panel means the Professional Conduct Panel established under Rule 1(3) as constituted from time to time;

professional member means a Fellow of CILEx who is not a member of the CILEx Council or the CILEx Regulation Board of Directors and who is otherwise eligible to be appointed to a list of panellists under Rule 2;

regulated legal activity means:

- (a) a reserved legal activity;
- (b) immigration advice or immigration services;

Relevant Person means an Approved Manager, Authorised Entity, Compliance Manager, CILEx Member, ~~or~~ CILEx Practitioner or Designated Officer;

reserved legal activity has the same meaning as in the Legal Services Act 2007.

(2) Subject to paragraph (1) and Rules 7, 21 and 33, the Interpretation Act 1978 applies to these Rules as if they were an Act of Parliament.

Extension of Time

4. Where these Rules prescribe a time limit by which a person must act or after which they may not act, an Investigator appointed under Part II, the Professional Conduct Panel, the Disciplinary Tribunal or the Appeals Panel (as the case may be) may, upon application, vary that time limit if satisfied that in all the circumstances it is reasonable to do so.

Service of Documents

5. (1) Any notice required to be given under these Rules may be given to a person or that person's representative:
 - (a) by sending it by first class post to a relevant address;
 - (b) by leaving it at a relevant address;
 - (c) by personal service, effected by leaving the document with an individual or, in the case of a body corporate or other entity, with a director, officer or manager of that body corporate or entity;
 - (d) by such other method as the Professional Conduct Panel, the Disciplinary Tribunal or the Appeals Panel (as the case may be) may direct.

- (2) For the purpose of paragraph (1), a **relevant address** means:
- (a) in the case of an individual, the last known address of that person, including their usual or last known residence or usual or last known place of business;
 - (b) in the case of a body corporate or other entity, its principal or registered office, its last known address or any other office or place of business which is connected to the proceedings to which the notice relates;
- and for this purpose, the last known address of a Relevant Person is the address of that person as it appears in records maintained by CILEx Regulation.
- (3) A notice which is served in accordance with paragraph (1) is deemed to be served at the time of personal service or delivery or on the second working day after it was posted.
- (4) Where it is satisfied on reasonable grounds that it is in the public interest to do so, the Professional Conduct Panel, the Disciplinary Tribunal or the Appeals Panel (as the case may be) may:
- (a) deem service to be effective even though the requirements of paragraph (1) have not been complied with; or
 - (b) dispense with the requirement of service altogether.

Effect on Membership or Authorisation

6. A Relevant Person must not be permitted to terminate their Membership or Authorisation whilst the subject of any investigation or proceedings under these Rules.

PART II: INVESTIGATION OF COMPLAINTS AND THE PROFESSIONAL CONDUCT PANEL

Interpretation of Part II

7. In this Part, unless the context otherwise requires:

Clerk means the Clerk to the Professional Conduct Panel;

Investigator means a person appointed by CILEx Regulation to conduct investigations under this Part;

Panel means the Professional Conduct Panel; and

prior conduct has the meaning given in Rule 11(4).

Professional Conduct Panel

8. The Panel must consider:

- (a) declarations of prior conduct made by or on behalf of Applicants and Relevant Persons and other information relating to their prior conduct; and
- (b) allegations made against Relevant Persons.

Composition of the Panel

9. (1) The quorum for a meeting of the Professional Conduct Panel is three members from the list of panellists maintained under Rule 2(1)(a), of whom two must be lay members and one must be a professional member.
- (2) The Panel must
- (a) select one of their number to chair the meeting; or
 - (b) if different members are to chair different parts of the meeting, elect one of their number to chair the proceedings on any matter before considering that matter.

Conduct of Meetings

10. (1) Meetings of the Panel are to be held in private.
- (2) Meetings must be held at the offices of CILEx Regulation unless the Panel decides otherwise but nothing in these Rules requires any meeting to be held outside the United Kingdom.
- (3) Minutes and a record of the decisions of the Panel must be made by the Clerk.
- (4) The Panel may resolve to consider and determine a matter without a meeting and, in that event, a decision signed by the members of the Panel is as valid as if it was made at a meeting.
- (5) In considering a matter, the Panel:

- (a) may take account of, but is not bound by, the findings, views or analysis of an Investigator;
 - (b) may seek further information from the Relevant Person;
 - (c) may take account of any further representations and material adduced by the Applicant or Relevant Person.
- (6) Where, in accordance with Rule 14(1)(c) or 17(5), the Panel has requested that:
- (a) an Applicant or Relevant Person attend a meeting of the Panel; or
 - (b) where the Applicant or Relevant Person is an entity, that a representative of that entity attend a meeting of the Panel;
- an Applicant or Relevant Person who so attends or which is so represented may be represented at the meeting by any person, whether or not legally qualified, but the Panel may refuse to permit a particular person to assist or represent a party if the Panel is satisfied that there are good and sufficient reasons for doing so.
- (7) Decisions at a meeting of the Panel are to be made by a majority vote of the panellists present.
- (8) The Panel must give reasons for its decisions and inform the parties of any right of an appeal.
- (9) CILEx Regulation must within 21 days of any decision of the Panel notify the Applicant or Relevant Person of that decision and, in the case of an allegation, CILEx Regulation must notify any complainant of the decision once it takes effect.

Duty to Declare Prior Conduct

11. (1) Every Applicant or Relevant Person who is an individual must declare in writing to CILEx Regulation if that individual has at any time:
- (a) been convicted or accepted a caution in the United Kingdom for a criminal offence, or been convicted elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;
 - (b) been removed from being a trustee of, or being concerned with the management or control of, a charity;
 - (c) been removed from office as a member, director or manager of any public body;
 - (d) been adjudged bankrupt or made a composition with creditors;
 - (e) been disqualified from acting as a director of a company;
 - (f) been the subject of a civil judgment;
 - (g) been subject to any investigation or proceedings concerning the person's fitness to practise by any regulatory or professional body.
- (2) Paragraph (1)(a) applies subject to the Rehabilitation of Offenders Act 1974.

- (3) In respect of every Applicant or Relevant Person that is not an individual, a declaration must be made in writing to CILEx Regulation if:
 - (a) a resolution for a voluntary winding-up of the Relevant Person has ever been passed without a declaration of solvency under section 89 of the Insolvency Act 1986;
 - (b) the Relevant Person has ever entered administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act;
 - (c) an administrative receiver within the meaning of section 251 of that Act has been appointed in respect of that Relevant Person;
 - (d) a meeting of creditors has been held in relation to the Relevant Person under section 95 of that Act;
 - (e) an order for the winding up of the Relevant Person has been made;
 - (f) a civil judgment has been made against that Relevant Person;
 - (g) that Relevant Person has been the subject of any investigation or proceedings conducted by any regulatory or professional body.
- (4) Each of the matters in paragraph (1) and (3) is referred to in these Rules as **prior conduct**.
- (5) In paragraphs (1)(f) and (3)(f) references to a **civil judgment** are to a judgment of a civil court concerning any debt, fraud, misrepresentation or conduct related to the administration of justice.
- (6) A declaration of prior conduct is to be considered and determined in accordance with Rules 13 and 14.

Timing of Declaration

12. (1) Every Applicant must disclose full details of prior conduct at the earliest opportunity and, unless the conduct occurs later, in any application for Membership or Authorisation.
- (2) Every Relevant Person must disclose full details of prior conduct at the earliest opportunity and in any event (if not previously disclosed to CILEx Regulation or CILEx):
 - (a) in the case of a CILEx Member:
 - (i) in any application for Membership;
 - (ii) in any application for a change in Membership grade;
 - (iii) in any other application to CILEx or CILEx Regulation; and
 - (iv) in an annual return.
 - (b) in ~~the any other case of an Approved Manager, Authorised Entity or CILEx Practitioner:~~
 - (i) in any application for Authorisation; and

- (ii) in any annual return form.
- (3) Where requested to do so by CILEx Regulation, an Applicant or Relevant Person must provide further details of any prior conduct.
- (4) Failure by a Relevant Person to comply with this Rule and Rule 11 may be treated as misconduct.

Investigator Decisions: Prior Conduct

13. (1) An Investigator may determine that no action is to be taken in relation to a declaration of prior conduct where:
- (a) the Applicant or Relevant Person has declared an outstanding judgment and there is no evidence of:
 - (i) persistent or deliberate failure to meet financial obligations;
 - (ii) a related criminal offence; or
 - (iii) failure to make arrangements to pay off any debts;
 - (b) the Applicant or Relevant Person has declared a caution or spent conviction and is not a CILEx Fellow or applying for CILEx Fellowship;
 - (c) the Applicant or Relevant Person has declared a driving offence and:
 - (i) there is no evidence of a persistent pattern of offending,
 - (ii) a custodial sentence was not imposed; and
 - (iii) the duration of any disqualification imposed was not 18 months or more;
 - (d) the Applicant or Relevant Person is or has been subject to a bankruptcy Order or has entered into an arrangement with their creditors; or
 - (e) the prior conduct is of a kind which the Panel has given the Investigator delegated authority to determine.
- (2) The Investigator must, within 21 days of making a decision, notify the Applicant or Relevant Person of that decision and, in respect of a decision made under paragraph (1)(e), must at the same time inform the Panel of that decision.
- (3) An Investigator may decline to make a determination under this rule if, in the opinion of the Investigator, it would be more appropriate for the declaration to be determined by the Panel.

Panel Decisions: Prior Conduct

14. (1) In considering any declaration or other information relating to prior conduct, the Panel must have regard to any guidance published by CILEx Regulation and may:
- (a) seek advice from or refer the matter to an Investigator or any CILEx or CILEx Regulation committee it considers appropriate;
 - (b) request that the Applicant or Relevant Person provide such further information as the Panel may reasonably require; and

- (c) request that the Applicant or Relevant Person or, where the Applicant or Relevant person is an entity, a representative of that entity, attend a meeting of the Panel.
- (2) Failure by a Relevant Person to comply with a request under paragraph (1)(b) or (c) may be treated as misconduct.
- (3) In respect of any prior conduct the Panel may:
 - (a) decide to take no further action;
 - (b) require the Applicant or Relevant Person to give an undertaking as to their future conduct;
 - (c) impose conditions on the Applicant or Relevant Person as it may think appropriate in respect of their future conduct and, in the case of an individual, their employment;
 - (d) reprimand the Relevant Person, warn the Relevant Person as to their future conduct or both;
 - (e) refer the matter to the Disciplinary Tribunal as if it was an allegation; or
 - (f) refuse any application for Membership or Authorisation or any other application to which the prior conduct relates.

Investigating Misconduct: Initial Procedure

- 15. (1) Where CILEx Regulation receives a complaint or any other information to the effect that a Relevant Person may have engaged in misconduct (an **allegation**), it may investigate the allegation in accordance with these Rules.
- (2) An Investigator must investigate an allegation as follows:
 - (a) the Investigator is to gather information about and investigate the issues involved including, where the allegation arises from a complainant, obtaining:
 - (i) any information about the complaint that the complainant wishes to provide; and
 - (ii) the consent of the complainant to provide a copy of the complaint and any supporting information to the Relevant Person;
 - (b) the Investigator must notify the Relevant Person that an allegation has been made against them, provide the Relevant Person with details of the allegation (including a copy of any complaint or supporting information) and a copy of the Rules and invite the Relevant Person to submit representations to the Investigator within 14 days;
 - (c) the Investigator may seek information or advice from third parties.
- (3) The Investigator may supply the complainant with a copy of all or part of any response from the Relevant Person and, in that event, must allow:
 - (a) the complainant a period of 14 days in which to make written observations; and

- (b) the Relevant Person a period of 14 days in which to comment on any observations received from the complainant.
- (4) At the conclusion of the investigation, the Investigator must prepare a report containing a summary of the information obtained and an analysis of the issues for consideration and must forward the same to the Relevant Person and complainant and invite them within a period of 14 days to comment in writing on the report.
- (5) Upon receipt of comments from the Relevant Person or the expiry of the time allowed for comments (whichever is the sooner), the Investigator must either determine the matter or refer it to the Panel.
- (6) A Relevant Person is obliged to comply with and respond to -reasonable enquiries made by an Investigator and failure to do so may be treated as misconduct.

Decisions by Investigators in Certain Cases

16. (1) Where an Investigator is of the opinion that:
- (a) there is no evidence available to substantiate an allegation;
 - (b) the allegation does not disclose any misconduct by the Relevant Person;
 - (c) CILEx Regulation has no jurisdiction to consider the allegation; or
 - (d) the time which has elapsed since the events (or knowledge of those events, if later) giving rise to the allegation exceeds the prescribed period;
- the Investigator may reject the allegation without further reference to the Panel.
- (2) For the purpose of paragraph (1)(d), the **prescribed period** means such period of not less than one year as CILEx Regulation may prescribe.
- (3) Where an Investigator is of the opinion that the evidence available indicates that the Relevant Person has a case to answer in respect of an allegation; and either:
- (a) the allegation is of a serious nature; or
 - (b) an adverse finding has previously been made against the Relevant Person by the Professional Conduct Panel or Disciplinary Tribunal in respect of an allegation of a similar nature;
- the Investigator may refer the allegation directly to the Disciplinary Tribunal without further reference to the Panel.
- (4) An Investigator must:
- (a) provide reasons for rejecting or referring to the Disciplinary Tribunal any allegation under this Rule;
 - (b) notify the Relevant Person and any complainant of the decision within 21 days; and
 - (c) report any such decision to the Panel.

Powers of the Professional Conduct Panel

17. (1) The Panel must consider any allegation which is referred to it and determine whether the Relevant Person has a case to answer.
- (2) In determining whether there is a case to answer, the Panel must consider whether, based upon the available evidence, there is realistic prospect that CILEx Regulation would be able to prove the allegation of misconduct before the Disciplinary Tribunal.
- (3) In respect of an allegation, the Panel may determine that:
 - (a) there is no case to answer; or
 - (b) there is a case to answer and:
 - (i) refer the allegation to the Disciplinary Tribunal; or
 - (ii) with the consent of the Relevant Person, dispose of the allegation in accordance with paragraph (4).
- (4) Where the Relevant Person admits an allegation and consents to the Panel doing so, the Panel may dispose of the matter by:
 - (a) requiring the Relevant Person to give undertakings as to their future conduct;
 - (b) imposing conditions on the Relevant Person in respect of their conduct or, in the case of an individual, their employment;
 - (c) reprimanding the Relevant Person, warning them as to their future conduct or both.
- (5) Before reaching a decision under paragraph (4), the Panel may request that the Relevant Person or, where the Relevant Person is an entity, a representative of that entity, attend a meeting of the Panel and failure to comply with such a request may constitute misconduct.

Determination by Consent

18. (1) Where, in respect of any allegation:
 - (a) an Investigator is of the opinion that the Relevant Person has a case to answer; and
 - (b) the Relevant Person admits the allegation;then subject to paragraph (3), the Investigator and the Relevant Person may agree to determine the allegation by consent.
- (2) The terms of any determination by consent must include:
 - (a) a statement to the effect that the Relevant Person admits the allegation(s);
 - (b) the imposition on the Relevant Person of one or more of the sanctions available to the Professional Conduct Panel under Rule 17 or the Disciplinary Tribunal under Rule 30 (other than the imposition of costs); and

- (c) a provision that CILEx Regulation may in its absolute discretion notify any person or publish the terms of the determination by consent.
- (3) A determination by consent must not take effect until it has been approved by order of the Panel.
- (4) Failure by a Relevant Person to comply with the terms of a determination by consent constitutes misconduct.

Interim Orders

- 19. (1) The Panel may at any time, on the application of an Investigator or of its own motion, consider whether it is necessary for the protection of the public, in the interests of the Relevant Person concerned or otherwise in the public interest to suspend or restrict a Relevant Person's Membership or Authorisation pending a hearing before the Disciplinary Tribunal.
- (2) The Panel must give the Relevant Person not less than 7 days' notice of a meeting to consider the imposition or review of an interim order, unless the Panel consider that due to the seriousness or urgency of the case a shorter period of notice is appropriate.
- (3) The notice under paragraph (2) must inform the Relevant Person of the time, date and place of the hearing, brief details of the matters giving rise to the application for an interim order and of the right to appear before and be heard by the Panel.
- (4) In considering whether to make an interim order, the Panel may determine its own procedure in accordance with these Rules, any guidance published by CILEx Regulation and the overriding requirement of fairness.
- (5) The Panel may order that the Relevant Person's Membership or Authorisation be:
 - (a) suspended; or
 - (b) subject to such restrictions as the Panel considers appropriate;for a maximum period of 18 months and any such order must be reviewed by the Panel every 3 months.
- (6) Where the Panel makes an interim order against a Relevant Person that is an Authorised Entity, it may also require the Relevant Person to enter into a Practice Management Agreement.

Appeals

- 20. (1) Decisions of the Panel (other than a decision to impose an interim [suspension](#) order which takes effect immediately) only take effect after the period for lodging an appeal against the decision has expired or, where an appeal is made, after the appeal has been disposed of or withdrawn.
- (2) An Applicant or Relevant Person may appeal against any decision or order of the Panel other than a decision to refer a matter to the Disciplinary Tribunal.

- (3) A complainant may make an application to the Panel seeking the review of a decision of an Investigator under Rule 16 to reject an allegation.
- (4) An application under paragraph (3) must be made in writing within 21 days of notification of the decision of the Investigator and, in conducting any review, the Panel may confirm the Investigator's decision, require the Investigator to investigate the matter further or consider the matter as if it was a referral made under Rule 17, but subject to such modifications as the Panel consider appropriate.
- (5) An appeal under paragraph (2) must be made in accordance with Part IV.

PART III: THE DISCIPLINARY TRIBUNAL

Interpretation of Part III

21. (1) In this Part, unless the context otherwise requires:

Chair means the Chair of a Disciplinary Tribunal Panel;

Clerk means the clerk to the Disciplinary Tribunal;

finalised hearing date means either the first hearing date or, where the first hearing date is varied by the Panel, that varied hearing date;

first hearing date means the hearing date set under Rule 24(1);

Panel means the members of the Disciplinary Tribunal appointed to hear a particular matter;

party means CILEx Regulation and the respondent(s); and

respondent means a Relevant Person against whom an allegation is made.

(2) In this Part any reference to the Professional Conduct Panel or Investigator having referred a matter to the Disciplinary Tribunal includes a decision by an Appeals Panel under Part IV to refer a matter to the Disciplinary Tribunal.

Disciplinary Tribunal

22. (1) The Tribunal has jurisdiction to hear matters referred to it under Part II by the Professional Conduct Panel or Investigator or by an Appeals Panel under Part IV.

(2) The Tribunal may determine its own procedure in accordance with these Rules, the guidance published from time to time by CILEx Regulation and the overriding requirement of fairness.

Disciplinary Tribunal Panel

23. (1) A matter that has been referred to the Tribunal must be heard by a Panel of 3three members from the list of panellists maintained under Rule 2(1)(b), of whom 2two must be lay members and 1one must be a professional member.

(2) The members of the Panel must choose one of their number to act as Chair for the purposes of the hearing.

(3) If, during the course of any hearing, a member of the Panel is unable to continue to attend the hearing, the remaining members may, with the consent of the parties, continue with the hearing.

(4) Where, under paragraph (3), a matter is heard by the remaining two members and they are unable to arrive at a determination, the matter must be re-heard by a new Panel comprising panellists who were not members of the original Panel.

Proceedings

- 24 (1) Where a matter has been referred to the Tribunal, the Clerk must, as soon as reasonably practicable:
- (a) notify the parties that the matter has been referred to the Tribunal; and
 - (b) fix a date, time and venue for the hearing of the matter by the Tribunal.
- (2) Unless the Tribunal directs otherwise, hearings are to be held at the offices of CILEx Regulation but nothing in these Rules requires any hearing to be held outside the United Kingdom.
- (3) CILEx Regulation must, not less than 42 days before the first hearing date, lodge with the Clerk a notice setting out:
- (a) particulars of the allegations against the Respondent that are to be heard by the Tribunal; and
 - (b) the nature of the evidence that CILEx Regulation will present to the Tribunal.
- (4) CILEx Regulation must, at the same time that any notice is lodged under paragraph (23), serve a copy of that notice on the Respondent.
- (5) Not less than 28 days before the first hearing date, each party will serve on the other copies of any documentary evidence in their possession or control relating to the allegations and any witness statements upon which they intend to rely.
- (6) Any fact which needs to be proved at a hearing by the evidence of witnesses may be proved by evidence given in a witness statement and a party who requires a witness to attend a hearing for the purpose of cross-examination upon the content of a witness statement served in accordance with paragraph (5) must serve notice to that effect upon the opposing party within 7 days of disclosure of the statement.
- (7) A party is deemed to admit the authenticity of any document disclosed under paragraph (5) above unless, within 7 days of disclosure of the document, that party serves notice requiring the document to be proved at a hearing.

Directions and Preliminary Matters

25. (1) The Panel may at any time give directions for the management and conduct of proceedings (and as to the consequences of failing to comply with such directions) and determine any preliminary issues raised by any party.
- (2) The Panel may give directions or determine issues under paragraph (1) without a meeting of the Panel but by two or more of the Panel advising the Clerk of their decision and, in that event, the Clerk must notify the parties of the decision within three days of the date on which the decision was made.
- (3) Where the parties consent, a single Panel member may give directions or determine an issue under paragraph (1).

Additional Allegations

26. Where the Panel is satisfied that it would not cause unfairness to the respondent, the Panel may permit CILEx Regulation to add allegations to the matter referred to the Tribunal, and those additional allegations may be treated as if they were included in the original matter referred to the Tribunal.

Hearing Documentation

27. Not less than 7 days before the finalised hearing date, CILEx Regulation must produce and provide the Clerk and the respondent with copies of an indexed and paginated hearing bundle comprising:
- (a) the allegations;
 - (b) any documents relied upon by the parties;
 - (c) any witness statements; and
 - (d) any relevant notices.

Conduct of Hearings

28. (1) Hearings must be held in public unless the Panel is satisfied that, in the interests of justice or for the protection of the private life of the respondent, the complainant, a person giving evidence or any other person, the public should be excluded from all or part of a hearing.
- (2) The Panel must give CILEx Regulation and the respondent and, in its discretion any other person, the opportunity of being heard.
- (3) A party may be represented at a hearing by any person, whether or not legally qualified, but the Panel may refuse to permit a particular person to assist or represent a party if the Panel is satisfied that there are good and sufficient reasons for doing so.

Evidence

29. (1) The Panel may control the evidence by giving directions as to:
- (a) the issues on which it requires evidence;
 - (b) the nature of the evidence which it requires to decide those issues; and
 - (c) the way in which the evidence is to be placed before the Panel.
- (2) The burden of proof rests upon CILEx Regulation and the standard of proof is the balance of probabilities.
- (3) Subject to the requirements of a fair hearing, the Panel may:
- (a) admit evidence whether or not it would be admissible in civil proceedings; and
 - (b) exclude evidence that would otherwise be admissible.

- (4) The Panel may limit cross-examination.
- (5) Subject to any other provisions of these Rules, the Civil Evidence Act 1968 and the Civil Evidence Act 1995 apply in relation to the hearing of a matter as they apply in relation to civil proceedings.
- (6) Production before the Panel of:
 - (a) a certificate purporting to be under the hand of a competent officer of a ~~Court~~ court in the United Kingdom or overseas that a respondent has been convicted of a criminal offence is conclusive evidence of the offence committed;
 - (b) a copy of the determination of any ~~Tribunal~~ body in or outside England and Wales exercising a professional disciplinary jurisdiction is conclusive evidence of the facts found proved in relation to that determination;
 - (c) a copy of the judgment of any ~~Civil Court~~ court or tribunal is conclusive evidence of the facts found proved in relation to that judgment.

Decisions

30. (1) Decisions of the Panel are to be made by a majority vote of the panellists present.
- (2) The Panel may:
 - (a) announce its decision and reasons at the conclusion of the parties' cases;
 - (b) announce its decision at the conclusion of the parties' cases and give its reasons on a later date; or
 - (c) reserve its decision and reasons to a later date.
- (3) Where the Panel reserves its decision or reasons, the Panel must notify the parties of its decision, reasons and any order made within 21 days of the conclusion of the parties' cases and, where necessary, the notice must specify a date, not more than 21 days after the date of the notice, for any further hearing.
- (4) Where the Panel's decision is that one or more of the allegations against the respondent has been proved:
 - (a) CILEx Regulation must inform the Panel of any previous disciplinary proceedings in which any allegation has been proved against the respondent; and
 - (b) the respondent may then make submissions in mitigation and, where appropriate, in respect of costs.
- (5) Where the Panel finds that one or more of the allegations against the respondent has been proved the Panel:
 - (a) may:
 - (i) take no further action;
 - (ii) reprimand the respondent, warn the respondent as to their future

- conduct or both;
- (iii) impose conditions on the respondent as it may think appropriate in respect of the respondent's conduct or, where the respondent is an individual, their employment (and such conditions may be imposed in addition to any reprimand or warning); or
 - (iv) order that the respondent be excluded from Membership or Authorisation for such period (which may be a minimum fixed or indefinite period) as it may decide; and
- (b) may order the respondent:
- (i) except where the Panel has ordered that the respondent be excluded from Membership or Authorisation, to pay a fine not exceeding an amount determined by CILEx Regulation from time to time; and
 - (ii) to pay costs to CILEx Regulation in respect of the proceedings; and
- (c) may, in the case of a respondent that is an Authorised Entity which has been excluded from Authorisation, also require the respondent to enter into a Practice Management Agreement.
- (6) For the purpose of these Rules a **Practice Management Agreement** means an agreement between CILEx Regulation and an Authorised Entity imposing such requirements as CILEx Regulation considers appropriate in the circumstances for the orderly conduct or transfer of the Authorised Entity's business, funds and client files and the terms of such an agreement may include (but are not limited to) requirements that:
- (a) the Authorised Entity cease to accept new business or clients;
 - (b) the business of the Authorised Entity be managed or supervised by a person appointed by CILEx Regulation;
 - (c) the Authorised Entity and those responsible for its management to execute powers of attorney, bank mandates or other instruments and take such other steps as are required to enable any person appointed by CILEx Regulation to perform their functions under a Practice Management Agreement, including safeguarding client funds, files and other assets; and
 - (d) the Authorised Entity meet the costs of any steps taken by CILEx Regulation or any person appointed by it under a Practice Management Agreement.
- (7) Where the Panel finds that one or more of the allegations against the respondent has not been proved, it may order CILEx Regulation to pay the reasonable costs of the respondent.
- (8) An Order of the Panel takes effect 21 days after notification under paragraph (3) or (4) or, where a further hearing has been convened under that paragraph, 21 days after the conclusion of that hearing, unless before then a written notice of appeal has been given to the Tribunal.
- (9) Where the Panel makes an Order against a respondent under paragraph (5)(a), it

may also order that the respondent's Membership or Authorisation be suspended immediately or made subject to immediate conditions until the Order takes effect in accordance with Paragraph (8) if it considers that doing so is necessary for the protection of the public, in the respondent's own interests or otherwise in the public interest.

- (10) Where the Panel makes an Order under paragraph (5) any certificate previously issued to the Relevant Person by CILEx or CILEx Regulation ceases to have effect and must be delivered by the respondent to CILEx Regulation.

Interim Orders

31. (1) The Tribunal may at any time, on the application of the Investigator or of its own motion, consider whether it is necessary for the protection of the public, in the interests of the Relevant Person concerned or otherwise in the public interest to suspend or restrict a Relevant Person's Membership or Authorisation pending the conclusion of proceedings before the Tribunal.
- (2) The Tribunal must give the Relevant Person not less than 7 days' notice of a meeting to consider the imposition or review of an interim order, unless the Tribunal consider that due to the seriousness or urgency of the case a shorter period of notice is appropriate.
- (3) The notice under paragraph (2) must inform the Relevant Person of the time, date and place of the hearing, brief details of the matters giving rise to the application for an interim order for suspension and of the right to appear before and be heard by the Tribunal.
- (4) In considering whether to make an interim order, the Tribunal may determine its own procedure in accordance with these Rules, any guidance published by CILEx Regulation and the overriding requirement of fairness.
- (5) The Tribunal may order that the Relevant Person's Membership or Authorisation be:
- (a) suspended; or
 - (b) subject to such restrictions as the Panel considers appropriate;
- for a maximum period of 18 months and any such order must be reviewed by the Panel every 3 months.
- (6) Where the Panel makes an interim order against a Relevant Person that is an Authorised Entity it may also require the Relevant Person to enter into a Practice Management Agreement.

Appeals

32. (1) Decisions of the Tribunal (other than a decision to impose an interim order which take effect immediately) only take effect after the period for lodging an appeal against the decision has expired or, where an appeal is made, after the appeal has been disposed of or withdrawn.

(2) The respondent may appeal against:

~~(a) a finding by~~ any decision or order of the Tribunal, including that one or more
~~allegations has been proved; or~~

~~(b) any sanction or costs imposed by the Tribunal.~~

(3) CILEx Regulation may appeal against:

(a) a decision of the Tribunal which, in the opinion of CILEx Regulation, was made based upon a manifest error, is irrational or similarly flawed; or

(b) the imposition by the Tribunal of a sanction which, in the opinion of CILEx Regulation, is unduly lenient.

(4) An appeal must be made in accordance with Part IV.

PART IV: THE APPEALS PANEL

Interpretation of Part IV

33. In this Part, unless the context otherwise requires:

Appeals Clerk means the Clerk to the Appeals Panel;

appellant means the person in whose name an appeal is made to the Appeals Panel and, in the case of an appeal under Rule 32(3), means CILEx Regulation;

Chair means the Chair of an Appeals Panel; and

Disciplinary Tribunal includes a Panel of the Disciplinary Tribunal that has heard a case under Part III.

Notice of Appeal

34. (1) An appeal must be made by giving notice in writing in accordance with this Rule.
- (2) The notice must be addressed to the Appeals Panel at the offices of CILEx Regulation and must:
- (a) state that it is a notice of appeal and whether the appeal is made under:
 - (i) Rule 20; ~~or~~
 - (ii) Rule 32; or
 - (iii) Rule 26 of the CILEx Licensing Rules.
 - (b) include:
 - (i) the name and address of the appellant;
 - (ii) the date, nature and other relevant details of the decision which is the subject of the appeal;
 - (iii) a concise statement of the grounds of the appeal; and
 - (iv) the name and address of the appellant's representative (if any) and state whether correspondence concerning the appeal should be sent to the representative instead of the appellant;
 - (c) be signed by or on behalf of the appellant; and
 - (d) be accompanied by a copy of any documents on which the appellant proposes to rely for the purposes of the appeal.
- (3) A notice of appeal must be lodged no later than 42 days after the date on ~~which~~ the decision that is the subject of the appeal was made.

Appeals Panel

35. (1) The Appeals Panel must comprise two lay members and one professional member from the list maintained under Rule 2(1)(c).

- (2) The members of the Appeals Panel must choose one of their number to act as Chair for the purposes of the appeal.
- (3) An Appeals Panel must consider and determine any appeal made in accordance with Rules 20 or 32 or Rule 26 of the CILEx Licensing Rules.
- (4) At the beginning of the hearing the Chair must explain to the parties the order of proceedings which the Appeal Panel proposes to adopt.
- (5) The Appeals Panel may conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings and the parties may be heard in such order as the Panel determines, taking into account that the burden of proof rests upon the appellant.
- (6) In determining an appeal, the Appeals Panel may admit any evidence it considers fair and relevant to the case before it, whether or not such evidence would be admissible in a civil proceedings.
- (7) Having considered an appeal, the Appeals Panel may:
 - (a) dismiss the appeal;
 - (b) allow the appeal and quash the decision appealed against; or
 - (c) substitute for the decision appealed against any other decision that the Professional Conduct Panel ~~or~~ Disciplinary Tribunal or CILEx Regulation (as the case may be) could have made;and may make such ancillary orders, including orders for costs, as it considers just and appropriate.
- (8) Decisions of the Appeals Panel are to be made by a majority vote of the panellists present.
- (9) Notice of the decision of the Appeals Panel must be given in writing to the appellant within 21 days and takes effect 28 days after the date on which it was made.
- (10) Where the decision in an Appeal under Rule 20(2) has the effect of referring a matter to the Disciplinary Tribunal, that referral may be treated for all purposes as if it was made by the Professional Conduct Panel.
- (11) Appeals under Rule 20 or Rule 26 of the CILEx Licensing Rules are normally to be heard in private unless the appellant requests otherwise.
- (12) Appeals under Rule 32 are to be heard in public, unless the Appeals Panel is satisfied that, in the interests of justice or for the protection of the private life of the appellant, any complainant, person giving evidence or any other person, the public should be excluded from all or part of a hearing.

Representation

36. (1) The Appeals Panel must give the appellant and the respondent to the appeal and, at its discretion any other person who appeared before the Professional Conduct Panel or Disciplinary Tribunal, the opportunity of being heard.
- (2) A party may be represented at a hearing by any person, whether or not legally qualified, but the Appeals Panel may refuse to permit a particular person to assist or represent a party if the Appeals Panel is satisfied that there are good and sufficient reasons for doing so.

Determination without Convening Hearing

37. The Appeals Panel may determine an appeal without convening a hearing, on the basis of any documents or written representations provided by the parties, where:
 - (a) the Appeals Panel has notified the parties of its intention to do so; and
 - (b) the parties have consented.

PART V: OTHER MATTERS

Notice and Publication etc. of Decisions

38. (1) CILEx Regulation must cause all adverse findings and orders of the Professional Conduct Panel, Disciplinary Tribunal and Appeals Panel (**Decisions**) to be recorded against the relevant entry in the relevant CILEx register.
- (2) Where a Relevant Person against whom a Decision is made is
- (a) employed; or
 - (b) is a partner, director, manager of, or holds a financial interest in, a relevant body,
- CILEx Regulation must notify the employer or relevant body of the Decision.
- (3) In this Rule **relevant body** means:
- (a) an Authorised Entity;
 - (b) a legal services body within the meaning of s.9A of the Administration of Justice Act 1985; or
 - (c) a body licensed under Part 5 of the Legal Services Act 2007.
- (4) CILEx Regulation must give notice of all decisions to such other regulatory and oversight bodies as it considers appropriate.
- (5) CILEx Regulation must cause all decisions and the name of the Relevant Person concerned to be published in such manner as it considers appropriate.
- (6) Paragraphs (2), (4) and (5) do not apply to the extent that the Professional Conduct Panel, Disciplinary Tribunal or Appeals Panel directs otherwise.

Recovery of Fines and Costs

39. Any fine or costs order imposed under these Rules is recoverable as a debt.

Maintenance of Exhibits and Transcripts

40. Any exhibits produced or used at a hearing of the Professional Conduct Panel, Disciplinary Tribunal or Appeals Panel and any recording or transcript of those proceedings must be kept by CILEx Regulation for a period of at least one year after the proceedings to which they relate.

Annual Report

41. An annual report must be made to the CILEx Regulation Board of the work of the Investigators, Professional Conduct Panel, Disciplinary Tribunal and Appeals Panel during the previous year.

Transitional Provisions

42. (1) These Rules come into force on [~~5 January 2015~~ date] (the Commencement Date).
- (2) Any allegation received by CILEx Regulation before the Commencement Date but which on that date has not been referred to the Professional Conduct Panel, Disciplinary Tribunal or Appeals Tribunal in accordance with the Investigation, Disciplinary and Appeals Rules dated [~~4-5 January 2010-2015~~] (the **Old Rules**) must be dealt with under these Rules.
- (3) Any allegation received by CILEx Regulation before the Commencement Date and which on that date has been referred to the Professional Conduct Panel, Disciplinary Tribunal or Appeals Tribunal under the Old Rules must continue to be dealt with in accordance with the Old Rules.
- (4) Any allegation received by CILEx Regulation after the Commencement Date must be dealt with in accordance with these Rules.

ANNEX 2

CILEx LICENSING RULES

PART 1: INTERPRETATION

Interpretation

1. (1) In these Rules:

the **Act** means the Legal Services Act 2007;

applicant, in relation to an application made under these Rules, means:

- (a) a body seeking a licence as a Licensed Body; or
- (b) an individual seeking approval as an owner, designated officer or manager of such a body;

approval means approval granted under these Rules to be an owner, designated officer or manager of a Licensed Body;

authorised person has the same meaning as in section 18 of the Act;

CILEx means the Chartered Institute of Legal Executives and, where CILEx has delegated responsibility to it for the application and administration of any rule, includes CILEx Regulation Limited;

CILEx regulatory arrangements means the regulatory arrangements (within the meaning of section 21 of the Act) established by CILEx and includes these Rules and:

- (a) the CILEx Code of Conduct;
- (b) the CILEx Investigation, Disciplinary and Appeals Rules;
- (c) the CILEx Accounts Rules;
- (d) the CILEx Compensation Fund Rules; and
- (e) the CILEx Professional Indemnity Insurance Rules;

designated officer, in relation to a Licensed Body, means its:

- (a) Head of Legal Practice (within the meaning of section 91 of the Act); or
- (b) Head of Finance and Administration (within the meaning of section 92 of that Act);

Licensed Body means a body that is licensed by CILEx under these Rules to carry on one or more reserved legal activity;¹

manager has the same meaning as in section 207 of the Act;

¹ In the CILEx Code of Conduct and in other CILEx Rules (other than the CILEx Authorisation Rules) references to an "Authorised Entity" include a Licensed Body.

owner in relation to a Licensed Body, means:

- (a) a person who has a restricted interest in that body; or
- (b) in the case of a body which is a partnership, a partner (and whether or not the partner holds a restricted interest);

and for this purpose **restricted interest** has the same meaning as in Schedule 13 to the Act;

practising address has the same meaning as in paragraph 15(2) of Schedule 11 to the Act;

prescribed, in relation to any form or fee, means prescribed from time to time by CILEx;

regulatory objectives has the same meaning as in section 1(1) of the Act.

- (2) Subject to paragraph (1), the Interpretation Act 1978 applies to these Rules as if they were an Act of Parliament.

PART 2: LICENCES

Licence Applications

- 2. (1) A licence application must be made in the prescribed form and be accompanied by:
 - (a) such documents and information as CILEx may specify;
 - (b) any other documents or information that CILEx may reasonably require in order to discharge its functions under these Rules; and
 - (c) the prescribed fee.
- (2) An applicant must ensure that any information it provides to CILEx is complete and accurate.
- (3) If, after the date that an application is submitted to CILEx but before it is determined, there is any change in any information provided in that application of which the applicant is or ought reasonably to be aware, the applicant must promptly notify CILEx of that change.
- (4) Without limiting paragraph (1), the documents and information which may be specified under that paragraph include any documents and information which CILEx may reasonably require to assess, in accordance with rule 3(2), whether the applicant's owners, designated officers and managers are collectively are fit and proper to control or manage a Licensed Body.
- (5) Where any document or information provided under this rule discloses a matter which may constitute prior conduct within the meaning of Part II of the CILEx

Investigation, Disciplinary and Appeals Rules, CILEx may:

- (a) refer that matter to the Professional Conduct Panel as if it was a declaration of prior conduct made under those Rules; and
- (b) ask the Panel to:
 - (i) consider the matter under rule 14(1) of those Rules; and
 - (ii) provide CILEx with an opinion on the fitness and propriety of the person to whom the matter relates.

Determination of licence applications

- 3. (1) CILEx may only grant a licence application if:
 - (a) the applicant is a licensable body (within the meaning of section 72 of the Act);
 - (b) at least one manager of the applicant is an individual who:
 - (i) is an authorised person (within the meaning of the Act); and
 - (ii) CILEx is satisfied has the necessary competence in respect of any reserved legal activity which that body proposes to conduct;
 - (c) the applicant has a practising address in England and Wales;
 - (d) CILEx is satisfied that the applicant will comply with these Rules including, in particular,
 - (i) rule 7 (designated officers); and
 - (ii) rule 8 (management and control); and
 - (e) CILEx is satisfied that the applicant will comply with the CILEx regulatory arrangements including, in particular:
 - (i) the CILEx Indemnity Insurance Rules; and
 - (ii) the CILEx Compensation Fund Rules.
- (2) In reaching a decision, CILEx:
 - (a) may take account of any information which it considers to be relevant and, for that purpose, may:
 - (i) require an applicant to submit further information; or
 - (ii) may visit an applicant to obtain further information;
 - (b) must take account of:
 - (i) any opinion provided by the Professional Conduct Panel under rule 2(5)(b)(ii);
 - (ii) its Risk Assessment Framework; and
 - (iii) the regulatory objectives.
- (3) CILEx may refuse a licence application if:

- (a) it is not satisfied that the applicant's owners, designated officers and managers collectively are fit and proper to control or manage a Licensed Body;
- (b) it is not satisfied that the applicant's management arrangements are adequate to safeguard the regulatory objectives;
- (c) it is not satisfied that the applicant will comply with the CILEx regulatory arrangements;
- (d) the applicant has:
 - (i) provided inaccurate or misleading information;
 - (ii) failed or refused to disclose, or attempted to conceal, relevant information;
 - (iii) failed to provide any further information or documents which CILEx has requested in accordance with rule 2(1)(b); or
 - (iv) failed to comply with rule 2(2) or (3).
- (e) for any other reason, CILEx considers that granting a licence would be inconsistent with the regulatory objectives or contrary to the public interest.

Time limit on determinations

- 4. (1) Subject to paragraph (2), CILEx must:
 - (a) decide whether to grant or refuse a licence application and
 - (b) notify the applicant of that decision and the reasons for it;within a period of six months from the day on which the application is made to CILEx in accordance with rule 2.
- (2) CILEx may extend the time period specified in paragraph (1) by not more than three months if it considers that it is necessary to do so.
- (3) Notice of any extension under paragraph (2) must be given to the applicant before the time period specified in paragraph (1) has expired and in any such notice CILEx must:
 - (a) specify the date by which the application will be determined; and
 - (b) provide the reasons for the extension.
- (4) The power conferred by paragraph (2) may not be exercised more than once in respect of the same application.

PART 3: LICENCE DURATION, SCOPE AND CONDITIONS

Licence duration, scope and conditions

5. (1) A licence under these Rules takes effect from the date that it is granted and remains in effect until:
 - (a) it is suspended or revoked under rule 14;
 - (b) subject to paragraph (2), the Licensed Body ceases trading, is wound up or otherwise ceases to exist; or
 - (c) the body is licensed by another approved regulator.
- (2) For the purpose of paragraph (1)(b) a Licensed Body which is a partnership or unincorporated body is not to be regarded as ceasing to exist where:
 - (a) there has been a change in the membership of that partnership or body; and
 - (b) before that change occurred CILEx:
 - (i) was informed by the Licensed Body of the proposed change; and
 - (ii) confirmed in writing that, for the purpose of that paragraph, the proposed change does not constitute a cessation of the existence of the Licensed Body.
- (3) A licence granted under these Rules authorises a Licensed Body to undertake any reserved legal activity specified in that licence.
- (4) A Licensed Body must not act outside of scope of any licence granted under these Rules and, in particular must not undertake a reserved legal activity:
 - (a) for which it is not licensed; or
 - (b) by means of any person who is not licensed or otherwise authorised to undertake that activity.
- (5) A licence under these Rules is granted subject to:
 - (a) the general licence conditions in Part 4; and
 - (b) any special licence conditions imposed upon that licence in accordance with Part 5.

PART 4: GENERAL LICENCE CONDITIONS

Compliance with CILEx regulatory arrangements

6. (1) A Licensed Body must at all times have suitable arrangements in place to ensure that:

- (a) the Licensed Body, its owners, designated officers, managers and employees comply with:
 - (i) the CILEx regulatory arrangements; and
 - (ii) any statutory obligations which apply to any of them;
 - (b) any person who is an authorised person in relation to any reserved legal activity which the Licensed Body is authorised to conduct:
 - (i) has the necessary competence in respect of that reserved legal activity; and
 - (ii) maintains the professional principles in section 1(3) of the Act;
 - (c) any manager or employee who is a non-authorised persons does not act in contravention of the Act.
- (2) A Licensed Body must at all times have a practising address in England and Wales and must promptly inform CILEx of any change in that address.
- (3) This section applies in relation to the Board in its capacity as a licensing authority and its licensing Rules, as it applies in relation to an approved regulator and its regulatory arrangements.

Designated officers

7. (1) A Licensed Body must at all times have an individual who is designated as the Head of Legal Practice (**HoLP**)
- (2) The HoLP of a Licensed Body must be:
- (a) a manager or an employee of the Licensed Body;
 - (b) in a position of sufficient seniority and responsibility to fulfil the role;
 - (c) an authorised person in relation to any reserved legal activity which that body is licensed to conduct; and
 - (d) approved by CILEx.
- (3) The HoLP of a Licensed Body must:
- (a) take all reasonable steps to ensure compliance by the Licensed Body, its managers or employees with:
 - (i) the CILEx regulatory arrangements;
 - (ii) the terms and conditions of its licence other than any obligations referred to in paragraph (6)(a); and
 - (iii) any statutory obligations in relation to the conduct of any reserved legal activity; and
 - (b) promptly report to CILEx any failure to so comply.
- (4) A Licensed Body must at all times have an individual who is designated as the

Head of Finance and Administration (**HoFA**).

- (5) The HoFA of a Licensed Body must be:
 - (a) a manager or an employee of the Licensed Body;
 - (b) in a position of sufficient seniority and responsibility to fulfil the role; and
 - (c) approved by CILEx.
- (6) The HoFA of a Licensed Body must:
 - (a) take all reasonable steps to ensure compliance by the Licensed Body, its managers or employees with any obligations imposed upon them under the CILEx Accounts Rules; and
 - (b) promptly report to CILEx any failure to so comply.
- (7) A Licensed Body must have suitable arrangements in place to ensure that its HoLP and HoFA are able to discharge their duties in accordance with these Rules.

Management and control

8. (1) A Licensed Body must ensure that:
 - (a) any owner, designated officer or manager of the Licensed Body has been approved by CILEx:
 - (i) under Part 7; or
 - (ii) in the case of a temporary approval, under Part 8; and
 - (b) no manager of the Licensed Body is disqualified under the Act from acting as a manager of such a body.
- (2) In paragraph (1) references to an owner or manager of the Licensed Body include an owner or manager of a body corporate which is an owner or manager of that Licensed Body.

Disqualified employees

9. A Licensed Body must not employ a person, or enter into any arrangement for a person to provide services for or on behalf of the Licensed Body, if the person is disqualified under the Act from being employed by any licensed body.

Annual Return and other Information

10. (1) A Licensed Body must provide a return in the prescribed form to CILEx each year or at such other intervals as may be specified by CILEx.
- (2) A Licensed Body must promptly notify CILEx as soon as the Licensed Body becomes aware of any relevant information.
- (3) In this rule **relevant information** means any information about the Licensed

Body, its owners, designated officers, managers, or employees which is relevant to the performance by any of them of any obligation under these Rules (or any condition imposed under them) and includes information which:

- (a) has not previously been provided to CILEx; or
- (b) has previously been provided to CILEx but may have:
 - (i) been inaccurate, false or misleading; or
 - (ii) changed to a material or significant extent.

Fees

11. A Licensed Body must pay to CILEx the prescribed periodical fees which are applicable to that body.

PART 5: SPECIAL LICENCE CONDITIONS

Imposition of special conditions

12. (1) CILEx may impose one or more special licence conditions on a licence granted under these Rules if it considers that it is in the public interest to do so.
- (2) The special licence conditions which may be imposed under paragraph (1) include any condition to:
- (a) prevent or restrict a Licensed Body from taking any step which is likely to put the interests of clients, third parties or the public at risk;
 - (b) prevent or restrict a manager or employee of a Licensed Body from undertaking activities which that person is considered to be unsuitable to undertake, whether at all or on an unrestricted basis;
 - (c) require a Licensed Body to take specified steps to secure the proper, effective or efficient conduct of a reserved legal activity for which it is licensed; or
 - (d) monitor and secure compliance by a Licensed Body, its owners, designated officers and managers with:
 - (i) the CILEx regulatory arrangements; or
 - (ii) the regulatory objectives;
- (3) A special condition may be imposed at any time and, unless CILEx specifies otherwise, takes effect from the date on which it is imposed.

PART 6: LICENCE MODIFICATION, SUSPENSION AND REVOCATION

Licence modification

13. (1) If it considers that it is appropriate to do so, CILEx may modify the terms of a licence granted under these Rules (other than a general licence condition

imposed under Part 4).

- (2) A licence modification under paragraph (1) may be made by CILEx at any time and whether or not an application has been made under paragraph (3).
- (3) A Licensed Body may apply for its licence to be modified and any application must be made in the prescribed form and be accompanied by:
 - (a) such documents and information as CILEx may specify;
 - (b) any other documents or information that CILEx may reasonably require for the purpose of considering the application; and
 - (c) the prescribed fee.
- (4) CILEx must:
 - (a) decide whether to grant or refuse an application made under paragraph (3); and
 - (b) notify the applicant of that decision and the reasons for it.
- (5) A licence modification made under this rule takes effect from the date on which it is imposed or granted unless CILEx specifies otherwise.

Licence suspension and revocation

14. CILEx may suspend or revoke the licence of a Licensed Body if:
 - (a) the licence was granted in error or as a result of fraud;
 - (b) it has failed under these Rules to:
 - (i) provide any information required by CILEx; or
 - (ii) pay any prescribed fee which is payable;
 - (c) it has ceased to meet any of the criteria set out in rule 3(1);
 - (d) it has failed to comply with these Rules or the conditions of its licence, in particular:
 - (i) rule 5(3); or
 - (ii) rule 7(1) or (4);
 - (e) a person subject to the duty in section 90 of the Act in relation to the Licensed Body has failed to comply with that duty;
 - (f) it, or a manager or employee of the Licensed Body, has failed to comply with the duties imposed by section 176 of the Act;
 - (g) it has failed to comply rule 8(1)(b) or 9 (prohibition on disqualified managers and employees) and the manager or employee concerned was disqualified as a result of breach of a duty within section 99(4)(c) or (d) of the Act ;
 - (h) a person who is not an authorised person holds a restricted interest in the

Licensed Body:

- (i) as a result of the person taking a step in circumstances where doing so constitutes an offence under paragraph 24(1) of Schedule 13 to the Act (whether or not the person is charged with or convicted of such an offence);
- (ii) in breach of a condition imposed by CILEx under paragraph 17, 28 or 33 of that Schedule; or
- (iii) the person's holding of which is subject to an objection by CILEx under paragraph 31 or 36 of that Schedule;
- (i) it is subject to intervention under the Schedule 14 to the Act; or
- (j) it does not appear to intend to conduct the reserved legal activities for which it was licensed;
- (k) it has applied for its licence to be suspended or revoked; or
- (l) for any other reason CILEx considers that doing so is in the public interest.

Suspension and revocation procedure

15. (1) CILEx must not suspend or revoke a licence granted under these Rules unless it has given the Licensed Body:
- (a) written notice of its intention to suspend or revoke the licence; and
 - (b) an opportunity to make representations to it on the issues giving rise to the proposed suspension or revocation.
- (2) Any notice given under paragraph (1) must specify the period in which any representations are to be made and that period must be not less than 28 days beginning with the day on which the notice is given or such longer period as CILEx may specify.

PART 7: APPROVALS

Approval applications

16. (1) An approval application must be made in the prescribed form and be accompanied by:
- (a) such documents and information as CILEx may specify;
 - (b) any other documents or information that CILEx may reasonably require in order to discharge its functions under these Rules; and
 - (c) the prescribed fee.
- (2) An applicant must ensure that any information it provides to CILEx is complete and accurate.
- (3) If, after the date that an approval application is submitted to CILEx but before it

is determined, there is any change in any information provided in that application of which the applicant or the relevant body is or ought reasonably to be aware, they must promptly notify CILEx of that change.

- (4) Without limiting paragraph (1), the documents and information which may be specified under that paragraph include any documents and information which CILEx may reasonably require to assess, in accordance with rule 17(1), whether the applicant is a fit and proper person to be an owner, designated officer or manager of the relevant body (as the case may be).
- (5) Where any document or information provided under this rule discloses a matter which may constitute prior conduct within the meaning of Part II of the CILEx Investigation, Disciplinary and Appeals Rules, CILEx may:
 - (a) refer that matter to the Professional Conduct Panel as if it was a declaration of prior conduct made under those Rules; and
 - (b) ask the Panel to:
 - (i) consider the matter under rule 14(1) of those Rules; and
 - (ii) provide CILEx with an opinion on the fitness and propriety of the person to whom the matter relates.
- (6) In this Part, the **relevant body** means the Licensed Body (or body seeking such a licence) to which the approval application relates.

Determination of approval applications

17. (1) CILEx may grant an application for approval as an owner, designated officer or manager of the relevant body if it is satisfied that the applicant is a fit and proper person to be such an owner, designated officer or manager (as the case may be).
- (2) In determining whether a person is fit and proper person, CILEx:
 - (a) may take account of any information which it considers to be relevant and, for that purpose, may require an applicant to submit further information; and
 - (b) must take account of:
 - (i) the CILEx Fit and Proper Person Guidance;
 - (ii) any opinion provided by the Professional Conduct Panel under rule 16(5)(b)(ii);
 - (iii) in the case of an application to be Head of Legal Practice, the applicant's competence under the CILEx Practice Management Standards; and
 - (iv) in the case of an application to be Head of Finance and Administration, the applicant's competence under the CILEx Finance and Administration Standards.

- (3) CILEx must:
 - (a) decide whether to grant or refuse an approval application and
 - (b) notify the applicant and the relevant body in writing of that decision and the reasons for it.
- (4) If it grants an approval, CILEx may do so subject to the imposition of such special licence conditions on the relevant body as it considers appropriate (which may be imposed at the same time as the approval is granted or at any time thereafter).
- (5) If CILEx proposes to refuse an approval application it must give the applicant and the relevant body:
 - (a) written notice of its intention to do so; and
 - (b) an opportunity to make representations to it on the issues giving rise to the proposed refusal.
- (6) Any notice given under paragraph (1) must specify the period in which any representations are to be made and that period must be not less than 14 days beginning with the day on which the notice is given or such longer period as CILEx may specify.

Duration and withdrawal of approval

18. (1) An approval under these Rules takes effect from the date on which it is granted or such other date as CILEx may provide and unless otherwise provided continues to have effect until:
 - (a) the approved person ceases to be an owner, designated officer or manager of the Licensed Body (as the case may be); or
 - (b) it is withdrawn by CILEx.
- (2) CILEx may withdraw its approval of a person to be an owner, designated officer or manager of a Licensed Body if the person:
 - (a) no longer meets the criteria for approval;
 - (b) has failed to comply with a condition of that Licensed Body's licence; or
 - (c) has breached a legal duty or regulatory obligation.

Disqualification

19. (1) Subject to paragraphs (2) and (3), CILEx may disqualify a person from:
 - (a) acting as Head of Legal Practice of any Licensed Body;
 - (b) acting as Head of Finance and Administration of any Licensed Body;
 - (c) being a manager of any Licensed Body; or
 - (d) being employed by any Licensed Body.

- (2) A person may only be disqualified under paragraph (1) if where CILEx is satisfied that:
 - (a) in relation to a Licensed Body, the person (whether intentionally or through neglect):
 - (i) has breached a duty specified in section 99(4) of the Act to which the person is subject, or
 - (ii) has caused, or substantially contributed to, a significant breach of the terms of the Licensed Body's licence; and
 - (b) it is undesirable for the person to engage in one or more of the activities specified in paragraph (1)
- (3) CILEx must not disqualify a person under paragraph (1) unless the person has:
 - (a) been given not less than 28 days' written notice of its intention to consider doing so; and
 - (b) been afforded an opportunity of making written representation to CILEx or, at the person's choice, of appearing before and being heard on the question of disqualification.
- (4) Where a person asks to appear and be heard, the question of whether or not the person is to be disqualified must be:
 - (a) referred to the Disciplinary Tribunal established under Part III of the CILEx Investigation, Disciplinary and Appeals Rules, and
 - (b) determined by the Tribunal as if it was a matter which had been referred to it under those Rules.
- (5) A person who is disqualified under this rule may apply under rule 25 for that disqualification to be reviewed.
- (6) CILEx must notify the Legal Services Board of:
 - (a) any decision to disqualify a person under this rule;
 - (b) any review of such a decision; and
 - (c) any decision by CILEx that the disqualification should cease to have effect.

PART 8: TEMPORARY LICENSING AND APPROVAL ARRANGEMENTS

Temporary licences

20. CILEx may grant a temporary licence if, as a consequence of unforeseen events, a Licensed Body ceases to be such a body because:
 - (a) it has been divided into two or more unlicensed bodies; or
 - (b) its is owned by a person who is not an approved person.

Temporary Licence application

21. (1) A temporary licence application must be made in the prescribed form and be accompanied by:
- (a) such documents and information as CILEx may specify;
 - (b) any other documents or information that CILEx may reasonably require in order to discharge its functions under these Rules; and
 - (c) the prescribed fee.
- (2) CILEx may grant a temporary licence under paragraph (1) if:
- (a) it is satisfied that the persons concerned could not reasonably have foreseen the need to seek a new or amended licence;
 - (b) based upon the information provided in the prescribed form, it appears to CILEx that there is no reason to believe that granting a temporary licence would be contrary to the public interest; and
 - (c) subject to the persons concerned submitting a licence application or agreeing to do so by such date as CILEx may specify.
- (3) A temporary licence under this rule may be granted:
- (a) from such date and for such period (not exceeding 12 weeks) as CILEx may determine;
 - (b) subject to such general licence conditions and special licence conditions as CILEx thinks fit.
- (4) A temporary licence under this rule may, upon reasonable cause, be revoked by CILEx at any time.

Temporary approvals: designated officers

22. (1) A Licensed Body which ceases to have a designated officer who has been approved by CILEx, must promptly (and in any event within 7 days):
- (a) appoint another person to be the HoLP or HoFA (as the case may be);
 - (b) notify CILEx of that appointment in the prescribed form.
- (2) CILEx may grant temporary approval to a person appointed under paragraph (1) if:
- (a) it is satisfied that the Licensed Body could not reasonably have foreseen the need to seek approval of another designated officer;
 - (b) based upon the information provided in the prescribed form, it appears to CILEx that there is no reason to believe that the replacement designated officer is not a fit and proper person to perform that role; and

- (c) subject to the Licensed Body submitting an application for approval of a replacement designated officer or agreeing to do so by such date as CILEx may specify.
- (3) Temporary approval under this rule may be granted:
- (a) from such date and for such period as CILEx may determine;
 - (b) subject to such conditions as CILEx thinks fit (including special licence conditions imposed under Part 8);
- (4) Temporary approval under this rule ceases to have effect if:
- (a) the period determined under paragraph (3)(a) expires and is not extended by CILEx;
 - (b) it is withdrawn by CILEx at any time; or
 - (c) a replacement designated officer for the Licensed Body is approved by CILEx under Part 7.

Temporary approvals: owners' representatives

23. (1) Subject to paragraph (2) the following persons are to be regarded as an approved owner of a Licensed Body without the need to make application under Part 7:
- (a) the personal representatives of such an owner who has died;
 - (b) the trustee in bankruptcy or liquidator of such an owner who becomes bankrupt, insolvent or ceases to exist as a body corporate; and
 - (c) the Court of Protection deputy of such an owner who lacks capacity (within the meaning of section 19 of the Mental Capacity Act 2005).
- (2) A person to whom paragraph (1) applies is, by virtue of that paragraph:
- (a) only to be treated as an approved person for the purpose of holding the interest of the owner for a period of not more than six months from the date of their appointment; and
 - (b) not to be entitled to exercise any vote in respect of that interest or treated as an approved person for any other purpose.

PART 9 DEFAULTS, MISCONDUCT AND PENALTIES

24. (1) In this rule **default** means a failure by any person to comply with any obligation under these Rules.
- (2) A default may be referred for investigation and determination under the CILEx Investigation, Disciplinary and Appeals Rules as if misconduct was defined in rule 1(2) of those Rules to include a default under these Rules.
- (3) The sanctions which may be imposed under the CILEx Investigation, Disciplinary and Appeals Rules in respect of any misconduct (including but not limited to a

default) by a Licensed Body or any designated officer, manager or employee include a financial penalty within the meaning of section 95 of the Act.

- (4) Any decision under paragraph (3) to impose a financial penalty must be taken have regard to any guidance issued by CILEx on sanctions and finance penalties.

PART 10: REVIEW AND APPEALS

Review of decisions

25. (1) At the request of the person concerned, CILEx must review and reconsider a decision made under these Rules:
 - (a) to refuse to grant a licence;
 - (b) to impose special licence conditions upon a licence;
 - (c) to refuse an application for modification of the terms of a licence;
 - (d) to modify the terms of a licence;
 - (e) to suspend or revoke a licence;
 - (f) to refuse an application for approval as an owner, designated officer or manager of a relevant body;
 - (g) to refuse an application for approval as an owner, designated officer or manager of a relevant body;
 - (h) to disqualify a person.
- (2) A review request under paragraphs (1)(a) to (g) must be made within 28 days of the decision to which it relates.
- (3) In reviewing any decision under paragraphs (1)(a) to (g), CILEx:
 - (a) may take account of any representations or information provided with the review request by the person concerned; and
 - (b) may seek and take account of further information provided by any person, including from the person concerned.
- (4) A request for a review under paragraph (1)(h) (a **disqualification review**) may not be made before the end of the period of one year beginning with the date on which the person's disqualification under Rule 19 took effect.
- (5) A request for a disqualification review must be made in the prescribed form and be accompanied by such documents and information as CILEx may specify;
- (6) A disqualification review must be:
 - (a) referred to the Disciplinary Tribunal established under Part III of the CILEx Investigation, Disciplinary and Appeals Rules, and
 - (b) determined by the Tribunal as if it was a matter which had been referred to

it under those Rules.

- (7) Before making any decision in respect of a disqualification review, the Tribunal must give the person concerned an opportunity to appearing before it and being heard.
- (8) The Tribunal may only revoke a disqualification if it is satisfied, on such evidence as it may require and having regard, in particular, to the circumstances which led to it being imposed, that the person concerned is a fit and proper person to perform the role from which that person was disqualified.
- (9) CILEx or the tribunal (as the case may be) must give reasons for any review decision and inform the person concerned of any right of appeal.

Appeals

26. (1) A person may appeal to the Appeals Panel against an unfavourable review decision under rule 25.
- (2) An appeal under this rule must be made:
 - (a) within 28 days of the decision appealed against; and
 - (b) in accordance with Part IV of the CILEx Investigation, Disciplinary and Appeals Rules
- (3) In this rule **Appeals Panel** means the Appeals Panel established under rule 1(5) of the CILEx Investigation, Disciplinary and Appeals Rules.

Further appeal

27. (1) A person who is the subject of an unfavourable appeal decision under rule 26 may appeal to the appellate body.
- (2) In this rule **appellate body** means a body established under section 80(1)(a) of the Act to hear and determine appeals.

PART 11: THE REGISTER

The CILEx Licence Register

28. (1) CILEx must keep a register of all CILEx licensed bodies.
- (2) The register maintained under paragraph (1):
 - (a) may be kept in electronic form; and
 - (b) must be available for inspection by the public at the offices of CILEx at all reasonable times.
- (3) In respect of each Licensed Body, the register must contain:

- (a) the name of the Licensed Body (including any trading or previous names) and its licence number;
- (b) whether the Licensed Body is a partnership, an LLP or a company;
- (c) if the Licensed Body is:
 - (ii) a company or LLP, its registered office address and registered number;
 - (ii) a charity, its registered office address and registered number;
- (d) the main practising address of the Licensed Body in England and Wales and any other address from which it conducts any reserved legal activity;
- (e) the names of the designated officers and managers of the Licensed Body and in the case of the Head of Legal Practice the authorised body by which that person is authorised ;
- (f) the date the licence was issued;
- (g) the reserved legal activities which the Licensed Body is authorised to undertake;
- (h) any enforcement action or sanction which has been imposed on the Licensed Body, its owner or any employee;
- (i) whether the licence is subject to any special licence conditions, suspended or revoked and, where appropriate, the date of any suspension or revocation; and
- (j) such other information as CILEx may specify.

PART 12: PROHIBITION

Special bodies

29. CILEx cannot receive or consider licence applications from any body which is a special body within the meaning of section 106(1) of the Act.

CONSULTATION ON REVISING THE CILEx AUTHORISATION RULES

1. The Chartered Institute of Legal Executives (CILEx) is an approved regulator under the Legal Services Act 2007 (the Act). In accordance with the requirements of the Act it has separated its regulatory and representative functions. The regulatory functions have been delegated to CILEx Regulation Ltd. CILEx Regulation Ltd is the regulatory body for Chartered Legal Executives, other grades of CILEx membership, CILEx Practitioners and entities.
2. CILEx Regulation takes a risk based and outcomes focused approach to regulation. This approach focuses on working constructively with those entities it regulates to ensure that they deliver the best outcomes for their clients. This provides a balanced approach to regulation by delivering value for money support to entities that engage with CILEx Regulation, whilst also allowing it to focus investigation and enforcement in a proportionate manner against those who do not engage constructively and/or fail to deliver the outcomes expected of them. It looks at the processes and procedures entities have in place to manage risk proportionate to the size of the firm and areas of law in which they operate.
3. The CILEx Authorisation Rules, which apply only to non-ABS entities, set out how an applicant entity may be authorised as a CILEx Authorised Entity.
4. The Authorisation Rules cover the following:
 - the basis of the application process;
 - the decisions and determination criteria;
 - the terms of authorisation;
 - the approval of managers and compliance managers;
 - the Fit and Proper Test;
 - regulatory conduct; and
 - the Appeals process.
5. CILEx Regulation is currently making an application for CILEx to become a Licensing Authority. This will allow it to regulate and grant a licence to an applicant to become a

Licensed Body, also commonly known as an Alternative Business Structure (ABS). The application to become a Licensing Authority will be made to the Legal Services Board (LSB) under the Act. CILEx Regulation has reviewed the Authorisation Rules in the context of this application.

6. This consultation seeks your views on the proposal to revise the CILEx Authorisation Rules.
7. This consultation will run for 6 weeks, closing on 18 March 2016.

INTRODUCTION

8. CILEx Regulation is able to regulate entities whose owners and managers comprise authorised persons. The Legal Services Act enables regulators to become Licensing Authorities and to regulate Licensed Bodies (known as ABS). CILEx Regulation proposes to regulate Alternative Business Structures (ABS) under the Act.
9. An ABS is a regulated entity which provides legal services and has some form of non-lawyer involvement. This involvement can either be at management level, as an owner or shareholder.
10. CILEx Regulation proposes to revise the Authorisation Rules, which apply only to non-ABS applicant entities, to provide greater clarity to those applying for authorisation as a non-ABS entity.

AIMS OF THE CILEx AUTHORISATION RULES

11. The purpose of the authorisation function is to ensure that entities applying to be authorised by CILEx Regulation are capable of delivering the outcomes consumers of legal services would expect of them. The authorisation process is the way in which CILEx Regulation is able to begin regulation of an entity. After authorisation an entity is subject to supervision.
12. The authorisation stage is where CILEx Regulation conducts the assessment of whether the entity has the structure, processes and procedures necessary to deliver adequately the outcomes and to meet the wider regulatory objectives. The assessment is aligned with the assessment of the managers of the entity, as each manager must be assessed as a fit and proper person to be involved in the management of an entity authorised by CILEx Regulation. The entity will be required to evidence its capabilities.
13. Once authorised, entities and the individuals employed by them will be expected to abide by and adhere to the CILEx Code of Conduct and any other CILEx or CILEx Regulation Rules (including the Authorisation Rules), and will also be required to submit to on-going supervision.
14. The authorisation rules set out the process for appeals made by:

- an entity in respect of rejection of its application for authorisation;
- an individual manager where CILEx Regulation has rejected that managers application to be an Approved Manager;
- an Authorised Entity where there are sufficient grounds to revoke authorisation; and
- an Approved Manager against the decision to withdraw their Approved Manager designation.

PROPOSED CHANGES

15. CILEx Regulation intends to revise the Authorisation Rules to ensure they provide greater clarity to non-ABS applicants. This will be particularly important with applications for ABS being dealt with under the new CILEx Licensing Rules.
16. CILEx Regulation believes that the revision of the Authorisation Rules is in both applicants' and consumers' interests. It encourages an independent, strong, diverse and effective legal profession and promotes the maintenance of the professional principles that authorised persons should act with integrity and independence and in the best interests of their clients.

AUTHORISATION RULES

17. The Authorisation Rules ensure that entities applying to be authorised by CILEx Regulation are capable of delivering the outcomes expected of them. These outcomes are reflected in the Code of Conduct. The application of the authorisation process is supported by the Authorisation Rules.
18. A track change copy of the rules can be found at Annex 1.
19. CILEx Regulation will clarify to applicants that the Authorisation Rules will only apply to non-ABS entities. With the application to become a Licensing Authority, new Licensing Rules will cover applicants wishing to become an ABS.
20. CILEx Regulation will add the following new definitions in Rule 1:
 - CILEx Regulation.

21. CILEx Regulation will amend the following existing definitions to provide greater clarity:
 - Approved Manager; and
 - Authorised Entity – it will also encompass licensed bodies and will then be used more widely to cover both ABS and non-ABS entities.
22. Within the Authorisation Rules, CILEx Regulation has identified a variety of wordings used when referring to the Code of Conduct and Rules. It will seek to provide a consistent approach to give greater clarity to entities. Unless there is a particular circumstance where a particular Rule needs to be referred to, it will adopt 'The CILEx Code of Conduct and Rules' as the default wording.
23. CILEx Regulation will amend the wording in Rule 4 (14) to include Approved Manager and Compliance Manager to provide greater clarity.
24. CILEx Regulation will amend the wording in Rule 5 (2) to clarify that a Compliance Manager must have met the necessary outcomes and standards for Practice Management and Accounts Management to be approved as such.
25. CILEx Regulation will amend the wording in Rules 5, 6 & 8 to ensure it is consistent in the use of 'Manager' and 'Approved Manager' as appropriate, in order to provide greater clarity.

CONSULTATION QUESTIONS

Question 1

What are your views on the proposal to revise the CILEx Authorisation Rules?

Question 2

Do you have any comments on the proposal to clarify that the CILEx Authorisation Rules will only apply to non-ABS entities?

Question 3

Do you agree with the proposal to extend the definitions in the CILEx Authorisation Rules to provide greater clarity?

Question 4

Do you agree with the proposal to amend the wordings used when referring to the Code of Conduct and Rules in order to provide a consistent approach to the various wordings used and to give greater clarity?

Question 5

Do you agree with the proposal to amend the wording in Rule 4 (14) to include Approved Manager and Compliance Manager to provide greater clarity?

Question 6

Do you agree with the proposal to amend the wording in Rule 5 (2) to clarify that a Compliance Manager must have met the necessary outcomes and standards for Practice Management and Accounts Management to be approved as such?

Question 7

Do you agree with the proposal to amend the wording in Rules 5, 6 & 8 to ensure it is consistent and delivers greater clarity?

HOW TO RESPOND

Please send your response to this consultation to CILEx Regulation through one of the following methods:

- By email to consultations@cilexregulation.org.uk Mark it for the attention of David Pope.
- By post to CILEx Regulation Ltd, Kempston Manor, Kempston, Bedford MK42 7AB.
- By DX to CILEx, DX 124780 Kempston 2.

SUBMISSION DEADLINE

The deadline for the submission of responses is 18 March 2016.

CILEx AUTHORISATION RULES

CILEx AUTHORISATION RULES

Authority and Interpretation

1. (1) Responsibility for the application and administration of these Rules is delegated by CILEx to CILEx Regulation.
- (2) In these Rules, unless otherwise provided:

the Act:	means the Legal Services Act 2007;
Applicant Entity:	means a partnership (including a limited liability partnership), company or sole principal which applies to be authorised by CILEx under <u>these Rules and</u> the Legal Services Act 2007 to: <ol style="list-style-type: none">(a) carry on an activity which is a reserved legal activity; or(b) provide immigration advice or immigration services;
Approved Manager:	means a person who is approved by CILEx Regulation to be a manager <u>manage or participate in the management of</u> an Authorised Entity;
Authorised Entity:	<u>(a)</u> means a partnership (including a limited liability partnership), company or sole principal authorised by CILEx under <u>these Rules and</u> the Legal Services Act 2007 to: <ol style="list-style-type: none">(a) carry on an activity which is a reserved legal activity; or(b) provide immigration advice or immigration services; <u>but</u> <u>(b) does not include a Licensed Body within the meaning of the CILEx Regulation Licensing Rules;</u>
Authorised Person:	has the same meaning as in section 18 of the Act;

CILEx:	means the Chartered Institute of Legal Executives;
<u>CILEx Regulation:</u>	<u>means CILEx Regulation Limited;</u>
Compliance Manager:	means an Approved Manager who has lead responsibility for ensuring that an Authorised Entity, its Authorised Persons, <u>Approved</u> Managers, employees and sub-contractors comply with the CILEx Code of Conduct and Rules;
IDAR:	means the CILEx Investigation, Disciplinary and Appeals Rules;
regulated legal activity:	means: <ul style="list-style-type: none"> (a) a reserved legal activity; or (b) immigration advice or immigration services;
reserved legal activity:	has the same meaning as in the Act.

(3) Subject to paragraph (2), the Interpretation Act 1978 applies to these Rules as if they were an Act of Parliament.

Applications

2. (1) An Applicant Entity must make an application for authorisation in the form prescribed by CILEx Regulation.
- (2) An Applicant Entity must ensure that any information it provides to CILEx Regulation is complete and accurate. It must inform CILEx Regulation of any change which occurs to the information it has provided in support of its application.
- (3) An Applicant Entity must have a practising address in England or Wales.
- (4) An Applicant Entity must undertake to comply with the requirements of the CILEx Code of Conduct and Rules including the Professional Indemnity Insurance Rules and CILEx Compensation Fund Rules.

- (5) An Applicant Entity has a duty to declare prior conduct relating to the body, any person it proposes to appoint as an ~~of its~~ Approved Managers and any other person connected to or associated with that body. For this purpose **prior conduct** has the same meaning as in IDAR.
- (6) CILEx Regulation will consider an application and notify the Applicant Entity of its decision within a timescale specified by CILEx Regulation.
- (7) In carrying out an assessment of the application for authorisation CILEx Regulation may visit an Applicant Entity to obtain further information. CILEx Regulation will consider a visit as part of the application of its risk assessment framework.

Application decisions and determination criteria

3. (1) Once CILEx Regulation has considered an application it will either:
 - (a) grant Authorisation; or
 - (b) refuse Authorisation.
- (2) In determining any application CILEx Regulation will be guided by its Risk Assessment Framework and the Regulatory Objectives under the Act. Before it reaches a decision it may require an Applicant Entity to provide additional information.
- (3) If CILEx Regulation decides that an Applicant Entity has failed to meet, or may be unlikely to meet any of the requirements set out in the CILEx Code of Conduct or Rules, CILEx Regulation may require the Applicant Entity to meet specified compliance requirements or agree to meet specified conditions. CILEx Regulation will make such assessments using its risk assessment framework.

- (4) CILEx Regulation may grant Provisional Authorisation to an Applicant Entity until it obtains Professional Indemnity Insurance which satisfies the requirements of the CILEx Professional Indemnity Insurance Rules. In that event, the Applicant Entity must obtain insurance under those rules before it will be authorised to practise as an Authorised Entity. The Applicant Entity will not become an Authorised Entity until that condition is met. If the condition is not met within 90 days of the date of issue of the certificate of Provisional Authorisation, Provisional Authorisation will lapse and a new application for authorisation must be made.
- (5) Where an Applicant Entity is authorised, CILEx Regulation will specify any limitations on authorisation which will include whether authorisation is restricted to one or more specific regulated legal activities.
- (6) CILEx Regulation may only grant an application for authorisation if:
 - (a) the Applicant Entity includes at least one person who is an Approved Manager and, where the Applicant Entity seeks to carry out one or more regulated legal activities, who is an Authorised Person authorised to carry out one or more of those regulated legal activities;
 - (b) the Applicant Entity has a practising address in England or Wales;
 - (c) CILEx Regulation is satisfied that upon authorisation the Applicant Entity will be able to comply with the CILEx Code of Conduct and Rules;
 - (d) CILEx Regulation is satisfied that the Applicant Entity's management and governance arrangements are adequate to effectively manage risk and safeguard the Regulatory Objectives;
 - (e) CILEx Regulation is satisfied that the Applicant Entity will be able to meet any specified compliance requirements or conditions placed on it including the condition specified at Rule 3(4).

Terms of authorisation

4. (1) Authorisation is granted for an indefinite period.

- (2) An Authorised Entity must comply with the CILEx Professional Indemnity Insurance Rules and the CILEx Compensation Fund Rules.
- (3) An Authorised Entity must have an Approved Manager and, where the entity is authorised to carry out any regulated legal activities, that Approved Manager must be an Authorised Person who is authorised to carry out those regulated legal activities.
- (4) An Authorised Entity that wishes to conduct any regulated legal activity other than one forming part of its original authorisation must, before doing so, apply to CILEx Regulation for a modification to its authorisation. Any application for such a modification must be made in the form prescribed by CILEx Regulation. CILEx Regulation will assess any such application:
 - (a) as if it was an application for authorisation under these Rules; and
 - (b) by reference to its risk assessment framework;and will notify the Authorised Entity of its decision within a timescale specified by CILEx Regulation.
- (5) An Authorised Entity must notify CILEx Regulation of any material change that may affect its ability to comply with these Rules, any other CILEx Rules or the CILEx Code of Conduct. Notification must be made before any change takes place or, where this is not possible, as soon as reasonably practicable. Failure to do so will constitute a material breach of these Rules and CILEx Regulation reserves the right to revoke authorisation in such circumstances.
- (6) An Authorised Entity, its Approved Managers and Authorised Persons are subject to the CILEx Code of Conduct and Rules.

- (7) CILEx Regulation may require an Authorised Entity to meet specified compliance requirements or agree to specified conditions if it decides that the Authorised Entity has failed or may be unlikely to meet any ~~of the requirement_s~~ of the CILEx Code of Conduct or ~~CILEx~~ Rules. CILEx Regulation will make such assessments using its Risk Assessment Framework.
- (8) CILEx Regulation may revoke Authorisation if:
- (a) an Authorised Entity no longer has an Approved Manager;
 - (b) the Approved Manager of an Authorised Entity is no longer authorised to carry out the regulated legal activity or regulated legal activities CILEx Regulation has authorised it to carry out;
 - (c) an Authorised Entity no longer has a practising address in England or Wales;
 - (d) CILEx Regulation is no longer satisfied that an Authorised Entity is able to comply with the CILEx Code of Conduct or Rules;
 - (e) an Authorised Entity's management or governance arrangements are deemed by CILEx Regulation to be no longer adequate to manage risk effectively or safeguard the Regulatory Objectives.
- (9) CILEx Regulation may also revoke Authorisation if it determines that the Authorised Entity is in breach of the CILEx Code of Conduct or ~~any CILEx~~ Rules. Any such breach will be determined by CILEx Regulation and may include, but not be limited to, the following:
- (a) an Authorised Entity has failed to meet compliance requirements or conditions specified by CILEx Regulation;
 - (b) an Authorised Entity has provided inaccurate or misleading information or there has been a material omission, delay, or failure to provide information to CILEx Regulation;
 - (c) for any other reason CILEx Regulation considers that it would be contrary to the public interest or otherwise inconsistent with the Regulatory Objectives to allow authorisation to continue.

- (10) The requirements relating to the revocation of authorisation including the timing of any decision to revoke authorisation will be determined by the relevant Panel or Tribunal under IDAR.
- (11) An Authorised Entity must inform CILEx Regulation as soon as reasonably practicable if that entity or any Authorised Person or Approved Manager is subject to any matter identified in Rule 11 of IDAR (prior conduct).
- (12) Where any individual designated as an Approved Manager is no longer employed by an Authorised Entity or can no longer carry out their role as an Approved Manager, the Authorised Entity must inform CILEx Regulation as soon as reasonably practicable prior to this change taking place, or where this has not been possible within 28 days of the change taking place.
- (13) If a change specified in Paragraph (12) applies to a Compliance Manager the Authorised Entity must provide CILEx Regulation with details of the replacement Compliance Manager as soon as reasonably practicable. If the replacement Compliance Manager is not an Approved Manager, the individual must apply to CILEx Regulation to be designated as an Approved Manager and specify their designation as Compliance Manager.
- (14) An Authorised Entity must at all times have suitable arrangements in place to ensure that:
- (a) its Authorised Persons, Compliance Manager, other Approved Managers, and employees comply with the duties imposed by the CILEx Code of Conduct and ~~all other CILEx~~ Rules which apply to them;
 - (b) ~~Arrangements for ensuring that~~ they do not employ any person disqualified from being employed in an Authorised Entity providing legal services.

- (15) The Authorised Entity must supply any information required by CILEx Regulation which CILEx Regulation deems necessary in order to carry out periodic risk assessment and review in support of its regulatory duties.
- (16) Authorised Entities will be required to provide Annual Returns. CILEx Regulation will determine the format and information requirements for such returns.
- (17) A failure to supply a completed Annual Return within the timescale specified by CILEx Regulation will constitute a breach of Paragraph (9)(b).
- (18) An Authorised Entity must pay CILEx Regulation the periodic fee(s) of such amounts and at such times as CILEx Regulation may prescribe.

Approved Managers and the Compliance Manager

5. (1) An Authorised Entity must have at least one Approved Manager. ~~All Managers must apply to be~~ who has applied to and been designated as such Approved Managers by CILEx Regulation. One Approved Manager must also be designated as Compliance Manager and must consent to being designated as such.
- (2) CILEx Regulation will determine:
 - (a) in accordance with Rule 6, whether a person a Manager or Compliance Manager in an Authorised Entity is fit and proper to hold that the post of Approved Manager or Compliance Manager in an Authorised Entity; and
 - (b) in the case of a Compliance Manager, whether the person has met the necessary outcomes and standards for Practice Management and Accounts Management to be approved as a Compliance Manager.
- (3) When applying to be an Authorised Entity, and after any authorisation has been granted, an Authorised Entity must undertake not to employ any person who is disqualified from being employed in an Authorised Entity providing legal services, or designate in the role of Approved Manager or Compliance Manager

any person who is disqualified from performing any of those roles or any similar role within an Authorised Entity.

- (4) An Authorised Entity must have suitable arrangements in place to ensure that the Compliance Manager is able to discharge their duties in accordance with the CILEx Code of Conduct and ~~these and all other CILEx~~ Rules. A Compliance Manager may be assisted by others in undertaking compliance duties but cannot delegate overall responsibility for compliance to any other person.
- (5) CILEx Regulation may withdraw Approved Manager designation from an individual if ~~IPS deems it considers~~ that the individual is no longer fit and proper to carry out that role. CILEx Regulation will provide the Authorised Entity and the individual with written reasons for its decision.
- (6) The Compliance Manager must take all reasonable steps to:
 - (a) comply ~~with~~ with:
 - (i) the CILEx Code of Conduct,
 - (ii) the CILEx Accounts Rules,
 - (iii) the CILEx Professional Indemnity Insurance Rules;
 - (iv) the CILEx Compensation Fund Rules; and
 - (v) and any any other CILEx ~~or CILEx Regulation~~ Rules;
 - (b) ensure compliance with any statutory obligations of the entity, its Approved Managers and employees in relation to the entity's carrying on of authorised activities;
 - (c) record any material compliance failures and notify CILEx Regulation as soon as reasonably practicable. Material failures will include any breach or pattern of breaches of the CILEx Code of Conduct, the CILEx Accounts Rules or any other CILEx ~~or CILEx Regulation~~ Rules. A material failure will also include the failure to inform CILEx Regulation if the Authorised Entity is in financial difficulty;
 - (d) record any compliance failures and make such records available to CILEx Regulation on request and in any event at least annually as part of the

annual return submitted to [CILEx Regulation](#)^{PS}.

Fit and Proper Test

6. (1) In determining whether an Approved Manager is fit and proper for the purpose of these Rules, CILEx Regulation will consider the person's character, suitability, fitness and propriety having regard to:
 - (a) the person's ability to comply with the professional principles in section 1(3) of the Act; and
 - (b) the factors set out in Paragraph (2).

- (2) The factors are whether the person:
 - (a) has been convicted of a criminal offence:
 - (i) for which a term of imprisonment was imposed;
 - (ii) involving dishonesty or fraud;
 - (iii) involving perjury or other offences relating to the administration of justice;
 - (iv) involving serious violence.
 - (b) has been the subject of an adverse regulatory finding involving:
 - (i) material breach of regulatory requirements;
 - (ii) failure to provide information or the provision of false information;
 - (iii) refusal, suspension or withdrawal of regulated status;
 - (c) has been declared bankrupt, entered into any individual voluntary arrangements, been the subject of a court judgement for debt;
 - (d) has been removed as or disqualified from being a company director or charity trustee;
 - (e) has been concerned in the management or ownership of any company which has been wound up or put into receivership or administration in circumstances of insolvency;
 - (f) has been the subject of a judgment of a civil court concerning any fraud, misrepresentation or conduct related to the administration of justice;
 - (g) has engaged in other conduct involving dishonesty, violence,

discrimination, abuse of trust or financial impropriety or mismanagement.

Waivers

7. CILEx Regulation may in its discretion waive any provision of these Rules for a particular purpose or purposes.

Regulatory Conflict

8. (1) If a conflict arises between a requirement imposed on an Authorised Entity or on an employee or Approved Manager of the entity by CILEx Regulation as the regulator of that entity, and on an individual Approved Manager or employee of that entity by another approved regulator, then the requirement imposed by CILEx Regulation prevails over the requirement imposed by the other approved regulator.
- (2) If a conflict arises between a requirement imposed on a non- CILEx Regulation Authorised Entity or on an employee or Approved Manager of that entity by another approved regulator as the regulator of that entity and on an individual Approved Manager or employee of that entity by CILEx Regulation, then the requirement imposed by the other approved regulator prevails over the requirement imposed by CILEx Regulation.

Appeals

9. (1) An appeal may be made against any of the following decisions made by CILEx Regulation under these rules:
 - (a) refusal of an application for authorisation;
 - (b) revocation of authorisation;
 - (c) refusal of an application to be an Approved Manager;
 - (d) withdrawal of Approved Manager designation from an individual.

- (2) An appeal may be made by giving notice to the Appeals Panel established under IDAR.
- (3) A notice under Paragraph (2) shall be addressed to the Appeals Panel at the offices of CILEx Regulation and shall:
 - (a) state that it is a notice of appeal under this Rule;
 - (b) include:
 - (i) the name and address of the appellant,
 - (ii) the date, nature and other relevant details of the decision which is the subject of the appeal,
 - (iii) a concise statement of the grounds of the appeal, and
 - (iv) the name and address of the appellant's representative (if any) and state whether correspondence concerning the appeal should be sent to the representative instead of the appellant;
 - (c) be signed by or on behalf of the appellant;
 - (d) be accompanied by a copy of any documents on which the appellant proposes to rely for the purposes of the appeal.
- (4) Rules 35(1), (2), (4) to (6), (8) and (9), 36 and 37 of IDAR shall apply to an appeal made under these Rules.
- (5) Appeals shall normally be heard in private unless the appellant requests otherwise.
- (6) Having considered an appeal, the Appeals Panel may:
 - (a) dismiss the appeal;
 - (b) allow the appeal and quash the decision appealed against; or
 - (c) substitute for the decision appealed against any other decision that CILEx Regulation could have made;

and may make such ancillary orders, including orders for costs, as it considers just and appropriate.

CONSULTATION ON EXTENDING THE CILEx COMPENSATION FUND TO ALTERNATIVE BUSINESS STRUCTURES (ABS)

1. The Chartered Institute of Legal Executives (CILEx) is an approved regulator under the Legal Services Act 2007 (the Act). In accordance with the requirements of the Act it has separated its regulatory and representative functions. The regulatory functions have been delegated to CILEx Regulation Ltd. CILEx Regulation is the regulatory body for Chartered Legal Executives, other grades of CILEx membership, CILEx practitioners and entities.
2. The Legal Services Act 2007 (Chartered Institute of Legal Executives) (Modification of Functions) Order 2014 gave CILEx the ability to set up the CILEx Compensation Fund. The CILEx Compensation Fund was established on 5th January 2015 and is overseen and managed by independent Trustees.
3. CILEx Regulation is making an application for CILEx to become a Licensing Authority under the Act. This will allow CILEx Regulation to regulate and grant a license to a Licensing Body, also commonly known as an Alternative Business Structure (ABS). The application to become a Licensing Authority will be made to the Legal Services Board (LSB) under the Act.
4. CILEx Regulation proposes to become a regulator of ABS and to extend the operation of the CILEx Compensation Fund to ABS.
5. The consultation is open until **18 March 2016**.

INTRODUCTION

6. CILEx Regulation proposes to regulate ABS under the Act.
7. An ABS is a regulated entity which provides legal services and has some form of non-lawyer involvement. This involvement can either be at management level or as an owner or shareholder.
8. In developing its proposals to become a Licensing Authority, changes are being sought to extend the CILEx Compensation Fund to ABS.

CURRENT AIM OF THE CILEx COMPENSATION FUND

9. The aim of the CILEx Compensation Fund is to recompense clients of an entity regulated by CILEx Regulation who have incurred a loss due to the dishonesty or failure to account of that entity, its owners or employees. These are losses for which the client has no other source of redress.
10. The rules also allow for a claim to be made in respect of civil liability where the entity does not have in place a policy of qualifying insurance against which a claim may be made.
11. The fund has the benefit of £1m designated by CILEx as a draw-down fund. The fund also has the benefit of being insured for claims received against it. All regulated entities make a contribution to the fund to help build and maintain the fund. The maximum grant that can be made by the Trustees is for £500,000.
12. The procedures for making and processing applications are set out in the CILEx Compensation Fund Rules and CILEx Compensation Fund Handbook.

CILEx Compensation Fund Rules

13. The CILEx Compensation Fund Rules are at annex 1.
14. The CILEx Compensation Fund Rules have been drafted to impose obligations upon entities to make a contribution to the CILEx Compensation Fund. The rules also set out the powers of the fund and of the Trustees.

PROPOSED CHANGES

15. CILEx Regulation intends to extend the operation of the current CILEx Compensation Fund to ABS. CILEx Regulation considers that having different compensation funds for ABS and non-ABS operates against consumers' interests as it can lead to uncertainties amongst consumers as to which fund to claim against. A single fund will also help reduce costs, the benefits, of which authorised entities can pass onto their clients.
16. It is proposed that the contributions payable by ABS will be on the same basis as non-ABS. Each year CILEx sets the annual funding requirement to the CILEx Compensation Fund, which it publishes on its website. CILEx Regulation has applied a risk based approach to the level of contributions that regulated entities make to the fund. The risks taken into account are:
 - The area of law in which the entity practices;
 - The level of turnover;
 - Whether client money is held;
 - How client money is held – in client account or escrow.

Modification of Functions Order

17. CILEx Regulation will make a Modification of Function Order via a Section 69 Order under the Act to allow the CILEx Compensation Fund to be extended to ABS. This will be achieved by consequential amendment under the Act, designating CILEx as a Licensing Authority for ABS. A separate consultation will be issued by CILEx Regulation on this.

Changes to the CILEx Compensation Fund Rules

18. The CILEx Compensation Fund Rules will be extended to cover ABS. The rules will also be amended to give the Trustees delegated powers to make decisions and to manage the Fund. These delegated powers are needed so that the Trustees can remain independent in their decision making from CILEx and CILEx Regulation. CILEx Regulation will continue to provide administrative support to the fund under these rules.
19. The changes that are intended to be made to these rules are at annex 1.

CONSULTATION QUESTIONS

Question 1

What are your views on the proposal to extend the CILEx Compensation Fund to operate a single Compensation Fund for ABS and non-ABS?

Question 2

Do you agree that ABS should pay a Compensation Fund contribution on the same basis as non-ABS?

Question 3

What are your views on CILEx Regulations plans to seek a Modification of Functions Order under Section 69 of the Act to extend the fund to ABS?

Question 4

What are your views on the proposal to extend the CILEx Compensation Fund Rules to cover ABS?

Question 5

What are your views on the additional changes proposed to the CILEx Compensation Fund Rules?

Question 6

Do you have any other comments on CILEx Regulation's proposal to extend the operation of the CILEx Compensation Fund to ABS?

HOW TO RESPOND

Please send your response to this consultation to CILEx Regulation through one of the following methods:

- By email to consultations@cilexregulation.org.uk. Mark it for the attention of Mandeep Nagra.
- By post to CILEx Regulation Ltd, Kempston Manor, Kempston, Bedford MK42 7AB.
- By DX to CILEx, DX 124780 Kempston 2.

SUBMISSION DEADLINE

The deadline for the submission of responses is **18 March 2016**.

CILEx COMPENSATION FUND RULES

CILEx COMPENSATION FUND RULES

Introduction

1. (1) These are the CILEx Compensation Fund Rules.
- (2) These rules are made by CILEx under articles 3 and 4 of the Legal Services Act 2007 (Chartered Institute of Legal Executives) (Modification of Functions) Order 2014.
- (3) These rules ~~come into force on 5th January, 2015.;~~
(a) come into force on 5th January 2015; and
(b) revoke all Compensation Fund Rules made before that date.
- (4) Responsibility for-;
(a) the management and application and of the Fund is delegated by CILEx to the Trustees; and
(b) the administration of these Rules and of the Fund (but subject to sub-paragraph (a)) is delegated by CILEx to CILEx Regulation.

Interpretation

2. In these Rules, unless otherwise provided:

Applicant:	means a person applying for a Discretionary Grant;
Authorised Entity:	means a partnership (including a limited liability partnership), company or sole principal authorised <u>or licensed</u> by CILEx under the Legal Services Act 2007 to: (a) carry on an activity which is a reserved legal activity; or (b) provide immigration advice or immigration services;
CILEx:	means the Chartered Institute of Legal Executives;
Discretionary Grant:	means a Discretionary Grant made by CILEx under Rule 5(1)(a) or (b);
the Fund:	means the CILEx Compensation Fund;
regulated legal activity:	means: (a) a reserved legal activity; or (b) immigration advice or immigration services; and
reserved legal activity:	has the same meaning as in the Legal Services Act 2007.;
	<u>and</u>

the Trustees: [means the trustees of the Fund appointed by CILEx].

The Fund

3. (1) CILEx must establish and maintain the CILEx Compensation Fund (the **Fund**) which is to be applied by the Trustees to the payment of Discretionary Grants and for the other purposes provided for under these Rules.
- (2) Every Authorised Entity must make contributions to the Fund. ~~CILEX~~
- (3) CILEx may from time to time prescribe the rate and amount of, and payment arrangements for, those contributions.
- ~~(3)~~ Any contribution to the Fund which is not paid in accordance with ~~paragraph~~ paragraphs (2) and (3) may be recovered by CILEx as a debt.

Management of the Fund

4. (1) The Fund is to be managed by ~~CILEx Regulation, which may:~~
~~(a)~~ the Trustees, who are to hold and distribute any monies raised for the purposes of the Fund; and may:
 - ~~(a)~~ invest the Fund in any investments in which trustees may invest under section 3 of the Trustee Act 2000 (general power of investment);
 - ~~(b)~~ insure in relation to the Fund, and pay premiums in respect of such insurance from the Fund, for such purposes and on such terms as ~~it~~ they consider appropriate;
 - ~~(c)~~ borrow for the purposes of the Fund, pay interest on any money so borrowed, repay any money so borrowed and use investments or other property which form part of the Fund as security for such borrowing; ~~and~~
 - ~~(d)~~ use the Fund to pay any ~~other~~ costs, charges or expenses properly incurred:
 - (i) by CILEx in establishing the Fund; and
 - (ii) by the Trustees or CILEx Regulation in administering the Fund.
- (2) The payments which may be made under Paragraph (1) ~~(ed)~~ include any expenditure, including the payment of any award of costs or damages, incurred by ~~CILEx~~ the Trustees, CILEx, CILEx Regulation, ~~their or the~~ employees or agents of any of them as a result of proceedings against any of them for any good faith act or omission in the exercise or purported exercise of powers under these Rules.

Discretionary Grants

5. (1) The Fund may be used by ~~CILEx Regulation~~ the Trustees to make Discretionary

Grants to persons who are clients of Authorised Entities to:

- (a) replace money which an Authorised Entity has misappropriated or for which an Authorised Entity has otherwise failed to account; or
 - (b) compensate a person in respect of the civil liability of an Authorised Entity which, contrary to the CILEx Professional Indemnity Insurance Rules:
 - (i) does not have in place a policy of qualifying insurance against which a claim in respect of that civil liability can be made; or
 - (c) reimburse Applicants for:
 - (i) costs and expenses reasonably incurred in connection with the making of a successful application for a Discretionary Grant; and
 - (ii) costs and expenses reasonably incurred, and interest on losses suffered, as a result of the events giving rise to that application.
- (2) A ~~grant~~Discretionary Grant may not be made in respect of any loss:
- (a) arising solely by reason of the professional negligence of an Authorised Entity;
 - (b) which is a personal debt or trading debt or liability of an Authorised Entity;
 - (c) arising from practice by the Authorised Entity outside of England and Wales;
 - (d) which is a claim for interest under a contract between the Applicant and an Authorised Entity; or
 - (e) which did not arise from the performance or purported performance by an Authorised Entity of a regulated legal activity that it is authorised or licensed by CILEx to undertake.
- (3) Any Discretionary Grant is to be made in the absolute discretion of ~~CILEx Regulation~~the Trustees and no person has a legally enforceable right to any grant.

Applications

6. (1) An application for a Discretionary Grant must be made:
- (a) in the form CILEx Regulation may from time to time prescribe; and
 - (b) not more than one year after the Applicant:
 - (i) first knew, or with reasonable diligence should have known, about the misappropriation, failure to account or events giving rise to a civil liability (as the case may be); or
 - (ii) having taken prompt and appropriate steps to recover a loss to which Rule 7(1) applies knew, or with reasonable diligence should have known, that the loss would not be recoverable wholly or in part

as result of undertaking those steps.

(2) The time limit of one year specified in paragraph (1)(b) may be extended at the discretion of the Trustees if they are satisfied that there are exceptional circumstances which justify doing so.

(3) An Applicant must provide evidence to satisfy ~~CILEx Regulation~~ the Trustees that, in consequence of the misappropriation, failure to account or events giving rise to a civil liability (as the case may be), the Applicant has suffered or ~~is likely to~~ will suffer loss and hardship.

(34) The Applicant has the burden of proving a claim and must provide ~~CILEx Regulation~~ the Trustees with such documents or other information as ~~it~~ they may require in respect of that claim.

(45) Failure to provide documents or other information or to co-operate with the Trustees or CILEx Regulation may be taken into account when determining the merits of an application.

Other Remedies and Subrogation

7. (1) A Discretionary Grant may be refused in respect of all or any part of a loss that is:

- (a) an insured risk; or
- (b) capable of being made good by any other means.

(2) Before deciding whether to make a Discretionary Grant, ~~CILEx Regulation~~ the Trustees may require an Applicant to:

- (a) pursue any civil remedy against:
 - (i) the Authorised Entity who is the subject of the application;
 - [(ii) any third party who possesses or controls the money that the Applicant seeks to recover;
- (b) commence insolvency proceedings against that Authorised Entity;
- (c) make a formal complaint to the Police or other agency against that Authorised Entity; and
- (d) assist in the taking of any action against that Authorised Entity.

(3) If a Discretionary Grant is made, the Fund is subrogated to any rights or remedies of the recipient ~~are to be subrogated to CILEx in relation to the subject-matter of the Discretionary Grant~~ and, if required by ~~CILEx Regulation~~ the Trustees (whether before or after the making of the grant) the Applicant must:

- (a) prove in any insolvency or winding-up of the Authorised Entity;
- (b) sue for recovery of the loss or other property in the name of the Applicant but on behalf of CILEx; and

- (c) comply with any other reasonable requirement for the purpose of giving effect to CILEx's rights.

Grant Limit

- 8. A Discretionary Grant ~~may~~must not exceed £500,000.

Refusal of an Application

- 9. If an application for a Discretionary Grant is refused, whether in whole or part, CILEx Regulation must inform the Applicant in writing of ~~the~~the Trustees decision and the reasons for that decision.