

# **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:

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

<b>CILEx:</b>	means the Chartered Institute of Legal Executives;
<b>CILEx Regulation:</b>	means CILEx Regulation Limited;
<b>Compliance Manager:</b>	means an Approved Manager who has lead responsibility for ensuring that an Authorised Entity, its Authorised Persons, Approved Managers, employees and sub-contractors comply with the CILEx Code of Conduct and Rules;
<b>regulated legal activity:</b>	means: <ul style="list-style-type: none"> <li>(a) a reserved legal activity; or</li> <li>(b) immigration advice or immigration services;</li> </ul>
<b>reserved legal activity:</b>	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.
- (4) These rules came into force on 5<sup>th</sup> January 2015 and were subject to changes on 13 August 2019.

## 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 CILEx Professional Indemnity Insurance Rules and CILEx Regulation Compensation Arrangements Rules.

- (5) An Applicant Entity has a duty to declare prior conduct relating to the body, any person it proposes to appoint as an Approved Manager and any other person connected to or associated with that body. For this purpose, **prior conduct** has the same meaning as in the CILEx Regulation Enforcement Rules.
- (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 Regulation Compensation Arrangements 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 requirement of the CILEx Code of Conduct or 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.
  - (f) it is subject to intervention under the Schedule 14 of the Act.
- (9) CILEx Regulation may also revoke Authorisation if it determines that the Authorised Entity is in breach of the CILEx Code of Conduct or 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 the CILEx Regulation Enforcement Rules.
- (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 the CILEx Regulation Enforcement Rules (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 Rules which apply to them;
  - (b) 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 who has applied to and been designated as such 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 is fit and proper to hold 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 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 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:
    - (i) the CILEx Code of Conduct,
    - (ii) the CILEx Accounts Rules,
    - (iii) the CILEx Professional Indemnity Insurance Rules;
    - (iv) the CILEx Regulation Compensation Arrangements Rules; and
    - (v) any other CILEx 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 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.

### 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.
- (h) has been involved in any other matter which may be relevant to a decision by CILEx Regulation to authorise or approve that individual.

## **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 the CILEx Regulation Enforcement Rules.
- (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 the CILEx Regulation Enforcement Rules 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.