

# **Changes to the Professional Indemnity Insurance (PII) Scheme Rules and Minimum Wording to cover The Insurance Act 2015 and Alternative Business Structures (ABS)**

Summary of responses and CILEx Regulation response.

## **Introduction**

1. On 9 May 2017 we issued a consultation document seeking views on a number of changes that were required to bring the CILEx PII Rules and Minimum Wording up to date ahead of the proposed application by CILEx Regulation on behalf of CILEx to become a Licensing Authority in 2017.
2. The Insurance Act 2015 came into effect on the 12 August 2016 and made changes to the law on non-disclosure and misrepresentation in relation to commercial insurance contracts. Whilst changes had already been made to our PII proposal form, the consultation proposed to amend the Minimum Wording to bring them in line with the expectations of the Insurance Act. We also consulted on formalising changes previously agreed with our Qualifying Insurers to our Minimum Wording. These were intended to maintain protection for consumers.
3. The consultation closed on 2 June 2017. This shorter period than normal reflects the requirement to comply with the Insurance Act and that we had already engaged with our Qualifying Insurers in 2015 and 2017 on the proposed changes.
4. This report summaries the key points emerging from the responses together with our response.

## **Responses received**

5. We only received one response during the consultation period.

## **Overview of responses**

6. We had previously engaged with our Qualifying Insurers on these proposed changes which had broadly been accepted and we believe that this is reflected on only having received one response to the consultation.

7. The one respondent was supportive of the majority of the changes although expressed concerns at the intention to bring the minimum wording in line with other regulators in respect of the provision of run-off cover when a firm is in default.

**Question 1 Do you agree that the Minimum Wording should adopt the non-consumer standard of non-disclosure in line with other regulators?**

8. The respondent agreed with this.

**CILEx Regulation response**

9. We are pleased that there was no request for us to contract out of the Insurance Act 2015. This will allow us to adopt the non-consumer standard to ensure that firms meet a high standard when presenting any risk to an Insurer. This will require firms to make a “fair presentation of the risks” to insurers and also requires disclosure of circumstances an insured ought to know.
10. The Insurance Act will now require a higher standard of disclosure on our firms when seeking insurance which is in line with wider changes to the insurance market. The current position that insurers cannot avoid or repudiate cover for ‘non-disclosure’ or misrepresentation remains and, whilst insurers’ remedies under the Act are not available to them, the reimbursement provisions apply instead. Changes have already been made to the proposal form that applicant firms use.
11. These changes will help ensure a consistency of approach to the provision of PII to the legal sector.

**Question 2. Do you have any further comments regarding the changes proposed under the Insurance Act?**

12. There was no additional comment from our respondent.

**CILEx Regulation response**

13. In view of there being no additional comments we will look to implement the changes as proposed in our consultation.

**Question 3. Do you have any comments about the further changes to the Minimum Wording as proposed?**

14. The respondent questioned whether they would wish to remain a Qualifying Insurer if the changes around run-off were implemented so that the minimum terms were similar to that for the SRA. They wished to retain the option of an additional premium.

## CILEx Regulation response

15. The changes had previously been agreed with Qualifying insurers in 2015 and 2017 when it was acknowledged that it was incorrect for us to be setting premium percentages relating to run-off cover. It also allowed for insurers to pay the excess if not recoverable from the entity. This was accepted as being a position that insurers had to accept when a firm is in default.
16. We were keen that the consumers have protection in the event of a firm defaulting and the changes that were agreed were similar to those found within the SRA minimum terms.
17. By making the changes to run-off to provide a consistent approach across regulators, insurers are now free to specify the run-off premium, and when a firm elects to pay run-off, they will have to pay in advance. We expect all firms to pay run off in the event of firm closure. .
18. However we do need to insure that consumers have protection in the event of a firm defaulting and, as a third party, we would not be in a position to establish an insurable interest to pay the run-off premium. We are therefore implementing a similar arrangement with our Qualifying Insurers that exists with other regulators, that is that cover has to be given whether it is paid for or not.

## Question 4. Do you have any comments on the proposal to extend the PII scheme rules to ABS?

19. The respondent made no comment on the proposal to extend the PII scheme rules to ABS.

## CILEx Regulation response

20. We are pleased to note that there were no comments against extending the scheme to cover ABS. We have engaged with our Qualifying Insurers on our approach to Licensing and how this will fit into our existing entity regulation. We wanted to ensure that they understood the types of applicants that we are expecting to see, our approach to the risks that ABS pose and how we will be looking to mitigate these through our assessment process and ongoing supervision.
21. We will be looking to proceed with the changes as part of our Licensing application.

## Respondents to the Consultation

Type of respondents	Number of respondents	Named respondents
Insurance company	1	Insurance company
<b>Total</b>	<b>1</b>	