

APPROACH TO APPLICANT ENTITIES SEEKING AUTHORISATION BY CILEX REGULATION

INTRODUCTION

This document sits alongside the CILEX Authorisation Rules and the CILEx Regulation Licensing Rules in setting out our approach to applications for authorisation (including licensing) by CILEX Regulation.

It explains how we use our Risk assessment to carry out our desk-based authorisation and supervision, and the types of entities that we believe are suitable for regulation by CILEx Regulation.

Further information, including FAQs and how to best structure an application, is available on the CILEx Regulation website

TYPES OF APPLICANT FIRMS

Non-ABS Applicant Entities

The applicant entities are required to be 100% owned by authorised persons. These can include:

- CILEx Practitioners
- Fellows (approved for ownership only alongside another authorised person)
- Solicitors
- Barristers
- Conveyancers

The intention is that those seeking authorisation should be able to demonstrate their specialism in the field for which they are seeking approval. This is in line with the CILEx Group approach to developing specialist lawyers. For example, we would welcome an application from a solicitor with experience solely in litigation to have their firm

authorised for litigation but if they wanted to be authorised for conveyancing it is unlikely they would be able to demonstrate the necessary experience.

Our authorisation rules do not allow for any minority shareholding by non-lawyer owners, such as those allowed for SRA firms under their Recognised Body Regulations. These would need to be considered as an ABS, under our licensing rules.

ABS Applicant Entities

We have a similar approach to those Non-ABS Applicant entities, in that the intention is that those seeking authorisation should be able to demonstrate their specialism in the field for which they are seeking approval as a law firm.

We are particularly seeking to use ABS to extend the opportunities to CILEx members to run their own firms by bringing in additional experience and skills to the firm, for example, where a CILEx member runs a limited company with their non-lawyer partner.

Those ABS that are structured as an investment model with a predominantly non-lawyer ownership are not the type of ABS that we are seeking to regulate. This was set out in our original application to the LSB.

In addition, we will be expecting the following from applicant entities:

- No Multi-Disciplinary Practices
- Legal services ring fenced in separate companies
- Legal services to be connected to core business
- Intention that the Head of Legal Practice is manager / owner
- Encouraging diversity in provision of legal services – CILEx members

If an applicant is not able to meet these expectations, then it is unlikely that their application will be authorised.

All applicants

If an applicant is not able to meet the expectations above, then it is unlikely that their application will be authorised.

We would expect the principal activity of any applicant firm to be the provision of legal services and not associated services, for example, claims management activities.

Firms looking to Switch Regulators

In considering applications for firms to switch from an existing regulator to CILEx Regulation, we will expect them to be demonstrating the expectations that we have for our Non-ABS and ABS applicants.

In addition, we will be seeking as part of the engagement process with the applicant firm to understand how the change of regulator may improve the firm and/or the experience for the client. Where a firm appears to be restructuring itself purely to enable it to change its regulator, then we will be questioning in detail the rationale for this action.

We will be seeking to visit a firm as part of the process as we believe that this will have benefits to all parties involved in the switching process. This visit will enable:

1. A clear understanding and timeframe to be agreed for completion of the switching process.
2. An understanding of the firm and how they mitigate risks.
3. A simplification of the application process by being able to evidence on site processes and procedures
4. An early identification of any issues that both sides need to address.

As it will be necessary for a switching firm to gain the consent of their insurer to the change (when an existing PII policy is to continue), then we will be requesting sight of the last proposal form submitted. We believe that by sharing this information, and with the knowledge that a visit has been carried out, this will provide some comfort to the insurer that any current risks are being identified. We will also request from the insurer details of any watching claims.

In considering an application to switch regulators, we do want the firms seeking our authorisation to be a good fit with us as a regulator, both from size, structure and services offered. Consequently, we do reserve the right to decline a firm switching to us because we believe that their current regulator remains more appropriate to be their regulator. In this instance, there should be no impact on the firm by this decision as it can continue to operate under its existing regulatory arrangements. Consequently, we do not believe that there should be a right of appeal in this instance. We will always seek to indicate to a firm if we feel they may not be appropriate as a CILEx Authorised Entity.

RISK ASSESSMENTS

Basic Risk Assessments

Basic risk assessments are desk-based assessments of information obtained by CILEx Regulation on Applicant Entities to support applications for authorisation (including licensing), and the continuation of authorisation of Authorised Entities. Such assessments must be carried out as follows:

- 1) At the authorisation stage using information obtained in support of an application for authorisation;
- 2) At the annual return stage;
- 3) Any time after authorisation where intelligence is received from the entity or otherwise to indicate that the risk profile of the entity may have changed. This would include where an application to modify the terms of authorisation has been received or where there has been a change of Approved Manager.

Such assessments are carried out by CILEx Regulation Relationship Officers. Assessments are checked by the Entity Authorisation & Client Protection Manager.

When assessing the information received that requires us to complete a Basic risk assessment, we are looking at two sets of key factors:

Impact Factors -those that determine the effect an entity may have on the regulated marketplace should the risks crystallise, and consumers are not served in accordance with CILEx Regulation outcomes. Here we would be looking at the types of clients / consumers that a firm works with and the services that it delivers to them, alongside the scale.

Probability Factors – those that determine how likely it is that those effects will happen i.e. that the entity cannot service consumers in a way which contributes to the achievement of CILEx Regulation outcomes. Here we are looking at how a firm is able to mitigate risk and deliver the services it offers in a safe and secure way.

In looking at Impact and Probability factors we will be taking a balanced view, that considers timescales and the actions that we can or may be required to take in the future. We will also take in to consideration how an applicant or authorised entity presents the requested information, how they engage with us during this process and their understanding of risk and the potential impact that they may have.

The individual assessments of our applicants and entities will enable us over time to build up a better understanding of the risks that are most likely to cause us concerns in the future. In the meantime, we will be accessing risk information across the professional sectors to help inform us in our approach.

Advanced Risk Assessment

The advanced risk assessment is a process used when assessing the relative severity of the actual risks/compliance issues that have occurred or are likely to occur at a practice regulated by CILEx Regulation.

Advanced risk assessments can either be desk-based or following a visit and are an assessment of the information obtained by CILEx Regulation on Applicant Entities to support applications for authorisation (including licensing), and the continuation of authorisation of Authorised Entities. Similar to the basic risk assessment, such assessments may be carried out as follows:

- 1) At the authorisation stage using information obtained in support of an application for authorisation;
- 2) At the annual return stage;
- 3) Any time after authorisation where intelligence is received from the entity or otherwise to indicate that the risk profile of the entity may have changed. This would include where an application to modify the terms of authorisation has been received or where there has been a change of Approved Manager.

Such assessments are carried out by CILEx Regulation Relationship Officers and are checked by the Entity Authorisation & Client Protection Manager.

Referring to the guidance is a process which may assist the better identification of any problems with the information supplied, which could point to potential inadequacies in the entity's systems and procedures for example. The use of the guidance will then guide us on the appropriate course of action.

This will also be used when identifying possible evidence of non-compliance by those entities, and sole practitioner firms, who are supervised by CILEx Regulation for compliance with the Money Laundering Regulations 2017.

Supervision and regulatory action

In order to prioritise the regulatory action that we take, we rank risks according to their nature and scale, how we are prioritising action relating to that risk, and the urgency with which we need to act to protect the public and carry out our regulatory responsibilities.

This enables us to bring a consistent approach to how we deal with risk as it is identified in each case and ensure that the appropriate resources are allocated. It also enables us to integrate our other supervisory responsibilities, such as that as an Anti-money Laundering Supervisor, within our day to day risk activities.

The identification of a risk may require us to gain a better understanding of the situation and refine our risk assessment. In this case we may:

- Seek further information from the applicant or entity
- Visit the premises of the applicant or entity
- Conduct a more detailed forensic investigation, including the use of risk specialists
- Refer the matter to our Enforcement team for investigation

We will use the information gathered to update our risk assessment and prioritise any action. This may include follow up visits or requests for further information at a later date to confirm that agreed actions have been taken. This will then form part of our supervisory approach to a firm.

How we apply the risk framework and assessments, including the updating of and supplementing the risk rating criteria, is overseen by the CILEx Regulation Strategic Risk Committee. They review operation of and determine how the framework should be applied across impact and probability scoring ranges, receiving and reviewing data from CILEx Regulation alongside summaries on risk data assessments on the wider market for legal services.

This helps ensure that we continually seek to improve our approach to risk management and remain alert to new risks as the technology and the legal sector market evolves.

Decisions involving the CILEx Regulation Strategic Risk Committee (SRC)

If any assessment results in one of the following recommendations:

- reject authorisation application
- revoke authorisation
- reject Approved Manager designation
- withdraw Approved Manager designation.

the assessment and any accompanying documents must be referred by the Entity Authorisation & Client Protection Manager to the SRC who will need to approve the decision. However, before the following is considered the Entity Authorisation & Client Protection Manager may be requested to gather further information and/or review their decision as well as instructing a forensic investigation.

If the decision to refuse authorisation is supported by the SRC the matter will be passed to the Entity Authorisation & Client Protection Manager to advise the applicant. The Entity Authorisation & Client Protection Manager will advise the applicant of their right to appeal and will notify the Investigations Team.

If any of the other decisions are supported by the SRC the matter will be passed to the Entity Authorisation & Client Protection Manager to refer to the Investigations Team. The Entity Authorisation & Client Protection Manager will be responsible for notifying the entity/manager of the decision and their right of appeal. The Entity Authorisation & Client Protection Manager will be responsible for dealing with any follow up work resulting in revocation of authorisation which may include intervention or the enforcement of a Practice Management Agreement.

If any of the aforementioned decisions are not supported by the SRC, the SRC will advise on an alternative course of action and the matter will be passed back to the Entity Authorisation & Client Protection Manager and copied to the Investigation Manager (or vice versa). The team responsible for taking forward the SRC alternative recommendation will depend on the type of action recommended.

Timeframe for resubmitting applications

Whilst there are no rules relating to when an applicant who has been declined may resubmit an application, any applicant needs to consider whether they have sufficiently mitigated any reasons previously given for their application having been declined.

By having any declined decisions referred to the SRC for oversight, we believe that this would provide the opportunity for any obvious mitigants to be put in place to enable the Entity Authorisation & Client Protection Manager to reconsider their initial decision.

Having followed this process, we would then not expect an applicant to resubmit a further application within the following 12 months from receipt of final decision.

Publication

We will consider publishing the numbers and circumstances of those applications where they are not considered to meet our approach to authorisation.