

# Rules and procedure for admission to the RICS Assigned Risks Pool

Version 4 with effect from 2 February 2022

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Approved by RICS' Standards and Regulation Board.

## Definitions

In this document the following definitions apply:

- a** Aggregate – the limit of indemnity that is only available once in respect of all claims made under the policy during the applicable period of insurance.
- b** ARP – the RICS Assigned Risks Pool.
- c** Attached classes – a trainee surveyor, trainee associate or student.
- d** Business review – a formal investigation undertaken by a chartered surveyor and an accountant appointed by RICS to obtain information relating to the operations, regulatory compliance and/or financial performance/position of the firm.
- e** Constructive declinature; constructively declined – a quotation by a listed insurer to the firm that is sufficiently in excess of contemporary market rates and/or terms and conditions to constitute an actual declinature and/or terms which do not comply with RICS insurance requirements. The ARP manager will be the final arbitrator as to whether terms provided by a listed insurer constitute constructive declinature. This definition also applies to 'constructively declined'.
- f** Each and every claim – the limit of indemnity that will apply to each claim notified under the policy during the applicable period of insurance.
- g** Excess – the part of the policy that the insured firm will be required to pay in the event of any claim.
- h** Final premium – the premium paid by the firm for the period of the insurance (usually one year) less the amount of the provisional premium previously paid.
- i** Firm – the whole or part of any body corporate, a partnership, a limited liability partnership, or an unincorporated practice of a sole practitioner concerned with the business of surveying or providing other related services, which is regulated by RICS. A firm that has been suspended from RICS Regulation is not eligible to apply to enter the ARP. A firm must have been regulated by RICS for a minimum of 12 months in order to be eligible to enter the ARP.

- j** Listed insurer – an insurer who is listed by RICS. A complete list of listed insurers is available on request from RICS Regulation.
- k** Member – a Fellow, Professional Member, Associate Member or Honorary Member of RICS or a member of the attached classes.
- l** Manager(s) – a company appointed by RICS to advise and to manage the ARP and to implement decisions made by the panel. The manager acts on behalf of RICS and the panel and cannot act on behalf of the firm.
- m** Panel – the Assigned Risks Pool Panel, which may comprise members of RICS, the ARP manager, RICS staff and representatives of the listed insurers.
- n** PI – professional indemnity.
- o** Prescribed listed insurer – an insurer whom an ARP applicant must approach to obtain a declinature. This is to satisfy the requirement of proof that insurance cannot be obtained from the standard market.
- p** Principal – means a
- sole practitioner
  - director of a company
  - member of a limited liability partnership or other body corporate managed by its members
  - member of the management, supervisory or administrative board in any other body corporate
  - person holding any position that is equivalent to any of the above positions in the part of the world in which the firm is established
  - person performing the functions of any of the above roles; an officer or employee of the firm who provides surveying services to the public through and in the name of the firm. Provision of such services is not routinely subject to direct supervision by any other person, normally denoted by a person whose job title includes the word 'Partner' or 'Director'.
- q** Provisional period of admission – membership of the ARP for an initial period of no longer than 120 days, subject to any extension agreed by the panel.
- r** Provisional premium – the premium paid by a firm for the provisional period of admission, before gaining entry to the ARP.
- s** Regulated by RICS – a firm that meets the eligibility criteria to be able to use the firm's designation 'Regulated by RICS' as defined in the *RICS Rules of Conduct*.
- t** RICS – Royal Institution of Chartered Surveyors.
- u** RICS approved minimum wording – the approved minimum wording which is in force at the commencement or renewal date of any policy – a current copy of which can be obtained on application to the insurance section, RICS Regulation.

- v** RICS insurance requirements – the requirements relating to professional indemnity insurance as defined by the *RICS Rules of Conduct*, policy statement and guidance.
- w** RICS Rules of Conduct – the current version of the *RICS Rules of Conduct*.
- x** Surveying service – those services (including the giving of advice) normally undertaken by members of RICS.

## The purpose of the ARP

- 1** RICS requires every regulated firm that is providing or offering surveying services to third parties to have valid PI insurance.

The purpose of having PI insurance is to:

- a** ensure that if the insured (member or firm) faces a claim, it is protected from financial loss that it cannot meet from its own resources
  - b** protect the insured against the consequences of its liability to pay damages to third parties in respect of breaches of professional duty that it commits in the course of its professional activities and
  - c** ensure that the firm's clients do not suffer financial loss that the firm cannot meet.
- 2** RICS recognises that circumstances may arise where a firm may be unable to obtain PI insurance and therefore render(s) it unable to comply with the RICS insurance requirements. This may be as a result of a poor claims record, the type of business being carried out or other risk factors, and may occur through no direct fault of the firm.
  - 3** Where this happens, the ARP is a facility to which a firm may apply to enable it to comply, in some cases to a more limited degree, with the RICS insurance requirements while the firm takes action to rectify the issues that have led to it being declined PI insurance.
  - 4** Failure to explore the ARP route in these circumstances will put the firm in breach of *RICS Rules of Conduct* and may lead to disciplinary action by RICS.
  - 5** Entry into the ARP should only be considered after a firm has exhausted all other options.
  - 6** The provisional premium, business review cost (if applicable) and final premium is likely to be substantially higher than the expiring premium. The extent of cover may be lower, since the limit of indemnity may be on an aggregate basis rather than an each and every claim basis.
  - 7** The insurance provided within the ARP is underwritten by each listed insurer in proportion to their market share.

## ARP Rules of admission and membership

The following Rules must be satisfied by a firm applying for admission to the Assigned Risks Pool (ARP).

- 8** Entry into the ARP by a firm is subject to an application and acceptance of the entry procedures and any conditions of membership of the ARP being observed at all times. Non-

adherence to any terms could result in cover being withdrawn or restricted at any time, at the sole discretion of the panel.

- 9 All decisions of the panel and/or ARP manager relating to admission and membership of the ARP are final and will be binding on the firm while it remains a member of the ARP. In the event that a matter is not covered by, or conflicts with, these entry procedures and conditions of membership, the panel and/or ARP manager shall have absolute discretion as to what action shall be taken.
- 10 A firm may apply to enter the ARP if it is currently trading and has been declined (or constructively declined) PI insurance. A firm that is no longer trading (i.e. in 'run off') at the time of application is not eligible to enter the ARP.
- 11 Insurance within the ARP shall only be made available to firms that are regulated by RICS. A firm that has been suspended by RICS Regulation is not eligible to enter the ARP. A firm must have been regulated by RICS for a minimum of 12 months in order to be eligible to enter the ARP. Insurance within the ARP for subsidiary, or predecessor, firms that are not regulated by RICS will be at the sole discretion of the panel. If a firm ceases to be regulated by RICS for whatever reason, the insurance provided by the ARP shall cease with effect from the date the firm ceases to be regulated by RICS, except at the sole discretion of the panel.
- 12 In applying to enter the ARP for the provisional period of admission, the firm must be able to provide evidence to the ARP manager, that it has either:
  - a been declined PI insurance by its own insurer(s) or
  - b undertaken a full market exercise and been declined PI insurance by listed insurers/ prescribed insurers. A declinature by a coverholder or managing general agent of a listed insurer/prescribed insurer will not be deemed to be a declinature of PI insurance for the purposes of Rule 5 or
  - c of constructive declinature, which the ARP manager shall judge to be satisfactory. The ARP manager can make an initial judgement on whether terms that have been offered constitute constructive declinature.
- 13 The limit of indemnity within the ARP will be in accordance with that recommended by the *RICS Insurance Requirements*, subject to a maximum limit of indemnity of £1,000,000 and the limit of indemnity may be on an aggregate or aggregate plus unlimited round the clock reinstatement basis rather than on an each and every claim basis.
- 14 If the policy is written on an aggregate basis, and in the event that the aggregate limit is eroded or extinguished by paid or outstanding claims while the firm is still within the ARP, the panel may reinstate the aggregate limit at its sole discretion.
- 15 Other than as stated elsewhere within these Rules, the insurance policy wording applicable to the ARP shall be the latest issued *RICS Approved Minimum Wording*, except that:
  - a the limit of indemnity can be on an aggregate basis, as stated above.
  - b the panel may set additional terms and conditions of insurance that may result in less comprehensive insurance than the wording of the *RICS Approved Minimum Wording*.

- 16** No insurance will be provided by the ARP unless all information, confirmation and declaration requirements of the ARP manager are fulfilled, the contractual undertakings are complete and, if required, the business review costs are paid in full.
- 17** If the provisional or full premium is not paid in full within 30 days of the inception of the provisional period or subsequent period, the policy will be cancelled from the inception date of the provisional period or subsequent period.
- 18** Standalone run-off insurance for any firm within the ARP will not be available for a firm that is the subject of a winding-up order (or equivalent) or otherwise ceases to trade, or is the subject of the appointment of a liquidator, administrator or receiver (including an administrative receiver), except at the absolute discretion of the panel.
- 19** Any breach of any the contractual undertakings given by the firm, or the giving of any false or misleading information by the firm, so as to gain admission to the ARP or any breach of these entry procedures and conditions of membership will be grounds for immediate expulsion from the ARP, with all insurance within the ARP voided. RICS may take disciplinary action.
- 20** A firm must leave the ARP once it can obtain and intends to take up insurance in the standard insurance market, subject to the provisions of Rule 21 below. Evidence of the available insurance must be provided to the ARP manager.
- 21** A firm cannot leave the ARP without first giving 28 days written notice, unless agreed otherwise by the ARP manager of their intention to do so and having discharged all obligations to RICS, contractual or otherwise, that may be or may become due as a result of its membership of the ARP.
- 22** Return of any premium paid for any unexpired period of insurance shall be at the sole discretion of the ARP manager, less any costs, and will in any event not be returned if any claim or circumstance which might give rise to a claim is notified during the provisional period of admission or subsequent eight-month period within the ARP. Return of the business review cost in the event of the business review not proceeding will be less any costs incurred by RICS and/or the ARP manager.
- 23** Insurance beyond a period of 12 months is entirely at the discretion of the panel. Any application made for subsequent periods of insurance must follow the same process as the initial application. If required by the panel, a further business review will be undertaken at the expense of the firm for each further period of cover in order to assess the firm's progress towards becoming a better risk proposition to the standard insurance market.
- 24** Any firm that has failed to comply with the terms offered by the panel will not be eligible to make a further application to join the ARP for a period of 12 months from the date of provisional period of admission to the ARP or the date of inception of the full terms offered, whichever is earlier.
- 25** The panel has the right to change these ARP entry procedures and conditions of membership at any time without prior notice, subject to approval of the RICS Standards and Regulation Board.

- 26** Firms that seek admission to the ARP will be notified of any revisions to the entry procedures and conditions of membership and, following such notification, will be bound by them. The revisions, however, will not apply to firms already admitted to the ARP.

## Procedure for admission to the ARP

- 27** If a firm has been declined insurance cover (or considers that it has been constructively declined) or is concerned that it will not be able to arrange insurance, the firm must complete the requisite form to notify RICS directly and should apply for admission to the ARP through the ARP manager or its insurance brokers/intermediaries.
- 28** The ARP manager, based on receipt of the required supporting information and documentation, will make an initial judgement as to whether the PI insurance market is declining the risk (including any constructive declinature).
- 29** The ARP manager will advise the firm, through its insurance brokers or intermediaries, of the formal terms for the provisional period of admission of the firm into the ARP, including the provisional premium and business review cost (if required).
- 30** The terms will include certain required information, confirmations, declarations and contractual undertakings. The provisional premium payable for the provisional period of admission will be calculated by the ARP manager.
- 31** Unless agreed in writing by the ARP manager, no insurance will be provided by the ARP in the provisional period of admission until all information, confirmation and declaration requirements of the ARP manager are fulfilled, the contractual undertakings are complete and the business review (if required) costs are paid in full.
- 32** Once the firm has been provisionally admitted to the ARP, the ARP manager will inform the firm, via its insurance brokers/intermediaries, and RICS. The date of commencement of the provisional period of admission into the ARP will be the date stated in the ARP manager's written confirmation of insurance, even if there is a gap between the expiring insurance policy and entry to the ARP. Retrospective insurance may be allowed subject to a satisfactory no claims and no material change declaration at the sole discretion of the ARP manager and/or panel.
- 33** Upon completion of the above requirements and within the provisional period of admission, the panel will set the terms of full admission to the ARP, including the final premium.
- 34** In the event of a failure by the firm to complete the requirements of Rules 16 and 32 above, insurance within the ARP will cease at the end of the 30-day provisional period of admission. In such circumstances RICS may take disciplinary action.
- 35** In the event of a failure by the firm to complete the requirements of Rule 41, insurance within the ARP will cease at the end of the 120-day provisional period of admission, or such period as the panel has determined. In such circumstances RICS may take disciplinary action.
- 36** Provided that the firm has complied with all the required ARP entry procedures, including agreeing to comply with the panel's requirements for changes to the practices of the firm and any other confirmations, declarations and contractual undertakings, the ARP manager

will provide to the firm formal terms of full admission for the first year only, including the final premium, via its brokers/intermediaries.

- 37** If the formal terms for full admission of the firm to the ARP provided by the panel are not accepted by the firm, no further insurance shall be granted beyond the provisional period of admission to the ARP.
- 38** No insurance beyond the provisional period of admission will be provided by the ARP until all information, confirmation and declaration requirements of the ARP manager are fulfilled and the contractual undertakings are complete.
- 39** Once the firm has been admitted to the ARP on full terms, the ARP manager will inform the firm, via its brokers/intermediaries, and RICS.

## Business review

- 40** A firm must undergo a business review in the following circumstances:
  - a** it is required by RICS
  - b** it is required by the ARP manager or
  - c** it is required by a prescribed insurer.
- 41** Where a business review is required, during the first 30 days of the provisional period of admission the firm must agree with RICS a date for the business review to be undertaken.
- 42** A business review shall be undertaken for the following purpose:
  - a** to ascertain details of the exact nature of the firm's business
  - b** to ascertain the reasons for insurance not being available and to assist the panel to understand those reasons
  - c** to assist in setting the terms of full entry into the ARP and
  - d** to assist in setting out requirements to the firm as to how the firm shall be better managed in the future. The intention of these requirements is to help make the business a better risk proposition to the standard insurance market.
- 43** At the discretion of the ARP manager and subject to the agreement of a prescribed insurer, during the first 120 days of the provisional period of admission, the business review will be undertaken. RICS will inform the firm as to the cost of the business review. The business review is entirely for the benefit of the ARP panel; however, a copy will be made available to the firm for information.

## Disciplinary action

The fact that insurance through the ARP does not meet the standards set by RICS' Standards and Regulation Board is not of itself a disciplinary matter as long as the firm remains in the ARP. If other breaches of *RICS Rules of Conduct* have occurred or there have been past breaches of the **RICS Insurance Requirements**, RICS is entitled to investigate those breaches and take such disciplinary action as it considers appropriate.

If a firm is unable to obtain cover in the open market upon leaving the ARP, the firm may be subject to disciplinary action.

## Further information

Should you require additional information, please contact the following:

RICS Regulation

55 Colmore Row

Birmingham

B3 2AA

t: 020 7695 1670

e: [regulation@rics.org](mailto:regulation@rics.org)

Miller Insurance Services

70 Mark Lane

London

EC3R 7NQ

t: 020 7031 2371

e: [arpmanager@miller-insurance.com](mailto:arpmanager@miller-insurance.com)

## Delivering confidence

We are RICS. Everything we do is designed to effect positive change in the built and natural environments. Through our respected global standards, leading professional progression and our trusted data and insight, we promote and enforce the highest professional standards in the development and management of land, real estate, construction and infrastructure. Our work with others provides a foundation for confident markets, pioneers better places to live and work and is a force for positive social impact.

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