



Consultation

Consultation on Assigned Risks Pool

Consultation on proposals to amend the Terms of Reference and Rules of Admission to RICS Assigned Risks Pool



Consultation

1. This consultation on proposals to amend the Assigned Risk Pool (ARP) Terms of Reference and Rules and Procedure for Admission to the ARP are part of RICS' policy development process, and help to ensure that the impact of any policy changes have been properly assessed and stakeholders have been consulted on proposals.
2. The aim of this consultation is to gather feedback and view on proposed amendments to the functioning of the ARP in the UK. We are keen to hear feedback from RICS members, regulated firms, consumers and insurers. This will help us to develop a final position that achieves the best outcome to the identified problem.

How to respond

3. You can respond to this consultation online via RICS iConsult or by responding to the questions below and emailing hgarnett@rics.org.
4. Please ensure that you respond to this consultation no later than 27 November 2020.

Background

5. RICS requires that all regulated firms must hold 'adequate and appropriate' indemnity as a protection for the clients that they provide services to. The RICS requires that all firms in the UK hold professional indemnity insurance (PII) that meets its requirements.¹
6. In order to ensure minimum policies are provided by insurers, RICS runs an insurer market, where insurers sign an agreement with RICS to provide RICS firms with at least the minimum level of coverage. If lower terms are offered, the minimum terms will come in as the default. These insurers also sign up to provide an Assigned Risk Pool (ARP), which is a facility to provide PII for actively trading Regulated Firms who are unable to obtain PII in the normal market.
7. The distressed nature of the current PII market have been well documented, with a collapse in the availability and capacity of the market caused by insurer concerns around profitability and

¹ <https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/regulation/professional-indemnity-insurance-requirements---version-7.pdf>

concern around fire safety exposure as a result of Grenfell and other high profile fire safety failures.

In response to this, RICS consulted on important changes to its minimum terms, and in May 2020 launched its revised policy wording that insurers offering PII to RICS firms must meet. The key changes made included:

- Fire safety exclusion – Removal of the fire safety exclusion wording from the minimum policy terms and the temporary insertion of the ability for insurers to apply their own fire safety exclusions. Insurers have an obligation to clearly communicate the intent and potential impact of the exclusion in the product summary.
- EWS1 Form – Following concerns being raised around the completion of EWS1 Form and where liability sits, the exclusion included on the EWS1 Forms – to exclude liability - has been inserted into the minimum policy wording, alongside a requirement for all those undertaking EWS1 Form work, to disclose and discuss this with their insurer.
- Availability - To avoid further contractions, insurers were given greater flexibility in respect to writing excesses and the ability to write unlimited aggregate round the clock limit of liability.

8. In addition, amendments were also made to the admissions process for the ARP. These included simplifying the process to provide greater support for firms entering the ARP and, following concerns that it was no longer solely a rehabilitative panel for firms with poor claims history and that well performing firms with good claims histories were ending up in the ARP, we gave greater flexibility to the terms provided so that clients deem them acceptable.

9. These changes to the RICS' minimum policy wording in May have prevented further restriction in supply, with many firms able to obtain cover. The changes to the ARP rules have also had an impact with 25 firms entering the ARP since May, ensuring firms are able to keep trading.

10. While these changes have been well received, there has only been limited improvement in the market and it is likely to continue to be challenging for firms entering renewal next year. In order to address this, we are focusing on three areas to ensure that we have the right insurance model and support during these challenging times:

- **Improved insight and data:** undertaking a PII member survey to collect evidence to advocate the need for intervention with insurers and government.

- **Targeted policy and guidance:** producing guidance to support members on risk, liability and insurance, and moving towards a master policy through the ARP for those unable to obtain terms in the open market.
- **Efficient governance and processes:** as we receive more applications to the ARP, reviewing its processes to ensure it is efficient, effective and offers a platform for firms to continue trading where they are unable to gain cover in the open market.

11. This consultation relates to third of these areas and proposes amendments to improve the efficiency and effectiveness of the ARP.

Proposals for consultation

12. We are proposing to make changes to the ARP Terms of Reference (ToR) and the Rules and Procedures for Admission to the RICS Assigned Risks Pool. We believe that these changes will significantly improve the functioning of the ARP, making the application process efficient and reducing the administrative burden on RICS, firms and insurers.

Terms of Reference

13. The ARP Terms of Reference (ToR) set out how the responsibilities and functions of the ARP Panel and ARP Manager, which oversees the RICS' ARP. The ToR cover:

- Panel composition and appointment;
- Functions of the Panel;
- Meeting format;
- Roles and responsibilities;
- Powers of the Panel; and
- Functions of the ARP Manager

14. The ToR have been in place for a number of years without significant revision. Given the hardened PII market and the increasing number of firms applying to the ARP, we believe that several the processes are no longer fit for purpose, or suitable for dealing with an increased number of applications.

15. A number of changes have been proposed to the ToR to improve the efficiency and overall functioning of the ARP. These changes will impact those regulated firms applying to enter the ARP and Listed Insurers.
16. These changes are set out below. A copy of the revised ToR with tracked changes is available in Appendix 1.

Convening the ARP Panel

17. The ARP Panel oversees admissions to the ARP, providing advice to insurers and firms, and monitoring progress within the ARP. Under the current procedures, the ARP Panel is required to meet to review all applications. With an increase in applications, this has become resource intensive for all parties and, when firms have a good claims history and are therefore low risk, it is often unnecessary. As a result, we are proposing to change when the ARP Panel meets.
18. The ARP Panel will only be required to convene, if the following criteria are met:
 - A Business Review is required under Rule 39 of the RICS ARP Rules for Admission (see amended business review requirements below); or
 - when RICS, the ARP Manager or Listed Insurer feels it is appropriate to do so.
19. In all other cases, the ARP Panel will not be required and decision to admit the firm to the ARP will be made by the ARP Manager following confirmation of terms from the Prescribed Listed Insurers.

ARP Panel composition

20. The ARP Panel advises insurers about Firms admitted to the ARP, ratifies admission to the ARP, and determines, and advises firms on, the terms and conditions. Currently the ARP Panel consists of:
 - A Chair, who will be a Chartered Surveyor; and
 - Two Panel members who are appointed RICS Members; and
 - Up to three Panel members who are Listed Insurers or the ARP Manager as their representative.
21. We are considering amending the number of appointed RICS Members on the Panel from two to one. Given the increase in firms entering the ARP and the expectation that this will continue, this will make the process more efficient and provide great flexibility for the Panel to meet. With the panel expected to oversee fewer business reviews, this will make the Panel easier to convene and ensure that the view from profession on the panel is maintained.

22. We are keen to seek views on this approach and whether there are any objections or unintended consequences.

Rules of Admission

23. The [*Rules and Procedure for the admission to the RICS Assigned Risks Pool*](#) sets out the rules for and requirements of firms applying to enter the ARP. As the number of firms applying to enter the ARP has increased due to a hardening of the PII market, we have become aware of a number of changes that are required to improve the efficiency and functioning of the admissions process for RICS regulated firms.

24. These changes are set out below. A copy of the revised Rules and Procedures for Admission to the RICS Assigned Risks Pool with tracked changes is available in Appendix 2.

Market exercise

25. Currently, when applying to enter the ARP, firms are required to obtain ten constructive declinatures in order to satisfy the application requirements. With the contraction in the PII market, there are fewer insurers actively writing for surveyors and meeting the current requirements is often unachievable.

26. As a result, we are proposing to amend the requirements for firms applying to the ARP for firms to have undertaken a 'full market exercise' before applying to the ARP, to have been denied insurance by a Listed Insurer or to be concerned that they are unable to arrange insurance.

Business reviews

27. At present, all firms applying to enter the ARP are required to undergo a Business Review, the cost of which is borne by the firm. Historically, firms entering into the ARP were doing so due to their distressed nature, as such, the Business Review played a crucial role in identifying areas of risk within a firms practice and providing guidance on how a firm can improve its process to obtain insurance on the open market in the future.

28. However as already noted, there has been an increase in the number of firms applying to enter the ARP with a good claims history, not because of poor risk management strategies and a bad claims history, but as a consequence of a market capacity issue.

29. As such, we believe that it is not proportionate for these firms to meet the same requirements as those firms are failing to get insurance because they are a risk. We are proposing a targeted risk-based approach to Business Reviews and requesting them only in the following circumstances:
- It is required by RICS as the result of concerns the RICS regulation team may have about a firm's practice as a result of intelligence received or previous RICS complaints history; or
 - It is required by the ARP manager or a Prescribed Listed Insurer, due to a poor claims history or over concerns on the firms insurable risks.
30. These changes will provide efficiencies in the application process, reducing the administrative burden on both the firm and the RICS, whilst still ensuring that the appropriate oversight and guidance is provided to those firms identified as riskier.

Phoenixing firms

31. When a regulated firm closes there is a requirement on the principals of the firm to inform RICS of the closure and provide information to demonstrate that the firm has closed in an orderly way. Some firms do not close in an orderly manner, sometimes because of insolvency and occasionally without having appropriate PII run off cover in place.
32. Firms that close in a disorderly manner may pose a risk to their former clients, employees, creditors and to the reputation of Chartered. Sometimes these firms may close in a disorderly way and then rapidly re-establish themselves as a new trading entity. We use the term "phoenix firms" to describe these companies.
33. We are aware of insurer concern around phoenixing and firms potentially putting their exposure in the ARP run-off pool and re-joining RICS as a new firm. Such a practice is unfair and has an impact on the risk profile of the ARP and may impact the future cover available. We are proposing that in order for a firm to be eligible for entering the ARP, they must have been regulated by RICS for a minimum of at least 6 months. This should help to prevent new firms joining RICS in order to run-off and phoenix.

Suspended firms

34. We are also proposing to introduce the requirement that a regulated Firm that has been suspended from RICS Regulation is not eligible to apply to enter the ARP.

35. Firms that have been suspended, are no longer registered for regulation and have all benefits of RICS regulation withdrawn, including eligibility for the ARP.

Impact assessment

36. The impact assessment of the proposed changes to the ARP, will largely be driven by the responses that are received to this consultation.

37. However, throughout the development of these changes, we have considered the impact on consumers, RICS regulated firms and insurers. The proposed changes have been made with the aim of increasing the efficiency of the admissions process and the effective functioning of the ARP. We believe that the proposed changes will overall have a positive impact.

38. We wish to explore impacts further in the questions below and would welcome views from consumers, firms and insurers.

Consultation questions

General questions

Q.1 Do you agree with all of or some of the proposed changes to ARP Terms of Reference and Rules and Procedures for Admission to the RICS ARP?

Q.2 Are there any unintended consequences of introducing these changes, that RICS has not considered?

Q.3 Do you have any other comments on the proposed changes?

ARP Panel composition

Q.4 Do you agree or disagree with the proposals to change the composition of the ARP Panel? Please explain your answer.

Phoenixing firms

Q.5 Do you believe that the provision for a firm to be regulated for at least 6-months before accessing the ARP provides sufficient protection against phoenixing firms?

Appendices

The following appendices are attached to the consultation:

- Appendix 1: Assigned Risks Pool Panel – Terms of Reference, Panel Roles & Responsibilities, and Panel Format
- Appendix 2: Rules and Procedure for Admission to RICS Assigned Risks Pool