

The Right Honourable Chris Grayling MP
Lord Chancellor and Secretary of State for Justice
Ministry of Justice
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LEGAL SERVICES
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Dear Lord Chancellor,

Recommendation for the Institute of Chartered Accountants in England and Wales to be designated as an approved regulator and a licensing authority for probate activities

On 14 December 2012, the Institute of Chartered Accountants in England and Wales (**ICAEW**) made two separate applications to the Legal Services Board (**the Board**) under the Legal Services Act 2007 (**the Act**). The first was an application under Part 2 of Schedule 4 to the Act for the Board to recommend to the Lord Chancellor that an order be made designating ICAEW as an approved regulator. The second was an application under Part 1 of Schedule 10 to the Act for the Board to recommend to the Lord Chancellor that an order be made designating ICAEW as a licensing authority. Both applications are for the reserved legal activity of probate activities.

The applications represent a new entrant to the legal services market, as ICAEW has not previously been designated as an approved regulator or licensing authority under the Act for any other reserved legal activities.

The Board's Rules for Applications for Approved Regulator and Qualifying Regulator designation¹ giving effect to paragraphs 13(2) and 13(3) of Schedule 4 to the Act set out the matters on which the Board must be satisfied when granting an application for designation as an approved regulator. The Board has considered the application and is satisfied that the criteria for granting an approved regulator designation application have been met.

The Board's Rules for Licensing Authority Designation Applications² giving effect to paragraphs 11(2) and 11(3) of Schedule 10 to the Act set out the matters on which the

¹http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Qualifying_Regulator_status/20110328_Rules_for_applications_Aproved_Regulator_Qualifying_Regulator_designation_1_April.pdf

²http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/designating_la_rules_v2_june_2011_final.pdf

Board must be satisfied when granting an application for designation as a licensing authority. The Board has considered the application and is satisfied that the criteria for granting a licensing authority designation application have been met.

Therefore, the Board agreed at its meeting on 27 November 2013 to recommend to the Lord Chancellor that ICAEW (under paragraph 16(2) of Schedule 4 to the Act) be designated as an approved regulator for the reserved legal activity of probate activities. Furthermore, the Board agreed that the proposed regulatory arrangements be approved for use by the approved regulator when the Lord Chancellor exercises his authority under paragraph 18(1) of the same Schedule.

Having agreed to make the above recommendation, the Board also agreed to recommend to the Lord Chancellor that ICAEW (under paragraph 14(2) of Schedule 10 to the Act) be designated as a licensing authority for the same reserved legal activity and the licensing rules which are contained within ICAEW's regulatory arrangements, be approved when the Lord Chancellor exercises his authority under Paragraph 16(1) of the same Schedule.

In relation to the regulatory arrangements that have been approved by the Board, ICAEW has confirmed that it will restrict the scope of activity to be authorised to that of 'non-contentious probate' to be carried on by probate practitioners - i.e. the preparation of any probate papers on which to found a grant of probate or a grant of letters of administration only. The authorisation will not extend to the preparation of any probate papers on which to oppose a grant of probate or oppose a grant of letters of administration.

Schedule 10 to the Act sets out the process for an applicant to apply to the Board for designation as a licensing authority. Paragraph (3)(b) of that Schedule indicates that a body may make a licensing authority application for a reserved legal activity, if it has first made an application under Part 2 of Schedule 4 to the Act (designating approved regulators) for the Board to recommend that an order be made by the Lord Chancellor designating the body as an approved regulator in relation to that activity. The designation as a licensing authority can therefore only proceed if you agree to designate ICAEW as an approved regulator.

There are a number of documents that support the recommendations. Due to the volume, only electronic copies of the following documents have been provided to your officials, but paper copies can also be provided on request.

- ICAEW's application and supporting documents which sets out the proposals and how they comply with the requirements of the Act and our rules and guidance;
- ICAEW's final Probate Regulations which form the proposed regulatory arrangements and licensing rules;

- advice from the Mandatory Consultees, Selected Consultees and ICAEW's response to that advice; and
- the Board's decision notice.

Yours sincerely

A handwritten signature in black ink, appearing to read "David Edmonds". The signature is written in a cursive, flowing style.

David Edmonds
Chairman

RECOMMENDATIONS TO THE LORD CHANCELLOR UNDER SCHEDULE 4, PART 2 and SCHEDULE 10, PART 1 OF THE LEGAL SERVICES ACT 2007

1. The Institute of Chartered Accountants in England and Wales (**ICAEW**) submitted two applications to the Legal Services Board (**the Board**) on 14 December 2012. The first application has been made under Part 2 of Schedule 4 to the Legal Services Act 2007 (**the Act**) for the Board to recommend to the Lord Chancellor that an order be made designating ICAEW as an approved regulator. The second application has been made under Part 1 of Schedule 10 to the Act for the Board to recommend to the Lord Chancellor that an order be made designating ICAEW as a licensing authority.
2. Both of ICAEW's applications relate to the reserved legal activity of probate activities, as defined in paragraph 6 of Schedule 2 to the Act – specifically, the preparation of probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales. The Act further defines 'probate papers' as papers on which to found, or oppose a grant of probate or, a grant of letters of administration.³
3. ICAEW also sought the LSB's approval of ICAEW's associated regulatory arrangements for probate activities and of the licensing rules which are contained in the associated regulatory arrangements.
4. At its meeting on 27 November 2013, the Board resolved to grant the application to make a recommendation to the Lord Chancellor for an order to be made designating ICAEW as an approved regulator and, to approve the associated proposed regulatory arrangements. In making that decision, the Board also resolved to grant the application to make a recommendation to the Lord Chancellor for an order to be made designating ICAEW as a licensing authority and, to approve the proposed licensing rules contained within the ICAEW's associated regulatory arrangements.
5. In making its decision the Board considered the criteria in paragraphs 13(2) and 13(3) of Schedule 4 to the Act. The Rules for Applications for Approved Regulator and Qualifying Regulator designation (1 April 2011) provide the mechanism through which the Board carries out its assessment against these requirements and the Board has therefore satisfied itself of compliance with the requirements of paragraphs 13(2) and 13(3) by an assessment of the application and proposed regulatory arrangements against these rules.
6. The Board also considered the criteria in paragraphs 11(2) and 11(3) of Schedule 10 to the Act. The Rules for applications to be designated as a licensing authority (13 June 2011) provide the mechanism through which the Board carries out its assessment against these requirements and the Board has therefore satisfied itself of compliance

³ Schedule 2 to the Act – The reserved legal activities: Probate activities

Paragraph 6 (1) "Probate activities" means the preparing any probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales. (2) In this paragraph "probate papers" means papers on which to found or oppose – (a) a grant of probate, or (b) a grant of letters of administration.

with the requirements of paragraphs 11(2) and 11(3) by an assessment of the application and proposed regulatory arrangements against these rules.

7. Therefore, in accordance with paragraph 16(2) of Schedule 4 to the Act, the Board recommends to the Lord Chancellor that:
 - ICAEW be designated as an approved regulator for the reserved legal activity of probate activities; and
 - the associated proposed regulatory arrangements are at the same time treated as having been approved by the Board (under paragraph 18(1) of Schedule 4).

8. The LSB also recommends under paragraph 14(2) of Schedule 10 to the Act that:
 - ICAEW be designated as a licensing authority for the reserved legal activity of probate activities; and
 - the proposed licensing rules which are contained within the associated regulatory arrangements are at the same time treated as having been approved by the Board (under paragraph 16(1) of Schedule 10).

9. Schedule 10 to the Act sets out the process for an applicant to apply to the Board for designation as a licensing authority. Paragraph (3)(b) of that Schedule indicates that a body may make an application under this part of the Act if it has made an application under Part 2 of Schedule 4 to the Act (designating approved regulators) for the Board to recommend that an order be made by the Lord Chancellor designating the body as an approved regulator in relation to that activity. Therefore the recommendation for ICAEW to be designated as an approved regulator must be considered and decided upon by the Lord Chancellor before a decision is made about whether to grant ICAEW's designation as a licensing authority.

10. A copy of this recommendation has been published on the LSB's website (under paragraph 16(3) of Schedule 4 and paragraph 14(3) of Schedule 10).

David Edmonds
Chairman, Legal Services Board
11 December 2013