

**Applications by the Institute of Chartered Accountants in England and Wales (ICAEW) to the Legal Services Board for a recommendation to the Lord Chancellor that it be designated as an approved regulator and licensing authority for probate activities**

**January 2013**

*Background*

The ICAEW is a body founded by a Royal Charter in May 1880 and which received a supplementary Charter in 1948. It is a regulator and professional membership body for the accountancy profession in England and Wales. It provides leadership and practical support to its UK and international members and professional standards are maintained through working closely with governments, regulators and the industry. It also undertakes education and training to support students studying to become chartered accountants.

According to the ICAEW, a number of their members are already engaged in some of the activities related to probate such as advising on trust planning and inheritance tax. These related activities fall outside the scope of the reserved legal activity definition of probate activities in the Legal Services Act 2007 (**the Act**). In making the applications for designation as an approved regulator and licensing authority, ICAEW hope to provide consumers with access to a complete service of probate activities through their authorised members.

The applications if granted, will allow the ICAEW to authorise firms to undertake probate activities as either:

- an authorised firm in which all principals and owners are individually authorised; or
- a licensed firm (Alternative Business Structure (**ABS**)) in which not all principals and owners are authorised.

The ICAEW have made two applications to the Legal Services Board (**LSB**) to become an approved regulator and licensing authority for probate activities. The first application has been made under Part 2 of Schedule 4 to the Act for designation as an approved regulator, and the second application is for designation as a licensing authority under Part 1 of Schedule 10 to the Act.

In preparing for both applications the ICAEW have developed a single regulatory framework that will apply for the most part equally to authorised firms and ABS wishing to undertake probate activities.

## *Scope*

Probate activities are defined in Schedule 2 of the Act as the preparation of probate papers for the purposes of the law 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.

However, the scope of both the ICAEW's applications is restricted to applications for grant of probate or letters of administration only; the ICAEW will not be seeking the power to authorise firms that wish to oppose a grant of probate or letters of administration.

## *Structure of the application*

The main part of the **applications** consists of:

- **Executive summary** – a summary of the proposed regulatory arrangements (see pages 7 – 8 and Annex 1), a description of the Business Plan (page 8) and internal governance arrangements (page 9).
- **Who we are** - the ICAEW's Royal Charter and constitution, the organisational structure of the Council and Board, information on the make-up of its membership.
- **ICAEW as regulator and monitoring body** – the ICAEW's current regulatory responsibilities (page 12), a description of the Review Committee and the Appeal Committee (page 13), client money regulations (page 16), professional indemnity insurance regulations (page 17), complaints and discipline arrangements (pages 17 – 19) and monitoring (pages 15-16)
- **Designation as an approved regulator** – the regulatory arrangements for the approved regulator application including: process of authorisation (pages 22 – 24), qualification arrangements (pages 24 – 25), post authorisation (page 29 – 31), monitoring compliance (page 31), compensation arrangements (pages 34 – 36), enforcement and discipline (pages 36 – 38)
- **Designation as a licensing authority** – the proposed regulations and regulatory arrangements for the licensing authority application (pages 39 – 63)
- **The regulatory objectives and Better Regulation Principles** – a description of how the ICAEW's applications support the regulatory objectives (pages 64 – 67) and Better Regulation Principles (pages 67 – 69)
- **Probate Business Plan** – pages 70 – 73
- **Internal governance** – pages 74 – 78
- **Regulatory conflict** – pages 79 – 80
- **Charter & Statutory Powers** – pages 81 – 82
- **Consultation** – page 83
- **Statement/contact details/glossary** – pages 84 - 87

This is supported by **23 annexes** listed at the end of this synopsis.

## *Consultation*

The ICAEW consulted on its draft application for probate for 10 weeks (June to September 2012). They received a total of eight responses from members, the Legal Services Consumer Panel (**the Panel**) and the Law Society. Further information may be found in annexes 22 - 23 including a list of consultees, a copy of the consultation responses and ICAEW's detailed response to the feedback received from the Panel.

### *Timetable*

The Act requires the LSB to make a decision on a designation application within 12 months of the application being made (which can be extended to a maximum of 16 months). The applications were received on 14 December 2012 and the LSB will therefore make a decision by 14 December 2013 (or no later than April 2014 if an extension notice is issued).

The LSB has set itself an internal target of making a decision on whether to make a recommendation to the Lord Chancellor within 6 months of the application being deemed complete. This is of course dependent on what emerges from the detailed consideration of the application.

### *Table of Annexes*

Annex 1	ICAEW's draft probate regulations
Annex 2	ICAEW's Royal Charter ICAEW's Supplemental Charter ICAEW's Principal Bye-laws ICAEW's Disciplinary Bye-laws ICAEW's Review Committee regulations
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Annex 20	Framework Memorandum of Understanding: Licensed Bodies as Multi-Disciplinary Practices Constituted as Alternative Business Structures
Annex 21	Proposed amendments to ICAEW's Supplemental Charter for probate and ABS
Annex 22	Consultation – stakeholder list Consultation – responses Consultation – ICAEW's response to the Consumer Panel's comments
Annex 23	Compliance with the Legal Services Board's criteria for determining approved regulator and licensing authority applications

