



Application by ICAEW under the Legal Services Act 2007 to become an approved regulator and licensing authority for the reserved activities of:

Conduct of litigation  
Exercise of a right of audience  
Reserved instrument activities  
Notarial activities  
Administration of oaths



## Contents

<b>1.</b>	<b>Executive summary.....</b>	<b>8</b>
	<b>Introduction .....</b>	<b>8</b>
	Structure of the application .....	8
	Scope of Regulation .....	9
	Business case for the application and how it will benefit business and the consumer .	10
	Proposed regulatory arrangements.....	10
	Authorisation and qualification requirements.....	10
	Monitoring and quality assurance .....	11
	Consumer redress .....	11
	Complaints redress.....	12
	Enforcement .....	12
	Business plan .....	12
	Internal governance .....	12
	Conclusion.....	13
<b>2.</b>	<b>Who we are .....</b>	<b>14</b>
	Royal Charter and constitution .....	14
	Overview of structure and governance .....	14
	Becoming an ICAEW member.....	15
<b>3.</b>	<b>ICAEW as regulator and monitoring body.....</b>	<b>16</b>
	Our current regulatory responsibilities .....	16
	Statutory .....	16
	Oversight Bodies.....	16
	Regulatory Governance .....	17
	Professional Standards Board .....	17
	Committees .....	17
	Audit, Insolvency and Investment Business .....	17
	Probate.....	18
	Review Committee.....	19
	Appeal Committee .....	19
	Investigation Committee .....	19
	Disciplinary Committee .....	21
	Penalties.....	21
	Publicity .....	22
	The Practice Assurance Committee.....	22
	Regulatory Governance review.....	22
	Broader regulatory activity.....	24
	Practice Assurance Scheme .....	24
	Annual returns .....	24
	Monitoring.....	25
	Clients' money regulations.....	25
	Anti-money laundering legislation .....	25
	Professional indemnity insurance .....	26

	Code of Ethics .....	26
<b>4.</b>	<b>ICAEW'S Applications to Regulate Reserved Legal Activities.....</b>	<b>28</b>
	The reserved legal activities .....	28
	ICAEW's applications to regulate reserved legal activities.....	28
	The applications.....	28
	Business case for applying to regulate the further reserved legal activities .....	28
	Introduction.....	28
	Registration diversity .....	29
	Research .....	29
	Case in support of ICAEW's application to regulate and license the further reserved legal activities .....	30
	Business benefits of application of accreditation to carry out the further reserved legal activities.....	31
	The public interest, administration of justice and protection of the consumer .....	32
	How we will ensure that accredited legal services firms will differentiate between tax services which relate to reserved legal activities and those that do not .....	33
	Entitlement to carry out a reserved legal activity.....	36
<b>5.</b>	<b>How we will build upon the Current Regulatory Arrangements and Procedures for the Reserved Legal Activity of Probate.....</b>	<b>38</b>
	Applications.....	38
	Process .....	38
	Staff resources .....	38
	Legal Services Committee.....	38
	Enforcement .....	39
	Practice Assurance Schem.....	39
	Professional indemnity insurance .....	40
	Compensation arrangements.....	40
	The Legal Services Regulations .....	42
<b>6.</b>	<b>ICAEW Legal Services applications and Qualifications Framework .....</b>	<b>43</b>
	Introduction .....	43
	Applications for individual authorisation.....	43
	The Legal Services Regulations .....	43
	The rationale of the Authorisation and Qualification Framework .....	44
	Continuing professional development – Regulations, Codes of Ethics and Statutory Duties .....	47
	ICAEW Probate Regulations.....	47
	ICAEW Code of Ethics.....	47
	Requirement to undertake continuing professional development .....	48
	The following activities, if relevant to your role, could count as CPD: .....	49
<b>7.</b>	<b>Designation as an approved regulator .....</b>	<b>51</b>
	Rationale.....	51
	Who we will accredit as authorised firms .....	51
	Accountancy-led practices .....	51
	The authorisation process .....	52
	The application .....	52
	Qualification requirements .....	54

The contact partner.....	55
Legal Services affiliates .....	55
Fees .....	56
Determining applications.....	56
Data verification.....	57
Legal Services Committee .....	58
Review of decisions .....	59
<b>Post-authorisation arrangements.....</b>	<b>59</b>
Further reserved legal activities work.....	59
Continuing professional development .....	60
Clients' money and other property .....	60
Record-keeping .....	61
Regulatory conflict .....	61
Cessation of practice .....	61
<b>Monitoring compliance .....</b>	<b>61</b>
Annual review and returns .....	61
Reviews and Practice Assurance.....	62
<b>Modifications and dispensations.....</b>	<b>62</b>
Dispensations .....	62
Modifying accreditation .....	63
<b>Complaints-handling arrangements.....</b>	<b>63</b>
ICAEW and the Legal Ombudsman .....	64
<b>Compensation and indemnification arrangements.....</b>	<b>64</b>
Professional indemnity insurance .....	64
Compensation arrangements.....	65
<b>Enforcement and discipline .....</b>	<b>66</b>
Powers of ICAEW and the Legal Services Committee .....	66
Regulatory penalties .....	67
Powers of the Investigation and Disciplinary Committees .....	67
Targeted and proportionate enforcement action .....	67
Intervention powers .....	68
<b>8. Designation as a licensing authority .....</b>	<b>70</b>
Who we will accredit as licensed firms.....	70
Our proposed regulations/regulatory arrangements.....	70
Appropriate qualification requirements.....	70
Access to justice .....	71
Regulating conduct.....	72
Indemnification arrangements.....	74
Compensation arrangements.....	75
Regulatory conflict .....	75
Complaints-handling arrangements .....	76
Applications for accreditation .....	77
Diversity.....	77
Determining applications for accreditation.....	78
Review of determinations.....	78

Period of accreditation and renewal .....	79
Licensing by another licensing authority .....	79
Modifying accreditation .....	80
Modifications under section 106.....	81
Management.....	81
Head of Legal Practice (HoLP) .....	82
Head of Finance and Administration (HoFA).....	83
Practice requirements .....	85
Licensed activities.....	85
Compliance with regulatory arrangements .....	85
Disqualified employees .....	86
Indemnification and compensation arrangements .....	86
Accounts.....	87
Fees .....	87
Financial penalties .....	87
Disqualifications.....	88
Suspension or revocation of accreditation under section 101 .....	89
Ownership of licensed bodies .....	91
Foreign ownership .....	94
Appellate body .....	94
Capital adequacy .....	95
Unreserved legal activities .....	95
Licensing authority competence to accredit different forms of ABS .....	96
Register of licensed firms.....	96
<b>9. The regulatory objectives and better regulation principles .....</b>	<b>97</b>
The regulatory objectives .....	97
Protecting and promoting the public interest and the interests of consumers .....	97
Improving access to justice .....	99
Promoting competition in the provision of services.....	99
Encouraging an independent, strong, diverse, and effective legal profession .....	100
Increasing public understanding of the citizen’s legal rights and duties.....	101
Promoting and maintaining adherence to the professional principles and supporting the rule of law .....	101
Better regulation principles .....	101
Transparency.....	101
Accountability .....	101
Proportionality.....	102
Consistency .....	102
Targeted .....	103
Conclusion .....	103
<b>10. Business plan.....</b>	<b>104</b>
Executive summary .....	104
Resource and capability .....	104
Training and development .....	105
Legal Services Committee .....	105

Funding .....	105
Fee scales and methodology .....	105
Contributions to ICAEW compensation arrangements .....	106
Forecasts and sensitivity analyses.....	<b>Error! Bookmark not defined.</b>
Draft timetable .....	107
Date .....	107
Activity/milestone .....	107
<b>11. Internal governance .....</b>	<b>108</b>
Background .....	108
Compliance with the IGRs as an Approved Regulator .....	109
ICAEW's current internal governance arrangements .....	109
Probate Committee .....	111
Access to the LSB .....	112
Proposed arrangements.....	112
The Legal Services Committee .....	112
Regulatory governance.....	112
Applicable Approved Regulator .....	113
Conclusion .....	119
<b>12. Regulatory conflict.....</b>	<b>120</b>
Other approved regulators.....	120
External regulatory conflicts .....	121
Conclusion .....	122
<b>13. Charter and Statutory Powers .....</b>	<b>123</b>
Additional statutory powers .....	123
Appeals .....	123
<b>14. Consultation .....</b>	<b>124</b>
<b>15. Statement .....</b>	<b>125</b>
<b>Contact details .....</b>	<b>125</b>
<b>Glossary of defined abbreviations.....</b>	<b>126</b>
<b>Annexes.....</b>	<b>129</b>

# 1. EXECUTIVE SUMMARY

## Introduction

- 1.1. The Institute of Chartered Accountants in England and Wales (ICAEW) wishes to apply to become an Approved Regulator and Licensing Authority under the Legal Services Act 2007 (the Act) for the reserved legal activities of: Conduct of litigation; rights of audience; reserved instrument activities; notarial services and administration of oaths. The scope of this application, however, is restricted to the regulation of the aforementioned activities in relation to taxation services only (the 'further reserved legal activities'). ICAEW is not seeking authority to accredit firms wishing to deliver the full range of these reserved legal activities.
- 1.2. This application is being made with the intention of building on the success of ICAEW's current probate regulation and the processes that we have put in place following our designation as an Approved Regulator and Licensing Authority of probate in August 2014.
- 1.3. ICAEW started accrediting firms for probate activities in September 2014 and the number of applications for authorisation and licensing received during our first year of regulation have far exceeded our expectations. The firms we have accredited are located in over 38 counties in England and Wales with a fairly even spread. This therefore illustrates that ICAEW's designation as a legal services regulator has increased access to justice and has therefore been in the public interest.
- 1.4. We now wish to expand the reserved legal activities we regulate and in so doing help the Government to further its aim of promoting competition in the market for legal services. Research carried out by ICAEW showed that accountancy firms are already providing taxation services that complement all reserved legal activities. The ability to carry out the reserved legal activities for taxation matters would therefore be an adjunct to their existing business and a natural link to the traditional accountancy practice.
- 1.5. Furthermore, the success of our probate regulation shows that our processes are working well and we therefore have the capacity and capability to expand our sphere of legal services regulation to the activities we are applying to regulate.
- 1.6. ICAEW's application is made in accordance with Part 2 of Schedule 4 and Part 1 of Schedule 10 of the Act which enables the Lord Chancellor, on the recommendation of the Legal Services Board (LSB), to make orders designating bodies as approved regulators and licensing authorities.

## Structure of the application

- 1.7. This application is intended to provide a comprehensive overview of ICAEW's activities, and our proposed regulatory arrangements for the further reserved legal activities.
- 1.8. Sections 1 – 3 contain an introduction and background to ICAEW – our history, membership profile, activities as a professional body and current regulatory governance, processes and responsibilities. Section 3 also includes the changes ICAEW is currently implementing following a regulatory governance review to ensure that our regulatory governance arrangements remain in line with current best practice and expectations in terms of how it, as a statutory and professional standards regulator, structures its regulatory framework internally.
- 1.9. Section 4 sets out the scope of this application and why it is in the interests of the public and the consumer for accountants to conduct the reserved legal activities. It also outlines the business case for ICAEW applying to regulate the reserved legal activities and the benefits firms would gain by accountants having the ability to provide such services. It also explains



how our proposed regulatory process will enable firms to distinguish between taxation work that constitutes reserved legal services from that which constitutes accountancy services and highlights the sections of the Act that entitle ICAEW to apply to become an Approved Regulator and Licensing Authority for the reserved legal activities, most particularly, notarial services.

- 1.10. Section 5 explains how we will build upon ICAEW's current regulatory arrangements to effectively regulate the further reserved legal activities in order to ensure high standards and quality of service.
- 1.11. Section 6 sets out ICAEW's proposed Authorisation and Qualification Framework and the rationale behind its development which was to ensure high standards of professional skill and care which are important for the administration of justice and protection of the consumer.
- 1.12. In section 7 we have set out our proposed regulatory arrangements as an Approved Regulator. We have explained in detail how we intend to authorise firms to carry out the further reserved legal activities work, and the processes we will use to ensure that the Act's regulatory objectives and better regulation principles are upheld.
- 1.13. Section 8 outlines our proposed regulations for licensed firms (referred to as Alternative Business Structures (ABS) under the Act) and addresses each of the Act's requirements for these rules. It also explains how they are consistent with both the Act and the Legal Services Board's (LSB) guidance on licensing rules.
- 1.14. In section 9 we discuss the way in which our proposed arrangements are consistent with the Act's regulatory objectives and better regulation principles.
- 1.15. Section 10 outlines ICAEW's business plan for implementing the further reserved legal activities should this application be successful which is a very similar plan to that used for the implementation of our probate regulation.
- 1.16. In section 11 we explain how our regulatory governance arrangements comply with the LSB's Internal Governance Rules (IGRs) and how our regulatory governance framework is proportionate, accountable, transparent and conforms with best practice.
- 1.17. Section 12 sets out how ICAEW is complying with section 52 of the Act which relates to regulatory conflict with other approved regulators and section 54 of the Act which relates to external regulatory conflict.
- 1.18. Section 13 gives the assurance that ICAEW has the power under its existing Charter to become an Approved Regulator and Licensing Authority for the further reserved legal activities and confirms that no additional statutory powers will be required.
- 1.19. Finally section 14 outlines the consultation process ICAEW followed prior to submitting its formal application to the LSB **[To be added after informal submission of this application]**

## Scope of Regulation

- 1.20. As explained above, we do not intend to regulate the full range of further reserved legal activities but rather to restrict our regulation solely to services relating to taxation. Tax is a clearly defined area in which ICAEW's members are already high skilled. The ACA qualification alone contains a tax module at each of its three levels.

- 1.21. We feel confident that, as with our probate regulation, our Authorisation and Qualifications Framework set out in section 6 of this application and schedules 1 and 2 of the draft Legal Services Regulations (Annex 1) for the regulation of the further reserved legal activities will ensure both the quality and integrity of legal services provided by those we authorise, and therefore protection of the consumer.
- 1.22. The increased competition will also be in the public interest and benefit the consumer as it should reduce fees due to services being provided in one place.

## **Business case for the application and how it will benefit business and the consumer**

- 1.23. Research conducted by ICAEW shows that the taxation work currently carried out by accountancy firms would be complemented by all the further reserved legal activities so the ability to conduct them would be an adjunct to their current services and provide a nature link to the traditional accountancy practice. For example, accountants currently represent clients before the tax tribunals of the General Regulatory Chamber (GRC) and provide expert litigation support to solicitors relating to both civil and criminal actions. They also appear in court as expert witnesses.
- 1.24. Obtaining accreditation to carry out the further reserved legal activities for the service area of taxation is likely to be attractive to all sizes of accountancy firms. The debt recovery cases brought by HMRC in the civil courts can include low level debt and personal bankruptcy proceedings. This type of work would be within the scope of small firms as would the strict liability criminal cases brought in the criminal courts (if introduced by the Government). Complex, high level debt cases and defended company winding up proceedings are more likely to be within the sphere of larger firms as would complex tax fraud/evasion cases. The ability to prepare documents relating to property and trusts is likely to be attractive to all sizes of firms as would administration of oaths. However, notarial services are more likely to be used by larger firms.
- 1.25. The proposed service area of taxation would also complement ICAEW's regulated area of probate as it would build upon accredited firms' current areas of business relating to personal wealth, tax and financial planning.
- 1.26. Furthermore, the success of ICAEW's probate regulation together with its extensive experience in regulating other areas such as audit, insolvency and investment business, demonstrates that ICAEW has the capacity and capability to regulate these further reserved legal activities.

## **Proposed regulatory arrangements**

### **Authorisation and qualification requirements**

- 1.27. ICAEW intends to follow the same application process that it currently uses for its probate regulation which has proved very successful. Under the proposed regulatory arrangements, firms will be able to apply to ICAEW for authority to deliver the further reserved legal activities as accredited legal services firms. If individuals working within these entities wish to conduct, without supervisions, or supervise further reserved legal activities work, they will need to apply to ICAEW for approval as 'authorised individuals'. A person may apply to ICAEW to become an authorised individual if they:

- Are a member of ICAEW and can comply with the requirements of ICAEW's Authorisation and Qualifications Framework (Schedules 1 and 2 of the Legal Services Regulations (Annex 1)); or
- Hold a qualification issued or recognised by an approved legal regulator (other than ICAEW) that entitles them to undertake the reserved legal activities they are applying for authorisation to conduct; or
- Are otherwise qualified to undertake the reserved legal activities they are applying for authorisation to conduct so as to satisfy ICAEW that they comply with the requirements of the ICAEW Authorisation and Qualifications Framework (Annex 1) and that it should approve their designation as an authorised individual.

1.28. ICAEW's regulations governing the education and training of those it regulates is an important part of ICAEW's regulatory arrangements. We feel confident that our Authorisation and Qualifications Framework which is set out in schedules 1 and 2 to the draft Legal Services Regulations (Annex 1), will ensure that those we authorise to conduct the reserved legal services activities are highly trained and competent to work in these areas. They will therefore be able to provide a high quality service to consumers ensuring that the administration of justice continues to run smoothly.

1.29. When developing this framework, we did however, in addition to considering the education and training needs of applicants to ensure high standards of skill and care of those we authorise, take into consideration the proportionality of our proposed regulatory requirements and their effects on access of justice. Our framework therefore requires training and assessment that is necessary for the administration of justice and protection of the consumer but that is also proportionate to keep cost and time commitment at a reasonable level to enable entry into the legal services market of all size of firms.

## **Monitoring and quality assurance**

1.30. The quality and rigour of the application process is recognised as not being sufficient on its own to ensure that the quality of service is continued throughout the lifetime of accredited practices. Accordingly, ICAEW will extend its existing processes for monitoring and quality assurance to firms it accredits for the further reserved legal activities. Practitioners will be required to submit an annual return containing details specific to their legal practice, and monitoring reviews of firms will be targeted dependent on an assessment of risk. For the sake of efficiency, reviews will be carried out where possible in tandem with ICAEW's existing PA scheme, although ICAEW aims to conduct an initial review of the majority of firms during their first 24 months of accreditation.

## **Consumer redress**

1.31. Consumer protection for our probate regulation is also addressed through special compensation and professional indemnity insurance (PII) arrangements for accredited probate firms. These arrangements will be extended to cover the further reserved legal activities provided by accredited firms in addition to probate service. As currently with probate, firms authorised or licensed for further reserved legal activities will be required to carry a minimum of £500k PII per claim and comply with ICAEW's existing PII requirements. In addition, our current compensation scheme will be extended to cover the further reserved legal activities carried out by accredited firms and will continue to be underwritten by a master insurance policy (currently with the Royal Sun Alliance) held by ICAEW to provide redress for consumers on a comparable basis in cases where PII is invalidated (ie, in some cases of fraud).

1.32. For many years, ICAEW has set the requirements for PII for the accountancy profession and monitored compliance with those arrangements. The ethical and professional backdrop, together with an annual review, has resulted in a low claims history. We are now over a year into our regulation of probate services and this position has not changed and there have been no claims made on our Probate Compensation Scheme. The arrangements we put in place for our probate regulation provided an effective consumer protection platform at inception, which will continue to grow in strength as the accreditation process reaches maturity.

### **Complaints redress**

1.33. As with our probate firms, accredited legal services firms will be required to operate fair, efficient and effective internal complaints-handling processes to comply with the Act's requirements and those of the Legal Ombudsman. Signposting arrangements will be in place to notify clients of their right to refer matters to the Legal Ombudsman, both at the beginning of the engagement and at appropriate stages during the complaints-handling process. Issues of improper professional conduct will be dealt with under ICAEW's existing disciplinary processes.

### **Enforcement**

1.34. For more than 130 years, ICAEW has had in place disciplinary arrangements for ensuring that members who engage in unprofessional conduct are called to account. ICAEW will extend its existing disciplinary powers and processes to firms it accredits for the further reserved legal activities where there is a breach of our regulatory arrangements. In addition, in cases where there has been a breach of our regulatory arrangements, the proposed Legal Service Regulations set out a range of regulatory powers which ICAEW may draw upon to protect the consumer and the wider public interest. This includes the imposition of conditions or restrictions on a firm's accreditation; the power to suspend or withdraw accreditation, the power to disqualify individuals from holding particular posts or to intervene into firms in certain circumstances.

### **Business plan**

1.35. We intend to build upon the regulatory processes and arrangements we put in place for the regulation of probate. Despite these processes already being in place the set-up costs and first years of trading in new areas are delicate and some financial support is necessary to enable the necessary platforms to be built and consumer protection to be made available from day one. The business plan seeks to balance these requirements with a commercially viable charging mechanism to members that, in particular, seeks to promote the first time sole practitioner and builds on the ready access to market envisaged by the legislation. The set-up arrangements in particular are facilitated by a ready operational platform for other regulatory regimes that can be leveraged with minimum disruption and timely input.

### **Internal governance**

1.36. As explained in section 11, ICAEW believes it falls within the definition of an Approved Regulator as set out in the LSB's Internal Governance Rules (IGRs) and therefore our governance arrangements are fully compliant with these rules and therefore the Act. We also believe however, for the reasons also explained in section 11, that they fulfil, in practical terms, the requirements of an Applicable Approved Regulator, as also set out in the IGRs.

1.37. Furthermore, as ICAEW's governance arrangements are proportionate, they allow for cost-savings and synergies that are possible through shared services with ICAEW's representative arm (such as IT, human resources and procurement) – areas which do not

infringe on the regulatory body's ability to regulate independently. They therefore ensure compliance with the Act's regulatory objectives of:

- Improving access to justice;
- Promoting competition in the provision of services; and
- Encouraging an independent, strong, diverse and effective legal profession.

1.38. This is because our governance arrangements are proportionate to the risk to our regulatory body's independence thus allowing us to keep regulatory fees to a minimum which enables all sizes of firms to enter the legal services market. This increases competition keeping costs to the consumer low thus promoting access to justice.

1.39. We therefore believe that our current and intended approach to internal regulatory governance is not only compliant with the IGRs but is in keeping with the principal of regulatory independence and the outcomes sought by the introduction of these rules. It is also in line with the Government's policy of deregulation as it ensures red tape and regulatory arrangements are both necessary and proportionate.

## **Conclusion**

ICAEW's application for designation as an Approved Regulator and Licensing Authority for the further reserved legal activities has been prepared with care and reference to a number of stakeholders. It has also drawn upon our experience of having regulated the reserved legal activity of probate for over a year as well as our considerable in-house expertise gained as a result of many years of regulatory oversight. The content of the application and the draft regulations, combined with ICAEW's regulatory experience and the integrity of the accountancy membership should, in our view, provide the LSB with the necessary assurances required to approve this application.

## 2. WHO WE ARE

### Royal Charter and constitution

- 2.1. ICAEW was founded by Royal Charter in May 1880 and received a Supplemental Charter in 1948. As a chartered body, we work in the public interest to further the profession of accountancy worldwide.
- 2.2. A copy of our Charter and Supplemental Charter, is attached in Annex 2 and our Principal and Disciplinary Bye-laws are attached in Annex 7.
- 2.3. As a world-leading professional accountancy body, we provide leadership and practical support to over 146,000 members in more than 160 countries, working with governments, regulators and industry in the UK and abroad to ensure the highest standards are maintained. We have over 22,000 [ACA](#) students; nearly 25% of new students registered in 2014 were from outside the UK.
- 2.4. As a regulator and professional membership body, we undertake a range of activities to support members and students internationally. This includes:
  - educating and training chartered accountants;
  - facilitating members' continuing professional development; and
  - supporting members through the provision of advice and services.
- 2.5. We also play a key role in thought leadership on a range of technical accounting issues. Recent publications have focused on issues such as reporting on business risks; creating an effective finance function; and improving security and the use of digital information.
- 2.6. We engage regularly with governments, professional membership organisations and other bodies on issues affecting the accountancy and finance profession both within the UK and around the world. We are a founding member of the Global Accounting Alliance (GAA) with over 775,000 members worldwide, and are a member the Consultative Committee of Accountants (CCAB) which is the body for all the major professional accountancy bodies in the UK and Ireland.

### Overview of structure and governance

- 2.7. In accordance with the Charter, ICAEW's council is responsible for determining ICAEW's overall objectives, strategy and budget and is comprised of elected, co-opted and ex officio members drawn from geographical constituencies and different parts of the profession. At the time of writing there are 87 members of council.
- 2.8. Council is supported by the ICAEW board. The board is responsible for overseeing all matters relating to the development and implementation of ICAEW strategy, policy, operational plans and resources. It reports to council with recommendations as required.
- 2.9. The board currently comprises:
  - the president, deputy-president and vice-president of council;
  - the chairs of four of the five ICAEW departmental boards;
  - the CEO and executive directors;
  - two members directly elected from council;
  - a co-opted non-executive member from the EU; and
  - Two independent non-executive directors.
- 2.10. A list of the current ICAEW office-holders and the executive management team is set out in Annex 25.

- 2.11. There are five departmental boards that report to the main board; these are: Learning and Professional Development, Members, Technical Strategy, Commercial, and Professional Standards. These boards are responsible for overseeing departmental operational plans, monitoring performance and approving specific projects.
- 2.12. Copies of ICAEW's annual review and accounts for 2014 are contained in Annex 3. These set out our vision, values and current strategic aims. Also included in Annex 4 are our risk management strategies and staff development policies.

## **Becoming an ICAEW member**

- 2.13. Half our members work in business, industry, the public and not-for-profit sectors and half in professional practice; 83% of UK FTSE100 companies have an ICAEW Chartered Accountant as a board member. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. We ensure these skills are constantly developed, recognised and valued.
- 2.14. To qualify as an ICAEW Chartered Accountant and become a member of ICAEW, students must complete the ACA. The ACA is an internationally recognised, leading business and finance qualification which incorporates a three-year period of supervised training within an ICAEW authorised training employer, alongside professional examinations and mandatory development in professional skills and ethics. This training is widely available throughout training offices in the UK and internationally.
- 2.15. Although over 78% of those entering training for the ACA are university graduates, ICAEW is also recognised for excellence in promoting access to the chartered accountancy profession. It actively promotes diversity and social mobility in the profession by offering direct entry into training for school leavers after A levels; via membership of the Association of Accounting Technicians, completion of ICAEW's Certificate in Finance, Accounting and Business (CFAB), a number of part-time university degree programmes and the new Higher Apprenticeships.
- 2.16. In 2014, we attracted 7,326 new students.
- 2.17. During the period of authorised training, students must pass 15 ACA modules. It may be possible for students to obtain credit for prior learning for some of the exams. The Certificate Level consists of six modules, which are designed to introduce students to the fundamentals of accountancy, finance and business. The Professional Level comprises a further modules, designed to build on the fundamentals and test students' understanding and ability to use technical knowledge in real-life scenarios. Finally, the Advanced Level comprises three exams. The Corporate Reporting and Strategic Business Management modules test students' understanding and strategic decision making at a senior level. They present real-life scenarios, with increased complexity and implications from the Professional Level modules. The Case Study tests all the knowledge, skills and experience gained so far. It presents a complex business issue which challenges students' ability to problem solve, identify the ethical implications and provide an effective solution.
- 2.18. During the training agreement period, students must accumulate and show evidence of at least 450 days of practical work experience. This excludes exam days, holidays, courses, illness and office administration. Practical and progressive work experience must be taken in at least one of the following six technical categories: accounting; taxation; financial management; insolvency; information technology and audit or assurance (audit is not compulsory). Students will also be required to complete comprehensive professional development, as well as training in ethics and professional scepticism.
- 2.19. Further information on our current requirements for students training for the ACA is contained in Annex 5.

## 3. ICAEW AS A REGULATOR AND MONITORING BODY

### Our current regulatory responsibilities

- 3.1. For more than 130 years, ICAEW has had disciplinary arrangements for ensuring that members who behave inappropriately are called to account and, if necessary, are excluded from the profession.

### Statutory

- 3.2. Over the last 25 years, ICAEW has undertaken responsibilities as a regulator under statute in the areas of audit, insolvency and investment business. We are;
- the largest Recognised Supervisory Body (RSB) and Recognised Qualifying Body (RQB) for statutory audit in the UK, registering approximately 3,800 firms and 9,300 responsible individuals under the Companies Act 1989 and 2006;
  - the largest single insolvency regulator licensing some 750 insolvency practitioners as a Recognised Professional Body (RPB) under the Insolvency Act 1986 out of a total UK population of 1,700;
  - a Designated Professional Body (DPB) under the Financial Services and Markets Act 2000 (and previously a Recognised Professional Body under the Financial Services Act 1986) currently licensing approximately 2,500 firms to undertake exempt regulated activities under that Act;
  - a Supervisory Body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2007 dealing with approximately 13,000 member firms; and
  - an accredited body under the FSA Retail Distribution Review (RDR) arrangements.
- 3.3. In discharging these duties we are subject to oversight by the FRC's Conduct Committee, the Insolvency Service and the FSA. These bodies regularly monitor our arrangements and have not identified any significant areas of concern in the way we have discharged our regulatory responsibilities to date.
- 3.4. In July and August 2014 ICAEW was designated as an Approved Regulator and Licensing Authority for the reserved legal activity of probate and is restricting its regulation to non-contentious probate activities. This designation, in addition to ICAEW becoming an accredited body under the FSA Retail Distribution Review (RDR) arrangements, provided us with the opportunity to provide a wider range of services to members and also demonstrate our increased focus on protecting consumers.

### Oversight Bodies

- 3.5. ICAEW's efficiency, effectiveness and integrity as a front-line regulator are overseen by a number of overarching regulators;
- as an audit regulator by the Conduct Committee of the Financial Reporting Council (FRC), under the Companies Act 2006;
  - in respect of audits of Irish companies quoted on the Irish Stock Exchange by the Irish Auditing and Accounting Supervisory Authority (IAASA), under the Companies (Auditing and Accounting) Act 2003;
  - in its regulation of investment business conducted by its members by the Financial Conduct Authority (FCA), under the Financial Services Act 2012;
  - in its insolvency licensing by the Insolvency Service, under the Insolvency Act 1986; and
  - as an approved regulator and licensing authority for the reserved legal activity of probate by the Legal Services Board (LSB), under the Legal Services Act 2007.



- 3.6. Each of these oversight bodies has the ability to withdraw authorisation if it is not satisfied with the adequacy of ICAEW's regulation in its area.
- 3.7. In addition to overseeing ICAEW and the other audit regulators, the FRC itself investigates and adjudicates on "public interest" cases. The definition of such cases includes audit under statutory arrangements, and under a voluntary side agreement between the FRC and the CCAB, accountancy services provided to any significant company or other organisation. Its scope covers most of the activities of the major accountancy firms. In addition ICAEW can refer cases to the FRC outside these parameters where, for some other reason, they regard the public interest to be involved; and the FRC can "call in" cases when it thinks that appropriate. In practice, the FRC only deals with 5-10 disciplinary cases a year. But its responsibility for most of the activities of the largest firms affects the nature of the disciplinary cases which go through ICAEW's processes. The majority of ICAEW cases relate to smaller firms or to the activities of individual members.

## **Regulatory Governance**

- 3.8. All ICAEW's functions as a regulatory and disciplinary body have been delegated to committees. Our office-holders are disqualified from membership of these committees in accordance with Principal Bye-law 44, and council members are also excluded from these committees. These rules enforce the principle of independence within ICAEW's governance structure separating regulatory and membership activities.

## **Professional Standards Board**

- 3.9. At the apex of ICAEW's regulatory structure is the Professional Standards Board (PSB) which is responsible for overseeing the development of ICAEW policy in all areas of professional standards, including discipline. It is accountable to the ICAEW Board.
- 3.10. The PSB has no involvement in decisions by the committees about individual cases. ICAEW's regulatory and disciplinary functions have been delegated to a set of committees.

## **Committees**

- 3.11. Under the PSB there are four committees covering the registration and licensing of firms and individuals in respect of the main areas for which ICAEW is a regulator – the Audit Registration Committee, the Insolvency Committee, the Investment Business Committee and the Probate Committee.
- 3.12. In addition, there is a Review Committee, an Investigation Committee, a Disciplinary Committee, an Appeal Committee and a Practice Assurance Committee. Disciplinary action can happen either as a result of reports made to any of the regulatory committees or to the Practice Assurance Committee or as a result of complaints made, for example, by members of the public or by other accountants.
- 3.13. The following paragraphs describe the functions and composition of each of these committees

## **Audit, Insolvency and Investment Business**

- 3.14. The Audit Registration, Insolvency Licensing, and Investment Business Committees are responsible for discharging ICAEW's supervisory responsibilities in the regulated areas of audit, insolvency and investment business.
- 3.15. These committees are responsible for, among other things:

- granting or rejecting applications for registration and licences;
- withdrawing or suspending registration or licences;
- imposing conditions or restrictions on registration or licences;
- imposing regulatory penalties for compliance failures and referring for investigation (and potentially disciplinary action) any serious issues;
- granting or refusing dispensations from eligibility requirements;
- reviewing returns and reports and investigating any failure to make such returns and reports;
- making enquiries regarding eligibility and compliance; and
- publishing orders and decisions.

3.16. These committees also consider reports arising out of monitoring reviews conducted by Quality Assurance Department (QAD) and take regulatory action as required (see paragraphs 3.61 to 3.65).

3.17. The current Scheme of Delegation under which they operate requires that each of these committees has a minimum of eight members of whom two must be lay (ie, not accountants).

## **Probate**

3.18. As a condition of being designated as an approved regulator and licensing authority for probate under the Legal Services Act 2007, ICAEW agreed different arrangements for the Probate Committee, intended to ensure that it carries out its regulatory functions in relation to probate independently. Neither ICAEW Council nor the ICAEW Board and committees may intervene directly in its work. ICAEW does, however, retain the right to request that the Legal Services Board intervene in the committee's arrangements if it considers it to be failing to discharge its functions in accordance with the Probate Regulations or the regulatory objectives of the Legal Services Act 2007. The committee has an equal balance of technical members (practitioners) and independent lay members, the chair is a lay member with a casting vote when required. Lay members must never have qualified or practised as a professional accountant and must not be lawyers or persons with legal training.

3.19. Before determining matters of policy, or making or amending regulations concerning the regulation of probate practitioners, the committee is required to consult with the Professional Standards Board and other interested parties as appropriate.

3.20. The Probate Committee has responsibility for;

- considering and determining applications for probate accreditation
- considering and determining applications for authorised individual, head of legal practice head of finance and administration, non-authorised owner or probate affiliate status;
- monitoring compliance with the Probate Regulations;
- taking regulatory action as required to secure compliance with the Probate Regulations;
- referring matters to ICAEW disciplinary committees as required;
- compiling and maintaining a register of licensed firms and supplying this information to the Legal Services Board as required;
- determining applications for grants under the Probate Compensation Scheme Regulations;
- developing policy in relation to probate practitioners, in consultation with the PSB and other key stakeholders;
- rule-setting and making any amendments to the Probate Regulations and Probate Compensation Scheme Regulations in consultation with the Legal Services Board, the PSB and other stakeholders;

- budget and fee-setting in relation to accredited probate firms, in consultation with the Legal Services Board, PSB (and the ICAEW board where any proposed increase is above the rate of wage inflation); and
- liaising freely with the Legal Services Board and other stakeholders on matters concerning probate practitioners and responding to requests for information from the Legal Services Board.

3.21. These responsibilities have been delegated to the committee by the ICAEW Council. Formally it is ICAEW which is the Approved Regulator under the Act.

3.22. The Scheme of Delegations for the Probate Committee requires a total of ten members, of whom five must be lay. The chair must be lay and has a casting vote if necessary. The quorum for the committee is five, of whom at least three must be lay.

## **Review Committee**

3.23. If a member or firm wishes to challenge a decision of any of the four regulatory committees, they have the right to apply to the Review Committee (RC). The RC has the power to make any order which a regulatory committee could have made. The RC's regulations are set out in Annex 6.

3.24. The RC comprises up to 16 members, of whom at least one quarter must be lay, and normally operates in panels of three: one chartered accountant, one lay member, and one specialist in the area under review.

3.25. Panels of the RC are also assisted by an independent legal assessor who gives advice on procedural and other legal matters, although they do not take part in the decision-making process.

## **Appeal Committee**

3.26. Following the decision of the Review Committee (RC), members have a further right of appeal to the Appeal Committee (AC) for appeals relating to audit, insolvency and investment business and the First-tier Tribunal of the GRC for appeals relating to probate. The AC consists of at least 14 members, at least one quarter of whom must be lay. It operates in panels of five members, comprising three chartered accountants, one lay member and a legally qualified chairman (who is a practising QC or retired judge of the High Court). There are currently 16 members of the AC.

3.27. On appeal, the panel of the AC has the power to affirm, rescind or vary any orders of the RC, or to direct that the matter be heard afresh.

## **Investigation Committee**

3.28. ICAEW has processes in place for dealing with complaints about members, provisional members, member firms or affiliates who may have breached our bye-laws or regulations, or failed to comply with our Code of Ethics. We will consider complaints that have been raised about members by their clients, other accountants, other regulators, the general public or ICAEW staff.

3.29. Complaints are investigated by the Professional Conduct Department's Investigation Team using a thorough investigation procedure. Provided ICAEW has jurisdiction to deal with the complaint, for example, the complaint is about an ICAEW member, the Investigation Team will consider the nature and seriousness of the complaint. In appropriate cases of a less serious nature, the case manager will attempt conciliation through apology or some form of remedial action. Where conciliation is not appropriate or not possible, the Investigation Team

will consider the case and the supporting evidence and determines whether it needs to be reported to the Investigation Committee (IC). If the Investigation Team determines that there is no case to answer, the matter is closed, unless the complainant objects. If the team concludes that there may be a case, or if the complaint objects to closure by the Investigation Team, the issue is referred to the IC.

- 3.30. A sample of cases closed by the Investigation Team is reviewed annually by a sub-group of the IC and intermittently by the Conduct Committee of the FRC.
- 3.31. The IC normally meets monthly. It is responsible for considering all matters referred to it in accordance with the Disciplinary Bye-laws and may make regulations in respect of any functions delegated by it by ICAEW Council. It currently looks at about 25 cases each time it meets.
- 3.32. The IC consists of not fewer than 14 members, of whom at least one quarter must be lay (although in practice normally a third of the committee members are non-accountants). The quorum is three, of whom one must be lay. Members are appointed for a term of 3 years which may be renewed once, with a further option for extension for one additional term. There are currently 19 members of the IC. ICAEW Council members are not allowed to serve on the committee.
- 3.33. In less serious cases, the IC may issue a caution if it considers that the complaint is made out and some formal mark of disapproval is appropriate. A caution, while not published, forms part of the disciplinary record of the member/firm and is disclosed to enquirers. Alternatively, the IC may determine that although there is a prima facie case to answer, no further action is required.
- 3.34. In more serious cases where a complaint is admitted, the IC may issue a consent order with the agreement of the member or firm. This may result in the member being reprimanded or severely reprimanded, and having to pay a fine and a sum by way of costs to ICAEW.
- 3.35. If a member or firm does not accept a consent order, the case will be referred by the IC to the Disciplinary Committee (DC).
- 3.36. In the most serious of cases, for example where an individual's continued membership is threatened, the case will always be referred to the DC.
- 3.37. In cases where the IC considers that the complaint is not made out and that there is therefore no case to answer, the complainant is entitled to have the matter referred to an independent reviewer of complaints who is a non-accountant. The reviewer of complaints may ask the Investigation Committee to reconsider the matter if, in their opinion, one of the following conditions apply:
  - i. fresh evidence has been received since the date of the finding that is of a material nature;
  - ii. either ICAEW staff or the IC have failed to follow proper procedure and the Investigation Committee's consideration of the complaint has been prejudiced as a result;
  - iii. there is reason to suspect that a member of the IC involved in considering the complaint was not independent and the committee's consideration of the complaint was prejudiced as a result; or
  - iv. the IC's finding was not one that could reasonably have been arrived at on considering the fact and matters before it.

## Disciplinary Committee

- 3.38. The DC has at least 14 members, at least one quarter of whom must be lay members. For hearings they sit in tribunals of three. There are currently 19 members of the DC.
- 3.39. Where a matter is referred to the DC, there will be a hearing in accordance with the Disciplinary Bye-laws (Annex 7).
- 3.40. On receipt of a formal complaint from the IC, the chair of the DC or, failing him or her, any vice-chair of the committee:
- i. appoints three of its members, to being ICAEW members and the third a lay member, as a tribunal to hear that complaint; and
  - ii. appoints one of the three as chair of the tribunal.
- 3.41. The chair of a tribunal may therefore be a non-accountant, but does not have to be.
- 3.42. The DC may appoint a barrister or solicitor to act as legal assessor at the hearing of a formal complaint. In practice, a legal assessor is appointed in all cases.
- 3.43. The IC's case is presented to a disciplinary tribunal either by an ICAEW lawyer or by independent counsel. The member is entitled to representation either by a lawyer or by another ICAEW member, or by any other person at the DC's discretion.
- 3.44. If the DC decides that the case is proved, it may order a disciplinary penalty in accordance with the bye-laws. These include reprimands, fines, the removal of a member's practicing certificate and, ultimately, exclusion from membership.
- 3.45. A member can appeal to the AC against a finding of liability, the penalty imposed or any costs order.

## Penalties

- 3.46. When deciding whether a penalty is required and, if so, what level of penalty may be appropriate, the regulatory and disciplinary committees refer to the *Guidance on Sanctions*, a copy of which is contained in Annex 8. The guidance, which is reviewed annually, provides a structured framework for committee members when they decide on sanctions. It is intended to ensure that decisions are reached through a fair and reasoned process, and that the approach to sanctioning is consistent and proportionate across committees. The principles that underpin sanctioning policy are that penalties should be used to:
- protect the public;
  - maintain the reputation of the profession;
  - correct and deter misconduct; and
  - uphold the proper standards of conduct in the profession.
- 3.47. The framework states that, in considering what level of penalty to impose, a tribunal should consider:
- the category and type of behaviour that corresponds to the complaint (eg, dishonesty, financial mismanagement, breach of bye-laws and/or regulations etc)
  - the seriousness of the complaint;
  - what penalties are available;
  - any aggravating or mitigating factors;
  - any factors that are personal to the defendant; and

- whether an ancillary order ought to be made in relation to factors such as costs, fees or publicity.

## **Publicity**

3.48. Hearings of the DC and AC are open to the public unless, exceptionally, a tribunal decides otherwise. When an adverse finding and order is made by the IC or the DC (including consent orders), a record of the decision will be publicised on ICAEW's website and in other professional publications. This means there will be publicity in all cases where a finding and order is made. There is a power available to the tribunal to direct the omission of the defendant's name, but this power is rarely exercised.

## **The Practice Assurance Committee**

3.49. The Practice Assurance Committee is responsible for:

- considering reports arising from review visits where serious areas of concern have been identified in the provision of accountancy services to the public, particularly where the firm or practicing certificate (PC) holder has been unwilling or appears to be unable to rectify them;
- considering reports on failure by members or firms to comply with their obligations arising from the Practice Assurance Regulations;
- indicating to firms or practicing certificate holders the action the committee considers appropriate in the light of the above reports;
- considering whether to refer a complaint for investigation in accordance with the Disciplinary Bye-laws in the event of failure by a firm or practising certificate holder to take the steps recommended by the committee or where very serious matters have been reported to the committee;
- considering issues where staff require practical advice on such matters as interpretation of the guidance and best and acceptable practice;
- making recommendations to the PSB on matters of policy arising from the above and responding to requests from the PSB for comments on any issues; and
- considering issues raised by individual members and firms including any dissatisfaction with the handling of visits or other aspects of the Practice Assurance arrangements.

3.50. The committee normally consists of not fewer than ten members, of whom at least two must be lay members. The current chair is not a chartered accountant. At present there are ten members of whom three are lay. At least half of the accountant members should be drawn from unregulated firms (i.e. firms who do not offer audit, insolvency, probate or investment business). Together with members from regulated firms, they are intended to provide broad representation of firms across the size of spectrum covered by Practice Assurance. The quorum for the committee is three, of whom one must be a lay member and one must be a member at an unregulated firm.

3.51. The committee may not include any person who is a member of the Investigation, Disciplinary or Appeal Committees.

## **Regulatory Governance review**

3.52. In order to ensure that its regulatory governance remains in line with current best practice and expectations in terms of how it, as a statutory and professional standards regulator, structures its regulatory framework internally, ICAEW decided in 2013 that it needed an independent review of its regulatory governance process. Sir Christopher Kelly was appointed to chair a Regulatory Governance Review Group to undertake this independent review and reported to ICAEW Council in December 2013.

3.53. ICAEW is currently implementing its recommendations which will result in the following:

- (a) The PSB will be reconstituted in a way which would give it a greater degree of independence from the rest of ICAEW in both substance and appearance. It is being replaced by the ICAEW Regulatory Board (IRB) which will have the same numbers of lay and ICAEW members, with its chair appointed by an independent panel set up specifically for that purpose, the selection to be made on a 'best-person-for-the-job' basis and therefore could be a chartered accountant as well as a lay person. The Regulatory Governance Review Group's reasoning for this recommendation was that if the appointment of that person was done independently of ICAEW Council and Board, then that was insulation to make sure that the chair would be sufficiently independent of ICAEW, even if the final decision was to appoint an ICAEW member.
- (b) The issues that will come before the IRB will be broadly the same as those currently discussed by the PSB, with the main change being the balance of members on the new board. There will be parity in numbers between accountant and lay members (including the chair). As with the chair, members will be appointed by the independent panel which selected the chair.
- (c) The IRB will be charged with ensuring the Professional Standards Department runs the processes that underpin the licensing and disciplinary work effectively and efficiently.
- (d) Sentencing Guidelines will in future be dealt with by the IRB which will be able to take a view over the Investigation Committee, the Disciplinary Committee and the Appeal Committee – not challenging individual decisions but providing an overview on decisions taken. It will therefore be able to give an informed view on whether ICAEW's disciplinary tribunals and regulatory committees are actually doing their job appropriately.
- (e) Once established the IRB will establish its own Nominations Committee, chaired by a lay member, to make appointments to the committees reporting to it.
- (f) The Audit Registration Committee, the Insolvency Licensing Committee, the Investment Business Committee and the Practice Assurance Committee will have equal numbers of lay and technical members. Their chairs will be chosen on the basis of who is considered by the Nominations Committee of the IRB to be best fitted for the job, whether lay or technical.
- (g) There will also be parity in numbers between lay and accountant members of the Investigation Committee, with the chair chosen from among the lay members.
- (h) Disciplinary tribunals will have a lay majority and a lay chair (as opposed to the current composition of two chartered accountants and one lay member). This will give no reason for doubt on the transparency and objectivity of the process.
- (i) There will be lay majorities on the panels for both the Review Committee and the Appeal Committee. Review Committee panels will consist of – either - two lay members (one of whom should be chair) and one technical member – or - a legally qualified chair, one lay member and one technical member. Appeal panels should consist of two chartered accountants, two lay members and a legally qualified chair of the stature, as now, of a QC or retired High Court Judge.

## Broader regulatory activity

### Practice Assurance Scheme

- 3.54. The Quality Assurance Department (QAD) of ICAEW Professional Standards is responsible for the delivery of ICAEW's PA scheme. This is ICAEW's framework of practice review that applies to all members holding a practising certificate (PC) in the European Economic Area. It is supplementary and complementary to the QAD's work in the regulated areas of audit, insolvency, investment business, and probate, and, as such, is an area of monitoring that applies to all PC holders.
- 3.55. Members who hold a PC and who are engaged in public practice, or who work within the regulated areas, are also required to have professional indemnity insurance (PII). We monitor compliance with the PII regulations (Annex 9) to ensure that firms hold appropriate levels of cover to safeguard the public in cases of negligence. Both the PA scheme and ICAEW's requirements for PII are discussed below.
- 3.56. The PA scheme is a principles-based quality assurance framework, which provides firms with advice and practical support to develop and improve their practices. It is centred on four standards (listed below) that set out the quality assurance principles which firms and reviewers use to assess practices.
- **Laws, regulations and professional standards** - firms must comply with laws, regulations and standards that are relevant to the services they provide, including ICAEW's regulations, standards and guidance.
  - **Client acceptance and disengagement** - firms should agree to act for a client only if, in doing so, it does not contravene ICAEW's regulations, standards and guidance.
  - **Competence** - firms should ensure that all principals, staff and subcontractors are competent to carry out their work.
  - **Quality control** - firms should ensure that work is conducted in an environment where quality is monitored.
- 3.57. QAD provides guidance and support to members to help them implement procedures to maintain and improve the quality processes in their practices. This guidance sets out acceptable practice and best practice. Additional support is provided to firms when they first register and regular email alerts and web-postings are used to keep firms abreast of key issues. QAD produces a leaflet which is sent to firms before a visit informing them of the process and what will be considered. This is contained in Annex 10.

### Annual returns

- 3.58. All firms that are subject to the PA scheme must complete an annual return. Additional tailored information is also required from firms working in the regulated areas of probate, audit, insolvency and investment business.
- 3.59. Data from the annual return is used to monitor firms' compliance with the probate, audit, DPB, insolvency and PII regulations (see below). QAD uses the information in the annual return to understand the risk profile of each firm based on factors such as the firm's size; its turnover, and the nature of the work being carried out. The questions on the annual return are reviewed regularly.
- 3.60. An extract of the annual return is contained in Annex 11 outlining the questions that relate specifically to probate activities. As with probate, sections of the annual return will be developed for each of the further reserved legal activities.



## **Monitoring**

- 3.61. QAD is responsible for carrying out reviews of firms working in the regulated areas of probate, audit, insolvency and investment business, as well as to other firms that fall within the scope of the PA scheme. It currently carries out over 3,000 reviews of firms each year.
- 3.62. Depending on the firm's size, monitoring may take the form of a site visit, review by phone or desk-top review. The frequency of these reviews depends on various risk factors and the firm's size, but PA reviews are generally carried out at least once every eight years for smaller firms and every four years for larger firms. The very large firms are visited annually. QAD also carries out about 100 risk visits each year.
- 3.63. If a review highlights a serious issue in relation to PA or the regulated areas, the QAD team makes a report to the relevant committee. This committee in turn refers matters for possible disciplinary action if it is sufficiently serious or if the firm or the practising certificate holder fails to take the action recommended by the committee.
- 3.64. QAD reviewers have a high degree of skill and experience across a range of disciplines. QAD reviewers are all chartered accountants with many years' experience in reviewing audit, investment business, insolvency and general practice. A number of reviewers hold specialist qualifications in tax and financial services. Combined, members of the team have an average length of service of 10 years.
- 3.65. ICAEW has a number of contracts to supply external monitoring services, which QAD also manages. These include contracts to provide monitoring services to the Chartered Institute of Public Finance and Accountancy (CIPFA) and the Institute of Actuaries, in addition to a number of monitoring contracts specifically related to anti-money laundering procedures for non-member firms.

## **Clients' money regulations**

- 3.66. Members and firms holding client monies must comply with ICAEW's clients' money regulations, as set out in Annex 12. These regulations require firms to place any client monies in a separate, interest-bearing client account, unless the client agrees otherwise. Firms must also obtain agreement from their bankers that there is no right of set-off between a client money account and the firm's own account. If monies are to be deposited in a bank account outside the UK or Ireland, the firm must inform the client in writing of the country/territory and obtain the appropriate confirmations from the bank (if this is in the EU). The firm must inform the client that their money may not be protected as effectively as it would if held in a bank in the UK or Ireland, and obtain the client's agreement to these arrangements in writing. The regulations impose strict requirements on payments into and out of a clients' money account and also require firms to repay a client's money to the client promptly should there be no further reason for the firm to hold the funds on the client's behalf.
- 3.67. Firms are obliged to keep proper records of transactions involving clients' monies and to reconcile their client accounts at least every five weeks. Firms must keep these records for six years. Compliance with these regulations is monitored by QAD as part of the PA scheme.

## **Anti-money laundering legislation**

- 3.68. Members must also demonstrate their compliance with primary legislation relating to money laundering and terrorist financing, and the Money Laundering Regulations 2007. ICAEW, in collaboration with other accountancy bodies, has produced guidance to help members and

member firms interpret this legislation. The Anti-Money Laundering Guidance for the Accountancy Sector<sup>1</sup> (Annex 13) has been approved by HM Treasury and is intended to provide authoritative guidance and practical advice to firms in adopting best practice when implementing and complying with anti-money laundering (AML) requirements.

- 3.69. All PA review visits cover members' procedures for complying with AML legislation. Non-member firms can also apply to QAD for AML supervision provided a principal of the entity is an ICAEW member.

### **Professional indemnity insurance**

- 3.70. All ICAEW members who hold a practising certificate and engage in public practice must hold PII and comply with our PII regulations (Annex 9)
- 3.71. The PII regulations place an obligation on firms to take reasonable steps to meet claims arising from being in public practice and to arrange 'qualifying insurance'. This is cover from a participating insurer, which complies with our minimum approved policy wording.
- 3.72. The minimum level of indemnity is 2.5 times the firm's gross fee income for the previous accounting year, subject to a minimum of £100k and a maximum of £1.5m. These limits are kept under review with insurers in collaboration with the Institute of Chartered Accountants of Scotland (ICAS) and Chartered Accountants Ireland (CAI).
- 3.73. If a firm is an accredited probate firm, the minimum limit of indemnity required for authorised work (i.e., probate and estate administration) is £500,000 for any one claim. This may form part of, or be in addition to, the minimum limit of indemnity required for the firm's other activities. The same minimum limit of indemnity will be required for the further served legal activities.
- 3.74. In addition, firms must carry out an annual risk assessment in order to obtain cover that is appropriate for their needs. We suggest that firms take into account such factors as their size and the nature of their work in assessing the level of cover that is required. The requirement to carry out the risk assessment means that many firms have PII in excess of the amount set out above.
- 3.75. If firms are unable to obtain suitable cover from the market, firms are able to apply for entry to the Assigned Risks Pool (ARP) for a period of two years. At the time of writing, there are only six ICAEW firms in the ARP, which reflects the much lower claims experience of our firms compared with some other professions.
- 3.76. We monitor compliance with the PII regulations through our system of annual returns and QAD reviews. The Professional Indemnity Insurance Committee oversees compliance with the PII regulations, dealing with issues arising on a case-by-case basis and overseeing firms' entry into the ARP.

### **Code of Ethics**

- 3.77. All ICAEW members<sup>2</sup> and member firms must comply with ICAEW's Code of Ethics, which is set out in Annex 14. This code has been derived largely from the International Ethics Standards Board of Accountants' (IESBA) Code of Ethics issued by the International Federation of Accountants in July 2009. It is intended to ensure that ICAEW members demonstrate the highest standards of professional conduct at all times, and that they take

---

<sup>1</sup> With the exception of Appendix A – Supplemental guidance for the Tax Practitioner – which has been submitted for Treasury approval separately.

<sup>2</sup> For the purposes of the code, a 'member' includes ICAEW affiliates, provisional members and employees of a member firm.

account of the public interest when they engage in professional accountancy work and business activities (whether remunerated or voluntary).

- 3.78. The code is divided into four parts: the first covering the general application of the principles to all members. Subsequent sections deal with specific situations which members might encounter in practice, in business or when undertaking insolvency work. The code also includes a number of case scenarios and suggests guidance on the course of action that might be appropriate (or in some cases required) in each case.
- 3.79. The Code of Ethics is underpinned by five fundamental principles which ICAEW members, member firms, students and affiliates must display at all times.

**Integrity** - to be straightforward and honest in all professional and business relationships.

**Objectivity** - to not allow bias, conflict of interest or undue influence of others to override professional or business judgments.

**Professional competence and due care** - to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional services based on current developments in practice, legislation and techniques and to act diligently and in accordance with applicable technical and professional standards.

**Confidentiality** - to respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, to not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of the professional accountant or third parties.

**Professional behaviour** - to comply with relevant laws and regulations and avoid any action that discredits the profession.

- 3.80. As it is not possible to define the situations that might arise and pose a threat to the fundamental principles, the code sets out a conceptual framework to be applied by members in seeking to comply with their ethical obligations.
- 3.81. This framework requires members to consider, at all times, whether their actions or relationships could constitute a threat to the five principles. If a member identifies a threat, he/she must consider whether any safeguards are available either to eliminate that threat or reduce it to a level that is acceptable. These safeguards could take the form of further professional training, monitoring or the independent review of reports by a third party.
- 3.82. If, after evaluating the significance of the threat and the available safeguards, the member considers that the threat cannot be eliminated or reduced, the framework dictates that they should either decline the appointment or refuse to continue with the engagement.

## 4. ICAEW'S APPLICATIONS TO REGULATE RESERVED LEGAL ACTIVITIES

### The reserved legal activities

4.1. Part 3 section 12(1) Legal Services Act 2007 (the Act) states that the following are reserved legal activities.

- (a) the exercise of a right of audience;
- (b) the conduct of litigation;
- (c) reserved instrument activities;
- (d) probate activities
- (e) notarial activities;
- (f) the administration of oaths.

### ICAEW's applications to regulate reserved legal activities

#### The applications

4.2. ICAEW is currently an Approved Regulator and Licensing Authority for the reserved legal activity of probate.

4.3. ICAEW is making two applications to become an Approved Regulator and Licensing Authority for the five remaining reserved legal activities as follows:

i. To become an Approved Regulator under Part 2 of Schedule 4 of the Legal Services Act 2007 for the reserved legal activities of:

- rights of audience;
- conduct of litigation;
- reserved instrument activities;
- notarial activities; and
- administration of oaths;

restricted for each reserved legal activity to the service area of taxation (the 'further reserved legal activities').

ii. To become a Licensing Authority under Part 1 of Schedule 10 of the Legal Services Act 2007 for the further reserved legal activities.

### Business case for applying to regulate the further reserved legal activities

#### Introduction

4.4. In December 2012, ICAEW applied to the Legal Services Board to become an Approved Regulator and Licensing Authority for probate. The application was successful and ICAEW

was designated as an approved regulator and licensing authority for probate activities in August 2014 and started accepting applications for accreditation in September 2014.

- 4.5. Obtaining such designation has provided ICAEW members with an opportunity to participate in the UK legal services market and extend their service offerings by providing professional services to their clients relating to probate in addition to estate administration.
- 4.6. When applying for designation, ICAEW's aim, as set out in its business case, was to receive 100 applications for accreditation in its first year of licensing (which commenced on 22 September 2014) with its overall break even number being 250. As at 31 March 2015 ICAEW had received 99 applications, 32 for authorisation and 67 for licensing. Of these 99 applications, 73 have been accredited, 26 being authorised and 47 licensed. Applications received have therefore, so far, exceeded initial expectations and the commercial objectives appear highly likely to be achieved.

### Registration diversity

- 4.7. In order to comply with the data request from the LSB relating to ICAEW's annual self-assessment under section 55 of the Act an analysis of the size and location of the 73 firms that were accredited up to 31 March 2015 was carried out. The sizes of these firms range from sole principal firms to a firm with 57 principals. As anticipated, 83% are firms with 1 – 5 principals. The breakdown is as follows:

Principals	Number of firms	Percentage of total firms accredited
1	28	39%
2	12	16%
3	13	18%
4	2	3%
5	5	7%
6	5	7%
7	3	4%
8	2	3%
14	1	1%
40	1	1%
57	1	1%

- 4.8. These accredited firms are located across 38 counties in England and Wales with a fairly even spread, illustrating that ICAEW's designation as a regulator of probate has increased access to justice and was therefore in the public interest. The largest number of applications came from firms located in London although these made up only 18% of the total.
- 4.9. As at 8 February 2016, the number of applications for accreditation received was 217, 71 for authorisation and 146 for licensing. Of those, 182 had been accredited, 58 for authorisation and 124 for a licence.

### Research

- 4.10. Following the success of this application and the implementation of probate regulation, ICAEW conducted further research into the services provided by its member firms and the potential for further expansion and growth that the ability to conduct the remaining reserved

legal activities would give them. This research identified areas of work currently carried out by accountancy firms that would;

- i. be complemented by all the remaining reserved legal activities so that they would be an adjunct to such areas of work and therefore have a natural link to the traditional accountancy practice;
- ii. be areas that ICAEW has the capacity and capability to regulate; and
- iii. provide a strong argument that it would be in the interests of consumers for accountancy firms to provide such services.

4.11. The area of work that fitted the above criteria and provided the strongest business case for an application by ICAEW to regulate all the remaining reserved legal activities was taxation.

4.12. Research conducted shows that accountancy firms are already providing tax services relevant to all reserved legal activities. For example, 18 out of the top 20 accountancy firms conduct tax investigation work and provide services relating to tax evasion/fraud and financial crime as part of their litigation support/forensic services.

4.13. Annex 15 sets out the taxation services that are currently provided by accountancy firms and the further reserved legal activities that would complement them and therefore be an adjunct to the existing business and a natural link to the traditional accountancy practice. This comparison includes all the further reserved activities and a more detailed case in favour of our application to regulate these activities is set out below.

## **Case in support of ICAEW's application to regulate and license the further reserved legal activities**

### **Conduct of civil litigation and rights of audience in the civil courts**

4.14. HMRC institute a good deal of litigation proceedings in these civil courts to recover tax debt. This can be by way of civil litigation proceedings and/or insolvency proceedings depending on the amount of the debt.

4.15. HMRC also has the power to bring proceedings in the High Court or refer them to be brought by the National Crime Agency, under the Proceeds of Crime Act 2002 Part 5 - for recovery of proceeds of crime relating to 'VAT Carousel Fraud'.

4.16. ICAEW members already have a lot of relevant expertise and experience in these areas as follows:

- Members already deal with tax investigations. They also prepare cases and represent clients before tax tribunals in cases relating to appeals against HMRC decisions.
- VAT carousel fraud can be extremely complicated and accountants have expertise in the area of indirect taxation.
- Tax advice is being given to solicitors as part of firms' litigation support services and members also appear in court as expert witnesses so they are already experienced in elements of case preparation and court procedure.
- Members have experience in dealing with the Contractual Disclosure Facility (CDF) used by HMRC to investigate suspected cases of tax fraud under Code of Practice 9.

### **Conduct of criminal litigation and rights of audience in the magistrates' and crown courts**

4.17. Prosecutions are currently brought in the criminal courts for tax fraud/evasion. In addition the government has decided to introduce a strict liability offence (strict liability in the sense that

no mens rea is required but there could be some limited statutory defences) for failure to disclose offshore income and or gains. It is currently consulting on this.

4.18. As mentioned above - ICAEW members:

- Already provide expert tax litigation advice to solicitors as part of their litigation support services and these include members appearing in court as expert witnesses - so they are already experienced in criminal procedure.
- Have experience in dealing with the Contractual Disclosure Facility (CDF) used by HMRC to investigate suspected cases of tax fraud under Code of Practice 9. Great care is needed in dealing with the CDF, whether dealt with by the Special Investigation or Civil Investigation of Fraud offices, to ensure that any disclosure made is full and complete, so that no criminal prosecution can take place. Therefore accountants experienced in this procedure may be better placed to defend a client who obtained poor service and was as a consequence prosecuted due to negligent false disclosure.

4.19. Furthermore, experienced tax accountants may be better able to establish a statutory defence for or mitigate the seriousness of a strict liability offence for failure to disclose offshore income/gains.

### **Reserved instruments**

4.20. Members currently provide services relating to treasury functions, for example, tax advice in relation to investments and trusts. The ability to prepare documents that fall within the definition of reserved instrument activities (for example the drafting of trust deeds or instruments for the transfer of personal property) would complement and build upon the current work they are already doing in this area.

### **Notarial services**

4.21. ICAEW is of the opinion that a good business case can be made for it to regulate notarial services. Notarial services are required for service areas already provided by accountants relating to tax matters such as transfer pricing and VAT.

### **Administration of oaths**

4.22. As with other authorised legal services providers, having the ability to administer oaths will complement the other legal services a firm may provide. Authorised persons will be required to comply with the ICAEW Code of Ethics/Code of Conduct and appropriate training will be provided.

### **Conclusion**

4.23. ICAEW is therefore of the opinion that a strong business case can be made for ICAEW's members to be able to conduct the further reserved legal activities relating to tax matters. ICAEW members are already skilled and experienced in particular aspects of all the further reserved legal activities and therefore having the ability to provide these additional services will be an adjunct to the current services they provide.

### **Business benefits of application for accreditation to carry out the further reserved legal activities**

4.24. On the basis of the research outlined above, we consulted widely on this proposed application including consultations with the Big4, Group A and APA firms; the ICAEW's Tax Faculty; Practice Committee; and Business Law Committee all of which agreed with the

proposal. For example, it was the view of the Tax Faculty that ICAEW obtaining designation to accredit firms in the area of taxation would:

- i. Enable firms to enhance their current services relating to tax; and
- ii. Provide protection for members whose advice is sought in tax disputes that may possibly by straying into the areas of reserved legal activity. The faculty is particularly concerned about the implications of the introduction of a strict liability offence for failure to disclose offshore income/gains and the advice that may be sought from members regarding such offences.

4.25. Obtaining accreditation to carry out the further reserved legal activities for the service area of taxation is likely to be attractive to all sizes of ICAEW's member firms. The debt recovery cases brought by HMRC in the civil courts can include low level debt and personal bankruptcy proceedings. This type of work would be within the scope of small firms as would the strict liability criminal cases that may be brought in the magistrates' courts. Complex, high level debt cases and defended company winding up proceedings are more likely to be within the sphere of larger firms as would complex tax fraud/evasion cases. The ability to prepare documents relating to property and trusts is likely to be attractive to all sizes of firms as would administration of oaths. However, notarial services are more likely to be used by larger firms.

4.26. The proposed service area of taxation would also complement ICAEW's regulated area of probate as it would build upon members' current areas of business relating to personal wealth, tax and financial planning. A further application would also build on the regulatory arrangements that have already been put in place for probate, many of which would simply be replicated or extended in the application. For example, our authorisation, monitoring and enforcement processes would follow the same model, as would the regime for complaints-handling. Furthermore, we intend to extend the cover of our Probate Compensation Scheme to include cover for the further reserved legal activities, details of which are set out in paragraphs 5.23 to 5.28.

4.27. It would also be in the interests of justice for accountants to do such work. Research has shown that expert advice in tax related matters is already being sought from and provided by member firms – it would provide a 'one stop shop' for all taxation services and thus lower the cost to the consumer.

### **The public interest, administration of justice and protection of the consumer**

4.28. In his response to ICAEW's previous application to regulate probate services, the Lord Chief Justice (LCJ) had concerns that, if our application were to succeed, there was a risk that standards may slip as our members would not be adequately skilled in court procedure and would not be aware of the role of the courts.

4.29. In ICAEW's response to the advice from the LCJ we agreed with him that high standards of professional skill and care are important for the functioning of the courts (although ICAEW only applied to regulate non-contentious probate) but strongly disagreed that regulatory competition would have a detrimental effect on standards caused by a variation in standards between regulators.

4.30. Members will not be carrying out a full range of reserved legal activities such as general litigation and advocacy which require a much wider legal knowledge. We intend to restrict our regulation solely to services relating to taxation.

4.31. Tax is a clearly defined area in which our members are already highly skilled. The ACA qualification alone contains a tax module at each of its three levels covering – principles of



taxation, tax compliance and business planning – taxation. Furthermore, the vast majority of accountancy firms have departments specialising in taxation services.

- 4.32. We feel confident that, as with our probate regulation, our Authorisation and Qualification Framework for the regulation of the further reserved legal activities, set out in section 6 of this application and Annex 1 of this application, will ensure both the quality and integrity of legal services, and protection of the consumer. The qualification regulations will require attendance on courses and passing of assessment that are, as a minimum, of a comparable standard to that of the Solicitors' Legal Practice Course.
- 4.33. ICAEW will be expanding its Code of Ethics to include guidance on each of the further reserved legal activities. This will include rules relating to litigation and advocacy covering such rules and duties to the court.
- 4.34. It will also be in the interests of consumers for ICAEW members to carry out the further reserved legal activities. Increased competition should reduce fees as services will be provided in one place. At the moment solicitors are seeking expert help from accountants to assist with the advice and assistance they give to their clients. Furthermore, adequate qualification training coupled with existing expertise in this area will ensure protection.

## **How we will ensure that accredited legal services firms will differentiate between tax services which relate to reserved legal activities and those that do not**

### **Introduction**

- 4.35. Tax forms a large proportion of the work undertaken by accountants which can be illustrated by the fact that ICAEW's ACA qualification contains three tax modules, one at each of its three levels covering: Principles of taxation, Tax compliance and Business planning – taxation.
- 4.36. Although some tax work is related to the further reserved legal activities, as set out in Annex 15, this work can be clearly defined as accountancy services and distinguished from the further reserved legal activities that a firm could be accredited to carry out. This is because, as explained below, the reserved legal services elements of tax work can be easily identifiable as they form small and/or distinct parts of that work. It will therefore be possible for firms to put procedures in place to ensure reserved work is identified and carried out in accordance with our Legal Services Regulations.
- 4.37. For these reasons we feel it would only be necessary for accredited firms to differentiate between work that is a reserved legal activity and that which is not in order to ensure the reserved services are carried out or supervised by authorised individuals.

### **The nature and categories of tax work**

- 4.38. Tax work can be broadly categorised as follows:

- Tax planning and advisory
- Tax accounting/reporting and tax compliance

These are commented upon further below

- (a) Tax planning and advisory

- (i) The tax planning and advice that accountants give to businesses involves both operational and transactional tax planning. An example of operational tax planning would be advice on transfer pricing where there is a direct link between any planning and the movement of goods and services between different parts of the business. Examples of transactional tax planning would include giving advice on an acquisition or disposal by the business or advice to a business considering entering into a new market and deciding whether to set up a branch or subsidiary in a new country.
- (ii) An example of tax planning advice given to individuals, on the other hand, would involve advice on wealth management such as advising on the setting up of trusts.
- (iii) The areas of work that may flow from tax planning and advice which relate to reserved legal services are likely to relate to reserved instrument activities and notarial services. This type of work will, in the main, fall within the following categories of work:

<b>TAX PLANNING AND ADVISORY</b>	
<b>Accountancy services</b>	<b>Reserved legal activities</b>
Treasury functions – advising clients on investments and trusts	Preparation of an instrument that transfers property falling within the definition of reserved instrument (for examples, acquisitions or disposals)  Preparation of Trust Deeds
Transfer pricing	Preparation of documents relating to court proceedings  Notarial services relating to translation and/or authentication of documents for transfer pricing and overseas property transactions
Advice on indirect taxes (VAT)	
Estate administration	

- (iv) These examples are all distinct, easily identifiable aspects of the services provided to clients.
- (b) Tax accounting/reporting and tax compliance
- (i) Tax compliance and reporting are activities that are mostly concerned with managing risk. Ensuring compliance is both timely and accurate is critical for clients. They can involve, for example, extractions of data and tax calculations; completion of tax returns and their submission to tax authorities; tax payments; and the management of other compliance matters.
  - (ii) Tax filings can be the subject of review by a tax authority. This review might be superficial, based on the information filed, or it might be comprehensive, including examination of internal company information and interviews of personnel.

- (iii) Accountants will assist clients with audits and investigations by tax authorities and therefore, the areas of tax work that may flow from tax compliance which relate to reserved legal activities are likely to be tax litigation relating to civil and criminal tax investigations and subsequent proceedings.
- (iv) This type of work is likely to fall within the following categories:

<b>TAX ACCOUNTING/REPORTING AND TAX COMPLIANCE CIVIL PROCEEDINGS</b>	
<b>Accountancy services</b>	<b>Reserved legal services</b>
Litigation support and forensic services (supplied to firms of solicitors)	Advice to and representation of clients in relation to HMRC litigation or insolvency proceedings in the civil courts relating to tax debt including appearance before the civil courts.
Contractual Disclosure Facility used by HMRC to investigate suspected cases of tax fraud under Code of Practice 9	Defending civil proceedings under the Proceeds of Crime Act 2002 part 5
Tax investigations by HMRC which lead to non-action or a settlement	Representation of clients in relation to judicial review proceedings including appearance in court
Tax investigations by HMRC which do not settle and result in the representation of clients in proceedings in the Tax Chamber of the First-tier Tribunal and any subsequent appeal to the Upper-tier Tribunal including appearance before the first and upper tier tax tribunals	Representation of clients in relation to appeals from the Upper-Tier Tribunal to the Court of Appeal including appearance before the court

<b>TAX ACCOUNTING/REPORTING AND TAX COMPLIANCE CRIMINAL PROCEEDINGS</b>	
<b>Accountancy services</b>	<b>Reserved legal services</b>
Litigation support and forensic services (supplied to firms of solicitors)	Advice to and representation of clients being prosecuted for the strict liability offence of failure to disclose offshore income and or gains (if or when introduced)

<p>Criminal tax investigations carried out by HMRC prior to the case being passed to the relevant UK prosecuting authority for a decision on whether or not to prosecute. These do not constitute legal services unless HMRC exercises its power to make an arrest whereupon advice thereafter it is likely to constitute a reserved legal activity.</p>	<p>Advice to and representation of clients being prosecuted for tax evasion/fraud</p>
--	---

## Conclusion

4.39. We believe it will be possible for our authorised and licensed persons to make these distinctions and set up processes to ensure that the further reserved legal activities are identified.

### Legal Services Regulations and procedures

- (a) We also believe that it will be possible for accredited firms to put in place the necessary procedures to ensure that our Legal Services Regulations are complied with and reserved legal activity work is conducted or controlled by authorised individuals only, for the following reasons:
- (i) Every firm accredited by ICAEW will be required to have an individual authorised to conduct or control each of the further reserved legal activities the firm is accredited to carry out. These individuals will, by virtue of their training, be aware of the definition of the reserved legal activity for which they are authorised. ICAEW will also issue further guidance on these definitions, as it did with probate.
  - (ii) As the activities ICAEW is applying to regulate relate to taxation services only, applicants wishing to seek individual authorisation are likely to be tax practitioners working in the department that will carry out these regulated activities. They will therefore be aware of, or can be made aware of, the nature of the tax work that department is being asked to carry out. This should enable them to put procedures in place to ensure the work relating to reserved legal services is differentiated and carried out or supervised by them
  - (iii) Our application process also requires applicant firms to provide details of their compliance arrangements. We will advise applicants that we would expect such compliance arrangements to include procedures to ensure this differentiation.
  - (iv) Furthermore, it is a requirement of our Legal Services Regulations that the HoLP (the contact partner in the case of an authorised firm) ensures that the firm complies with the regulations and that reserved legal services are only carried out or supervised by those authorised to do so.

### Entitlement to carry out a reserved legal activity

4.40. We do not believe that there would be a legitimate challenge to ICAEW application to authorise, license and regulate all further reserved legal services, providing all application criteria are satisfactorily met.

- 4.41. We are however aware that the Master of Faculties is of the opinion that it would not be possible for another regulator to regulate notarial activities as he believes the law does not permit Notaries Public to be regulated by any regulator other than the Master of Faculties. We are not, however, aware of the specific law that the Master of Faculties relies on in support of this view.
- 4.42. For this reason ICAEW is of the opinion that it may be helpful to the Legal Services Board for us to set out what sections of the Act enable ICAEW, in our opinion, to become an approved regulator and licensing authority for all the further reserved legal activities, giving specific attention to notarial activities.
- 4.43. Annex 16 sets out these relevant sections of the Act that, in our opinion, permit us to apply to regulate notarial services in addition to the other further reserved activities.
- 4.44. This annex explains that the Act enables applicants to apply for designation to become an approved regulator and licensing authority for all six reserved legal activities and, provided such application complies with the requirements set out in Part 2 of Schedule 4 of the Act and Part 1 of Schedule 10 of the Act, such designation should be granted.
- 4.45. These designation requirements include the applicant having satisfactory regulatory arrangements and licensing rules which must include regulations as to the education and training which persons must receive, and any other requirements which must be met by or in respect of them, in order for them to be authorised.
- 4.46. ICAEW's regulations regarding the authorisation of individuals to carry out notarial activities are set out in paragraphs 6.24 to 6.29 of this application and in the ICAEW Legal Services Regulations (Annex 1).
- 4.47. The qualification requirements for such applicants will be those set out in paragraph 12(4) of Part 2 of Schedule 5 of the Act, (which relates to the transitional arrangements) namely:
- An applicant who is a notary and who either –
- (a) has in force a practising certificate as a solicitor issued under the Solicitors Act 1974 (c.47), and is duly entered in the Court of Faculties of the Archbishop of Canterbury in accordance with rules made by the Master of the Faculties, or
  - (b) has in force a practising certificate as a public notary issued by the said Court of Faculties in accordance with rules so made.
- 4.48. We are confident that this will assure the Legal Services Board and also the Master of Faculties that notaries working within an ICAEW accredited entity would be:
- (a) qualified to competently carry out notarial work at the same standard as those working in entities regulated by the Master of Faculties; and
  - (b) subject to the same professional rules of practice and conduct as notaries working in entities regulated by the Master of Faculties.
- 4.49. We are aware that the duties of notaries are largely regulated by rules made by the Master of Faculties under the authority granted by s.57 of the Courts and Legal Services Act 1990. We have reviewed these rules and most particularly, the Notaries Practice Rules 2014, and, as explained in Annex 16, can see nothing in these rules which would prevent a notary from working in an entity regulated by ICAEW, whether as a "principal" as defined in our Legal Services Regulations or as an employee of such entity.

## 5. HOW WE WILL BUILD UPON THE CURRENT REGULATORY ARRANGEMENTS AND PROCEDURES FOR THE RESERVED LEGAL ACTIVITY OF PROBATE

### Applications

#### Process

- 5.1 We believe our current application processes for our probate regulation are working well with all applications being processed well within the required time period.
- 5.2 The total number of applications from firms received in the period to 31 March 2015 was 99 and of these, 73 have been accredited. The average period taken to process an application, that is between initial receipt from the applicant of all the information required to make a decision, and the decision being communicated to the applicant, was approximately 37 days. This is well within the 6 – 8 week time period set as an internal objective. The maximum time allowed under the Act to process an application is 6 months, beginning when all information required on the application form has been received; no applications have exceeded (or even approached) this amount of time to reach a decision.
- 5.3 As the same application process will be used for the applications relating to the further reserved legal activities we believe that ICAEW will be able to process these additional applications as competently and efficiently as the probate applications.
- 5.4 We will therefore be amending the current probate application forms to enable these forms to be used for applications relating to the further reserved legal activities. The probate application forms are attached as Annex 17

#### Staff resources

- 5.5 With regard to staff resourcing, we will follow what we did with our probate regulation by appointing an individual within the business support team to be dedicated to the processing of the reserved legal activities applications and, as the volume of applications increase, we will recruit new members of staff who s/he will train and supervise to assist with the applications as and when needed.
- 5.6 Likewise, as with the application processing team, a case manager within our Professional Conduct Department will have responsibility for reviewing and making decisions on the applications for the further reserved legal activities and, when the volume of applications increases, we will recruit and train new case managers to assist with the processing of the applications as and when needed.

### Legal Services Committee

- 5.7 During the application process for ICAEW's designation as an Approved Regulator and Licensing Authority for probate, the Probate Committee was formed and, following training in March 2014, started operating in April 2014.
- 5.8 The process of recruiting members for the committee took place by advertising within ICAEW and by public advertisement (for technical members) and by public advertisement (for independent lay members) during 2013.

- 5.9 As set out in section 3, the Probate Committee governs the arrangements for ICAEW's probate regulation and is totally independent of ICAEW's Professional Standard's Department's regulatory governance processes. The committee provides reports of its activities and decisions to the PSB for information only.
- 5.10 The Probate Committee has the right to enter into communication freely with the LSB and other stakeholders and has the freedom to notify the LSB if it considers that its independence is being compromised in any way. If, however, at any time the Probate Committee ceases to discharge its functions appropriately, ICAEW, as the approved regulator, would be required to notify the LSB, or could replace members of the committee following consultation with the LSB.
- 5.11 This committee will be renamed the Legal Services Committee and its members will be increased to 12 members, 6 lay and 6 technical. We will recruit new members to replace 3 – 4 technical members currently on the committee to ensure we have expertise in taxation and all reserved legal activities. The terms of reference of the Legal Services Committee will be the same as for the Probate Committee save for the number of members. The terms of reference of the Probate Committee are attached as Annex 20.

## **Enforcement**

- 5.12 ICAEW will extend its existing disciplinary powers and processes to firms it accredits for the further reserved legal activities where there is a breach of our regulatory arrangements. In addition, in cases where there has been a breach of our regulatory arrangements, the proposed Legal Service Regulations set out a range of regulatory powers which ICAEW may draw upon to protect the consumer and the wider public interest. This includes the imposition of conditions or restrictions on a firm's accreditation; the power to suspend or withdraw accreditation, the power to disqualify individuals from holding particular posts or to intervene into firms in certain circumstances.

## **Practice Assurance Scheme**

- 5.13 On-going supervision of all regulated entities and activities will continue to be conducted through reviews of firms within the framework of the Institute's Practice Assurance (PA) Scheme.
- 5.14 As outlined in ICAEW's application to become an approved regulator and licensing authority for probate, ICAEW's Quality Assurance Department (QAD) will visit all accredited firms within 24 months of approval of their application. Thereafter they will slot into QAD's PA Scheme cycle which varies between 4 and 8 years depending on the size of the firm.
- 5.15 QAD is however reviewing probate applications on a monthly basis in order to identify the optimum timing for those firms' first probate visit. This is based on the date of the last and cyclical visit but managed to be within 24 months of the firms' applications being approved. To the end of September 2015, QAD has considered 148 firms for a visit. Of these 148 firms, QAD has scheduled visits to 31 firms in 2015. The first visit took place on 7 July 2015 and, as at the end of September 2015 QAD had carried out 16 onsite probate visits, of which 5 were complete.
- 5.16 All firms accredited to carry out one or more reserved legal activity will be supervised in this way through our PA Scheme.

## **Professional indemnity insurance**

- 5.17 As with firms we currently accredit for probate, firm accredited to carry out the further reserved legal activities will be required to comply with our Professional Indemnity Insurance (PII) Regulations (attached as Annex 9) which require them to carry out an annual risk assessment to determine the level of PII that is suitable for their needs, and carry a minimum level of indemnity of at least £500k per claim. This is likely to be done in conjunction with the firm's PII brokers.
- 5.18 This minimum level of indemnity was initially set for our regulations relating to probate work. In arriving at this figure, we considered the information produced by HMRC on the value of estates arising out of deaths in the period 2008 – 2009 and reported before June 2011. Over 90% of these estates had a gross capital value of less than £500k, and the average gross value of all estates was £236k. It was on this basis that we concluded that a requirement for £500k PII per claim would be sufficient to protect the overwhelming majority of consumers in cases of negligence, or fraud where there is one or more innocent principal.
- 5.19 At the time we acknowledged that the PII requirements of other approved regulators may have been greater than those which we proposed. The Solicitors Regulation Authority, for example, at the time required solicitors to carry a minimum level of indemnity of £2m or £3m depending on the firm's structure. However, we understood that, historically, these limits were based on the compensation that might be due in complex personal injury cases, and that they were not driven by a need to protect clients provided with other reserved legal activities services as such.
- 5.20 In developing these probate regulatory arrangements, we were conscious of the need to ensure that our proposals do not act as a deterrent to market entry. Accordingly, in considering our proposals for indemnification, we took note of the responses to our survey of firms in 2011. One of the key themes arising from this survey was the extent to which a requirement for increased PII could prevent smaller firms from applying for accreditation. This was particularly the case where firms did not expect further reserved legal activities and related work to generate a large income stream.
- 5.21 For these reasons, we have elected to require firms conducting authorised probate work to hold at least £500k PII per claim. We considered that the requirement for PII of this level balanced the need for strong consumer protection on the one hand, with the Act's objective of promoting greater competition in the market on the other. Additionally, these are minimum requirements only, and the majority of medium-sized and large firms carry PII at levels far in excess of these limits. In cases where the value of the estate is likely to exceed the level of insurance, firms are required to notify their clients in writing at the beginning of the engagement that their PII is capped and their level of cover.
- 5.22 In relation to this application, ICAEW sought advice from our insurance broker about whether to set a different minimum level of indemnity for the further reserved legal activities to the one currently set for probate work. We were advised that the same level of cover that we currently set for probate work would be sufficient and appropriate to set for our regulation of the further reserved legal activities as it would adequately protect consumers in cases of negligence or fraud relating to the further reserved legal activities matters where there is one or more innocent principals. For this reason and the reasons set out above, we propose to set a minimum level of indemnity of at least £500K per claim for all reserved legal activities work.

## **Compensation arrangements**

- 5.23 Although PII should provide adequate protection for clients in cases of fraud where there is one or more innocent principal, we have also addressed the potential need to provide



redress for consumers in cases where PII is invalidated because the fraud has been carried out by a sole practitioner or two or more principals acting in collusion.

- 5.24 As part of our probate regulation, a Probate Compensation Scheme was set up in order to address this potential need and to comply with the Act's requirements for compensation arrangements where individuals and firms engage in probate and estate administration work. We will widen the scope of our Probate Compensation Scheme to cover, additionally, the further reserved legal activities. A copy of the draft Legal Services Compensation Scheme Regulations are attached at Annex 18. This compensation scheme will continue to be funded initially through Professional Standards' budget and underwritten by a master insurance policy. It will continue to be a discretionary fund of last resort which will compensate clients in cases where a firm's own PII is invalidated. ICAEW's insurance broker has assured us that there will be no difficulty in extending our current master insurance policy to cover the further reserved legal activities in addition to probate and estate administration.
- 5.25 As set out in chapter 3 of the draft Legal Services Compensation Scheme regulations, grants will be made wholly at the discretion of the Legal Services Committee where an applicant<sup>3</sup> is able to satisfy the committee that they have suffered loss as a consequence of:
- fraud or other dishonesty on the part of the accredited firm, or any of its principals or employees, in carrying out authorised work; or
  - a firm's failure to account for monies received in connection with authorised work.

Chapter 5 provides that grants will not be made in respect of losses which, among other matters:

- arose at a time when the firm was not accredited;<sup>4</sup>
  - arose solely by reason of professional negligence;
  - did not result from the firm's activities in relation to authorised work; or
  - result from the firm's trading debts or are the personal debts of the firm or any principals, employee or shareholders.
- 5.26 Grants from the scheme will be capped in any one year at a level comparable to our minimum requirements for PII, ie, £500k per claim.
- 5.27 From year one of our probate operations, the compensation levy has been used to fund the compensation scheme and annual premium. A percentage of the compensation levy has also be used to start building up a compensation fund over time, with minimum contributions of £100k per year aimed at accumulating a fund of £1m over 10 years. This is based on our target break-even volumes. Our intention in the medium to long-term is that a fund will enable us to increase the level of self-insured excess, thereby reducing the annual premiums and in turn the compensation levy that is charged to practitioners.
- 5.28 We have also included in our regulations a requirement that firms inform clients in writing at the beginning of the engagement of the existence of compensation arrangements and the timescales for making applications. We also recommend in guidance that firms inform clients of the ways in which they can access further information about the scheme, in particular the circumstances in which a grant may be made. We consider that this will increase consumers' understanding of their rights during the legal process, as well as ensuring that they have a

---

<sup>3</sup> Applicants that are body corporates or registered charities will only be eligible for a grant if their annual turnover for the last accounting year was less than £1 million.

<sup>4</sup> Unless the Legal Services Committee is reasonably satisfied that, at the time the relevant act or default took place, the applicant was not aware that the firm's accreditation had ceased or been suspended, or that the principal or employee conducting the further reserved legal services work had been disqualified under the Act.

better understanding of the situations in which they may or may not be covered by these arrangements.

## **The Legal Services Regulations**

- 5.29 The Probate Regulations have been amended to cover the further reserved legal activities in addition to probate and have been renamed the 'Legal Services Regulations'. The draft Legal Services Regulations are included in this application at Annex 1
- 5.30 The draft Legal Services Regulations provide for the same application process as we currently have for our probate regulation. In order for individuals to obtain authorisation to conduct the reserved legal activities, they will need to apply under one of three legal services regulations as set out in regulation 4.1 and paragraph 6.7 of this application.
- 5.31 We have built upon our current qualification framework for probate by developing qualification and assessment criteria for the further reserved legal activities. We will be sourcing appropriate courses and assessment from established professional qualification providers which meet these criteria.

## 6. ICAEW LEGAL SERVICES APPLICATIONS AND QUALIFICATIONS FRAMEWORK

### Introduction

- 6.1 An important part of ICAEW's regulatory arrangements is its regulations governing the education and training of those we authorise to conduct the further reserved legal activities.
- 6.2 ICAEW is aware that high standards of professional skill and care are important for the administration of justice and the functioning of the courts. It also believes that the educational platform for the effective delivery of legal services is important to ensure both the quality and integrity of service, and protection for the consumer.
- 6.3 ICAEW is also of the view that a variation in the standards across legal regulators of professional skill and care is inappropriate and we will therefore continue to ensure that the standards of those practitioners that we authorise are, as a minimum, of the same standard as those regulated by other legal regulators.
- 6.4 We believe our Authorisation and Qualification Framework, which is set out in schedules 1 and 2 of ICAEW's draft Legal Services Regulations (Annex 1), will ensure that those we authorise to conduct the further reserved legal activities are highly trained and competent to work in these areas and will therefore be able to provide a high quality service to consumers.
- 6.5 When developing this framework, in addition to considering the education and training requirements of applicants, we also took into consideration the proportionality of our proposed regulatory requirements and their effects on access to justice.

### Applications for individual authorisation

#### The Legal Services Regulations

- 6.6 We intend to follow the same application process that we currently use for our probate regulation which has proved very successful.
- 6.7 As set out in section 4 of our draft Legal Services Regulations (Annex 1), ICAEW will accept applications for individual authorisation for one or more of the further reserved legal activities under the following 3 regulations:
  - Regulation 4.1(a): For applicants who are members of ICAEW who comply with the qualification requirements (as set out in schedules 1 and 2 of the Legal Services Regulations) (Annex 1) for the reserved legal activity or activities they are applying for authorisation to carry out.
  - Regulation 4.1(b): For applicants who hold a qualification issued or recognised by an approved regulator (other than ICAEW) that entitles the individual to undertake the reserved legal activity or activities they are applying for authorisation to carry out.
  - Regulation 4.1(c): For applicants who are otherwise qualified to undertake the reserved legal activity or activities they are applying for authorisation to carry out so as to satisfy ICAEW that it should approve their designation as an authorised individual.

- 6.8 As we are limiting our regulation of the further reserved legal activities to taxation only, our authorised persons will not be carrying out the full range of these activities. Therefore, to ensure our regulatory requirements are proportionate and do not adversely affect access to justice, applicants seeking authorisation will be required to demonstrate competency in the knowledge areas and skills required to competently practice the further reserved legal activities for taxation matters only. For example, we will not require applicants to have detailed knowledge of the law of contract, tort or land law, although the law of contract and elements of tort (eg, professional negligence) are covered in our ACA qualification.
- 6.9 We believe these proposed regulatory requirements will be sufficient to ensure that those we authorise are able to provide legal services to a high standard and quality in order to uphold the interests of justice and protect the consumer. They will not however, restrict market entry by imposing unnecessary burdensome requirements, for example, by requiring applicants to attend unnecessary courses and assessments thus saving costs and time. Such proportionality will ensure increased competition which will help reduce costs for the consumer.
- 6.10 Schedule 1 of our draft Legal Services Regulations (Annex 1) sets out the draft syllabus of courses and assessments that applicants will be required to attend and pass in order to demonstrate the required standard of competency in each of the further reserved legal activities.
- 6.11 Schedule 2 of our draft Legal Services Regulations (Annex 1) sets out the applications that can be made by individuals seeking authorisation to carry out one or more of the further reserved legal activities. In addition to outlining the different types of applications that can be made, it also sets out the qualification and practice requirements for each area of authorisation and the details of any exemptions that may be available.
- 6.12 In relation to the courses and assessments, it is our intention to consult with several professional training providers/universities that are already providing professional legal training for other legal regulators with a view to commissioning and approving courses and assessments that cover our draft syllabus.

## **The rationale of the Authorisation and Qualification Framework**

### **Introduction**

- 6.13 The syllabus for each further reserved legal activity has been designed to cater for the education and training needs of those with little legal and taxation knowledge and or experience. It therefore covers the full range of knowledge areas and skills that competent practitioners will require to conduct these activities.
- 6.14 We are however aware that, as with our own members who have the ACA qualification, other applicants will have already acquired knowledge and skills in some or all of the syllabus areas. For this reason our application process and Authorisation and Qualifications Framework (Annex 1) allows for exemptions from certain areas of the syllabus for those with the ACA qualification or for those applicants that can satisfactorily demonstrate they hold an equivalent qualification.

### **Rights of audience**

- 6.15 In relation to rights of audience, ICAEW appreciates the significant difference between the levels of expertise required to ensure competency of advocates appearing before each court moving up the hierarchy in both the civil and criminal courts. For this reason we have separated our authorisation process into distinct areas requiring different training,

qualification and practice experience in order to ensure high standards of advocacy are maintained. For example, applications for authorisation to appear in the higher courts can only be made by applicants who have been awarded a qualification by a legal regulator (other than ICAEW) which awards them rights of audience in the higher courts such as barristers, and solicitors who have been awarded the appropriate higher rights of audience by the Solicitors Regulation Authority. Whereas applications for rights to appear in civil courts for matters heard in judge's rooms (chambers) are subject to less rigorous regulatory requirements.

- 6.16 ICAEW is aware that the Joint Advocacy Group (JAG) which comprises representatives from the Bar Standards Board, the Solicitors Regulation Authority and CILEx Regulation has set up a Quality Assurance Scheme for Advocates (QASA) which will assure the quality of advocates appearing in criminal courts in England and Wales.
- 6.17 We understand that the implementation of this scheme was suspended by the regulators in the JAG pending the judgment of the Supreme Court on an appeal challenging the introduction of the QASA. The Supreme Court handed down its judgment on 24 June 2015 in which it dismissed the claimant's appeal and upheld QASA as lawful and proportionate, but it appears that the scheme remains suspended whilst the judgment is being considered.
- 6.18 Should ICAEW's application to become an Approved Regulator and Licensing Authority for rights of audience in the criminal courts be successful, ICAEW will be making contact with the JAG about the QASA and whether or not it will be possible and/or necessary for those advocates it authorises to register for this scheme – should it be implemented.
- 6.19 We understand it only applies to criminal advocacy which includes advocacy in all hearings arising out of police-led or Serious Fraud Office-led investigation and prosecuted in the criminal courts by the Crown Prosecution Service or the Serious Fraud Offices but does not include hearings brought under the Proceeds of Crime Act 2002.
- 6.20 We also understand that non-traditional specialist criminal cases that are not compatible with the assessment framework are outside of the scope of the scheme.
- 6.21 As the criminal advocates ICAEW intends to authorise will be conducting cases relating to taxation which are likely to emanate from HMRC investigations it may be their work will not fall within the definition of criminal advocacy and/or may fall within the definition of specialist criminal cases that therefore are not compatible with the assessment framework. We will however seek advice on this.
- 6.22 Whilst our authorisation process allows firms to apply for entity regulation for the whole suite of authorised activities at all levels they must ensure that they have the required number of authorised individuals for each of the reserved legal activities they are applying for accreditation to conduct. Furthermore, in relation to rights of audience, accredited firms must ensure that authorised individuals only appear in the courts and at the level they have been accredited for.

#### **Reserved instrument activities**

- 6.23 As set out in our Authorisation and Qualification Framework (Annex 1), we intend to restrict the authorisation of reserved instrument activities not only to taxation matters, but to activities within the meaning of paragraph 5(1)(c) of schedule 2 of the Act only. This paragraph of the Act defines these types of activities as those (that do not involve the preparation of any instrument of transfer or charge for the purposes of the Land Registration Act 2002, nor the making of an application or lodging of a document for registration under that Act) but those that relate to the preparation of any other instrument relating to real or personal estate for

the purposes of the law of England and Wales or instrument relating to court proceedings in England and Wales.

### **Notarial activities**

- 6.24 Our Authorisation and Qualifications Framework (Annex 1) allows for the grant of authorisation to conduct notarial activities within the meaning of paragraph 7(1) of Schedule 2 of the Act relating to taxation matters only.
- 6.25 Schedule 2, paragraph 7 of the Legal Services Act 2007 defines notarial activities as:
- (1) “Notarial activities” means activities which, immediately before the appointed day, were customarily carried on by virtue of enrolment as a notary in accordance with section 1 of the Public Notaries Act 1801 (c.79).
  - (2) Sub-paragraph (1) does not include activities carried on –
    - (a) By virtue of section 22 or 23 of the Solicitors Act 1974 (x.47) (reserved instrument activities and probate activities), or
    - (b) By virtue of section 113 of the Courts and Legal Services Act 1990 (c.41) (administration of oaths).
- 6.26 There appears to be no formal rules or statute that governs what a notary can do, and therefore it appears that this has come about by custom, hence the words used in the Legal Services Act 2007 - “customarily carried on by virtue of enrolment as a notary in accordance with section 1 of the Public Notaries Act 1801 (c.79)” - and this appears to be consistent with the key publication that notaries refer to (namely “Brooke’s Notary”) which states in chapter 2 – Functions, Powers, Duties and Qualifications of Notaries –
- “The official title of an English or Welsh notary is “notary public” or, in recent legislation, “public notary”. His functions as a whole are not defined by any statute or other instrument; there has never been in England any attempt to codify the precise nature of the notary’s office as has been done in the countries of the continental Europe, Latin America and other parts of the world whose legal systems are based on principles derived from Roman law. Instead, the functions of a notary in England and Wales must be gleaned from various sources: chiefly custom (by which in this context is meant principally the law merchant<sup>5</sup>), to a limited extent case law and also certain statutes which contain provisions relating to specific duties of a notary; hence the evident difficulty of furnishing a succinct definition of the notary’s role in the legal system of England and Wales.
- 6.27 Brooke’s Notary sets out the following as being the main functions of a notary:
- i. Verification of documents to take effect abroad
  - ii. Preparation and translation of documents for use aboard
  - iii. Translation of documents emanating from overseas
  - iv. Protesting bills of exchange
  - v. Certifying copies
  - vi. Conveyancing and probate matters
  - vii. Taking of affidavits
  - viii. Ship protests

---

<sup>5</sup> Jowitt’s *Dictionary of English Law*, 2<sup>nd</sup> edn (1977), p1069 defines the law merchant as: “that part of the law of England which governs mercantile transactions. It is founded upon the general custom of merchants of all nations, which, though different from the general rules of the common law, has been gradually engrafted into it, and made to form part of it.”

- ix. Certificates of law
- x. Advice on matters of the law of England and Wales and foreign law
- xi. Drawing of foreign bonds and debenture stock
- xii. Electronic commerce

6.28 ICAEW will therefore authorise suitably qualified applicants to conduct these activities in relation to taxation matters.

6.29 We are however restricting such authorisation to applicants who are a 'duly certificated notary' within the meaning of paragraph 12(4) of Schedule 5 of the Act, the definition of which is set out in the Schedule 1 of ICAEW's draft Legal Services Regulations.

### **Administration of oaths**

6.30 Our Authorisation and Qualifications Framework (Annex 1) allows for authorisation to administer oaths as defined in Schedule 2, paragraph 8 of the Act.

## **Continuing professional development – Regulations, Codes of Ethics and Statutory Duties**

### **ICAEW Probate Regulations**

6.31 Regulation 3 of the Draft Legal Services Regulations (Annex 1) deals with the conduct of authorised work and imposes the following regulatory obligations on authorised persons:

'3.1 accredited legal services firms must act in accordance with the fundamental principles set out in the Code of Ethics issued by ICAEW's Council and must make arrangements so that it, its principles and employees comply with these regulations and the professional principles set out in the Act to:

- a) act with independence and integrity;
- b) maintain proper standards of work;
- c) act in the best interests of their clients; and
- d) keep the affairs of clients confidential.

3.2 An accredited legal services firm shall only carry out authorised work which it is competent to perform.

3.3 An accredited legal services firm must make sure that only authorised individuals undertake, or control the undertaking of, reserved legal activity work on behalf of the firm.

3.4 An accredited legal services firm must make sure that all principals and employees undertaking authorised legal services work and/or authorised probate work are, and continue to be, competent to carry out the authorised legal services work and or authorised probate work for which they are responsible.'

6.32 In a licensed firm, the Head of Legal Practice will be responsible for taking all reasonable steps to ensure that the licensed firm and its principals and employees comply with their duties under the Legal Services Regulations.

### **ICAEW Code of Ethics**

6.33 A fundamental principle of ICAEW's Code of Ethics is professional competence and due care. Section 130 states, among other things, that members (which include ICAEW affiliates)

have an obligation 'to maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service; and to act diligently in accordance with applicable technical and professional standards when providing professional services.'

6.34 In addition, Part B (applicable to members in practice) contains section 210 on professional appointments which states among other things that:

'The fundamental principle of professional competence and due care imposes an obligation on a professional accountant in public practice to provide only those services that the professional accountant in public practice is competent to perform. Before accepting a specific client engagement, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care is created if the engagement team does not possess, or cannot acquire, the competencies necessary to properly carry out the engagement.'

### **Requirement to undertake continuing professional development**

6.35 All ICAEW members must comply with the Continuing Professional Development (CPD) regulations, set out in Annex 19. These regulations place an obligation on members to reflect on their learning and development needs, identify any gaps, source appropriate activities to fill those gaps and assess the effectiveness of their learning on a continuous basis.

6.36 ICAEW does not specify the form that CPD should take nor specify the number of hours or points that must be obtained. Instead members must undertake whatever development activity is required for them to remain competent in their roles.

This may include:

- attendance at a workshop, conference, seminar or webinar;
- reviewing books, journals or faculty publications;
- participation in an ICAEW special interest group;
- reviewing technical updates and news relevant to their role; or
- discussion and informal training with a senior colleague on an area of expertise.

6.37 Members must make an annual CPD declaration to this effect, which we audit on a sample basis. We also monitor compliance with the CPD regulations by requiring firms to return a CPD declaration each year for their staff. If a firm fails to make a CPD declaration, this is potentially a disciplinary issue and will be dealt with in accordance with our disciplinary procedures (detailed in section 3 of this application).

6.38 Therefore, ICAEW's regulations, code, and CPD arrangements place authorised practitioners and the authorised/licensed firm for which they work, under an obligation to ensure that they or those that work for them are, and continue to be, competent to carry out reserved legal activities work.

6.39 In order to comply with this obligation, persons who conduct and/or supervise the conduct of authorised work are required to maintain and develop their skills throughout their career by completing sufficient development activity to ensure that they remain competent in their roles. To do this we recommend they use our 'Reflect, Act, Impact, Declare' (RAID) approach (outlined below) which requires practitioners to consider their development needs, how they can meet them and to create a plan of action. This requires them to reflect on such matters as expectations, responsibilities and knowledge gaps and to evaluate the effectiveness of the CPD they have done and whether it has enabled them to meet their objectives.



6.40 We recommend that authorised persons take the following RAID approach to their CPD requirements:

i. Reflect

Consider your development needs and how you can meet them, and create a plan of action. Think about:

- Expectations - what do others expect of you and what standards do you expect of yourself?
- Changes - the main changes affecting you in your role
- Responsibilities – what are the areas of responsibility for your role?
- Environment - what are the main business environment issues for you?
- Knowledge gaps - what do you need to know about?

ii. Act

The following activities, if relevant to your role, could count as CPD:

- Technical reading
- Learning at work
- Meetings with experts
- Conferences
- Courses and seminars
- Online learning
- Workshops with your peers
- Reading magazines, newspapers and journals
- Registering for updates and email alerts

iii. Impact

Evaluate the effectiveness of what you have done. Are you satisfied that your actions have enabled you to meet your objectives, or do you need more work in this area?

iv. Declare

Each year ICAEW members and accredited Legal Services Firms must declare their compliance by making a CPD declaration.

v. Provide evidence

We recommend that you keep a record of your CPD during the year so that you can submit/produce this easily if required to do so.

6.41 They must also keep a record of their CPD activities as they can be selected to show evidence of compliance by our quality assurance team through our Practice Assurance Scheme. ICAEW members are also required to complete an [annual online CPD declaration](#), and may also be required to show evidence of compliance to our Learning and Professional Development Department through its annual monitoring processes.

6.42 Accredited firms are required on their annual declaration to ICAEW to confirm that they have made arrangements to ensure that their principles and employees comply with the ICAEW Code of Ethics, ICAEW's Probate Regulations, and the professional principles set out in the Legal Services Act 2007 (as outlined above).

- 6.43 A false declaration is a serious professional conduct issue and can affect a member's ability to practise as a chartered accountant. Furthermore, inadequate CPD exposes members to risk and potential claims which could have a serious effect on their professional indemnity insurance, a situation practitioners and firms would wish to avoid. Such issues are picked up through our quality assurance processes.
- 6.44 Therefore, for the reasons stated above, ICAEW's regulations, code, and CPD arrangements will place authorised practitioners and the authorised/licensed firm for which they work under an obligation to ensure that they or those that work for them are, and continue to be, competent to carry out reserved legal services work, most particularly in cases where such work will form a minority of their business activity. This obligation and our regulatory and quality assurance processes carried out by our Learning and Professional Development Department and Quality Assurance Department ensure that our CPD regime is stringent and effective in ensuring authorised persons are up to date and competent to conduct the work they are carrying out.

## 7. DESIGNATION AS AN APPROVED REGULATOR

### Rationale

- 7.1 ICAEW is applying to become an approved regulator for the further reserved legal activities under Part 2 of Schedule 4 of the Act. We do not wish to accredit firms to conduct the full range of the further reserved legal activities, just those relating to taxation services.
- 7.2 We consider that this application is consistent with the Act's regulatory objectives of promoting competition and increasing access to justice. It will increase diversity in the legal services market by providing members with an opportunity to expand the services they deliver to include the further reserved legal activities. It will also enable them to provide a more integrated service to clients who seek the full range of taxation services from one provider. Research has shown that expert advice in tax related matters is already being sought from and provided by member firms and it would therefore provide a 'one stop shop' for all taxation services and thus lower the cost to the consumer.
- 7.3 Based on feedback from extensive consultation and research carried out by ICAEW, our expectation is that obtaining accreditation to carry out the further reserved legal activities is likely to be attractive to all sizes of ICAEW's member firms. The debt recovery cases brought by HMRC in the civil courts can include low level debt and personal bankruptcy proceedings. This type of work would be within the scope of small firms as would the strict liability criminal cases that may be brought in the magistrates' courts. Complex, high level debt cases and defended company winding up proceedings are more likely to be within the sphere of larger firms as would complex tax fraud/evasion cases. The ability to prepare documents relating to property and trusts is likely to be attractive to all sizes of firms as would administration of oaths. Notarial services are more likely to be used by larger firms.

### Who we will accredit as authorised firms

- 7.4 Our proposed Legal Services Regulations contain eligibility requirements for firms wishing to become accredited for the further reserved legal activities (whether authorised or licensed). In accordance with the Act, firms wishing to become authorised will be those in which all principals and owners are individually authorised to carry out one or more of the further reserved legal activities.<sup>6</sup>

### Accountancy-led practices

- 7.5 Although our regulations have been framed widely so as not to restrict the types of firm that will be able to apply for accreditation, we expect that, as has been the case with our probate regulation, in the main, firms will be accountancy-led. This should ensure that, from the outset, we will have a relationship with the firms we regulate. Firms wishing to become authorised are likely to be member firms that are already subject to our Code of Ethics and existing regulatory and disciplinary arrangements. They will be familiar with the systems we have in place for monitoring compliance, along with our processes for quality assurance.

---

<sup>6</sup> Although a firm may still be authorised if another body is a principal of, or has an interest in, a firm, but non-authorised persons are only able to exercise (or control the exercise of) less than 10% of the voting rights in that other body. Therefore, certain de-minimis holdings will be possible.

7.6 Importantly, we will also have a profile of firms seeking accreditation from us detailing both their complaints history and intelligence gathered through previous annual returns. This will mean that we will have a sound knowledge of the firms we accredit, which will inform our assessment of risk in determining each application for accredited firm status.

## The authorisation process

### The application

7.7 Our draft Legal Services Regulations (Annex 1) require applicants to provide us with any information we consider necessary to assess the firm/individual's suitability for legal services work. Provided each applicant can demonstrate to us that they are 'fit and proper', have suitably qualified persons, and agree to adhere to our regulatory framework, we would expect to grant an application without restrictions or conditions.

We will require the following information, among other matters, on the application forms:

Firm structure and staff	<ul style="list-style-type: none"> <li>• Firm name and number</li> <li>• The firm's practice type</li> <li>• Principal and other office addresses</li> <li>• Details of the principals, including those who wish to become authorised individuals</li> <li>• Details of employees wishing to become authorised individuals</li> <li>• Details of the firm's designated contact partner</li> <li>• Details of the firm's management and ownership structure including reporting lines</li> <li>• Details of the firm's compliance arrangements</li> <li>• Summary details of all staff, including non-authorised individuals and support staff</li> <li>• Arrangements for diversity monitoring and existing diversity data.</li> </ul>
Authorised individuals	<ul style="list-style-type: none"> <li>• Details of all individuals wishing to become 'authorised individuals' who can undertake, or control the undertaking of, the further reserved legal activities the firm is applying to conduct (excluding sub-contractors or consultants)</li> <li>• Details of each individual's legal services qualification(s)</li> <li>• Details of each individual's experience in conducting further reserved legal activities work, including details of the firms in which they previously employed or a principal</li> <li>• If the individual has previously approved as an authorised individual authorised to conduct the further reserved legal activities by another regulator, details of that regulator and the applicant's membership number</li> <li>• Details of any disqualification</li> <li>• Declarations by each individual that they will comply with the legal services regulations at all times</li> <li>• Details of the types of activity that will be used by the individual to maintain competence and keep up to date with developments in relevant law and practice.</li> </ul>

Business services	<ul style="list-style-type: none"> <li>• Details of any further reserved legal activities related services the firm intends to deliver, in addition to the further reserved legal activities work it is applying to conduct.</li> </ul>
Financial	<ul style="list-style-type: none"> <li>• Total fee income from all sources for the last financial year</li> <li>• Estimated fee income for the reserved legal activity work the firm is applying to conduct and related services.</li> </ul>
Statements	<ul style="list-style-type: none"> <li>• A statement on how the firm’s application will promote access to justice</li> <li>• A statement identifying, where appropriate, any risk to the regulatory objectives and professional principles and the steps the firm will take to mitigate those risks</li> <li>• A statement outlining the steps the firm will take to ensure that authorised individuals can conduct further reserved legal activities work independently and free from improper influence by non-authorised persons</li> <li>• Confirmation that the firm will ensure that it has appropriate arrangements in place for dealing with such issues as training, supervision, discipline and complaints-handling</li> <li>• Confirmation that sole practitioners have arrangements in place for the appointment of an alternate in the case of incapacity or death</li> <li>• Confirmation that the contact partner will notify ICAEW immediately of any matter that indicates the firm has ceased, or may in the future cease, to comply with the legal services regulations.</li> </ul>
Professional Indemnity Insurance (PII)	<p>Full details of the firm’s PII cover.</p> <ul style="list-style-type: none"> <li>• Confirmation that cover has been obtained from an ICAEW participating insurer</li> <li>• Copy of the PII policy schedule.</li> </ul>
Fit and proper declarations	<p>Relating to the firm:</p> <ul style="list-style-type: none"> <li>• declarations concerning the firm’s financial integrity and reliability (covering a period of 10 years)</li> <li>• a declaration concerning any civil liabilities over the last five years</li> <li>• declarations concerning the firm’s reputation and character.</li> </ul> <p>For the individuals wishing to become authorised for reserved legal activities work:</p> <ul style="list-style-type: none"> <li>• declarations concerning the individual’s financial integrity and reliability</li> <li>• a declaration concerning any civil liabilities</li> <li>• declarations concerning the individual’s reputation and character.</li> </ul>

Declarations	<ul style="list-style-type: none"> <li>• A declaration confirming that the firm will comply with the legal services regulations at all times</li> <li>• A declaration confirming that the firm will not hold itself out as an accredited firm until it has received confirmation in writing that the application has been successful</li> <li>• A declaration confirming that the firm will establish and maintain internal processes for handling complaints and will deal cooperatively with the Legal Ombudsman and comply with his office's directions as necessary</li> <li>• A declaration confirming that the firm will deal openly and cooperatively with ICAEW, and will inform us promptly of any issue concerning the firm as required by the regulations</li> <li>• A declaration acknowledging that we may make enquiries of, or about, the firm as necessary</li> <li>• A declaration acknowledging that we may publish or disclose information about the firm as required.</li> </ul>
--------------	--

7.8 To ensure that the process is as simple and transparent as possible, as with our probate applications, we will provide guidance on our website on how we will determine applications, along with our fee structure. Information will also be provided on the mechanisms applicants can use to apply for a review of our decision if they are dissatisfied with the outcome of their application.

7.9 Copies of the current probate application forms for firms and individuals wishing to become accredited for probate activities are contained in Annex 17. These forms will be developed/adapted for use in the application process for our regulation of the further reserved legal activities.

### **Qualification requirements**

7.10 All principals and employees wishing to supervise the undertaking of, or to undertake (without supervision by an authorised individual) the further reserved legal activities work will need to comply with our authorisation qualification requirements and be approved as 'authorised individuals'.

7.11 In order to apply for individual authorisation applicants will be required to provide evidence in their applications that their qualifications comply with the criteria for the particular regulation under which they are applying (set out in regulation 4.1 of the draft Legal Services Regulations (Annex 1)) by providing evidence of attendance on courses and the passing of assessments that cover the qualifications syllabus and criteria set out in schedules 1 and 2 to the draft Legal Services Regulations (Annex 1).

7.12 The draft Legal Services Regulations Annex 1 provide three routes to individual authorisation. Regulation 4.1(a) permits applications from ICAEW members who will have been awarded the ACA qualification; regulation 4.1(b) permits applications from those holding qualifications issued or recognised by another approved regulator which entitle the applicant to carry out the further reserved legal activity/activities for which they are applying for authorisation; and regulations 4.1(c) which permits applications from those who are 'otherwise qualified' who can demonstrate that their qualification(s) covers the criteria set out in regulation 4.1 of the Draft Legal Services Regulations and the Authorisation and

Qualifications Framework contained in schedules 1 and 2 to these regulations set out in Annex 1 of this application.

- 7.13 In developing our qualification requirements for individual authorisation, we carried out an assessment of the knowledge and skills practitioners need to competently conduct further reserved legal activities work. Having done so we developed a syllabus and qualifications criteria set out in schedules 1 and 2 of the draft Legal Services Regulations (Annex 1). In developing this syllabus and criteria we did however seek to set our qualification requirements at a level which we consider is appropriate to ensure that those persons undertaking and supervising the conduct of further reserved legal activities work are competent to do so, without restricting market entry by imposing unnecessary and burdensome requirements.
- 7.14 As we are aware of the level of knowledge covered in our members' ACA qualification relating to the subject areas of tax and trusts – we will not require our members to attend courses and pass assessments that cover these knowledge areas. Those applying under 4.1(b) and 4.1(c) however will need to satisfy us that they have the required knowledge of tax and trusts in addition to the other subject areas covered in the syllabus. For this reason the syllabus in Annex 1 sets out in full the areas that all applicants will need to have covered to satisfy us that they are competent to carry out the further reserved legal activity/activities for which they are applying but evidence of coverage of taxation and trusts set out in the syllabus will only be required from those applying under regulation 4.1c and possibly some applicants applying under regulation 4.1(b).

### **The contact partner**

- 7.15 We will require each firm we accredit to have a contact partner. This should be an individual with sufficient seniority and influence within the firm to ensure that his/her instructions are acted upon. It is recommended that the contact partner be a principal and an authorised individual and, in the case of a sole practice, they will be the sole practitioner.
- 7.16 This contact partner will play a vital role in ensuring the firm's compliance with our regulatory framework. They will be responsible for ensuring that an annual compliance review is carried out, and that the firm submits an annual return confirming its compliance with the legal services regulations and activities as an accredited firm.
- 7.17 The contact partner will also play an important role in ensuring that lines of communication are maintained with us as a regulator. They will be responsible for corresponding with us and providing information and/or documentation to us as required.

### **Legal Services affiliates**

- 7.18 In all our regulated areas, if a firm includes principals who are not ICAEW members, we require them to become affiliates. This is so we are able to take regulatory or disciplinary action against such persons if necessary (whether they are an individual or body corporate).
- 7.19 In the same manner, we are proposing that principals of firms wishing to become accredited for further reserved legal activities work become ICAEW affiliates if they are not members of ICAEW or one of the bodies listed in chapter 8 of our draft Legal Services Regulations (Annex 1), ie:
- Institute of Chartered Accountants of Scotland (ICAS);
  - Chartered Accountants Ireland (CAI); or
  - another approved regulator.

- 7.20 If a principal is already an ICAEW affiliate, an accredited firm, a registered auditor or a DPB-licensed firm, they will not be required to become a legal services affiliate under the Legal Services Regulations.
- 7.21 Although legal services affiliate status will not confer ICAEW membership on the applicant, it will bind the person to the Legal Services Regulations, our Code of Ethics and our arrangements for conduct and discipline.
- 7.22 We will only grant legal services affiliate status if we are satisfied that the applicant is a fit and proper person who has agreed to be bound by regulations and paid an annual registration fee.

## **Fees**

- 7.23 We have developed a business plan for the regulation of the further reserved legal activities which is contained in Annex 21 and is discussed further in Section 10 below. This business plan provides background on the methodology we have used to calculate our fees (Annex 22).
- 7.24 Although there is provision in our regulations for an application fee, it is not our current intention to charge one. We will, however, charge the relevant annual registration fee at the point of application, which will be refunded to the firm if the application is declined. Currently, it is proposed that the annual registration fee will start at £350 for a sole practitioner with one office and will increase depending on the size of the firm (ie, the number of offices, principals and authorised individuals). Different fee scales will apply to authorised firms and licensed firms as the licensing arrangements are more complicated.
- 7.25 In cases where we need to carry out a site visit, or where significant additional work is needed to determine a firm or individual's application or to undertake further monitoring activities, we may charge an additional fee. We will also charge firms a separate compensation levy on an annual basis. It is proposed that the minimum charge for a sole practitioner with one office will be £350, with higher charges for other firms based on their size and structure.
- 7.26 The method by which we have calculated our fees is aimed at being cost-reflective and is consistent with the approach currently applied in our other regulated areas. Our intention has been also to set fees at a level which will not act as a disincentive to firms (particularly smaller firms) wishing to enter the market.

## **Determining applications**

- 7.27 We will aim to acknowledge receipt of all applications within two working days and to determine the majority of applications within four weeks. We will monitor our performance against this target and will make the results available on our website for transparency.
- 7.28 However, in accordance with the Act, we recognise that we will have six months to determine each application (beginning on the day that all information required on the application form is received). This timeframe may then be extended to nine months by issuing an extension notice to the applicant. If we need to do this in particularly complex cases, or in cases in which we require further information, we will issue a notice to the applicant detailing the reasons for the extension.
- 7.29 We will delegate straightforward applications to appropriately trained members of staff for a decision. More complex applications will be referred to the Legal Services Committee for determination including those which involve consideration of 'fit and proper' issues. The Legal Services Committee will also consider applications in cases where accreditation is to



be granted subject to conditions or restrictions. The committee's powers are discussed in more detail in paragraphs 7.37 to 7.42 below.

7.30 In determining whether to grant an application, or to grant the application subject to conditions or restrictions, we will take into account the following factors (among others) in assessing risk.

- The nature of the work proposed to be undertaken by the applicant (including any further reserved legal activities-related work).
- The scale of the firm's likely fee income for further reserved legal activities and related services.
- Corporate and management structure; reporting lines and compliance arrangements
- Whether the firm anticipates that client and/or estate monies will be held in connection with the reserved legal activities work.
- The qualifications of the individuals intending to undertake and supervise reserved legal activities work.
- Fit and proper considerations (both at a firm and individual level).
- The firm's arrangements for maintaining competence through CPD.
- Confirmation that the firm has appropriate arrangements in place for dealing with issues such as record-keeping, supervision and complaints-handling.
- Declarations by the firm that they will comply at all times with our regulations, and will inform us of any issues which may compromise its ability to comply.
- The adequacy of the firm's PII cover.

7.31 We will also consider generally the extent to which granting the application could compromise the Act's regulatory objectives, particularly those of consumer protection and the public interest. Although we will have regard to the applicant's access to justice statement, we envisage few cases, in a further reserved legal activities context, where these considerations would pose a threat to the regulatory objectives such that we would want to decline the application.

7.32 When we grant accreditation, we will aim to inform the firm as soon as practicable, and at the latest within seven days of the decision. If accreditation is granted (with or without conditions) it will come into effect immediately. It will be issued for an indefinite period, subject to the applicant's ongoing compliance with the Legal Services Regulations and payment of the annual registration fee.

7.33 If an application is refused or issued subject to conditions or restrictions, applicants will have the right to apply for a review of the decision as discussed in paragraphs 7.43 to 7.44 below.

## **Data verification**

7.34 Although the onus will be on firms to provide us with a full account of their status, we will put in place processes to verify the accuracy of information we receive. Largely this will be based on information we already hold about the firm that has been gathered through previous annual returns. However, we will also run checks on each applicant against our disciplinary records, and check the records of any authorised person with their relevant approved regulator. We will also run checks against the FSA's Shared Intelligence Service (SIS) and the LSB's register of disqualified persons.

7.35 In addition, applicants applying for 'authorised individual' status under regulation 4.1(c) who are not ICAEW members or members of other approved regulators, will be subject to basic Disclosure and Barring Service (DBS) checks. These will contain details of all current criminal convictions held on the Police National Computer, but will not include details of any spent convictions or cautions.

7.36 We may elect to carry out an initial review of a firm and, in those circumstances, we would reserve the right to charge a fee. Our aim in conducting the review would be to gain an understanding of the firm's ownership and management structure, and its business and income streams. This will inform our assessment of risk and whether any conditions or restrictions on the firm's accreditation may be required. It will also inform our requirements for subsequent monitoring.

## **Legal Services Committee**

7.37 The Legal Services Committee will be responsible for overseeing ICAEW's regulatory framework for the further reserved legal activities. As set out in our draft Legal Services Regulations, the committee will comprise twelve members, with a 50:50 split between lay and non-lay members. A lay person will be defined as someone who has never qualified or practised as a professional accountant, whether chartered or otherwise. Solicitors and persons with legal training will also be excluded. The balance of the committee will be made up of practitioners with expertise in reserved legal services, and the chair of the committee will be a lay person and will have a casting vote where necessary.

7.38 The composition of the committee is intended to strike a balance between those members who have a sound technical knowledge of further reserved legal activities and accountancy-related issues (such as taxation) and a strong lay membership. We consider that this proportion of lay members will provide the public with the requisite assurance that the committee's decision-making processes are fair and transparent.

7.39 The Legal Services Committee will have a range of responsibilities in relation to the further reserved legal activities, which will include:

- considering applications by firms or individuals for accreditation;
- granting accreditation subject to conditions or restrictions;
- imposing restrictions or conditions on an accredited legal services firm;
- suspending or withdrawing accreditation;
- granting or reviewing dispensations from the regulations;
- considering applications by firms to modify accreditation;
- reviewing QAD reports and returns;
- making appropriate enquiries to confirm that firms and individuals are complying with the Legal Services Regulations; and
- issuing regulatory penalties with the consent of the firm.

7.40 As set out in section 9 of our draft Legal Services Regulations (Annex 1), some of these powers may be delegated to appropriately trained members of staff. However, if an application for accreditation is to be rejected, or granted subject to conditions or restrictions, these powers will not be delegated and will be reserved to the Legal Services Committee only.

7.41 We will only impose conditions or restrictions in cases where we consider that additional safeguards are needed to protect the interests of consumers or the Act's regulatory objectives. These may include restrictions on the types of further reserved legal activities work a firm may undertake; a requirement on the firm to submit more frequent returns; or requirements for targeted CPD.

7.42 As a matter of policy, an application would only be refused if we considered that the risk to the regulatory objectives were so significant that it could not be mitigated or eliminated by the imposition of a condition or a restriction on accreditation.

## **Review of decisions**

- 7.43 If a firm or individual is dissatisfied with a decision of the Legal Services Committee or ICAEW to reject their application, or to approve it subject to conditions or restrictions, they will have the right to apply for a review. The Review Committee will consider the matter afresh and consider any new material put forward by the applicant. It will then be able to make any decision that ICAEW could have made. The Review Committee's remit is described further in paragraphs 3.23 to 3.25 above.
- 7.44 Thereafter, the applicant will have the right to appeal to the First-tier Tribunal of the General Regulatory Chamber (GRC) if they remain dissatisfied with the Review Committee's decision. In these circumstances, the Review Committee's decision will be postponed until the GRC either confirms or varies the decision, or directs that the Review Committee reconsider the matter.

## **Post-authorisation arrangements**

- 7.45 The firms and individuals we accredit for further reserved legal activities will be bound to comply with our bye-laws, regulations and guidance at all times. The key areas of compliance are outlined below.

### **Code of Ethics**

- 7.46 As with ICAEW members and member firms, accredited legal services firms will be bound by our Code of Ethics, which is set out in Annex 14 and discussed in paragraphs 3.77 to 3.82 above. Critically, this will place a duty on firms and individuals undertaking further reserved legal activities work to act in a way that is consistent with the five fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.
- 7.47 By adhering to these principles and applying the underlying ethical framework to further reserved legal activities work, accredited firms should maintain and promote the professional principles contained in section 1 of the Act, which require the authorised person to:
- act with independence and integrity;
  - maintain proper standards of work;
  - act in the clients' best interests; and
  - maintain confidentiality of clients' affairs.
- 7.48 While the code's principle of objectivity precludes members from acting in the client's interests if to do so would be unlawful, in the further reserved legal activities context it will function to promote and protect the client's interests because it will ensure that further reserved legal activities work is carried out free from bias and undue influence.
- 7.49 Under the code, accredited firms will be required to take care in conducting reserved legal activities work, and will have a duty to ensure that they act with integrity and keep clients' affairs confidential.

### **Further reserved legal activities work**

- 7.50 Our Code of Ethics also places a duty on members to engage only in services they are competent to perform. Therefore, although we may grant accreditation without conditions or restrictions, the onus will be on firms to ensure that they only handle matters that fall within their sphere of competence. If we believe individuals or firms are acting outside their area of knowledge, we will put in place safeguards to ensure that the quality of further reserved legal activities work is maintained and the interests of clients and the public are protected.

- 7.51 Similarly, firms will be responsible for demonstrating that they have proper processes in place to ensure the appropriate supervision of employees who carry out further reserved legal activities work on behalf of authorised individuals. We will require firms to confirm on their application form that they have arrangements for supervision, and will monitor the effectiveness of these processes through monitoring reviews and our PA scheme.
- 7.52 If at any time a firm ceases to have a principal or employee who is an authorised individual, the regulations require the firm to stop undertaking further reserved legal activities work immediately until another principal or employee becomes authorised.
- 7.53 All accredited firms will be obliged to deal with us in an open and cooperative manner. This will include keeping us fully informed of the identity of those individuals undertaking further reserved legal activities work, to changes in the firm's management and ownership structure, and to any issues that arise that might prevent the firm from complying with its regulatory responsibilities.
- 7.54 Firms will also be required to set out on the application form their processes for preventing anyone who is neither an authorised individual nor a person working under their supervision from having any improper influence over the conduct of further reserved legal activities work. This is reflected in our draft Legal Services Regulations 2.4h, 2.7b and 3.5.
- 7.55 We consider that these obligations are consistent with better regulation principles insofar as they have been set at an appropriate level to ensure that the quality of further reserved legal services is maintained, while at the same time not limiting the ability of firms to innovate and deliver a range of services to their clients.

### **Continuing professional development**

- 7.56 In accordance with regulation 3.4, firms that we accredit for further reserved legal activities will be required to ensure that all principals and employees undertaking authorised legal services work and/or authorised probate work are, and continue to be, competent to do so. This regulation seeks to ensure that all individuals undertaking or supervising reserved further reserved legal activities work remain up to date with changes to law and practice, and receive ongoing training and development as appropriate.
- 7.57 We will monitor compliance with this regulation and our CPD regulations (Annex 19) through our system of annual and member profile returns and QAD reviews. Firms will be expected to confirm how they are complying with CPD requirements, and non-compliance will be dealt with through an escalating range of enforcement measures from informal reminders through to action in accordance with our Disciplinary Bye-laws (Annex 7).

### **Clients' money and other property**

- 7.58 Regulations 3.8 and 3.9 of the Legal Services Regulations make provision for firms receiving property in connection with authorised legal services work and/or authorised probate work. They provide that any firm receiving property in connection with authorised legal services work activities must ensure that all reasonable steps are taken to keep the property safe and that details of the property are recorded. It is also recommended that insurance cover is obtained as appropriate.
- 7.59 The regulations also provide that any property may only be released on the client's written instructions, and that any client or estate monies are held in accordance with ICAEW's clients' money regulations (although these must be kept separate from other clients' monies). As set out in Annex 12 and discussed in paragraphs 3.66 to 3.67 of this application these regulations place an obligation on firms to (among other matters) place any client monies in a separate client account; to keep full records of monies paid into and out of all client bank

accounts, and to carry out a reconciliation of all client bank accounts at least every five weeks.

## **Record-keeping**

7.60 Regulation 3.10 places an obligation on firms to ensure that they maintain appropriate records of authorised work undertaken on behalf of clients. The guidance to the proposed regulation clarifies that these records may be electronic, but that a firm must be able to access these records easily, regardless of the mechanism used. There will be an expectation that the records will be kept for at least six years.

## **Regulatory conflict**

7.61 The draft Legal Services Regulations (Annex 1) place a duty on firms to inform us promptly (within 10 business days) if a requirement of another regulator (including an approved regulator or other external regulator such as the FSA) might cause them to cease complying with ICAEW's Legal Services Regulations. We will take steps to mitigate the risk of regulatory conflict in these circumstances and are a party to a memorandum of understanding (MoU) (Annex 24) with the other approved regulators and professional bodies. This is discussed further in Section 12 below.

## **Cessation of practice**

7.62 The proposed regulations also place a duty on firms to have appropriate arrangements in place to protect clients' interests on cessation of practice. Guidance to the regulations requires that, in cases where the accredited firm is a sole practice, the firm appoints an alternate firm to assume conduct of ongoing work in the event of the practitioner's incapacity or death.

## **Monitoring compliance**

### **Annual review and returns**

7.63 Our proposed regulations place a requirement on accredited firms to review, at least annually, how they are complying with the regulations. The contact partner will be responsible for this review, which is intended to encourage firms to assess critically the effectiveness of their processes for compliance.

7.64 The review will also enable firms to prepare more accurately any periodic return that may be required. As set out in our proposed regulations, we will require firms to submit a return at least once annually in order to monitor their compliance with our arrangements. In relation to further reserved legal activities-related services, this return will require firms to provide us with up-to-date data to confirm:

- the identity of persons authorised to carry out further reserved legal activities work and their status;
- the profile of further reserved legal activities and related work undertaken by activity;
- the volume of further reserved legal activities transactions;
- total turnover and turnover in relation to further reserved legal activities;
- financial information in relation to client and/or estate monies held;
- details of the firm's appointed alternate (if relevant);
- details of any complaints that have been received or investigations undertaken and their outcome;
- that authorised individuals (both principals and employees) have complied with our CPD requirements; and

- that any matters raised in the previous annual compliance review have now been addressed.

7.65 These and other questions are contained in the annual return. These questions may change in time if we identify new emerging risks in the regulatory environment. An extract of this annual return outlining questions which relate specifically to probate activities is attached as Annex 11. As with probate, questions specific to the further reserved legal activities will be drafted and inserted into the annual return.

## Reviews and Practice Assurance

7.66 QAD will also carry out monitoring reviews of firms on a periodic basis. The frequency of reviews will depend on risk, but QAD will review the majority of firms approved or licensed by us for further reserved legal activities within the first 24 months of their accreditation. We will not charge for this initial review.

7.67 Subsequent reviews will be tailored to take account of the QAD's assessment of risk. This would include consideration of (among other matters):

- information from the firm's annual return;
- the firm's size;
- the volume and complexity of reserved legal activities work being undertaken;
- whether clients' or estate monies are being held in relation to further reserved legal activities work;
- the value of clients'/estate monies held;
- the firm's complaints-history; and
- the disciplinary record of the firm and any authorised individuals.

7.68 In addition, the firms we accredit for further reserved legal activities will be subject to our PA framework. As discussed in paragraphs 3.54 to 3.57 above, this scheme is designed to provide members with guidance and support in developing and maintaining quality processes in their practices.

## Modifications and dispensations

### Dispensations

7.69 Firms accredited for reserved legal activities will have a duty to inform us in writing within 10 business days of a situation arising that may mean that they cannot, or expect not to be able to, comply with one or more of the Legal Services Regulations. We will expect firms to provide us with full details of the situation and to outline the steps they are taking to rectify the issue.

7.70 In these circumstances, firms will be able to apply in writing for a dispensation from the requirement to comply with the regulations. We will aim to acknowledge receipt of the application within two working days and to submit it to the Legal Services Committee for consideration as soon as practicable, and in any event within a further 10 working days, provided all necessary information has been obtained.

7.71 The Legal Services Committee may grant a dispensation of no more than 90 days, subject to being satisfied that it is reasonable to do so having regard to the public interest and the interests of any client.

7.72 If the Legal Services Committee rejects an application for a dispensation, it will inform the accredited firm of its reasons in writing within 10 business days. The firm will then be entitled to apply to the Review Committee for a review of the decision (as set out in paragraphs 3.23 to 3.25 above).

### **Modifying accreditation**

7.73 Accredited firms will be entitled to apply at any time for an order modifying their accreditation in accordance with regulation 2.12. We would require firms to submit their request to us in writing, outlining in full the situation and the reason for their request. As with the process for dispensations, we will aim to acknowledge the application within two working days, and to submit it for consideration to the Legal Services Committee within 10 working days, provided all necessary information has been obtained.

7.74 Although we will not charge for this process, we will reserve the right to apply a fee if substantial staff time is needed to determine the application (for example, if a visit to the firm is required or if the application contains substantial supporting information). In these cases, the level of the fee will be determined by the Legal Services Committee.

7.75 As set out in regulation 2.13, the Legal Services Committee may grant the modification, or modify accreditation on such other terms as it considers appropriate. If the Legal Services Committee rejects the application, it will inform the accredited Legal Services firm or individuals of its reasons in writing within 10 business days. The accredited firm will then be entitled to apply to the Review Committee for a review of the decision (as set out in paragraphs 3.23 to 3.25 above).

### **Complaints-handling arrangements**

7.76 Our proposed reserved legal services regulations outline a clear framework for complaints-handling in accordance with the Act. Firms will be required to maintain an internal complaints procedure and advise clients in writing of their right to refer matters to the Legal Ombudsman if they have a complaint. If matters are referred to the Legal Ombudsman, firms will need to cooperate fully with his investigation and comply with any decision.

7.77 In keeping with an outcomes-focused approach to legal services regulation, the regulations do not prescribe the steps that firms should take in seeking to resolve complaints. They provide firms with the freedom to resolve matters as they see fit, but contain some minimum requirements to ensure that clients' rights and interests are protected and that they are able to raise their concerns and access redress as appropriate.

7.78 The regulations require, for example, that in the event of a complaint, the matter should be investigated and dealt with in a fair, prompt, constructive and honest manner by a principal of the firm (or, in the case of a licensed firm, by the HoLP). This is intended to promote clients' confidence that their concerns will be taken seriously by the firm and investigated thoroughly.

7.79 The regulations also incorporate the requirements set out for complaints-handling by the LSB and Legal Ombudsman. Firms will be required to maintain a separate complaints file, and to remind clients of their right to refer matters to the Legal Ombudsman either at the conclusion of the complaints process, or after eight weeks if the matter is not resolved to the client's satisfaction within that time.

7.80 As guidance, we have also included a recommendation that firms set out in writing the scope of their intended work at the beginning of the engagement. This is on the basis that many complaints arise out of a misunderstanding of what services the firm has been retained to do, progress in delivering those services and the costs involved. We advise that firms should ensure that the client understands and agrees to the process, and that they should keep the

client updated as the matter proceeds. We see these measures as vital in helping firms avoid complaints, as well as promoting clients' understanding of their rights and duties during the legal process.

- 7.81 We also emphasise the importance of learning in relation to complaints and recommend that, at the conclusion of the complaints process, firms reflect on whether procedures or systems could be introduced or modified to avoid similar complaints arising in the future.
- 7.82 In our view, these arrangements should ensure that complaints about accredited firms will be dealt with fairly, effectively and in a timely and client-focused manner. Firms will retain the flexibility to resolve matters initially, but there will be transparency in complaints-handling as clients will be informed of their right to complain to the Legal Ombudsman at each stage of the process.

## **ICAEW and the Legal Ombudsman**

- 7.83 As the Legal Ombudsman's remit is limited to dealing with complaints of poor service by accredited firms, we will continue to be responsible for investigating issues of possible misconduct. These will be dealt with through our investigation and disciplinary processes outlined in section 3 above.
- 7.84 We will continue to work collaboratively with the Legal Ombudsman and to share information where possible to avoid inconvenience and delay arising out of duplicated processes and evidential requirements. To assist in this process we have entered into a MoU with the Legal Ombudsman as has been the case with other approved regulators.
- 7.85 As a general rule, we understand that consumers will be referred first by firms to the Legal Ombudsman, but that they will be signposted back to us if the complaint involves an issue or issues of possible misconduct. In these cases, we will consider whether the issue is one that could give rise to possible disciplinary action under our Disciplinary Bye-laws, and we will refer consumers to other bodies as necessary during the initial assessment process.

## **Compensation and indemnification arrangements**

### **Professional indemnity insurance**

- 7.86 Firms we accredit for further reserved legal activities will be required to comply with our PII regulations as set out in Annex 9 and discussed in paragraphs 3.70 to 3.76 above. These will require firms to carry out an annual risk assessment to determine the level of PII that is suitable for their needs, and carry a minimum level of indemnity of at least £500k per claim. This is likely to be done in conjunction with the firm's PII brokers.
- 7.87 As with our regulatory arrangements for probate, we considered that the requirement for PII of this level balanced the need for strong consumer protection on the one hand, with the Act's objective of promoting greater competition in the market on the other. Additionally, these are minimum requirements only, and the majority of medium-sized and large firms carry PII at levels far in excess of these limits. In cases where, for example, the value of the risk is likely to exceed the level of insurance, firms are required to notify their clients in writing at the beginning of the engagement that their PII is capped and their level of cover.
- 7.88 We were also advised by ICAEW's insurance broker that the same level of cover that we currently set for probate work would be sufficient and appropriate to set for our regulation of the further reserved legal activities as it would adequately protect consumers in cases of negligence or fraud relating to the further reserved legal activities matters where there is one or more innocent principal.



## Compensation arrangements

7.89 Although PII should provide adequate protection for clients in cases of fraud where there is one or more innocent principal, as with our regulation of probate, we have also addressed the potential need to provide redress for consumers in cases where PII is invalidated because the fraud has been carried out by a sole practitioner or two or more principals acting in collusion.

7.90 As part of our probate regulation, a Probate Compensation Scheme was set up in order to address this potential need and to comply with the Act's requirements for compensation arrangements where individuals and firms engage in probate and estate administration work. We will widen the scope of our Probate Compensation Scheme to cover, additionally, the further reserved legal activities. A copy of the draft Legal Services Compensation Scheme Regulations are attached at Annex 18. This compensation scheme will continue to be funded initially through Professional Standards' budget and underwritten by a master insurance policy. It will continue to be a discretionary fund of last resort which will compensate clients in cases where a firm's own PII is invalidated. ICAEW's insurance broker has assured us that there will be no difficulty in extending our current master insurance policy to cover the further reserved legal activities in addition to probate and estate administration.

7.91 As set out in section 3 of the draft Legal Services Compensation Scheme regulations, grants will be made wholly at the discretion of the Legal Services Committee where an applicant<sup>7</sup> is able to satisfy the committee that they have suffered loss as a consequence of:

- fraud or other dishonesty on the part of the accredited firm, or any of its principals or employees, in carrying out authorised legal services work and/or authorised probate work; or
- a firm's failure to account for monies received in connection with authorised legal services work and/or authorised probate work.

Chapter 5 provides that grants will not be made in respect of losses which, among other matters:

- arose at a time when the firm was not accredited;<sup>8</sup>
- arose solely by reason of professional negligence;
- did not result from the firm's activities in relation to authorised legal services work and/or authorised probate work; or
- result from the firm's trading debts or are the personal debts of the firm or any principals, employee or shareholders.

7.92 Grants from the scheme will be capped in any one year at a level comparable to our minimum requirements for PII, ie, £500k per claim.

7.93 From year one of our probate operations, the compensation levy has been used to fund the compensation scheme and annual premium. A percentage of the compensation levy has also be used to start building up a compensation fund over time, with minimum contributions of £100k per year aimed at accumulating a fund of £1m over 10 years. This is based on our target break-even volumes. Our intention in the medium to long-term is that a fund will enable us to increase the level of self-insured excess, thereby reducing the annual premiums and in turn the compensation levy that is charged to practitioners.

---

<sup>7</sup> Applicants that are body corporates or registered charities will only be eligible for a grant if their annual turnover for the last accounting year was less than £1 million.

<sup>8</sup> Unless the Legal Services Committee is reasonably satisfied that, at the time the relevant act or default took place, the applicant was not aware that the firm's accreditation had ceased or been suspended, or that the principal or employee conducting the further reserved legal activities had been disqualified under the Act.

7.94 We have also included in our regulations a requirement that firms inform clients in writing at the beginning of the engagement of the existence of compensation arrangements and the timescales for making applications. We also recommend in guidance that firms inform clients of the ways in which they can access further information about the scheme, in particular the circumstances in which a grant may be made. We consider that this will increase consumers' understanding of their rights during the legal process, as well as ensuring that they have a better understanding of the situations in which they may or may not be covered by these arrangements.

## Enforcement and discipline

### Powers of ICAEW and the Legal Services Committee

7.95 ICAEW and the Legal Services Committee will have the power to take regulatory action against a firm if they consider that the firm is not complying with the Legal Services Regulations, or that regulatory action is required to protect the interests of clients or the public interest.

Under the legal services regulations, ICAEW has the power to:

- impose conditions or restrictions on the way in which an accredited firm conducts further reserved legal activities work;
- suspend accreditation;
- withdraw accreditation; and
- impose regulatory penalties with the firm's consent.

As is set out in regulation 10.1, the Legal Services Committee may elect to impose a condition or restriction on the firm's accreditation if it considers that:

- the firm has not or may not have complied with the Legal Services Regulations in the past and the conditions or restrictions are justified;
- there is reason to believe that the firm may cease to comply with these regulations in the future and the conditions or restrictions are justified;
- being accredited or continuing further reserved legal activities work without conditions or restrictions could adversely affect a client or any other person;
- the condition or restriction is appropriate to ensure that further reserved legal activities work is undertaken, supervised and managed effectively;
- the firm no longer meets the eligibility requirements for accreditation and the conditions or restrictions are justified;
- the firm is not, or may not be, complying with the PII regulations and the conditions or restrictions are justified;
- the firm is over 30 days late in filing any required returns or reports and the conditions or restrictions are justified; or
- the firm has failed to pay any required fees, fines or costs within time and the conditions or restrictions are justified.

7.96 These conditions may require authorised individuals to undergo further training or receive enhanced supervision, or require firms to introduce more rigorous processes to ensure their compliance with the regulations. Similarly, a firm may be barred from carrying out certain types of further reserved legal activities work, or from accepting instructions from specific categories of client. The regulations make it clear that, if a condition or restriction is imposed by ICAEW, a firm will need to undertake to comply with its terms and that failure to comply may result in disciplinary action being taken against the firm.

- 7.97 The Legal Services Committee will also have the power under regulation 10.7 to impose restrictions or a condition on an urgent basis if we consider there is a need to do so. In these circumstances, the order would come into effect immediately, although the firm would have the right to make oral and written representations to the committee within 10 business days, and to apply to the Review Committee for a review of the underlying order in accordance with the procedure set out in chapter 11.
- 7.98 In more serious cases, the Legal Services Committee will have the power to suspend accreditation or withdraw accreditation completely. Accreditation may be suspended or withdrawn on a number of the grounds set out in regulation 10.4, or if the firm has failed to comply with any restrictions or conditions, or undertakings it has given to ICAEW.
- 7.99 In all cases the firm will have the right to apply to the Review Committee for a review of the decision and thereafter to the GRC. Any order imposing restrictions or conditions would not come into effect for at least 10 business days and, during this time, the affected party would have the right to apply for a review of the decision. Similarly, orders suspending or withdrawing accreditation would not come into effect for at least 28 days, providing the firm with an opportunity to seek a review.

### **Regulatory penalties**

- 7.100 In cases where we are satisfied that there has been a breach of the Legal Services Regulations, but where the breach is not so serious as to warrant action in accordance with the Disciplinary Bye-laws, the Legal Services Committee may propose a regulatory penalty to the firm. If the firm does not agree that there was a breach, the matter is referred to the Investigation Committee.
- 7.101 There is no right of review or appeal to a regulatory penalty.

### **Powers of the Investigation and Disciplinary Committees**

- 7.102 Although the Legal Services Committee will have the power to propose regulatory penalties to firms with their consent, it will not have the power to apply ICAEW's wider disciplinary arrangements. So if the Legal Services Committee considers that a matter could give rise to possible disciplinary action and should be investigated, it will be required to refer matters to the Investigation Committee. If there is a liability to disciplinary action, the matter will be dealt with by the Investigation Committee or referred on to the Disciplinary Committee for consideration.
- 7.103 The remit and powers of the Investigation and Disciplinary Committees are outlined in paragraphs 3.28 to 3.47 above. Depending on the seriousness of the breach, the Disciplinary Committee will have the power to impose the following sanctions, among others, if it considers that a matter that has been referred by the Investigation Committee is proved:
- to reprimand or severely reprimand the accredited legal services firm or individual;
  - to impose fines;
  - to withdraw accreditation; or
  - to exclude membership.
- 7.104 If a firm or individual is dissatisfied with a decision or order of the Disciplinary Committee they will have the right to appeal to the GRC. Accordingly, parties will have two opportunities to appear in person to present their case: once before the Disciplinary Committee and once on appeal.

### **Targeted and proportionate enforcement action**

- 7.105 In cases where we consider that firms may be in breach of our regulatory arrangements, we will act using targeted and proportionate enforcement action. In less serious cases we will seek to achieve an informal resolution where possible. Our experience in the regulated areas of probate, audit, insolvency and investment business has shown that a wide range of minor compliance issues can be resolved informally with firms through discussion. In our view, this approach fosters a culture of compliance among firms, at the same time as reducing the costs of regulation and enabling limited resources to be targeted at areas of greatest risk.
- 7.106 However, in more serious cases where action is needed to protect the consumer and/or the public interest, we will apply one of the above enforcement powers or sanctions to ensure that the quality of further reserved legal services work is maintained, and that firms conduct further reserved legal services work in accordance with the professional principles. The factors we will take into account in determining whether it may be necessary to restrict, suspend or withdraw accreditation, or refer a matter for possible further disciplinary action will include (among other matters):
- the seriousness of the risk to the regulatory objectives (in particular those of consumer protection and the public interest);
  - the number of clients and other persons affected by the issue/behaviour;
  - whether the act or omission was deliberate or ongoing;
  - whether the firm or the individual concerned has acknowledged the issue;
  - the steps that the firm or individual is taking (or has taken) to remedy the situation; and
  - the firm's/individual's regulatory and/or disciplinary history.

### **Intervention powers**

- 7.107 Despite the low incidence of fraud historically among our members, when making our application for designation to regulate probate activities, we recognised that there may be a risk to the consumer in cases where firms engage in authorised probate work and hold client and/or estate monies. Therefore, in order for us to protect the consumer and the wider public interest, we considered that it would be prudent to hold intervention powers under the Act for all accredited firms. We saw this as acting in accordance with the regulatory objectives and best regulatory practice, which is a requirement for approved regulators under section 28 of the Act.
- 7.108 We considered that the ability to intervene in cases of fraud or financial mismanagement would be particularly important in relation to authorised firms, the vast majority of which would be sole practices or very small firms where PII could be invalidated in the event of fraud. We saw the risk to the consumer being increased in these circumstances and believed it would be prudent for us to have the ability to intervene to protect the regulatory objectives if necessary, in the same way that we would be able to intervene into licensed firms.
- 7.109 ICAEW therefore applied, under Schedule 14 of the Act, to have the same intervention powers as an Approved Regulator as it had as a Licensing Authority. These powers were granted by Parliament by way of a Section 69 order for all legal services regulated by ICAEW.
- 7.110 We do not, however, envisage using these powers lightly. It is likely that we would only take such a step in cases where there was evidence of a serious suspicion or likelihood of fraud or financial mismanagement, or where other measures had been applied but failed (such as the imposition of conditions or restrictions on the firm's accreditation).
- 7.111 In cases where we do intervene, this would be done in conjunction with an order restricting the firm's further reserved legal activities on an urgent basis under regulation 10.7 of our draft Legal Services Regulations (Annex 1). Regulatory and/or disciplinary sanctions would also

be taken against the firm's principals and authorised individuals, and accreditation would be withdrawn.

7.112 It is a requirement of draft regulation 3.12 that firms conducting further reserved legal activities have in place arrangements to protect their clients' interests on cessation of practice. In guidance to this regulation we require that sole practitioners, in particular, nominate alternates to take over their work in the event of incapacity or death. Therefore, if we were aware that an alternate had been appointed previously by a firm, we would arrange for that firm to take over and complete any ongoing further reserved legal activities work. If no alternate has been previously appointed, we would appoint a firm as our agent to intervene into the firm to take control of the client monies and files, to protect the interests of existing and past clients.

## 8. DESIGNATION AS A LICENSING AUTHORITY

8.1 ICAEW's application to become a licensing authority for the further reserved legal activities is made in accordance with Part 1 of Schedule 10 of the Act. This section is intended to address the LSB's requirement for an explanation of how our proposed regulations comply with the requirements of section 83(5) and Schedules 11 and 13 of the Act, and the LSB's guidance on licensing rules. We also demonstrate how our proposed regulations and broader regulatory arrangements will support the outcomes set out in the LSB's guidance.

### Who we will accredit as licensed firms

8.2 We expect that the firms we will accredit will be mainly those that are accountancy-led, although our regulations have been framed widely to embrace other types of entity that we will accredit on their merits. As with our arrangements for authorised firms, this is to ensure that, from the outset, we have an understanding of the types of firm we will be licensing: their structure, processes and business streams.

8.3 Whilst we believe that the all sizes of firms will benefit from the ability to carry out the further reserved legal activities for the reasons set out in paragraphs 4.24 to 4.27 of this application, we anticipate that, as with our probate regulation, the greatest interest in alternative business structures (ABS) will come from our mid-tier to larger firms. This is because we do not expect every principal or owner in a larger accountancy firm to become individually authorised for the further reserved legal activities.

8.4 The research we carried out in 2011, indicated that almost two thirds of firms with two or more principals would apply to become licensed if we were to become a probate regulator.<sup>9</sup> This research has been borne out by our probate regulations as the number of firms accredited for probate as at 14 September 2015 showed two thirds are licensed firms.

### Our proposed regulations/regulatory arrangements

#### Appropriate qualification requirements

##### Section 83(5)(a) and section 21(2)

Licensing rules of a licensing authority must contain appropriate qualification regulations in respect of licensable bodies to which the licensing authority proposes to issue licences.

8.5 In Section 6 above we have outlined our qualification and training requirements for individuals wishing to become authorised for reserved legal activities work. These are set out in our draft Legal Services Regulation 4.1 and schedules 1 and 2 to the Legal Services Regulations. In accordance with the LSB's guidance on licensing rules, these requirements will apply equally to firms applying for accreditation under the ABS regime as they do for those applying for authorisation. We will not impose qualification requirements on those working in licensed firms that are any different to those that apply to individuals working in authorised firms.

8.6 We agree with the LSB's view that generally the qualifications and experience of those working in licensed firms are for the firm to decide, based on the requirements of their

---

<sup>9</sup> Although another third of respondents indicated that they were unsure whether they would apply for accreditation as an approved firm or a licensed firm. This may indicate that they would need more time to consider what the two options would entail.

businesses and the expectations of staff. We have therefore set our qualification/training requirements at a level which we believe is appropriate given our members' current skill set and training. This should ensure that reserved legal activities work is delivered by persons of sufficient skill and competence, while at the same time not placing unreasonable or unjustified qualification requirements on applicants wishing to enter the market.

- 8.7 In accordance with the Act, our proposed regulations require licensed firms to have a Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA). The HoLP will need to be an authorised individual and we will need to approve their designation. We will also need to approve the appointment of the HoFA who we would expect to hold an appropriate accounting or financial qualification. Given the nature of the firms that we are likely to accredit, this individual is likely to be a Chartered Accountant.
- 8.8 If a firm were to propose as a HoFA an individual who does not hold these qualifications, we would need to be satisfied that the individual's background and training was appropriate given the size and profile of the applicant firm and its likely business streams and turnover.
- 8.9 In both cases, the guidance to our regulations states that we would expect these persons to be of sufficient seniority to ensure that their instructions are acted upon by the firm's other principals and employees. We would prefer the HoLP and HoFA to be a principal of the firm where possible.
- 8.10 As with our probate regulation, Disclosure and Barring Services (DBS) checks will be carried out on all applicants applying to become a HoLP and HoFA. These will be standard checks and will therefore include spent convictions and cautions that are on the Police National Computer, save for those that are protected under The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended).
- 8.11 Although we will need to approve a firm's appointment of a HoLP and HoFA, we would expect to decline these appointments only in exceptional cases. Examples might be where DBS checks reveal a criminal record, or where the firm was intending to appoint a relatively junior member of staff as a HoLP who does not have access to the firm's managerial board. Likewise, we would not approve a HoFA's appointment if there are questions around their fit and proper status (particularly relating to issues of financial mismanagement).
- 8.12 In accordance with the LSB's guidance, the information we receive about these individuals will be used to inform our overall risk assessment of an applicant firm. If we consider that there may be some risk to the HoLP or HoFA's ability to discharge their regulatory responsibilities, we would apply enhanced mechanisms for monitoring (as discussed in paragraphs 7.66 to 7.68 above). This may necessitate more frequent reviews of the firm, including a review before accreditation is granted.

## Access to justice

### Section 83(5)(b)

Licensing rules of a licensing authority must contain provision as to how the licensing authority, when considering the regulatory objectives (in compliance with its duties under section 3(2) or 28(2)) in connection with the application for a licence, should take account of the objective of improving access to justice.

- 8.13 All firms wishing to become accredited for reserved legal activities work will be required to set out on their application form how their application will promote access to justice. We will need to be satisfied that this objective will be promoted before we grant a firm's application – although we can envisage few situations in which a firm's statement on this point alone would lead to the application being refused. We agree with the LSB that it will be difficult for

applicants to predict in isolation how their application will have an impact on this principle, and therefore we do not consider that responses to this question will be a determining factor on their own.

- 8.14 We understand from the LSB that the purpose of requiring this data is to contribute to a sector-wide evidence base that will enable the LSB and other approved regulators to understand better and evaluate the impact of ABS on access to justice. Accordingly, we will be willing to assist the LSB in its compilation of an annual statement on the impact of ABS, and will discuss with the LSB what evidence it needs for this purpose.
- 8.15 In order to better promote clients' awareness and understanding of legal processes, we have included within our regulations guidance to firms that they should ensure the client understands and consents to the scope of the work that is to be conducted, and the likely cost, at the beginning of the engagement. We consider that the best way to obtain and record the client's agreement is in an engagement letter. We also suggest that firms should be prepared to explain to clients aspects of their work as it progresses.
- 8.16 In our view, these initiatives should promote public legal education and access to justice and should contribute to the achievement of the following outcomes set out in LSB guidance:

**Outcome:** ABS provide examples of innovative and flexible ways of providing a greater range of services and enhanced value for money for consumers.

**Outcome:** ABS provide examples of improving access to justice that can be used by other approved regulators, licensing authorities and the LSB as examples of good practice in improving access to justice in general.

**Outcome:** consumer trust in the provision of legal services improves.

**Outcome:** consumer awareness and understanding of their right to, and how to get, legal advice improves.

## Regulating conduct

### Section 83(5)(c)

Licensing rules of a licensing authority must contain appropriate arrangements (including conduct rules, discipline rules and practice rules) under which the licensing authority will be able to regulate the conduct of bodies licensed by it, and their managers and employees.

- 8.17 In Section 3, we set out the arrangements we will have in place for regulating the conduct of all firms we accredit for the reserved legal activities and their principals and employees. Section 3 of our draft Legal Services Regulations sets out the important duties firms will need to comply with when conducting reserved legal activities work. This includes the requirement that individuals only work within their sphere of competence and take responsibility for their ongoing professional training and development. It also places a duty on firms to ensure that clients understand fully the nature, scope and terms of the work that is being carried out and that proper records are maintained.

In addition to these regulations, firms will be required to demonstrate their compliance with the following:

- our Code of Ethics;
- our Clients' Money Regulations;



- our PII regulations; and
- anti-money laundering legislation.

8.18 We consider that, when taken together, these arrangements will drive firms to conduct further reserved legal activities work and related services with professionalism and skill, which will protect the interests of legal services clients.

8.19 As outlined in paragraphs 7.46 to 7.49, firms are obliged at all times to conduct work in accordance with ICAEW's principles-based Code of Ethics and the professional principles set out in draft regulation 3.1. Among other things, this will ensure that firms conduct further reserved legal activities and related non-reserved activities with integrity and objectivity. They will need to ensure that their work is conducted free from undue influence, bias and conflicts of interests, and that client confidentiality is maintained at all times. The professional principles also place a duty on firms to act in the clients' best interests and ensure that proper standards of work are maintained.

8.20 When they apply, firms will also be required to set out on their application form their processes for preventing anyone from having any influence over the conduct of further reserved legal activities work who is not either an authorised individual (or a person working under the supervision of that person) if this influence is likely to affect the integrity and independence of further reserved legal activities work. This is reflected in our proposed Legal Services Regulations 2.4h, 2.7b and 3.5.

8.21 We consider that, when taken together, these duties and arrangements will ensure that the following outcomes set out in LSB guidance will be promoted and achieved:

**Outcome:** both "lawyer" and "non-lawyer" employees, office holders and owners behave in ways that ensure that:

- justice and the rule of law are upheld;
- they act with integrity and respect for the professional principles;
- they act with independence and in the best interests of their clients, ensuring that confidentiality and client money are protected;
- they provide good standards of service to all their clients; and
- they are trusted members of the public and do not behave in a way that undermines trust in the provision of legal services.

8.22 As discussed above, we will monitor compliance with these requirements through annual returns, QAD reviews and the PA scheme which applies to all members holding a practising certificate, including those not involved in the regulated areas of the further reserved legal activities, probate, audit, insolvency and investment business. We consider that the certainty of a review is a major driver in ensuring compliance with our arrangements. We will continue to adopt this approach when dealing with accredited firms.

8.23 If we consider that firms may be in breach of our regulatory arrangements, we will take targeted and proportionate enforcement action. In less serious cases, we will seek to achieve an informal resolution where possible. We envisage that our relationships with each firm's HoLP (or the contact partner in an authorised firm) will play a vital role in fostering a culture of compliance. Through our system of QAD reviews and the PA scheme, we will seek to help firms where possible in building effective and efficient processes to ensure compliance with our regulatory arrangements.

8.24 In more serious cases, we will apply one of our enforcement tools to ensure that consumers are protected and that the public interest is not compromised. The Legal Services Committee may take regulatory action by placing conditions on a firm's accreditation either to limit the

activity that can be carried out, or to ensure that steps are taken by the firm to improve their compliance with our regulatory arrangements.

- 8.25 In more serious cases, we may suspend a firm's accreditation, or apply conditions on their accreditation by way of an urgent order to prevent the continuation of further reserved legal activities work. This is likely to be used as an enforcement tool in cases where, for example, we have concerns about an individual or firm's competence to conduct the further reserved legal activities, or if there are allegations or suspicion of fraud.
- 8.26 If we consider that there has been a deliberate, ongoing and/or serious breach of the legal services regulations and/or our wider regulatory arrangements, we will take steps to withdraw a firm or individual's accreditation, or disqualify them from being a principal or employee of a licensed firm or holding the role of HoLP or HoFA.
- 8.27 In relation to owners, as with the HoLP and HoFA, we will carry out a standard DBS check on all those applying to be a non-authorised owner. We will also take action if we consider that the actions or interests of any non-authorised persons are putting at risk the regulatory objectives and the ability of authorised individuals/firms to comply with our regulatory arrangements. We will have the ability to impose conditions on a person's holding of a material interest, or to object to that holding, if we consider that action is required to safeguard against the risk of the person exerting improper influence over the conduct of further reserved legal activities work. In the most serious of cases, we will apply to the High Court for an order securing compliance with a condition on a holding, or for divestiture requiring the sale of shares.
- 8.28 Our powers of intervention under Schedule 14 of the Act will only be used in cases where we consider that there is a significant and immediate threat to consumer protection and the regulatory objectives. In these cases, we would seek to arrange for an alternate to complete any outstanding reserved legal activities work and for the transfer of client files.
- 8.29 We have sought, where possible, to apply our arrangements equally to authorised and licensed firms, unless prevented from doing so by the Act. This is to provide a level playing field across all accredited firms.
- 8.30 Our arrangements have been developed with a view to promoting and achieving the following outcomes outlined in LSB guidance:

**Outcome:** regulation is focused on consumer protection. Licensing authorities' enforcement powers are targeted on areas of high risk and consumer detriment, act as an effective deterrent and are able to be used proportionately in response to a wide variety of compliance and enforcement issues involving both individuals and entities to reduce the risk to consumers.

**Outcome:** consumers are confident that their advisers are regulated appropriately.

**Outcome:** licensing authorities' approach to regulation provides a level playing field in which competitive pressures rather than regulation shapes the provision of legal services.

## Indemnification arrangements

### Section 83(5)(d)

Licensing rules of a licensing authority must contain appropriate indemnification arrangements.

- 8.31 In paragraphs 7.86 to 7.88 above, we have set out the level of PII that firms will be required to carry if they wish to become accredited for the further reserved legal activities work. These requirements will apply equally to authorised and licensed firms. For the reasons outlined in those paragraphs, we consider that our indemnification requirements have been set at a level that is appropriate for this type of work. We would emphasise that the PII and legal services regulations require firms to hold PII of £500k per claim as a minimum level of indemnity only. The guidance to the PII regulations makes it clear that firms should still carry out a risk assessment, at least annually, to determine the level of indemnity that is appropriate for them given factors such as their turnover and volume of work, their client profile and the types of service they are conducting. Our regulatory requirements are therefore designed to be sufficiently flexible to enable accredited legal services firms to arrange insurance that meets their needs and the changing market conditions, while still protecting the consumer.
- 8.32 We do not believe that our arrangements will pose structural barriers to normal commercial activities such as issuing shares, mergers and restructures. For the sake of consistency, we do not consider that it is appropriate for firms to have alternative arrangements in place of PII. However, there is flexibility within our PII arrangements to deal with firms on a case-by-case basis which seek a waiver from the requirements of the PII regulations and have suitable alternative cover in place.

## Compensation arrangements

### Section 83(5)(e)

Licensing rules of a licensing authority must contain compensation arrangements.

- 8.33 In paragraphs 7.89 to 7.94 we outlined our proposed compensation arrangements for accredited legal services firms. Again, in line with LSB guidance, these arrangements will apply equally to both authorised and licensed firms.
- 8.34 Our compensation and indemnification arrangements are designed to promote the following outcomes set out in the LSB's guidance:

**Outcome:** regulatory arrangements provide appropriate levels of redress and protection for consumers against negligence and fraud for the services being provided, comparable to those enjoyed by consumers of non-ABS firms, whilst not unduly restricting commercial activity.

**Outcome:** consumers are more informed about the risks and potential compensation for fraud and misconduct when obtaining legal advice from any legal service provider.

## Regulatory conflict

### Section 83(5)(f)

Licensing rules of a licensing authority must contain the provision required by sections 52 and 54 (resolution of regulatory conflict) (including those provisions as applied by section

- 8.35 As explained in paragraph 7.61 above, our proposed Legal Services regulation 2.25 requires firms to inform us promptly if they consider that a requirement of another regulator (including another approved regulator) is giving rise to a regulatory conflict.
- 8.36 In Section 12 we outline how we are addressing the issue of possible regulatory conflict in relation to accredited firms. We are a signatory to the Alternative Business Structures Framework Memorandum of Understanding (set out in Annex 24) and have been an active member since 2010 of the inter-regulator ABS Working Group which established this framework.
- 8.37 We consider that these arrangements should enable us to reduce the risk of regulatory conflict arising, and mitigate its effects on the licensed body and the consumer in cases where it does. By working collaboratively and openly with other regulators, and by sharing information in cases of conflict, we consider that the delays and costs that stem from duplicated processes should be minimised and that common standards should be upheld.
- 8.38 This should promote the achievement of the following outcome set out in the LSB's guidance on licensing rules:

**Outcome:** a single framework Memorandum of Understanding is implemented by all relevant bodies and provides a mechanism to resolve overlaps in ways which:

- provide the best form of consumer protection and redress;
- minimise confusion for market participants; and
- reduce/remove conflict in the future.

## Complaints-handling arrangements

### Section 83(5)(g)

Licensing rules of a licensing authority must contain the provision required by sections 112 and 145 (requirements imposed in relation to the handling of complaints).

- 8.39 In paragraphs 7.76 to 7.82 we outlined our requirements in terms of complaints-handling for firms carrying out further reserved legal activities work. These arrangements will apply equally to firms licensed under the ABS regime.
- 8.40 As discussed above, we will not seek to be prescriptive about the way in which firms deal with complaints, provided they can demonstrate, if requested, that they have mechanisms in place to deal with complaints in a fair, prompt, constructive and honest manner.
- 8.41 We recognise that clients can suffer inconvenience if responsibilities for complaints-handling are not clear. So our draft Legal Services Regulations require that firms inform their clients at the beginning of the engagement of the individual to contact if they have a complaint. This will be the HoLP in a licensed firm. They will also need to highlight the availability of the Legal Ombudsman, both at the outset of the engagement and during the internal complaints process, and provide clients with the information necessary to refer matters to the Legal Ombudsman if required. If we receive complaints for which we lack jurisdiction, we will refer clients to other bodies promptly during our initial assessment process.

8.42 We consider that these arrangements promote and support the following outcomes set out in LSB guidance:

**Outcome:** consumers of legal services provided by ABS are afforded the same protections as consumers from non-ABS providers for first line complaints handling and access to the Legal Ombudsman.

**Outcome:** referral of complaints to other bodies is done in a way that minimises inconvenience for consumers.

### **Section 83(5)(h)**

Licensing rules of a licensing authority must contain any other provision required to be contained in licensing rules by the Act.

Our licensing rules have been drafted in accordance with the requirements of the Act.

## **Applications for accreditation**

### **Sch. 11, paragraph 1(1)**

Licensing rules must make provision about the form and manner in which applications for licences are to be made, and the fee (if any) which is to accompany an application.

8.43 As outlined in paragraphs 7.7 to 7.9 above, our proposed Legal Services Regulations contain provision for firms wishing to apply to become accredited for further reserved legal activities work. As with our probate regulation, to make the application process as straightforward as possible, we will publish guidance on our website to help applicants (both entities and individuals) complete our application forms.

8.44 Although the information we will require from firms wishing to apply to become authorised or licensed will be substantially the same, we will require additional information from firms wishing to be licensed. For example, we will require details of the qualifications and experience of individuals wishing to be appointed as the HoLP and/or the HoFA. These individuals will also have to submit fit and proper declarations and undergo standard DBS and other background checks.

8.45 In accordance with the Act, we will also require firms to submit to us full details of any non-authorised principals or shareholders. Those persons holding a material interest in the body of 10% or more will have to submit fit and proper declarations and a standard DBS check will be carried out on them in the same way as for applicants for HoLP and HoFA status. Further details of the information that will be required from non-authorised owners are set out in paragraphs 8.112 to 8.124 below.

## **Diversity**

8.46 Firms applying for accreditation (both authorised and licensed) will be required to conduct an initial monitoring exercise to assess the diversity profile of their organisation. In line with LSB guidance, we will provide firms with a model questionnaire, which will give individuals working in the firm the opportunity to describe themselves in terms of the following

characteristics: age, gender, disability, ethnic group, religion or belief, sexual orientation, socio-economic background and caring responsibilities.

- 8.47 In discussion with the other approved regulators and the LSB, we will issue guidance to firms on the arrangements for publishing summary data about their workforce and reporting it to us.
- 8.48 As with our probate regulation, we anticipate conducting this exercise on a three-yearly basis, but we will keep the timing of collection under review in consultation with the LSB and other approved regulators. We consider that it would be disproportionate and administratively burdensome to ask firms to conduct this exercise every year.
- 8.49 Our approach in requiring firms to collate this data is to contribute to a sector-wide evidence base that will enable the LSB and the approved regulators to evaluate the extent to which the regulatory objective of encouraging a strong, independent, effective and diverse legal services market is being achieved. Our intention is that it will also allow us to assess how far the following objectives set out in LSB guidance are being achieved:

**Outcome:** ABS allow the provision of legal services to develop in ways that help and encourage diversity.

**Outcome:** better information on diversity allows consumers a clearer insight into the providers they choose, provides individuals the information needed to make an informed decision about their careers and allows...firms to differentiate themselves in a liberalising market.

## Determining applications for accreditation

### Sch. 11, paragraph 2

Licensing rules must make provision for those items set out in Schedule 11, paragraph 2.

- 8.50 In paragraphs 7.27 to 7.33 we outlined the manner in which we will determine applications. As with our probate applications, we will aim to acknowledge receipt of all applications within two working days and to determine the majority of applications within four weeks of receipt. We will monitor our performance against this target and will make public the results in accordance with LSB guidance.
- 8.51 The guidance to draft Legal Services Regulation 2.5 sets out the Act's requirements in terms of timescales for determining applications. If it is not practicable to determine an application within six months, we will issue an extension notice to the applicant setting out the reasons for the extension (which may not exceed nine months).

## Review of determinations

### Sch. 11, paragraph 3

Licensing rules must make provision for review by the licensing authority of:

- a decision to refuse an application for a licence; and
- if a licence is granted, the terms of the licence.

- 8.52 As previously explained, if an application for accreditation is refused, or granted subject to conditions or restrictions, applicants will have a right to apply for a review of the decision in accordance with the procedures set out in chapter 11 of the draft Legal Services Regulations. This will apply to applications by firms, and to applications for authorised individual, HoLP or HoFA and legal services affiliate status. If we object to a non-authorised owner holding a material interest in a licensed firm, or if we impose conditions on that holding, they will also have a right to apply for a review of this decision.
- 8.53 In accordance with LSB guidance, the Review Committee will be comprised solely of individuals who have not been involved in the original decision. The process for review is straightforward and transparent, and is set out in our proposed Legal Services Regulations.

## Period of accreditation and renewal

### Sch. 11, paragraph 4(1)

The licensing rules may make provision:

- limiting the period for which any licence (subject to the provision of Part 1 of Schedule 11 and of the licensing rules) is to remain in force;
- about the renewal of licences, including provision about the form and manner in which an application for renewal is to be made, and the fee (if any) which is to accompany an application.

- 8.54 As recommended by the LSB, our accreditation of licensed firms will not be time-limited, and so there will be no need for an annual renewal process. We will, however, charge an annual registration fee as required by the Act, and non-payment of this fee may result in a firm losing its accreditation (see our Draft Legal Services Regulations 2.14 to 2.18).
- 8.55 As with all accredited probate and other ICAEW regulated firms, licensed firms will be required to submit an annual return. This will enable us to monitor the performance of the entity on an ongoing basis, and respond to any risks to the regulatory objectives that we might see emerging.

## Licensing by another licensing authority

### Sch. 11, paragraph 4(3)

Licensing rules must provide that a licence issued to a licensed body by the licensing authority ceases to have effect if the licensed body is issued with a licence by another licensing authority.

- 8.56 Our draft Legal Services Regulation 2.22b sets out that a firm will cease to be licensed by ICAEW as an accredited firm if it becomes licensed by another licensing authority.

## Continuity of accreditation

### Sch. 11, paragraph 5

Licensing rules may make provision about the effect on a licence issued to a partnership or other unincorporated body (“the existing body”) of any change in the membership of the existing body. The provision which may be made includes provision for the existing body’s licence to be transferred where the existing body ceases to exist and another

body succeeds to the whole or substantially the whole of its business.

- 8.57 Our draft Legal Services Regulation 2.7k places an obligation on accredited firms to inform us as soon as practicable (and in any event within 10 business days) of any event affecting the firm's eligibility to be accredited.
- 8.58 The regulations do not provide for a temporary transfer of accreditation as suggested above. We have elected instead to include guidance in the opening paragraphs of section 6 of the draft Legal Services Regulations to highlight to firms the importance of notifying us in advance of events that are likely to affect their eligibility for accreditation.
- 8.59 If a firm moves from being authorised to licensable, or if the ownership of a licensed firm changes such that we will be required to approve one or more non-authorised persons holding a material interest, we would expect firms to give us advance notice under the regulations.

## Modifying accreditation

### Sch. 11, paragraph 6(1)

Licensing rules must make provision about the form and manner in which applications are to be made for modification of the terms of a licence under section 86, and the fee (if any) which is to accompany the application.

- 8.60 Our process for modifying accreditation is set out in paragraphs 7.73 to 7.75 above. Although we will not generally charge a fee for this process, we will reserve the right to apply a charge if an application is particularly complex or contains substantial supporting documentation. This fee would be at the discretion of the Legal Services Committee.

### Sch. 11, paragraph 6(2)

Licensing rules may make provision as to the circumstances in which the licensing authority may modify the terms of a licence under section 86 without an application being made.

- 8.61 As set out in section 10 of our draft Legal Services Regulations, the Legal Services Committee will have the power to impose a condition or restriction on a licensed firm's accreditation for a period if required. This will allow us to modify a firm's accreditation without an application being made.
- 8.62 Draft Legal Services Regulation 10.1 (which also refers to parts of regulation 10.3) sets out the circumstances in which the Legal Services Committee may exercise this power.
- 8.63 It will also have the power to restrict or impose conditions on a licensed firm's accreditation by way of an urgent order under draft Legal Service Regulation 10.7 if necessary.

### Sch. 11, paragraph 6(3)

Licensing rules must make provision for review by the licensing authority of:

- a decision to refuse an application for modification of the terms of a licence;
- if the licensing authority makes licensing rules under sub-paragraph 6(2), a decision under those rules to modify the terms of the licence.



- 8.64 Under regulation 11.2, licensed firms will have the right to apply to the Review Committee for a review of the decision if they are dissatisfied with the outcome of their application for a modification. They will need to exercise this right within 10 business days of being notified of the Legal Services Committee's decision.
- 8.65 As is set out in draft Legal Services Regulations 10.7 and 10.8, the Legal Services Committee will also have the power to impose conditions or restrict a firm's accreditation on an urgent basis and without an application being made. Where this occurs, the firm will have the right to make oral or written representations within 10 business days. In addition, it will have the right to apply to the Review Committee for a review of the decision under draft Legal Services Regulation 11.2.

### **Modifications under section 106**

- 8.66 In accordance with LSB guidance, our draft legal Services Regulations do not provide currently for applications made under section 106 of the Act (applications by special bodies including low risk bodies as defined in section 108). Once the LSB has issued guidance on the appropriate approach to these bodies following the conclusion of the transitional arrangements for ABS, we will consider whether our regulations should be amended.

### **Management**

#### **Sch. 11, paragraph 9(1)**

Licensing rules must require a licensed body to comply with the requirements set out in Schedule 11, paragraph 9 at all times. The requirements are:

- at least one of the licensed body's managers must be a person (other than a licensed body) who is an authorised person in relation to a licensed activity;
- no manager of the licensed body may be a person who is disqualified from acting as a manager of a licensed body.

- 8.67 These requirements are addressed by our draft Legal Services Regulations 2.3 and 2.8

#### **Sch. 11, paragraph 10(1)**

Licensing rules may make provision as to:

- the managers of licensed bodies; and
- the arrangements for the management by them of the licensed body and its activities.

- 8.68 Our proposed regulations place no additional requirements on principals of licensed firms that do not apply to authorised firms. This is intended to give firms the greatest flexibility possible in determining their own management profile depending on their structure and business needs. We believe that a consistent approach is also in accordance with the principles of better regulation.
- 8.69 In cases where we consider that an application gives rise to a possible risk to the regulatory objectives, we consider that it would be more appropriate and proportionate to address this risk by way of a condition or restriction on the firm's accreditation, rather than applying a blanket requirement to all firms.

#### **Sch. 11, paragraph 10(2)**

Licensing rules must not require all managers of a licensed body to be authorised persons in relation to a reserved activity.

8.70 This is not a requirement of our proposed Legal Services Regulations.

### **Head of Legal Practice (HoLP)**

#### **Sch. 11, paragraph 11(1)**

Licensing rules must include the requirements set out in Schedule 11, paragraph 11 in respect of the appointment of the Head of Legal Practice.

8.71 Our draft Legal Services Regulations 1.6 and 2.7 provide that, at all times, a licensed firm must have a HoLP who is an authorised individual and who is not disqualified from holding that position. The individual must have consented to the appointment and we must have approved their appointment (draft Legal Services Regulations 4.2 to 4.6). If the HoLP no longer consents to hold that position, their status as a HoLP will cease, as set out in draft Legal Services Regulation 4.9, and the firm will have to appoint a new individual.

#### **Sch. 11, paragraphs 12(1) and 12(2)**

Licensing rules must make provision:

- about the procedures and criteria that will be applied by the licensing authority when determining under Schedule 11, paragraph 11(4) whether an individual is a fit and proper person;
- for a review by the licensing authority of a determination under Schedule 11, paragraph 11(4) that an individual is not a fit and proper person;
- about the procedures and criteria that will be applied by the licensing authority under Schedule 11, paragraph 11(6) whether to withdraw its approval;
- for a review by the licensing authority of a determination under Schedule 11, paragraph 11(6) to withdraw its approval;
- about the procedure which is to apply where a licensed body ceases to comply with the requirement imposed by virtue of Schedule 11, paragraph 11(2).

Rules made may in particular provide that the requirement imposed by virtue of Schedule 11, paragraph 11(2) is suspended until such time as may be specified by the licensing authority if the licensed body complies with such other requirements as may be specified in the rules.

8.72 We will only approve the individual's designation as a HoLP if we are satisfied that they are a fit and proper person who can carry out their regulatory responsibilities under the Act. If we consider that they have breached this duty, we may withdraw their status as a HoLP and disqualify them in accordance with draft Legal Services Regulation 5.1.

8.73 The declarations we will require from prospective candidates for HoLP designation will be contained in the application form in the same way as set out in our probate application form set out in Annex 17. These are the same declarations as those we will require from prospective owners of licensed firms. As stated in the probate application form, a disclosure to one or more of the questions will not result in the Legal Services Committee automatically

declining the application, but it will prompt the committee to make further enquiries into the applicant's background before deciding the application. On the other hand, if an applicant provides false or misleading information, this will be taken seriously by the committee and, if deliberate, is likely to result in the application being declined.

- 8.74 In accordance with LSB guidance, we will not require the HoLP of a licensed firm to undergo fit and proper checks on an annual basis. We agree that this would result in a substantial regulatory burden that may not be proportionate or justified. Rather, we have included within our proposed regulations a requirement on firms to inform us as soon as practicable (and at the latest within 10 business days) of any changes to the HoLP at their firm. It is clear from the regulations that this person would need first to have been approved by us in that capacity (see draft Legal Services Regulation 2.7j).
- 8.75 We will seek to verify the information we receive about an applicant's status against our own disciplinary records and/or the records of other applicable approved regulators. We will also carry out additional checks using the FSA's Shared Intelligence System (SIS), the LSB's register of disqualified persons, and will conduct DBS checks on applicants for HoLP status.
- 8.76 Where we are satisfied that the applicant is a fit and proper person, we would expect to approve their appointment as a HoLP without delay. We agree that the qualifications and experience of the HoLP should be broadly a matter for the firm to decide, depending on its management structure and the requirements of its business and staff. However, as we indicate in the guidance to draft Legal Services Regulation 1.6, we would expect any applicant to be of sufficient seniority within the firm to ensure that their instructions are acted upon. We would also want to be satisfied that this individual would have the freedom to report on matters to us without restrictions, even if this conflicts with the views of the firm's principals and senior management team.
- 8.77 In the rare case that approval by us of a HoLP was declined or, if granted, withdrawn at a later date, the individual would have the right to apply to the Review Committee for a review of the decision in accordance with the processes set out in section 11.
- 8.78 If a licensed firm finds itself temporarily without a HoLP – either because that person has left the firm, no longer wishes to hold that role, or because we have withdrawn their status – the firm will be able to apply for a dispensation from the Legal Services Regulations. As set out in the draft Legal Services Regulations 2.19 – 2.21, the firm would be required to inform us of in writing within 10 business days of the steps they are taking to replace the HoLP. The Legal Services Committee will then have the power to grant a dispensation of no more than 90 days, provided it is satisfied that it is reasonable to do so having regard to the public interest or the interests of any client. Any decision by the Legal Services Committee to decline an application for a dispensation would result in the firm being able to apply for a review of the decision in the usual way.

## Head of Finance and Administration (HoFA)

### **Sch. 11, paragraph 13(1)**

Licensing rules must include the requirements set out in Schedule 11, paragraph 13.

- 8.79 Our proposed regulations 1.6 and 2.7 provide that a licensed firm must have at all times a HoFA who is not disqualified from holding that position. The individual must have consented to the appointment and we must have approved their appointment (draft Legal Services Regulations 4.3 to 4.6). If the HoFA no longer consents to hold that position, their status as a HoFA will cease, as set out in regulation 4.9 and the firm will have to appoint a new individual.

### Sch. 11, paragraphs 14(1) and 14(2)

Licensing rules must make provision:

- about the procedures and criteria that will be applied by the licensing authority when determining under Schedule 11, paragraph 13(4) whether an individual is a fit and proper person;
- for a review by the licensing authority of a determination under Schedule 11, paragraph 13(4) that an individual is not a fit and proper person;
- about the procedures and criteria that will be applied by the licensing authority under Schedule 11, paragraph 13(6) whether to withdraw its approval;
- for a review by the licensing authority of a determination under Schedule 11, paragraph 13(6) to withdraw its approval
- about the procedure which is to apply where a licensed body ceases to comply with the requirement imposed by virtue of Schedule 11, paragraph 13(2).

Rules made may in particular provide that the requirement imposed by virtue of Schedule 11, paragraph 13(2) is suspended until such time as may be specified by the licensing authority if the licensed body complies with such other requirements as may be specified in the rules.

- 8.80 The equivalent procedures set out in paragraphs 8.71 – 8.78 will apply in relation to applications for designation of an individual as a HoFA. However, as is reflected in the guidance to draft Legal Services Regulation 1.6, the HoFA will not need to be an authorised individual, although we would expect them to hold an appropriate accountancy and/or financial qualification and be, where possible, a principal of the firm.
- 8.81 Our requirements concerning the appointment of both a HoLP and HoFA in a licensed firm are intended to comply with the Act's requirements and the following outcomes set out in LSB guidance:

**Outcome:** High quality Heads of Legal Practice (HoLPs) and Heads of Finance and Administration (HoFAs) who come from a wide range of backgrounds and diversity reflecting the commercial decisions and commercial operations of the ABS as well as statutory requirements.

**Outcome:** Strong governance arrangements to:

- provide HoLPs and HoFAs with access to CEO, Board, non-executives, and the licensing authority whenever necessary;
- ensure compliance with the Legal Services Act 2007 and licence requirements;
- ensure appropriate operating procedures; and
- provide a mechanism for ABS staff to raise concerns, which are acted upon appropriately.

**Outcome:** ABS compliance with licence requirements is high, with minimum enforcement required by licensing authorities.

## Practice requirements

### Sch. 11, paragraph 15(1)

Licensing rules must require a licensed body at all times to have a practising address in England and Wales. [This] does not apply to a licensed body:

- which is a company or limited liability partnership; and
- the registered office of which is situated in England and Wales (or in Wales).

8.82 Our draft Legal Services Regulations 2.4e and 2.7i require all accredited further reserved legal activities firms to have at least one office in England and Wales from which they undertake further reserved legal activities work (unless they are a company or LLP whose registered office is in England or Wales).

## Licensed activities

### Sch. 11, paragraph 16

Licensing rules must provide that a licensed body may carry on a licensed activity only through a person who is entitled to carry on the activity.

8.83 This is addressed through our proposed draft Legal Services Regulation 3.3, which provides that only authorised individuals may undertake, or control the undertaking of, reserved legal activities work.

## Compliance with regulatory arrangements

### Sch. 11, paragraph 17(1)

Licensing rules must include the requirements set out in Schedule 11, paragraph 17 – ie that:

- the licensed body, its managers and employees comply with the duties imposed by section 176 (duties of regulated persons)
- the licensed body and any manager or employee who is authorised for one or more of the further reserved legal activities complies with the professional principles set out in section 1(3) of the Act; and
- the licensed body must at all times have suitable arrangements in place to ensure that non-authorised persons subject to the duty imposed by section 90 comply with that duty.

8.84 Our draft Legal Services Regulation 3.1 places a clear obligation on accredited firms to comply with the professional principles set out in the Act. As the professional principles are consistent with the five fundamental principles underpinning the Code of Ethics of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour, these principles apply equally to licensed and authorised firms.

8.85 The draft Legal Services Regulations 2.4, 2.7 and 3.5 place a duty on both firms and the individuals within them to ensure that they comply with the duties set out in sections 90 and 176 of the Act; namely, to ensure that the firm and its principals and employees comply with our regulatory arrangements as an approved regulator, and that non-authorised persons do nothing to interfere with that duty. Firms are required to confirm in their application form that they have informed all principals, employees or shareholders of the duties contained in sections 90 and 176 of the Act. They will also need to outline the steps they will take to ensure that authorised individuals can conduct further reserved legal activities work independently and free from influence that might compromise their ability to comply with the Legal Services Regulations and the professional principles.

8.86 In addition, the draft Legal Services Regulations at draft Legal Services Regulation 1.6 stipulate that the role of the HoLP is to ensure, among other matters, that:

- the accredited firm complies with the requirements of the regulations;
- authorised persons in the firm continue to comply with their regulatory obligations; and
- non-authorised persons (whether they be non-authorised principals, employees or owners) do not do anything which causes or substantially contributes to a breach of the regulations by the firm or any authorised persons.

8.87 We do not consider it necessary to set out in our rules the processes the licensed firm should put in place to ensure compliance with the above principles and their regulatory duties. We agree with the LSB that this should be a commercial decision for the ABS to decide. Accordingly, providing we are satisfied that the firm has at all times a HoLP in post who is ensuring compliance with the professional principles, and has the power and ability to notify us when these principles and duties are being compromised, we would deem this satisfactory in the absence of adverse evidence.

These issues will also be covered as part of a QAD review of a firm.

## **Disqualified employees**

### **Sch. 11, paragraphs 18(1) and (2)**

Licensing rules must include the requirement that a licensed body may not employ a person who under Part 3 of Schedule 11 is disqualified from being an employee of a licensed body.

8.88 Our proposed Legal Services Regulation 2.8 provides that an accredited firm may not have a principal or employee who is disqualified from being a principal or employee of a licensed firm under section 99 of the Act. This applies to both authorised and licensed firms. Guidance to the regulation will alert firms that the LSB will maintain a list of persons who have been disqualified from working in licensed bodies.

8.89 Our disqualification procedure is set out in paragraphs 8.100 to 8.104 below. If we disqualify an individual from working in a licensed firm, we will inform the LSB of the disqualification as soon as practicable.

## **Indemnification and compensation arrangements**

### **Sch. 11, paragraph 19**

For the purpose of giving effect to indemnification arrangements and compensation arrangements, licensing rules may:

- authorise or require the licensing authority to establish and maintain a fund or funds;
- authorise or require the licensing authority to take out and maintain insurance with authorised insurers;
- require licensed bodies or licensed bodies of any specific description to take out and maintain insurance with authorised insurers.

8.90 Our arrangements for indemnification and compensation of consumers in cases of negligence, fraud and bankruptcy are outlined in paragraphs 7.86 to 7.94 above in relation to authorised firms. These arrangements will apply equally to licensed firms.

## Accounts

### Sch. 11, paragraph 20(1)

The licensing rules must make provision:

- as to the treatment of money (including money held on trust) which is received, held or dealt with by the licensed body, its managers and employees for clients or other persons; and
- the keeping of accounts in respect of such money.

8.91 The requirements on firms that deal with client and estate monies are outlined in paragraphs 7.58 to 7.59 above for authorised firms. These requirements are the same for licensed firms. In a licensed firm, however, the HoFA will be responsible for ensuring that the firm complies with these obligations and that any breach is reported to ICAEW as soon as reasonably practicable.

8.92 The importance for authorised firms of record-keeping and the need to reconcile accounts on a regular basis is set out in the clients' money regulations discussed in paragraph 3.66 to 3.67. It applies equally to those that are licensed.

## Fees

### Schedule 11, paragraph 21

The licensing rules must require licensed bodies to pay periodical fees to the licensing authority. The rules may provide for the payment of different fees by different descriptions of licensed body.

8.93 All accredited firms, including licensed firms, will be required to pay an annual registration fee and compensation levy. In section 10 we explain our methodology in calculating these fees, which are intended to be broadly cost-reflective and targeted depending on the firm's size and structure.

8.94 As set out in draft Legal Services Regulations 2.14 – 2.16 and discussed in paragraphs 7.23 to 7.26 above, we will also reserve the right to charge an initial application fee and other ad hoc fees if we need to carry out a visit or undertake significant additional work to determine a firm's application. However, it is not currently our intention to levy an application fee and additional fees will only be charged in exceptional circumstances.

## Financial penalties

### **Sch. 11, paragraph 22**

The licensing rules must make provision as to:

- the acts and omissions in respect of which the licensing authority may impose a penalty under section 95;
- the criteria and procedure to be applied by the licensing authority in determining whether to impose a penalty under that section, and the amount of any penalty.

- 8.95 If there has been a breach of the Legal Services Regulations, the Legal Services and Disciplinary Committees will follow the *Guidance on Sanctions*, which is described in paragraphs 3.46 to 3.47 above and set out in Annex 8.
- 8.96 The guidance will apply to all penalties imposed on licensed firms (up to the maximum set by order of the Lord Chancellor) and to authorised firms.<sup>10</sup> It will also apply to penalties imposed on individuals, and will form the basis for the Legal Services Committee's calculation of regulatory penalties.
- 8.97 As explained above, the *Guidance on Sanctions* provides a structured framework for determining both whether a penalty is required, and, if so, the level of penalty. In accordance with the LSB's guidance, the *Guidance on Sanctions* does not provide indicative penalties as this would limit the ability of the committees to set penalties at levels that are appropriate to the circumstances of each case, and may have the unintended consequence of distorting behaviour.
- 8.98 Rather, the framework sets out a suggested starting point for each type of complaint or breach of the regulations or bye-laws. This figure is intended as a guide to committees on where they might start when considering all the factors relevant to a complaint. Committees are then directed to take into account any aggravating or mitigating factors before determining whether it is appropriate either to reduce or increase the level of penalty. Examples of what might constitute an aggravating or mitigating factor for each type of complaint are set out in the framework.
- 8.99 The guidance states clearly that the purpose of a penalty should be to protect the public, correct and deter misconduct, and maintain proper standards of professional conduct and the reputation of the profession. In our view, the application of the guidance in further reserved legal activities cases will ensure that sentencing policy across committees will be transparent, consistent and proportionate, taking into account the surrounding circumstances of each case.

## **Disqualifications**

### **Sch. 11, paragraph 23(1)**

Licensing rules must make provision as to the criteria to be applied by the licensing authority in determining whether a person should be disqualified under section 99.

- 8.100 Our proposed Legal Services Regulation 5.1 will give us a broad power to disqualify a person from holding the following positions in a licensed firm:

---

<sup>10</sup> The Legal Services Act 2007 (Licensing Authorities) (Maximum Penalties) Rules 2011 (SI 1659/2011) has set the maximum financial penalty at £250m for an entity and £50m for an individual.



- HoLP;
- HoFA;
- principal; or
- employee.

In accordance with the Act, we may take the step to disqualify someone if we believe that, either intentionally or through neglect, they have:

- breached the duties imposed on them by the Act; or
- caused or substantially contributed to a significant breach of the licensed firm's accreditation; and

it is undesirable for them to continue holding that position.

- 8.101 We are likely to use these powers only rarely, in cases where we consider that the breach was either deliberate or so serious that the issue could not be addressed by either a condition on the firm's accreditation, or some kind of lesser penalty. In accordance with our *Guidance on Sanctions* any committee wishing to impose this penalty would need to have first considered the detailed circumstances surrounding the complaint, the seriousness of the behaviour, and whether any mitigating or aggravating factors exist.
- 8.102 Using the principles underlying sentencing policy, in deciding to disqualify an individual, a committee would need to be satisfied that the circumstances of the case were sufficiently serious to warrant the imposition of this penalty.

#### **Sch. 11, paragraph 23(2)**

##### **Licensing rules must make provision:**

- for a review by the licensing authority of a determination by the licensing authority that a person should be disqualified;
- as to the criteria and procedure to be applied by the licensing authority in determining whether a person's disqualification should cease to be in force; and
- requiring the licensing authority to notify the Board of any determination by the licensing authority that a person should be disqualified, of the result of any review of that determination, and of any decision by the licensing authority that a person's disqualification should cease to be in force.

- 8.103 Section 11 of our draft Legal Services Regulations provides that, if a person is disqualified from holding one of the positions set out in paragraph 8.100 above, they will be entitled to apply for a review of that decision. They will also have the right to apply at a later date to be reinstated in that position through the usual application process.
- 8.104 As set out in our draft Legal Services Regulation 5.5 we will notify the LSB promptly if a person is disqualified under our draft Legal Services Regulation 5.1, and will also notify the LSB if there is any change to that decision. Draft Legal Services Regulation 5.4 makes it clear that we may end a disqualification order if, on application from the person concerned, we consider that it is no longer necessary for the disqualification to remain in force.

### **Suspension or revocation of accreditation under section 101**

### **Sch. 11, paragraph 24(1)**

Licensing rules must make provision for the items set out in Schedule 11, paragraph 24.

- 8.105 Our draft Legal Services Regulations 10.3 – 10.4 set out the circumstances in which ICAEW may withdraw or suspend a firm's accreditation. In relation to licensed firms, this includes cases where the firm or its principals, employees or shareholders fail to comply with the reserved legal activities regulations. Specifically, it includes cases where the firm:
- no longer meets the eligibility criteria for licensed firms set out in draft Legal Services Regulation 2.3 (Sch. 11, paragraph 24(3));
  - conducts reserved legal activities work through a person who is not authorised, contrary to draft Legal Services Regulations 2.7h and 3.3 (Sch. 11, paragraph 24(4));
  - fails to comply with the requirements of section 6 of the draft Legal Services Regulations in relation to non-authorised owners of licensed firms (Sch. 11, paragraph 24(5));
  - fails to ensure that non-authorised persons do not improperly influence the conduct of reserved legal activities work contrary to draft Legal Services Regulations 2.7b and 3.5 (Sch. 11, paragraph 24(6));
  - fails to ensure that it, and its principals and employees, comply with the requirements of section 176 in accordance with draft Legal Services Regulation 2.7a (Sch. 11, paragraph 24(7));
  - has a principal or an employee who has been disqualified under the Act contrary to draft Legal Services Regulation 2.8 (Sch. 11, paragraph 24(8)); or
  - fails to comply with the requirement to have, at all times, a HoLP and HoFA (draft Legal Services Regulations 2.7f and 2.7g) who has consented to the appointment (draft Legal Services Regulations 4.2 and 4.3) and whose designation ICAEW has approved under Draft Legal Services Regulation 4.4 (Sch. 11, paragraph 24(9)).
- 8.106 In cases where we consider it necessary either to revoke or suspend a firm's accreditation, we will serve notice on the firm of our intention in writing. This decision will not come into effect for 28 days and, during that time, the firm may apply to the Review Committee for a review of the decision. As discussed in paragraphs 8.129 to 8.134 below, there is then a further right of appeal to the GRC.

### **Sch. 11, paragraph 25**

Licensing rules may make provision about other circumstances in which the licensing authority may exercise its powers under section 101 to suspend or revoke a licence.

- 8.107 In addition to the circumstances outlined in paragraph 8.105 above, our draft Legal Services Regulations 10.3 – 10.4 also empower us to suspend or revoke a firm's accreditation in a number of other circumstances. For example, the firm's accreditation may be revoked or suspended if we consider that the firm is no longer complying with the PII regulations; if it is failing to comply with any restrictions or conditions; or if its continued accreditation or involvement in reserved legal activities work might adversely affect the interests of a client or other person.
- 8.108 As set out in draft Legal Services Regulation 2.22a, a firm may apply to us at any time to cancel its status as an accredited firm, whether authorised or licensed.

### **Sch. 11, paragraph 26(1)**

Licensing rules must make provision about the criteria and procedure the licensing authority will apply in deciding whether to suspend or revoke a licence, or to end the suspension of a licence under section 101.

- 8.109 Chapter 10 of our proposed draft Legal Services Regulations sets out the criteria and procedure we will apply in deciding whether to suspend or revoke accreditation, or end or vary a suspension pursuant to regulation 10.6.

**Sch. 11, paragraph 26(2)**

Licensing rules must make provision for a review by the licensing authority of a decision by the licensing authority to suspend or revoke a licence.

- 8.110 As required by the Act, we will give any affected firm 28 days' notice of our intention to suspend or revoke accreditation under regulation 10.11. During this time, the firm will have the right to apply to the Review Committee for a review of the decision under regulation 11.2 (and thereafter a right to appeal to the GRC).
- 8.111 An application for a review of the decision would need to be in writing and set out the firm's circumstances and reasons for objecting to the decision.

**Ownership of licensed bodies**

**Sch. 13, paragraph 6**

**(1) For the purposes of this Schedule, the approval requirements are met in relation to a person's holding of a restricted interest if:**

- a) the person's holding of that interest does not compromise the regulatory objectives (the "regulatory objectives test");
- b) the person's holding of that interest does not compromise compliance with the duties imposed by section 176 by the licensed body or [any employee or manager of the licensed body who is an authorised person in relation to an activity which is a reserved legal activity] (the "regulated person's duties test"); and
- c) the person is otherwise a fit and proper person to hold that interest (the "fitness to own test").

...

(3) In determining whether it is satisfied of the matters mentioned in sub paragraph (1)(a) to (c), the licensing authority must in particular have regard to:

- a) the person's probity and financial position;
- b) whether the person is disqualified as mentioned in section 100(1) or included in the list kept by the Board under paragraph 51;
- c) the person's associates; and
- d) any other matter which may be specified in licensing rules.

(4) Licensing rules must make provision about the procedures that will be applied by the licensing authority when determining whether it is satisfied of the matters mentioned in sub-paragraph (1)(a) to (c).

- 8.112 We will require firms wishing to become licensed for further reserved legal activities to identify all persons with an interest in the firm (whether they are individuals or entities) and

state their respective voting rights or shares. As required by the Act, those persons holding a material interest will then be subject to the 'fitness to own' test before the application can be approved.

- 8.113 We have considered whether there are grounds for setting the threshold for material interests at a percentage lower than the 10% limit prescribed as a minimum by the Act. This would require us to extend the 'fitness to own' test to persons holding a small or *de minimis* interest in each firm. We consider, however, that the regulatory framework set out in the Act is already sufficiently robust to safeguard against the risk of non-authorized owners improperly influencing the conduct of reserved legal activities work. In our view, to extend additional checks over external ownership, shareholdings or voting rights would be disproportionate. Arguably, it may result in unnecessary and administratively burdensome over-regulation, which could have the unintended consequence of deterring firms from becoming authorised for further reserved legal activities work. The minimum interest has accordingly been set at 10%.
- 8.114 The Act already contains a further safeguard to protect against the risk of a person holding indirect influence in a firm through the holdings of one or more 'associates'. In identifying those with a material interest, the firm will need to identify whether any owner (or prospective owner) has associates as defined in regulation 6.3. Where such a relationship exists, the respective holdings will be considered together in determining whether the owner holds a material interest requiring pre-approval. So there is already a mechanism for addressing the risk that owners may seek to reduce their holdings in order to avoid the pre-approval checks that are required for larger interests.
- 8.115 If a firm identifies a principal or shareholder with a material interest in a firm, it will be required to complete a separate application form for that person. During the application process we will require information to enable us to determine whether the person's holding poses a risk to the regulatory objectives (the so-called 'regulatory objectives' test) or whether there is a risk that they may compromise the ability of the firm's principals or employees to conduct further reserved legal activities work in accordance with the Legal Services Regulations and the professional principles set out in the Act (the 'regulated persons' duties' test).
- 8.116 We will also gather information to enable us to assess the person's probity and financial history (the 'fitness to own' test). The declarations we will require from these principals and shareholders will be contained in the application form. These will be the same declarations that we will require from candidates for HoLP and HoFA status and they will extend to firms in which that individual was previously a principal, director or shareholder. They will also include questions on whether the applicant has been previously disqualified from acting as a HoLP, HoFA, principal or employee of a licensed firm, or whether a licensing authority has ever objected to, or imposed conditions on, the holding of a material (or other) restricted interest in a licensed firm.
- 8.117 As with applicants for HoLP and HoFA status, we will rely on our own disciplinary records and/or the records of other approved regulators (as applicable) to check the accuracy of the information we receive. We will also conduct the following, additional checks:
- DBS checks on potential non-authorized owners;
  - checks against the FSA's Shared Intelligence System (SIS);
  - checks against the LSB's register of disqualified persons; and
  - checks against the LSB's register of non-authorized persons whose holding of a restricted interest in a licensed body has been objected to or made the subject of conditions by another licensing authority.

- 8.118 As will be stated in the application form, a disclosure to one or more of the questions will not result automatically in the Legal Services Committee declining the application, but it will prompt the committee to make further enquiries into the person's background before deciding the application. However, if an applicant provides false or misleading information, this is likely to be taken seriously by the committee and, if deliberate, could result in the application being declined.
- 8.119 It is likely that the Legal Services Committee would also consider declining an application if it were apparent that the person and/or their associates had previously been associated with a failed firm, or a firm whose application to another licensing authority had been declined.
- 8.120 In more minor cases, however, we consider that it may be possible to discount adverse information, if that information is unlikely to have a bearing on the person's role or interest in the licensed firm and their ability to influence the conduct of further reserved legal activities work. For example, it may be considered less relevant if an individual has a 10 year old finding of misconduct, but will not be involved in the delivery of further reserved legal activities work. In other cases, the imposition of a condition on a holding may be sufficient to ensure that adequate safeguards are in place to protect legal services clients and the regulatory objectives.
- 8.121 In accordance with regulation 2.4h, firms applying to be licensed must confirm that they have informed all principals, employees and shareholders who are non-authorised persons of the duties imposed on them by sections 176 and 90 of the Act. Guidance to draft regulation 3.5 reminds firms of the need to inform new principals, employees and shareholders of these duties.
- 8.122 We consider that that this approach to the authorisation of ownership of licensed firms will achieve the following outcomes set out in LSB guidance:

**Outcome:** licensing authorities identify and manage risks to the outcomes posed by owners and their associates.

**Outcome:** consumer confidence in ABS that are owned by non-lawyers is at least as high as other law firms.

### **Sch.13, paragraph 38**

Licensing rules may impose limits on shares / voting rights held etc.

- 8.123 Our draft Legal Services Regulations do not provide for additional restrictions on the interests held by non-authorised persons in licensed firms. We agree with the LSB that any limits on shares or voting rights should be a commercial matter for the ABS to decide. We agree that the 'fitness to own' test, when taken in conjunction with our enforcement powers, should provide appropriate safeguards against improper influence and conflicts.

### **Sch. 13, paragraph 21**

The continuing obligation on firms to notify the licensing authority if a non-authorised person ("the investor") proposes to take a step which would result in them acquiring a restricted interest in a body and/or acquires an interest in the body without taking such a step.

8.124 The continuing obligation on firms to notify us of any changes to their ownership structure in terms of persons who hold a material interest is set out in regulations 6.10 to 6.12.

### **Foreign ownership**

8.125 We agree with the LSB's guidance that it would not be appropriate to ban certain categories of foreign ownership of ABS. Arguably, this would be contrary to the Act's objective of increasing competition and diversity in the market.

8.126 However, we acknowledge that, in some circumstances foreign ownership may increase a firm's risk profile and adherence to the regulatory objectives. It may be difficult to verify the background of an ultimate beneficial owner, or they might benefit from legal immunity.

8.127 We intend to deal with these risks on a case-by-case basis. If we identify a risk to the regulatory objectives, we may elect to impose a condition or restriction on the firm's accreditation, or approve a holding subject to conditions, as a means of ensuring greater consumer protection.

8.128 Should we incur additional costs in investigating the background of foreign owners, we would reserve the right to charge an increased annual registration fee or an ad hoc fee for significant additional work under regulations 2.14 and 2.15.

### **Appellate body**

8.129 As with our probate appeals, we are proposing that all appeals in relation to the further reserved legal activities firms are accredited to carry out be directed to the GRC. This is consistent with the approach favoured by the LSB which considers that a single mechanism for all appeals in relation to ABS will:

- support consistency in decision-making in relation to ABS (both in relation to entities and individuals working within those entities);
- enable a body of expertise to be developed in relation to ABS regulatory appeals; and
- lead to economies of scale in relation to administrative and appellate functions.<sup>11</sup>

8.130 As part of our application to become an approved regulator and licensing authority for probate, a section 69 order was passed by Parliament which modified ICAEW's functions. Article 2 of this order allows ICAEW to make rules or regulations for appeals to the First-tier Tribunal of the GRC against decisions made by it in its role as an approved regulator, including in its capacity as a licensing authority. A section 80 order was also passed by Parliament giving power to the First-tier Tribunal of the GRC to hear and determine appeals from decisions made by ICAEW in its capacity as a licensing authority. Article 4 of this order provides for appeals to be heard and determined by the First-tier Tribunal and sets out the powers of the First-tier Tribunal in relation to an appeal under the licensing rules. Parties generally bear their own costs in the tribunal, although the GRC does have limited powers to award costs in cases where parties have acted unreasonably.

8.131 In order to refer matters to the GRC, parties will need first to have sought a review of the decision by the Review Committee. If parties have failed to exhaust the internal complaints process, it is likely that the GRC will only hear the appeal if the Review Committee has failed to conduct the review in a timely manner.

---

<sup>11</sup> Legal Services Board *Alternative business structures: appeal arrangements*  
[[http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/20110509\\_absappeals\\_decision\\_doc.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20110509_absappeals_decision_doc.pdf)]

8.132 A firm or individual who is unhappy with a decision of the Review Committee or the Disciplinary Committee will be able to submit a notice of appeal to the GRC. The GRC will be able to:

- affirm the decision wholly or in part;
- set aside the decision wholly or in part;
- substitute for all or part of the decision with a new decision of a kind ICAEW could have made;
- remit the matter to ICAEW (either generally, or for determination in accordance with a finding made or direction given by the tribunal); or
- dismiss the appeal.

8.133 If a respondent is unhappy with the determination of the GRC, they will have the right to appeal to the Tribunal Service's Upper Chamber on a point of law.

8.134 We consider that designation of the GRC as the relevant appellate body for accredited firms will achieve the following outcomes set out in the LSB's guidance:

**Outcome:** one appellate body with sufficient resources and expertise to deal with complex issues whose processes and costs are transparent, efficient, fair and public.

**Outcome:** the appellate body is able to draw from experience across a wide range of regulatory issues and is able to come to consistent decisions about similar issues.

## Capital adequacy

8.135 In accordance with LSB guidance, we have not included within our authorisation processes a capital adequacy test for ABS. However we will require some financial information from the firm as part of the annual return.

## Unreserved legal activities

### Section 85(7)

Conditions on a licence issued by a licensing authority may include conditions as to the non-reserved activities which the licensed body may or may not carry on.

8.136 Although we may have the power as a licensing authority to impose conditions on the non-reserved activities a firm may carry out, it is not our intention do this if authorisation for these services is not required under the Act (either as a licensing authority or an approved regulator). That being so, there are no specific issues that we anticipate needing to take into account.

8.137 We agree with the LSB's guidance that the approach taken by licensing authorities in deciding whether to regulate reserved and/or non-reserved legal activities should reflect the current levels of consumer protection in the market. On this basis, we consider that to impose conditions on the non-reserved services that an authorised/licensed firm can carry out would result in an uneven playing field between regulated and unregulated firms, and would defeat the following outcome set out in LSB guidance:

**Outcome:** different forms of commercial arrangements for ABS emerge and effective regulation provides the same levels of consumer protection for reserved and unreserved legal activities as in the rest of the market.

## **Licensing authority competence to accredit different forms of ABS**

- 8.138 As explained in paragraph 8.2 above, although we expect to accredit mainly firms whose principal business is accountancy, we will not place restrictions on the nature or extent of external ownership other than those set out in the Act. Applications will, however, be considered on a case-by-case basis, and we will impose conditions and/or restrictions on accreditation where necessary to protect the public interest.
- 8.139 ICAEW has never sought to restrict its members from working within entities regulated by other bodies. In the same way we will not restrict our members from working in an entity licensed by another licensing authority.

## **Register of licensed firms**

- 8.140 As required by the Act, we will maintain a register of all firms we license for the further reserved legal services activities and this information will be available on our website. In accordance with LSB rules, it will contain the following information:
- The name of the licensed firm, along with any trading names and previous names;
  - The firm's registered address (if relevant);
  - The firm's practising address;
  - The firm's company registration number (if relevant);
  - The name of the HoLP and his or her authorising body;
  - The name of the HoFA;
  - Confirmation that the firm is licensed to undertake further reserved legal activities work;
  - The date the firm became licensed to undertake further reserved legal activities work;
  - The status of the firm's accreditation (ie, whether the licence has been suspended or withdrawn and the date that this took place); and
  - Details of any sanctions or enforcement activities that has been taken against the licensed firm (or its principals, shareholders or employees) although this will not include any administrative fines.
- 8.141 The information contained on this register may change from time to time if there is a change to the LSB's rules. Equivalent information will also be held and made available in respect of firms ICAEW authorises as an approved regulator.



## 9. THE REGULATORY OBJECTIVES AND BETTER REGULATION PRINCIPLES

### Section 82(1)

Each licensing authority must prepare and issue a statement of policy as to how, in exercising its functions under Part 5 (concerning the regulation of ABS), it will comply with the requirements of section 28.

### Section 28

In discharging its regulatory functions the approved regulator must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives and which the approved regulator considers most appropriate for the purpose of meeting those objectives:

- Protecting and promoting the public interest;
- Supporting the constitutional principle of the rule of law;
- Improving access to justice;
- Protecting and promoting the interests of consumers;
- Promoting competition in the provision of services;
- Encouraging an independent, strong, diverse, and effective legal profession;
- Increasing public understanding of the citizen's legal rights and duties; and
- Promoting and maintaining adherence to the professional principles, ie:
  - authorised persons should act with independence and integrity;
  - authorised persons should maintain proper standards of work;
  - authorised persons should act in the best interests of their clients;
  - the affairs of clients should be kept confidential.

The approved regulator must have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principle appearing to it to represent the best regulatory practice.

- 9.1 The following section is intended as a statement of policy on how we will exercise our regulatory functions as an approved regulator and licensing authority in accordance with the requirements of section 28 of the Act.
- 9.2 The statement is also aimed at demonstrating how our proposed regulatory arrangements will support the regulatory objectives and professional principles set out in section 1 of the Act.

### The regulatory objectives

#### Protecting and promoting the public interest and the interests of consumers

- 9.3 As a professional membership body and regulator with a duty to operate in the public interest, we have taken care to ensure that our regulatory arrangements for the further reserved legal activities will protect and promote the public interest and the interests of consumers.
- 9.4 By becoming an approved regulator and licensing authority for the further reserved legal activities, we will be in a position to accredit accountancy-led firms to deliver these services

directly to consumers. We consider that, as with the probate services that we now regulate, this will almost certainly increase competition in the market for the further reserved legal activities, which should benefit consumers by encouraging the formation of new and innovative business services. This, together with the ability to provide all services required by the consumer in one place, as effectively a 'one stop shop' will ensure more competitive prices.

- 9.5 In developing our regulatory arrangements we have also taken care to ensure that the appropriate safeguards will be in place to ensure that the further reserved legal activities are only delivered by persons of sufficient skill and competence.
- 9.6 Our Authorisation and Qualification Framework for the regulation of the further reserved legal activities, set out in Annex 1 of this application, will ensure both the quality and integrity the further reserved legal activities carried out by our authorised persons and therefore protection of the consumer. It will also ensure high standards of professional skill and care which is important for the functioning of the courts which is in the public interest.
- 9.7 Accordingly, applicants applying for individual authorisation will be required to provide evidence in their application that they have attended a course and passed an assessment which have been approved by the Legal Services Committee as suitable for applicants applying for authorisation to conduct each of the further reserved legal activities respectively. In addition, individuals who are authorised by other approved regulators may be recognised as authorised individuals under our regulations.
- 9.8 All accredited firms and authorised individuals will be required to comply with our Legal Services Regulations and ICAEW's Code of Ethics which will, as was the case with probate, be expanded by way of help sheets giving guidance to practitioners on the ethical issues related to the further reserved legal activities including rules relating to duties to the court.
- 9.9 We have also designed our authorisation processes to ensure that only persons who are fit and proper will be able to conduct further reserved legal activity work. Again, we see this as being consistent with the regulatory objectives of consumer protection and the promotion of the public interest. We will require applicants for accreditation (both entities and individuals) to disclose any issues that might call into question their integrity and ability to conduct further reserved legal activities work in a fair and honest manner, and we will run checks on the data we receive from both internal and external sources.
- 9.10 Applicants will be required to confirm that they have processes in place for dealing with matters such as clients' money, staff training and review procedures, record-keeping and complaints-handling. They will also need to confirm that they have appropriate levels of PII. We will monitor compliance with these arrangements through annual returns, and our system of targeted monitoring and Practice Assurance reviews, the frequency of which will be determined by our assessment of risk for each firm.
- 9.11 In cases where our supervision of firms highlights an actual or possible breach of our regulatory arrangements, we will act to protect the public interest and the interests of consumers. This may be through a range of measures, from obtaining an informal undertaking from the firm or individual to put things right to the imposition of formal regulatory and disciplinary sanctions such as the imposition of conditions or restrictions, the suspension or withdrawal of accreditation, disqualification or a fine (the level of which will be guided by our *Guidance on Sanctions*) (Annex 8).
- 9.12 We have also taken care to ensure that appropriate levels of redress will be in place to protect consumers if things do go wrong. Firms will be required to maintain an internal complaints system that is prompt, transparent and straightforward. They will be obliged to highlight the availability of their complaints procedure to new and existing clients, and to

signpost the availability of the Legal Ombudsman both at the beginning of the engagement and during the complaints process.

- 9.13 In the case of negligence, bankruptcy or fraud, clients will have access to redress due to the requirement on firms to hold a minimum of £500k in PII per claim. In cases where PII is invalidated – for example in cases where a fraud is conducted by a sole practitioner – clients will also have recourse to redress through ICAEW’s Legal Services Compensation Scheme (discussed in paragraphs 7.89 to 7.94 above).
- 9.14 At the beginning of the engagement, firms will be under an obligation to highlight to clients the availability of compensation arrangements, a measure which we see will not only promote consumer protection, but also improve consumers’ understanding of their rights in relation to redress in the provision of legal services.
- 9.15 We are confident that the arrangements we are proposing will protect both consumers and the public interest. We will develop a consumer engagement strategy, which will provide information and advice to consumers about reserved legal activities and our regulatory framework. We will also collect information on consumers’ expectations and experiences around the provision of further reserved legal activities, which will inform our regulatory arrangements going forward.

### **Improving access to justice**

- 9.16 Although ‘access to justice’ is not a defined term in the Act, it has been suggested that, in the context of legal services provision, it might be improved in a variety of ways such as increased availability of services geographically, improved technology, new and innovative business models and lower prices.
- 9.17 As our designation as an approved regulator and licensing authority should lead to increased competition and a more liberalised market for services relating to the further reserved legal activities, we consider that our application is consistent with the regulatory objective of improving access to justice.
- 9.18 As required by the Act, we will take note of the objective of promoting access to justice when we consider applications for accreditation. All firms applying to become either authorised or licensed for the further reserved legal activities will have to provide us with a statement on how their accreditation will promote access to justice. We would be prepared to collate and analyse this data to assist the LSB in creating a sector-wide evidence base that assesses the impact of various factors on access to justice.
- 9.19 As a matter of policy, however, we consider that it would be extremely rare for us to decline an application solely on the basis of a firm’s response to this section. We agree with the LSB that it will be difficult, if not impossible, for firms to assess in isolation how their application will affect this regulatory objective. Accordingly, although we will consider the concept of access to justice in determining each application, we do not envisage that this criterion alone will be necessarily determinative.

### **Promoting competition in the provision of services**

- 9.20 We consider that our designation as an approved regulator and licensing authority will increase and promote competition in the provision of legal services. It will enable us to accredit accountancy firms to conduct further reserved legal activities work, which until now has been an activity reserved solely to lawyers. We consider that this should drive various benefits for consumers in terms of an increased availability of services nationally, lower prices and efficiencies in service delivery.

- 9.21 To promote a level playing field between firms we accredit for further reserved legal activities, we have sought to develop a single regulatory regime that will be consistent and apply to both authorised and licensed firms. No additional requirements have been placed on ABS, unless required by the Act.
- 9.22 Where the Act has set out requirements that apply solely to ABS, as with our probate regulation, we have sought where possible to limit restrictions so as not to impede competition. Accordingly, we have elected only to apply the fitness to own test to non-authorised owners holding a material interest of 10% or more in a licensed firm as required by the Act. We decided against imposing additional checks on holders of lesser interests, or to include, for example, a capital adequacy test or additional share limits. We consider that additional checks would be likely to result in a disproportionate regulatory burden on firms, which is unjustified and may create a disincentive to market entry. We consider that the default value of 10% is sufficient to protect consumers without hindering diversity in the provision of further reserved legal activities.
- 9.23 Similarly, although we may have the ability as an approved regulator and licensing authority to impose restrictions or conditions on the non-reserved activities an accredited firm may carry out, we do not intend to do this unless we have reason to believe that the firm's activities in these areas are posing a threat to its compliance with the legal services regulations or the regulatory objectives. We do not consider it reasonable to place additional restrictions on accredited firms if these activities can be carried out in an unregulated capacity. This would appear to us to be anti-competitive and not in keeping with the Act's objectives.
- 9.24 Furthermore, whilst our qualification requirements have been developed to ensure high standards of professional skill and care, we have ensured that they are proportionate so that costs and time requirements are not a bar to smaller firms. For example, the qualification requirements for our members have been built upon the existing knowledge and skills acquired in the ACA qualification as set out in Annex 5.

### **Encouraging an independent, strong, diverse, and effective legal profession**

- 9.25 We consider that the accreditation of accountancy firms for the further reserved legal activities work will contribute to a more competitive, strong and diverse market. Firms we accredit will be asked to monitor and report on the diversity profile of their firms on a periodic basis. This initiative, which is in accordance with LSB guidance, is intended to drive change in the profile of providers in the legal services market. It should also provide consumers with the ability to make informed choices about where to obtain legal services.
- 9.26 We also consider that our regulatory arrangements will encourage a strong, effective and independent market by enabling firms to determine how best to ensure compliance with our regulations within their own commercial context. Our CPD requirements, for example, give firms the freedom to identify their own training and development needs. We are not prescriptive in the activities accredited firms must carry out on an annual basis save for the requirement that an individual's CPD must include the further reserved legal activities the authorised individual is carrying out. We will also monitor compliance with the principle that professional training and development should be kept under review on a continuing basis.
- 9.27 Similarly, our requirements for complaints-handling are not prescriptive. We will require only that firms demonstrate to us that they are complying with certain minimum requirements (such as ensuring appropriate signposting to the Legal Ombudsman and cooperation and compliance with that body's decisions). Otherwise, firms will have the freedom to determine for themselves how best to deal with consumer complaints.

## **Increasing public understanding of the citizen's legal rights and duties**

9.28 We have included within our proposed regulations guidance on the importance of good communication with clients about the anticipated scope of the engagement. We have suggested that, in order to increase client satisfaction and to reduce the likelihood of complaints, firms should set out in writing at the beginning of the engagement what they can expect to happen and the steps involved. They will also need to alert clients to their right to refer matters to the Legal Ombudsman, and be prepared to explain to clients aspects of their work (and the costs involved) as it progresses. We believe that this will improve consumers' understanding of the legal processes governing further reserved legal activities and promote public legal education generally.

## **Promoting and maintaining adherence to the professional principles and supporting the rule of law**

9.29 Firms we accredit for the further reserved legal activities will be under an obligation to comply with the professional principles and the rule of law. The professional principles are set out in our proposed Legal Services regulations, and are consistent with the five fundamental principles underpinning our Code of Ethics: integrity, objectivity, confidentiality, professional competence and due care, and professional behaviour (discussed in paragraphs 3.77 to 3.82 above).

9.30 If we consider that there is a threat (either real or emerging) to compliance with the professional principles and the rule of law, we will act. This may be by the imposition of a condition or restriction on accreditation, or, in serious cases, through the suspension or withdrawal of accreditation, or disqualification. In the most serious cases, if there are concerns that the financial or other interests of clients may be being compromised, we may intervene in the practice.

## **Better regulation principles**

### **Transparency**

9.31 We will be transparent in the way in which we exercise our regulatory functions. If we intend either to decline an application for accreditation, or approve the application subject to conditions or restrictions, we will explain clearly to the applicant the reasons for our decision and they will have an opportunity to seek a review of the decision. Similarly, if we are considering taking regulatory action, the affected individual or firm will be informed of this and invited to make representations. Once the decision has been taken, we will provide our reasons and advise them of their right to apply for a review and the timescales for this.

9.32 We will also be transparent in the way in which we approach enforcement. We will be transparent in our sentencing (our *Guidance on Sanctions* is in the public domain) and there will be a presumption that penalties will be made public, unless there is an overriding public interest reason why redaction or non-publication is necessary in the particular circumstances of the case.

### **Accountability**

9.33 We will be accountable for the way in which we exercise our regulatory functions. If we have set targets for the determination of applications, for example, we will publish these targets on our website and monitor our performance against them.

9.34 We will also work cooperatively with the LSB as oversight regulator. We appreciate that we will be accountable to the LSB for the decisions we take and the way in which we discharge

our regulatory functions. We will therefore undertake to provide accurate information in line with the LSB's requirements on a prompt basis.

## **Proportionality**

- 9.35 In developing our proposed qualification requirements, we have sought to adopt a proportionate approach that is aimed at fostering competition, while ensuring that those persons undertaking and supervising further reserved legal activities work are competent to do so. Having assessed the skills required for the further reserved legal activities, we are satisfied that the training and skills required to become a chartered accountant form a solid foundation for further studies in this area. We have therefore set our qualification requirements at a level which we believe is appropriate to build on applicants' existing skill sets and competencies.
- 9.36 In our approach to monitoring and enforcement, we have also sought to be proportionate. As explained in Section 3, the frequency and focus of our reviews will depend on our assessment of risk. In cases where we see a threat to the regulatory objectives emerging (particularly that of consumer protection) we will increase monitoring and supervision and focus our resources in that area.
- 9.37 As in the other regulated areas of probate, audit, insolvency and investment business, we will apply our enforcement mechanisms in a proportionate manner. Where possible, we will seek always to resolve issues initially with individuals and firms in an informal manner. We consider that this fosters a culture of compliance which helps to reduce regulatory costs and delays for both parties.
- 9.38 If, however, we consider that there has been, or may be, a breach of our regulatory arrangements, we will act. This may result, in less serious cases, in the imposition of a condition on a firm's accreditation, or in an appropriate sanction such as a reprimand, fine or regulatory penalty. It would only be in the most serious cases that we would suspend or withdraw accreditation to carry on the further reserved legal activities, or disqualify an individual from holding a position in a licensed firm. We would only apply these sanctions in cases where we considered that the breach of the regulations was so serious, or the risk to the regulatory objectives so severe, that a lesser penalty would not be appropriate.

## **Consistency**

- 9.39 In developing our regulatory arrangements for the further reserved legal activities, we have sought to be consistent. Our arrangements use comparable procedures to those that we use in the areas of probate, audit, insolvency and investment business regulation.
- 9.40 Except in cases where the Act has prescribed requirements that apply only to ABS (for example, the fitness to own test) we have applied our requirements equally to both licensed and authorised firms. Where possible, we have sought to minimise the risk of a competitive disadvantage arising where additional regulatory requirements are placed on a certain type of firm.
- 9.41 We will also seek to be consistent in the way in which we discharge our regulatory functions as an approved regulator and licensing authority. Decisions in relation to our authorisation processes and our monitoring of firms will be taken by a small number of trained staff with powers delegated by the Legal Services Committee or the Legal Services Committee. The Legal Services Committee will also be responsible for determining applications for dispensations or to modify accreditation, and for taking regulatory action if there has been a breach of the Legal Services Regulations. We consider that vesting these powers in a single body will ensure consistency in decision-making across cases.

- 9.42 Similarly, we will also be consistent in our use of regulatory and disciplinary powers. Through the application of our *Guidance on Sanctions*, we consider that penalties will be applied in a consistent and proportionate manner. Committees will consider the guidance in determining what, if any, penalty to apply and the level of penalty, having taken into account the particular circumstances of the case and any mitigating or aggravating factors.
- 9.43 In our approach to appeals, we have sought also to be consistent. We are proposing that appeals on decisions of the Review and Disciplinary Committees should be referred to the GRC for consideration. As with our probate appeals, we do not consider that there should be a distinction between appeals of authorised and licensed firms, and consider that the GRC will have the competence to determine appeals in a cost-effective and timely manner.
- 9.44 On a broader level, we will continue to foster a consistent approach to the regulation of the further reserved legal activities and ABS. As a member of the ABS working party, we will continue to cooperate and coordinate our regulatory activities with other approved regulators and professional bodies. This should facilitate consistent and joined-up regulation across the sector, and enable us agree common standards to regulation and specific issues.

## Targeted

- 9.45 We will adopt a targeted and proportionate approach to monitoring and enforcement. In determining the level of supervision that will be required to monitor accredited firms, we will take into account a range of factors in assessing risk. These are likely to include factors such as the size of the firm; the level of turnover; the frequency with which the further reserved legal activities work being conducted; and the experience and seniority of the authorised individuals, and the firm's HoLP and HoFA.
- 9.46 We consider that a targeted approach to monitoring and enforcement will ensure that resources are directed appropriately in areas of greatest risk. We will also seek to focus reviews on specific areas of concern if we see an emerging risk to compliance with our regulatory arrangements or the regulatory objectives.

## Conclusion

- 9.47 In developing this application, we have taken care to ensure that our proposed regulatory arrangements for the further reserved legal activities and ABS will be consistent with, and promote, the Act's regulatory objectives and better regulation principles. If our application is successful and we are designated as an approved regulator and licensing authority for the reserved legal activities, we will be committed to ensuring that we discharge our regulatory functions, so far as reasonably practicable, in accordance with the regulatory objectives and best regulatory practice.

## 10. BUSINESS PLAN

### Executive summary

- 10.1 We have set out in Annex 21 our business plan for implementing the further reserved legal activities accreditation scheme. Assuming our application for designation as an approved regulator and licensing authority for the further reserved legal activities is successful, senior staff at ICAEW, under the sponsorship of the ICAEW chief executive and the executive director, Professional Standards, will be responsible for implementing this plan.
- 10.2 The business plan demonstrates that, as in the other regulated areas of probate, audit, insolvency and investment business, our approach is to ensure that we have the appropriate levels of resource and funding in place to be able to discharge our regulatory duties in relation to the further reserved legal activities competently. As an experienced regulator, we pride ourselves on our governance and organisational structure, and consider that we are well positioned to add these additional further reserved legal activities to the existing suite of activities we already regulate.
- 10.3 Contained within the business plan is a timeline for the activities we will need to undertake before we will be in a position to begin accrediting firms and individuals to conduct work relating to the further reserved legal activities. The timeline represents our initial thinking although we recognise that the duration of each activity, and point at which it will commence, may change.
- 10.4 The principles and methodology we will use to produce the fee scale for the further reserved legal activities applications are detailed below.

### Resource and capability

- 10.5 We will implement the further reserved legal activities accreditation scheme by making use initially of existing structures and personnel within ICAEW's Professional Standards. At the time of writing, some 125 staff are employed across the regulatory support, quality assurance, regulatory policy and professional conduct departments of Professional Standards. All these departments have well established and efficient operational and IT processes for carrying out regulatory activities, and staff have a wealth of experience across the regulatory and disciplinary areas.
- 10.6 As we do not expect the volume of firms applying for further reserved legal activities accreditation to be high in the short term, we plan to maximise synergies with the other regulated areas by applying our existing operational processes to the regulation of these further reserved legal activities. Accordingly, any applications required under the Legal Services Regulations which are straightforward will be dealt with by appropriately trained staff in the regulatory support and regulatory policy areas under delegated powers. More complex applications will be referred to the Legal Services Committee for decision.
- 10.7 The QAD will be responsible for monitoring firms' compliance with our proposed regulatory arrangements for the further reserved legal activities. The QAD will be tasked with carrying out risk reviews based on intelligence gathered from annual returns and other sources, and will conduct reviews of firms. These reviews will be carried out in conjunction with QAD's PA scheme to maximise efficiencies where possible. Targeted, risk-based reviews will also be conducted where necessary, and we envisage that the majority of firms will receive a review during their first 24 months of accreditation.
- 10.8 If our monitoring of firms highlights an issue of possible or actual non-compliance with our regulatory arrangements for the further reserved legal activities, the matter will be referred to



Professional Standards' professional conduct department for investigation. Staff in this department deal with around 2,000 first-instance complaints and enquiries each year, and have a long experience in assessing and, where necessary, recommending disciplinary action against members for breaches of the regulations and Disciplinary Bye-laws.

## **Training and development**

- 10.9 Although our internal training programmes have yet to be finalised, as we did when setting up the processes and procedures for our probate regulation, we will develop and deliver internal training courses to all staff engaged in monitoring compliance with our regulatory arrangements. This will include both technical and regulatory knowledge and skills.
- 10.10 Principally this will apply to QAD staff who will be responsible for carrying out monitoring reviews mentioned above. As explained in paragraphs 3.61 to 3.65. QAD reviewers are all chartered accountants with a combined average length of service of 10 years. They are already skilled in monitoring compliance with ICAEW's clients' money regulations and anti-money laundering requirements, and so we are confident that this additional training in the further reserved legal activities, in addition to probate, will equip them to discharge their supervisory responsibilities competently in this area.
- 10.11 Furthermore, as was the case when implementing our processes for probate regulation, the Technical Advisory Team and Professional Conduct Team will be provided with both technical and regulatory training.

## **Legal Services Committee**

- 10.12 We will establish a committee, to be known as the Legal Services Committee, to oversee our regulatory responsibilities relating to the further reserved legal activities. As has been outlined in the application, this committee will be tasked with dealing with a range of matters including determining complex or non-standard applications for accreditation; determining applications for modifications and/or dispensations; reviewing returns and QAD reports; taking regulatory action against individuals/firms in the case of non-compliance and determining applications for grants made in accordance with the Legal Services Compensation Scheme. It will have full delegated powers to determine policy and regulatory matters and for rule-making and fee-setting with the approval of the LSB.
- 10.13 It is proposed that this committee will comprise ten members, with a 50:50 split between lay members and professional services practitioners. A lay person will be defined as someone who has never qualified or practised as a professional accountant, and solicitors and persons with legal training will also be excluded. Our intention is to advertise these appointments externally in one or more national newspapers and we have built funds into the operational budget to recruit these committee members. At this point we anticipate that the Legal Services Committee will convene for a minimum of six meetings per year, but the frequency of committee meetings will be kept under review depending on the volume of applicants for accreditation.

## **Funding**

### **Fee scales and methodology**

- 10.14 The commercial basis for the fee structure is that, on an ongoing basis, the underlying cost of providing the regulatory services is fully funded from the registration fee and compensation levy. The initial year of development involves estimated costs in the region of £130k which Professional Standards will finance from its budget, but recover in future charges phased over time.

- 10.15 The costs of the regulatory body will include the costs of the directly associated personnel, but will also draw on the infrastructure services of ICAEW on a basis consistent with that applied for the other four regulated areas of probate, audit, insolvency and investment business. Costs will also take account of synergies with the PA scheme, which may facilitate reviews of accredited firms concurrently with practice operation.
- 10.16 The fee structure will be determined taking into account the following factors.
- The aim of making the cost to a sole practitioner entering this market for the first time as undemanding as possible and enabling such entry to be achieved, though it be at the expense of the more established and larger practices. The Act's regulatory objectives include improved competition and access to justice, and we consider that high registration fees could pose an entry barrier to smaller firms, which would be counter-productive to those objectives.
  - A recognition that firm size, and the number of individuals conducting authorised work will have an impact on the scale of our regulatory operations and the costs involved.
  - Acknowledgement that, unlike the other regulated areas within ICAEW, the areas being regulated (the further reserved legal activities) will generally comprise a small part of the overall service offering of the accounting firm or practitioner. Therefore, the fees will be measured against only certain elements of income rather than the whole income of the firm or practitioner. This would be the commercial approach adopted by the firm in deciding whether to apply, and one we have mirrored in determining the fee structure.

### **Contributions to ICAEW compensation arrangements**

- 10.17 As with our probate regulation, in addition to an annual registration fee, we will charge a compensation levy. This levy will be charged in a manner consistent with the annual registration fees.
- 10.18 We met the initial seed funding of the probate compensation scheme of £100k through Professional Standards' budget. From year one of our probate operations, the compensation levy has been used to fund the annual premium. A percentage of the compensation levy has also been used to start building up a compensation fund over time, with minimum contributions of £100k per year, aimed at accumulating a fund of £1m over 10 years. The Probate Compensation Scheme will be expanded to cover the further reserved legal activities and will be referred to as the Legal Services Compensation Scheme.
- 10.19 The Legal Services Compensation Scheme will be a discretionary fund of last resort. Grants from the scheme will depend, among other matters, on applicants taking steps to exhaust other remedies and mitigate their loss. Grants will be at the total discretion of the Legal Services Committee and will be capped at £500,000 per claim with a total aggregate of £5 million per year.
- 10.20 operational environment and take on additional, trained and skilled staff if necessary.

## Draft timetable

Date	Activity/milestone
June 2016	Formal submission of application to the LSB.
June 2016 – December 2016	Development of internal processes and systems for registration; establishment of the Legal Services Committee; training of staff; further development of forms, website and IT development; guidance and marketing literature (as detailed in the annexed plan).
June 2016 – November 2016	LSB's determination of the application following formal consultation with the Competition and Markets Authority (CMA), the Legal Services Consumer Panel and the Lord Chief Justice.
First quarter of 2017	Lord Chancellor's consideration of the application.
First quarter of 2017	Passage of statutory orders through Parliament.
April 2017	Designation of ICAEW as an approved regulator and licensing authority for the further reserved legal services
April 2017	ICAEW begins accepting applications from firms for accreditation
April/May 2017	The first firms are accredited for the further reserved legal activities as authorised and licensed firms.

## 11. INTERNAL GOVERNANCE

### Background

- 11.1 The Act provides for the principle of regulatory independence. As set out in the LSB's Internal Governance Rules 2009 (IGRs) this is the principle that:
- 11.2 'Structures or persons with representative functions must not exert, or be permitted to exert, undue influence or control over the performance of regulatory functions, or any person(s) discharging those functions.'
- 11.3 When the LSB consulted on the IGRs in 2009 it recognised a need to allow a degree of flexibility where the scheme of the IGRs might conflict with, or make less practicable, a new approved regulator's adherence to the requirements of other oversight regulators.
- 11.4 As a regulatory body, in addition to the LSB, our principal regulatory activities are subject to oversight by the FSA, the FRC, the Irish Auditing and Accounting Supervisory Authority (IAASA) and the Insolvency Service. Up until now, these regulators have not taken substantive issue with our governance arrangements, and therefore we have not considered it appropriate or necessary to reorganise our arrangements along the lines of some of the other legal professional bodies, which have created separate entities for the discharge of their regulatory functions. We have been of the view that any amendments could interfere with, and make less practicable, our existing relationships with these other oversight bodies, and have considered that it would be disproportionate to restructure our governance arrangements significantly for the further reserved legal activities, given the cost-savings and synergies that are possible through shared services with ICAEW's representative arm (such as IT, human resources and procurement).
- 11.5 This enables promotion of the regulatory objectives of the Act, by ensuring that regulatory fees are kept as low as possible, thus promoting access to justice by enabling smaller firms to provide further reserved legal activities with the effect of increasing competition and keeping costs to the consumer low.
- 11.6 This approach to regulation is also in line with the Government's Red Tape Challenge and current policy for proportionality and deregulation.
- 11.7 We do however consider that the approach we have taken to date in relation to the Probate Committee – both to its membership and its function – is in keeping with the principle of regulatory independence and the outcomes sought by the introduction of the LSB's IGRs. Whilst the Probate Committee sits within ICAEW's existing governance structures, it has full autonomy and independence in dealing with matters in relation to probate practitioners, and has the freedom to report matters as necessary to the LSB.
- 11.8 Furthermore, in 2013 ICAEW commissioned a wide-ranging independent review of its regulatory governance processes and structures. This review focused on the relationship between PSB and other ICAEW departments, and encompassed such issues as the proportion of lay members on regulatory committees and boards; the regulatory financing model; rule-making powers and arrangements for shared services. A key driver of the review was the principle of regulatory independence in the Act and ICAEW's responsibilities as a prospective legal services regulator. The recommendations of this review are currently being implemented which will result in the changes to our regulatory governance arrangements set out in paragraph 3.52 to 3.53.

## Compliance with the IGRs as an Approved Regulator

### ICAEW's current internal governance arrangements

11.9 During the processing of our previous application to the LSB to become an Approved Regulator and Licensing Authority for probate the LSB confirmed that, as an accountancy regulator, we are considered to be an Approved Regulator (AR) as defined in Section 20(2) of the Act, for the purposes of the IGRs. As such, we are bound to comply with rules 6 and 7, and not the detailed schedule to the rules. Nor are we required to complete the annual dual self-certification exercise confirming our compliance with the principle of regulatory independence.

#### **Rule 6 of the LSB's internal governance rules 2009**

##### **Each Approved Regulator must:**

- have in place arrangements that observe and respect the principle of regulatory independence; and
- at all times act in a way which is compatible with the principle of regulatory independence and which it considers most appropriate for the purpose of meeting that principle.

#### **Rule 7**

##### **Without limiting the generality or scope of Rule 6, the arrangements in place under that Rule must in particular ensure that:**

- persons involved in the exercise of an Approved Regulator's regulatory functions are, in that capacity, able to make representations to, be consulted by and enter into communications with any person(s) including but not limited to the Board, the Consumer Panel, the OLC and other Approved Regulators;
- the exercise of regulatory functions is not prejudiced by any representative functions or interests;
- the exercise of regulatory functions is, so far as reasonably practicable, independent of any representative functions;
- the Approved Regulator takes such steps as are reasonably practicable to ensure that it provides such resources as are reasonably required for or in connection with the exercise of its regulatory functions; and
- the Approved Regulator makes provision as is necessary to enable persons involved in the exercise of its regulatory functions to be able to notify the Board where they consider that their independence or effectiveness is being prejudiced.

11.10 We believe our current regulatory governance arrangements comply with rules 6 and 7 of the IGRs. As explained in paragraphs 2.7 to 2.12 above, ICAEW's council is responsible for determining ICAEW's overall objectives, strategy and budget. It is supported by ICAEW's main board, and five departmental boards – Learning and Professional Development, Technical Strategy, Members, Commercial and Professional Standards – each of which

oversees departmental operational plans, monitors performance and approves specific projects.

11.11 The Professional Standards Board (PSB) is responsible for ICAEW professional standards and the activities of the Professional Standards Department (PSD). Its responsibilities include:

- developing proposals relating to Professional Standards' strategy and policy;
- determining the PSD's overall budget and resources;
- setting the level of regulatory fees based on the self-financing principle;
- making and amending regulations in the professional conduct and regulated areas of audit, insolvency and investment business;<sup>12</sup>
- amending the PA standards and guidance;
- dealing with matters relating to the monitoring of compliance with the clients' money regulations;
- developing and monitoring performance criteria and performance measures for PSD activities;
- reviewing the structure and membership of Professional Standards' committees (in consultation with ICAEW's Nominating Committee); and
- ensuring that the activities of the quasi-judicial committees and staff are visibly distinguishable and separate from other ICAEW activities.

11.12 The PSB is also charged with overseeing the work of ICAEW's quasi-judicial committees which include the:

- Audit Registration Committee;
- Insolvency Licensing Committee;
- Investment Business Committee;
- Review Committee;
- Investigation Committee;
- Disciplinary Committee; and
- Appeal Committee.

11.13 This is subject to the above committees not being answerable to the PSB for their regulatory decisions in individual cases. No member of council or anyone who sits on a committee of ICAEW's representative arm may sit on any of the quasi-judicial committees.

11.14 The PSB currently comprises 16 members, including two lay members, three staff members and the executive director, Professional Standards. It is chaired by a council member who also sits on ICAEW's main board, along with the executive director.

11.15 Although PSD shares some services with other departments in the organisation (eg, human resources) it operates with a significant degree of independence. Measures are in place to ensure that the discharge of activities is conducted free from influence from ICAEW's representational arm. Access to its IT systems, for example, is protected and, within the department, regulatory information is shared on a need-to-know basis.

11.16 PSD is also responsible for setting its own budget in accordance with a self-financing principle. ICAEW membership subscriptions or practising certificate fees are not used to subsidise its regulatory function in relation to audit, insolvency, investment business, probate,

---

<sup>12</sup> Excluding those regulations made by the Investigation, Disciplinary and Appeal Committees under powers delegated to them in the Schedule to the Disciplinary Bye-laws), and provided that PSB may not approve any such regulations or amendments without the endorsement of the Board where these represent new, or changes to, policy or are matters which are likely to be sensitive to members.

and PA (although legal and professional conduct activities are funded in part through these fees). Similarly, regulatory fees are not used to subsidise membership activities.

## Probate Committee

- 11.17 As part of our probate regulation a newly created quasi-judicial body, the Probate Committee, was set up with full responsibility for dealing with regulatory matters concerning probate practitioners. This committee has no representative functions.
- 11.18 As ICAEW fully supports the principle of regulatory independence we sought, through our existing governance structures, to apply this principle to the regulatory areas for which we are responsible. It was recognised, however, that in order to comply fully with rules 6 and 7 of the IGRs, some adjustments would need to be made to enable us to become a legal services regulator.
- 11.19 The Probate Committee was therefore set up with full, independent powers to determine matters in relation to probate practitioners free from any influence from ICAEW's representative arm and other committees and boards within PSD.
- 11.20 Its responsibilities include rule making, policy/strategy setting, budget setting and day-to-day casework concerning accredited probate firms. Although under its terms of reference (Annex 20) the Probate Committee is obliged to consult with the PSB and other stakeholders on matters of policy or if amendments to the probate regulations are proposed, it has full independence and ultimate responsibility for ensuring that matters concerning probate are conducted in accordance with the Act's requirements and the regulatory objectives.
- 11.21 The Probate Committee is made up of ten members, with a 50:50 split between lay and non-lay members and a casting vote for the lay chair where required. A 'lay member' is defined as someone who has never qualified or practised as a professional accountant, and persons with legal training are also excluded. The balance of the committee is made up of 'practitioners in the regulated areas', providing scope for the committee to expand its role in the future if ICAEW, as we are doing in this application, applies to regulate other reserved legal activities. Currently, non-lay members on the committee are probate practitioners.

Arguably the strengths of this approach are that:

- the proportion of lay members on the committee should promote public confidence that decisions of the committee are free from bias and professional interests. All accountants and persons with legal training are excluded from serving as lay member on the committee regardless of their background or professional membership body.
  - The appointment of a lay chair was supported by the Consumer Panel in its response to consultation. The Panel considered that the chair will set the strategic direction for the committee and that it is important that consumer-focused regulation is "*led from the top*".
  - the balance of the committee is formed of practitioners who have knowledge and experience of probate and estate administration. This has ensured an appropriate level of technical expertise on the committee to enable it to discharge its functions effectively and with competence.
- 11.22 This approach to the committee's membership has ensured that an appropriate balance is struck between involving lay persons in the regulatory process and practitioners who have technical knowledge and expertise of probate and estate administration. The 50:50 split of

lay and non-lay members is an approach that has been endorsed by the NHS in evaluating the governance arrangements of the General Medical Council and the Dental Council.

- 11.23 A 'sunset clause' has been inserted in to the contracts of committee members to enable the committee's membership and functions to be reviewed within 3 years. This should provide sufficient flexibility to enable the arrangements to be modified should the need arise in the future.
- 11.24 If at any time the Probate Committee ceases to discharge its functions appropriately, we understand that, as the Approved Regulator, ICAEW would be required to notify the LSB, or could replace members of the committee following consultation with the LSB.

### **Access to the LSB**

- 11.25 The Probate Committee has the right to enter into communication freely with the LSB and other stakeholders. Although for the purposes of transparency, information may be shared with ICAEW's representative arm (to facilitate, for example, the development of courses of probate best practice) it is recognised that, in accordance with rule 7 of the IGRs, ICAEW's council, main board, representative departments and PSB are unable to influence the content of representations made to these bodies. The Probate Committee has the freedom to notify the LSB if it considers that its independence is being compromised in any way.

## **Proposed arrangements**

### **The Legal Services Committee**

- 11.26 We propose to change the terms of reference of the Probate Committee (attached as Annex 20) to include the regulation of the further reserved legal activities in addition to probate activities. This new committee will be called the Legal Services Committee and the proposed terms of reference will require 12 members with a 50:50 split of lay and non-lay members with a lay chair who has the casting vote.
- 11.27 It is proposed that the technical members of the Legal Services Committee will have, collectively, expertise of the full range of the further reserved legal activities and probate.
- 11.28 Its role and constitution will remain under review, in consultation with the LSB, as ICAEW's experience as a legal services regulator grows and its arrangements evolve following the wider governance review.

### **Regulatory governance**

- 11.29 As explained in paragraphs 3.52, in order to ensure that its regulatory governance remains in line with current best practice and expectations in terms of how it, as a statutory and professional standards regulator, structures its regulatory framework internally, ICAEW decided in 2013 it needed an independent review of its regulatory governance process. Sir Christopher Kelly was appointed to chair a Regulatory Governance Review Group to undertake this independent review and report to ICAEW Council in December 2013.
- 11.30 ICAEW is currently implementing its recommendations the results of which are set out in paragraph 3.53 of this application as follows:
- (a) The PSB will be reconstituted in a way which would give it a greater degree of independence from the rest of ICAEW in both substance and appearance. It is being replaced by the ICAEW Regulatory Board (IRB) which will have the same numbers of lay and ICAEW members, with its chair appointed by an independent panel set up specifically for that purpose, the selection to be made on a 'best-person-for-the-job



basis and therefore could be a chartered accountant as well as a lay person. The Regulatory Governance Review Group's reasoning for this recommendation was that if the appointment of that person was done independently of ICAEW Council and Board, then that was insulation to make sure that the chair would be sufficiently independent of ICAEW, even if the final decision was to appoint an ICAEW member.

- (b) The issues that will come before the IRB will be broadly be the same as those currently discussed by the PSB, with the main change being the balance of members on the new board. There will be parity in numbers between accountant and lay members (including the chair). As with the chair, members will be appointed by the independent panel which selected the chair.
- (c) The IRB will be charged with ensuring the Professional Standards Department runs the processes that underpin the licensing and disciplinary work effectively and efficiently.
- (d) Guidance on Sanctions will in future be dealt with by the IRB which will be able to take a view over the Investigation Committee, the Disciplinary Committee and the Appeal Committee – not challenging individual decisions but providing an overview on decisions taken. It will therefore be able to give an informed view on whether ICAEW's disciplinary tribunals and regulatory committees are actually doing their job appropriately.
- (e) Once established the IRB will establish its own Nominations Committee, chaired by a lay member, to make appointments to the committees reporting to it.
- (f) The Audit Registration Committee, the Insolvency Licensing Committee, the Investment Business Committee and the Practice Assurance Committee will have equal numbers of lay and technical members. Their chairs will be chosen on the basis of who is considered by the Nominations Committee of the IRB to be best fitted for the job, whether lay or technical.
- (g) There will also be parity in numbers between lay and accountant members of the Investigation Committee, with the chair chosen from among the lay members.
- (h) Disciplinary tribunals will have a lay majority and a lay chair (as opposed to the current composition of two chartered accountants and one lay member). This will give no reason for doubt on the transparency and objectivity of the process.
- (i) There will be lay majorities on the panels for both the Review Committee and the Appeal Committee. Review Committee panels will consist of – either - two lay members (one of whom should be chair) and one technical member – or - a legally qualified chair, one lay member and one technical member. Appeal panels should consist of two chartered accountants, two lay members and a legally qualified chair of the stature, as now, of a QC or retired High Court Judge.

11.31 We therefore believe that our current and proposed regulatory governance arrangements comply with and will continue to comply with the IGRs 6 and 7.

## **Applicable Approved Regulator**

11.32 In addition to an AR the IGRs also refer to an Applicable Approved Regulator (AAR) which is defined as:

An Approved Regulator that is responsible for the discharge of regulatory and representative functions in relation to legal activities in respect of persons whose primary

reason to be regulated by that approved regulator is those person's qualifications to practice a reserved legal activity that is regulated by that Approved Regulator.'

- 11.33 Under the IGRs an AAR must meet additional requirements regarding its internal governance arrangements including compliance with the schedule to the IGRs.
- 11.34 Although, during consultation on our probate application the LSB confirmed that, as an accountancy regulator, ICAEW is considered to be an AR for the purposes of the IGRs. The LSB has recently indicated that, if ICAEW were to accept applications for authorisation to conduct legal activities from individuals or firms who ICAEW did not regulate for accountancy services, ICAEW may fall within the definition of an AAR.
- 11.35 ICAEW does not believe, should its further application to regulate the further reserved legal activities be successful, that it will fall within the definition of an AAR for the following reasons:
- 11.36 As with our probate regulation, the proposed Legal Services Regulations permit applications for individual authorisation to carry out one or more of the further reserved legal activities under the following three regulations - regulation 4.1a, b, and c.

<b>Legal Services Regulation</b>	<b>Types of applicant</b>	<b>Why such applicant does not fall within the definition of an AAR</b>
Regulation 4.1a	This regulation permits applications from ICAEW members.	Regulating such applicants does not bring ICAEW within the definition of an AAR as our members' primary reason to be regulated by ICAEW is their ACA qualification which enables them to practise as a Chartered Accountant, not to carry out reserved legal activities.
Regulation 4.1b	This regulation permits applicants from individuals who hold a qualification issued or recognised by an approved regulator (other than ICAEW) that entitles the individual to undertake one or more of the further reserved legal activities.	Regulating these applicants does not bring ICAEW within the definition of an AAR as these applicants will be represented by their own professional body (eg, the Law Society) so their regulation and representation will be completely separate as each function will be undertaken by an entirely separate body. Furthermore, any breach of professional conduct committed by such individuals will be referred to the regulator for their profession for disciplinary investigation and action (eg. The SRA) (as set out in

		section 12 of the application – regulatory conflict)
Regulation 4.1c	This regulation permits applications from individuals who are ‘otherwise qualified’ to undertake one or more of the further reserved legal activities so as to satisfy ICAEW that it should approve their designation as an authorised individual.	Regulating these applicants does not bring ICAEW within the definition of an AAR as these applicants will not be represented by ICAEW, they will only be regulated. Such applicants will be represented by their own professional body (if they have one). The applicants who have, to date, qualified to apply for authorisation under this regulation to carry out probate activities have qualifications awarded by the following bodies: ACCA, STEP, CIOT. Although we will require such applicants to become Affiliate Members, this simply brings them within the scope of our disciplinary bye-laws, Affiliate Membership does not make them a member of ICAEW for representation purposes.

11.37 However, even though ICAEW is an AR under the IGRs, we believe ICAEW would fulfil, in practical terms, the requirements of an AAR as our proposed arrangements comply with the outcomes sought by the IGRs in this respect.

<p><b>Part 1: Governance</b></p> <p><b>Rule A:</b> Each AAR must delegate responsibility for performing all regulatory functions to a body or bodies (whether or not a separate legal entity/separate legal entities) without any representative functions (herein after ‘the regulatory body’ or ‘the regulatory bodies’)</p> <p><b>Rule B:</b> The regulatory body or, if more than one, each of the regulatory bodies, must be governed by a board or equivalent structure (herein after the ‘regulatory board’)</p> <p><b>Rule C:</b> In appointing persons to regulatory boards, AARs must ensure that:</p> <ul style="list-style-type: none"> <li>• a majority of members of the regulatory board are lay persons; and</li> <li>• the chair of the regulatory board is a lay person</li> </ul>
--

11.38 ICAEW, as an AR, has delegated responsibility for performing all regulatory functions to the Professional Standards Department (‘the regulatory body’) which does not have any

representative functions (Rule 1A). The rule does not require the regulatory body to be a separate legal entity.

- 11.39 In relation to the regulation of legal services, the regulatory body of ICAEW is currently governed by the Probate Committee and will be governed by the proposed Legal Services Committee ('the regulatory board') (which has/will have the equivalent structure of a board) (Rule 1B).
- 11.40 Whilst there is no lay majority of members on the regulatory board, it does have a lay chair who has a casting vote and the Committees' terms of reference require a lay majority to be in attendance at meetings to be quorate. These arrangements therefore comply with the outcomes sought by Part 1 rule C of the IGRs.

## **Part 2: Appointments etc.**

**Rule A:** All appointments to a regulatory board must be made on the basis of selection on merit following open and fair competition, with no element of election or nomination by any particular sector or interest groups.

**Rule B:** The regulatory body must be responsible for:

- designing competency requirements; and
- designing and managing the appointments and reappointments process

**Rule C:** the selection of persons so appointed must itself respect the principle of regulatory independence and the principles relating to "appointments etc" set out in this part of this Schedule.

**Rule D:** Decisions in respect of the remuneration, appraisal, reappointment and discipline of persons appointed to regulatory boards must respect the principle of regulatory independence and the principles relating to "appointments etc" set out in this Part of this Schedule.

**Rule E:** Except insofar as an AAR would be, or would reasonably be considered likely to be, exposed to any material legal liability (other than to pay wages, salaries etc) as a consequence of the delay required to obtain the concurrence of the Board, no person appointed to a regulatory board must be dismissed except with the concurrence of the Board

**Rule F:** No person appointed to and serving on a regulatory board must also be responsible for any representative function(s).

- 11.41 The regulatory body designed competency requirements and designed and managed the appointments process for the current regulatory board. This body will design the competency requirements for the proposed Legal Services Committee (proposed future regulatory board) together with its appointment process (Rule 2B).
- 11.42 All appointments to the current regulatory board were made on the basis of selection on merit following open and fair competition, with no element of election or nomination by any particular sector or interest groups. The appointments for lay members were advertised in two national newspapers with clear criteria for available roles and details of the selection process. The appointments of technical appointments were advertised through accountancy media and regional ICAEW groups. The same process will be followed for the regulatory

board that will govern the regulation of the further reserved legal activities in addition to probate (Rule 2A).

- 11.43 The selection of members to the current regulatory board was made in accordance with criteria produced and applied by the selection board which was totally independent of ICAEW, its members being the lay chair of the Probate Committee and a representative external to ICAEW and the regulatory board being the Chair of another legal services regulator (Rules 2A and 2C).
- 11.44 The secretary of the current regulatory board attended the appointment interviews as a representative of the regulatory body in order to give technical advice and administrative support and ensure that a proper audit trail of the discussions, the points considered and final decisions made was maintained (Rule 2B and 2C). The same procedure will be followed for the appointments to the proposed future regulatory body.
- 11.45 As set out in paragraphs 11.30 of this application, the PSB is being reconstituted in a way which will give it a greater degree of independence from the rest of ICAEW in both substance and appearance. It is being replaced by the ICAEW Regulatory Board (IRB) which will have the same numbers of lay and ICAEW members, with its chair having been appointed by an independent panel set up specifically for that purpose, the selection having been made on a 'best-person-for-the-job basis. The Regulatory Governance Review Group's reasoning for this recommendation was that if the appointment of that person was done independently of ICAEW Council and Board, then that was insulation to make sure that the chair would be sufficiently independent of ICAEW, even if the final decision was to appoint an ICAEW member.
- 11.46 The issues that will come before the IRB will be broadly the same as those currently discussed by the PSB, with the main change being the balance of members on the new board. There will be parity in numbers between accountant and lay members (including the chair). As with the chair, members will be appointed by the independent panel which selected the chair.
- 11.47 The IRB will have no power to overturn or determine with the regulatory decisions of the proposed future regulatory board. As with the current regulatory board, both the membership and function of the proposed regulatory board is in keeping with the principle of regulatory independence and the LSB's internal governance rules. Whilst, the proposed future regulatory board will sit within ICAEW's existing governance structures, it will have full autonomy and independence in dealing with matters in relation to legal services practitioners, and will have the freedom to report matters as necessary to the LSB.
- 11.48 The IRB will however be charged with ensuring that ICAEW's regulatory body runs the processes that underpin the licensing and disciplinary work effectively and efficiently. The IRB will therefore be responsible for the quality assurance procedures and quality and efficiency of the work of the regulatory board. This will include such matters as remuneration, appraisal and discipline of persons appointed to the regulatory board. With regard to disciplinary matters, the IRB will normally consider any representations the Board may choose to make and unless the circumstances are exceptional, no person appointed to the regulatory board will be dismissed except with the concurrence of the Board (Rules 2D and 2E).
- 11.49 No members of the current regulatory board nor the proposed future regulatory board are responsible for any representative functions. Office holders and ICAEW Council members are excluded from being members of all regulatory committees (Rule 2F).
- 11.50 The terms and conditions of the current and proposed future regulatory board includes a requirement to comply with a code of conduct (Rule 2F)

### **Part 3: Strategy and Resources etc**

**Rule A:** Defining and implementing a strategy should include:

- access to the financial and other resources reasonably required to meet the strategy it has adopted;
- effective control over the management of those resources; and
- the freedom to govern all internal processes and procedures.

**Rule B:** The regulatory body (or each of the regulatory bodies) must have the power to do anything within its allocated budget calculated to facilitate, or incidental or conducive to, the carrying out of its functions.

**Rule C:** Insofar as provision of resources is concerned, arrangements must provide for transparent and fair budget approval mechanisms.

**Rule D:** Insofar as provision of any non-financial resources is concerned (for example, services from a common corporate service provider, or staff) arrangements must provide for transparent and fair dispute resolution mechanisms.

- 11.51 Although PSD shares some services with other departments in the organisation (eg, human resources) it operates with a significant degree of independence. Measures are in place to ensure that the discharge of activities is conducted free from influence from ICAEW's representational arm. Access to its IT systems, for example, is protected and, within the department, regulatory information is shared on a need-to-know basis (Rule 3A).
- 11.52 PSD is also responsible for setting its own budget in accordance with a self-financing principle. ICAEW membership subscriptions or practising certificate fees are not used to subsidise its regulatory function in relation to audit, insolvency, investment business, probate, and PA (although legal and professional conduct activities are funded in part through these fees). Similarly, regulatory fees are not used to subsidise membership activities (Rule 3B and 3 C).
- 11.53 Its responsibilities include rule making, policy/strategy setting, budget setting and day-to-day casework concerning accredited probate firms. Although under its terms of reference (Annex 20) the Probate Committee is obliged to consult with the PSB and other stakeholders on matters of policy or if amendments to the probate regulations are proposed, it has full independence and ultimate responsibility for ensuring that matters concerning probate are conducted in accordance with the Act's requirements and the regulatory objectives.

### **Part 4: Oversight etc**

**Rule A:** Arrangements in place must be transparent and proportionate.

**Rule B:** Arrangements in place must prohibit intervention, or the making of directions, in respect of the management or performance of regulatory functions unless with the concurrence of the Board.

11.54 As mentioned above, the IRB will have no power to interfere with the regulatory decisions of the proposed future regulatory board. The IRB will however be charged with ensuring that ICAEW's regulatory body runs the processes that underpin the licensing and disciplinary work effectively and efficiently. The IRB will therefore be responsible for the quality assurance procedures and quality and efficiency of the work of the regulatory board. The arrangements it puts in place for doing so will be transparent and proportionate. This will include such matters as remuneration, appraisal and discipline of persons appointed to the regulatory boards. With regard to disciplinary matters, the IRB will normally consider any representations the Board may choose to make and unless the circumstances are exceptional, no person appointed to a regulatory board will be dismissed except with the concurrence of the Board (Rules 4A and 4B).

## Conclusion

11.55 We therefore believe our current and intended approach to internal regulatory governance is in keeping with the principle of regulatory independence and the outcomes sought by the introduction of the LSB's IGRs. It is also in line with the Government's policy of deregulation thus ensuring red tape and regulatory arrangements are both necessary and proportionate.

11.56 As ICAEW falls within the definition of an AR under the Act, as required by the IGRs, our internal governance arrangements are fully compliant with rules 6 and 7. They would also fulfil, in practical terms, the requirements of an AAR.

11.57 As such governance arrangements are proportionate, as they allow for cost-savings and synergies that are possible through shared services with ICAEW's representative arm (such as IT, human resources and procurement) – areas which do not infringe on the regulatory body's ability to regulate independently, they therefore ensure compliance with the Act's regulatory objectives of:

- improving access to justice
- promoting competition in the provision of services and
- encouraging an independent, strong, diverse and effective legal profession

11.58 This is because our governance arrangements are proportionate to the risk to our regulatory body's independence thus allowing us to keep regulatory fees to a minimum which allows all sizes of firms to enter the legal services market.

## 12. REGULATORY CONFLICT

### Other approved regulators

- 12.1 Section 52 of the Act places a duty on approved regulators to make provision as is reasonably necessary to prevent regulatory conflicts. We recognise that if ICAEW extends its role as an approved regulator and licensing authority, there is further scope for conflict to arise in cases where:
- individuals authorised by other approved regulators work within ICAEW accredited firms; or
  - ICAEW members work within entities regulated by other approved regulators.
- 12.2 Since 2010 we have been involved in inter-regulator working groups that have been inter alia considering the issues around regulatory conflict between the approved regulators. In 2012 this resulted in the creation of a Multi-Disciplinary Practices Framework MoU, a copy of which is contained in Annex 24.
- 12.3 During 2014/15 the regulators forum, in which ICAEW is an active participant, considered adding a second MoU which addressed the exchange of information and resolution of conflict where authorised firms were involved. This document has not been signed as both the SRA and ICAEW were uncomfortable with its applicability and overlap with the MDP MoU. These two bodies are currently reviewing both the 2011 document and the requirements for authorised firms with a view to producing an updated version for the approved regulators to discuss and amend with a view to a new consolidated MoU being jointly signed up.
- 12.4 The currently operative MoU of 2012, which we are a signatory to, provides a framework for cooperation, coordination and the exchange of information between regulators and professional bodies. Although a non-binding document, it sets out a statement of intent comprising principles to which all signatories agree to adhere, as far as they practically and lawfully can. These include the principles that regulators and professional bodies should:
- work together to establish arrangements to prevent and resolve regulatory conflicts;
  - work together to agree common standards of regulation;
  - share information where it is lawful and in the public interest to do so;
  - cooperate and coordinate investigation to ensure that regulatory costs and duplication are minimised as far as possible; and
  - ensure client money and the financial interests of consumers are protected.
- 12.5 If an individual working within an ICAEW accredited firm is, or may be, in breach of our regulatory arrangements, we will liaise, and coordinate our investigations, with the relevant approved regulator. Although it is generally anticipated under the MoU that the entity regulator will lead investigations in these circumstances, we will approach the relevant approved regulator to discuss the process and determine who should lead the investigation. We will seek, where possible, to resolve any regulatory conflicts, and will share with other regulators the outcome of our investigations. Where possible, we will admit information obtained from other regulators within our own disciplinary processes.
- 12.6 Our early experience with licensing for probate indicated regulatory conflict with the SRA as a consequence of the limitations of some of their rules. These included;
- the applicability of the separate business rule
  - the solicitors practice rules inhibiting a solicitor working outside an SRA accredited firm



- 12.7 Discussions were initiated with both the SRA and the LSB to address these conflicts, and a satisfactory resolution was obtained to the benefit of all parties. These agreements have resulted in the SRA applying a more adaptable regime, and ICAEW modifying its rules to ensure that the outcomes the SRA expects from fellow regulators are achieved.
- 12.8 ICAEW has also been able to inform and advise the regulatory forums on regulator conflict based on their experience in regulating audit for over 25 years. A number of approaches which have been successful in the sphere of audit have proved to have relevance in resolving legal service differences.

## External regulatory conflicts

- 12.9 Section 54 of the Act places a duty on approved regulators to make provision, as is reasonably practicable and in all the circumstances appropriate to:
- prevent external regulatory conflicts;
  - provide for the resolution of any external regulatory conflicts that arise; and
  - prevent unnecessary duplication of regulatory provisions made by an external regulatory body.
- 12.10 We envisage that conflict could also arise with the requirements of other regulators that are not approved regulators under the Act. Given the nature of our members' work, we consider that the most likely source of conflict would be with the regulatory requirements of the FRC, the FCA and the Insolvency Service.
- 12.11 To address this issue, we have included within our proposed Legal Services Regulations a requirement on firms to inform us promptly – within 10 business days – if they consider that any other regulatory requirement to which they are subject (including the requirements of another approved regulator) might cause them to compromise their compliance with the regulations. If a situation of this kind arises, we will adopt a collaborative approach to liaising with the other approved regulators and resolving any issues on a case-by-case basis.
- 12.12 The FCA is a signatory to the Multi-Disciplinary Practices MoU and was a member of the working party mentioned in paragraphs 12.2 above. We anticipate, therefore, that we will be working with the FCA and other professional bodies to analyse further the issues around the scope and risks of regulatory conflict under the Act. This may result in the creation of further subject-specific MoUs or the development of informal resolution mechanisms for conflict situations in the future.
- 12.13 As part of the probate licensing arrangements it was necessary for ICAEW to agree an approach with LeO with regard to the handling of complaints, as LeO's remit under the act in theory covered all activities of licensed firms, which then potentially conflicted with complaint handling requirements of some of the other regulators, most notably;
- the FRC in public interest accountancy cases
  - the Insolvency Services in their complaints gateway
  - the Financial Conduct Authority in their complaints gateway
- 12.14 The approach that has been negotiated with LeO has steered an effective middle course that meets the legal service protection requirements of the act but at the same time recognises the reach and jurisdiction of other regulated activities outside legal services.

## Conclusion

- 12.15 Although we recognise that the nature of multi-disciplinary practices could give rise to conflict between the regulatory arrangements and requirements of various regulators and professional bodies, we are committed to working proactively with other bodies to reduce the risk of conflict arising, and to mitigate the effects of conflict if it does. We recognise that it is in the public interest for regulators to work cooperatively and collaboratively together, to ensure that a consistent and fair approach is applied to regulation across the legal services sector.
- 12.16 The experience to date noted above indicates that ICAEW is well equipped to address issues around regulator conflict and has been a pro-active and effective contributor to this debate since its designation for probate. This positions it well for dealing with wider conflict issues as a consequence of extending the reserved services it could accredit. We will continue to participate in the inter-regulator working groups, and will work with the LSB and other approved regulators to address issues of possible regulatory conflict as they arise.

## 13. CHARTER AND STATUTORY POWERS

13.1 When preparing our previous application to the LSB for designation to become an Approved Regulator and Licensing Authority for probate, we considered whether any additional powers would be required for the effective discharge of our functions as a regulator of probate. For the most part, we considered that our existing powers under the Royal and Supplemental Charters of 1880 and 1948 would be sufficient. However, to be sure that we would have the appropriate powers to regulate both the new area of legal activity and mixed practices of members and non-members, we amended clause 1 of the Supplemental Charter of 1948, which sets out the ICAEW's principal objects. This amendment was approved by the Privy Council and a copy of our amended Supplemental Charter is enclosed at Annex 2.

### **Additional statutory powers**

13.2 As part of our previous probate application a section 69 order and a section 80 order were passed by Parliament to enable ICAEW to acquire the same intervention powers as an Approved Regulator as it would have under the Act as a Licensing Authority. These statutory orders also enabled ICAEW to send its legal services appeals to the GRC for hearing and gave the GRC the power to hear them.

13.3 As these arrangements, along with others in relation to enforcement and governance, departed from ICAEW's usual arrangements under the Disciplinary Byelaws (DBLs), ICAEW amended its DBLs to make it clear that regulations may change, supplement or disapply parts of the bye-laws in certain circumstances. This amendment was considered prudent as clause 16 of the Supplemental Charter states that regulations must not be in any way inconsistent with the Supplemental Charter or the bye-laws. Copies of the amended bye-laws are included in Annex 7.

13.4 ICAEW has sought Counsel's advice on whether any additional statutory instruments will be needed to support this application. As the section 69 and section 80 orders were drafted to include all legal services regulated by ICAEW, we believe that no additional statutory instruments will be required in respect of this application save for the order designating ICAEW as an Approved Regulator and Licensing Authority for the further reserved legal activities should this application be successful.

### **Appeals**

13.5 It is proposed that, as with ICAEW's probate appeals, all appeals relating to the further reserved legal activities ICAEW regulates will be heard by the GRC. This will apply to decisions ICAEW makes as an Approved Regulator and Licensing Authority across both regulatory and disciplinary matters. Contractual and administrative arrangements have been finalised for ICAEW's probate appeals to be sent to the GRC for hearing. We will seek to amend these arrangements to additionally include the appeals relating to the further reserved legal activities.

13.6 The draft Legal Services Regulations (Annex 1) have been drafted on the assumption that appeals in relation to all accredited Legal Services firms will be referred to the GRC.

## 14. CONSULTATION

[To be completed once information consultation with stakeholders and take place]

## 15. STATEMENT

We confirm that the information contained in this application is accurate and complete to the best of our knowledge and belief:

---

Vernon Soare

Executive Director, Professional Standards

---

Chair, ICAEW Regulatory Board

## CONTACT DETAILS

Patricia Adair, Regulatory Policy Manager

T: +44 (0)1908 546 279

E: [patricia.adair@icaew.com](mailto:patricia.adair@icaew.com)

ICAEW

Professional Standards

Metropolitan House

321 Avebury Boulevard

Milton Keynes

MK9 2FZ

The Institute of Chartered Accountants in England & Wales (ICAEW) was incorporated under Royal Charter. The ICAEW Royal Charter number is RC000246

## GLOSSARY OF DEFINED ABBREVIATIONS

ABS	Alternative business structures
AML	Anti-money laundering
AC	Appeal Committee
ARP	Assigned risks pool
ACA	Associate Chartered Accountant
CFAB	Certificate in Finance, Accounting and Business
CAI	Chartered Accountants Ireland
CIPFA	Chartered Institute of Public Finance and Accountancy
CEO	Chief executive officer
CFO	Chief financial officer
CCAB	Consultative Committee of Accountancy Bodies
CMA	Competition and Markets Authority
CPD	Continuing professional development
DBS	Disclosure and Barring Service
DPB	Designated professional body
DC	Disciplinary Committee
FRC	Financial Reporting Council
FSA	Financial Services Authority
GAA	Global Accounting Alliance
GRC	General Regulatory Chamber
HoFA	Head of Finance and Administration
HoLP	Head of Legal Practice

HMRC	Her Majesty's Revenue and Customs
IAASA	Irish Auditing and Accounting Supervisory Authority
IHT	Inheritance tax
IPD	Initial professional development
ICAEW	Institute of Chartered Accountants in England and Wales
ICAS	Institute of Chartered Accountants of Scotland
IGR	Internal governance rules
IESBA	International Ethics Standards Board for Accountants
IC	Investigation Committee
LSB	Legal Services Board
LLP	Limited liability partnership
MoJ	Ministry of Justice
PA	Practice Assurance
PC	Practising certificate
PII	Professional indemnity insurance
PSB	Professional Standards Board
PSD	Professional Standards Department
QAD	Quality Assurance Department
QC	Queen's Counsel
RPB	Recognised professional body
RQB	Recognised qualifying body
RSB	Recognised supervisory body
RDR	Retail distribution review

RC            Review Committee

SIS           Shared Intelligence Service



## ANNEXES

1. Draft Legal Services Regulations
2. [ICAEW's Royal Charter and ICAEW's Supplemental Charter](#)
3. [ICAEW annual review and accounts](#) (2014)
4. ICAEW risk management strategies and ICAEW staff development policies
5. [Current requirements for students training for the ACA, ACA entry routes](#) and [ACA student regulations](#)
6. [The Review Committee Regulations](#)
7. [ICAEW's Principal Bye-laws; ICAEW's Disciplinary Bye-laws](#)
8. Draft Guidance on Sanctions [not currently available as under review]
9. Draft PII Regulations
10. [QAD Practice Assurance visits leaflet](#)
11. Extract from annual return outlining questions relating specifically to probate activities
12. [ICAEW's Client Money Regulations](#)
13. [The Anti-Money Laundering Guidance for the Accountancy Sector](#)
14. [ICAEW's Code of Ethics](#) and helpsheet providing guidance to probate practitioners on probate related ethical issues
15. Taxation services currently provided by accountancy firms that the further reserved legal activities would complement.
16. Relevant Sections of the Legal Services Act 2007 that permit ICAEW to apply to regulate all the further reserved legal activities
17. Probate Application Forms
18. Draft Compensation Scheme Regulations
19. [Continuing Professional Development Regulations](#)
20. Terms of Reference for the Probate Committee
21. Draft Business Plan
22. Proposed fees [not currently available]
23. Draft Terms of Reference of Legal Services Committee [not available - currently being developed]
24. Multi-Disciplinary Practices Framework MoU

25. ICAEW office-holders and executive management team
26. ICAEW structure chart and reporting lines
27. Consultation – list of stakeholders for public consultation