



Legal Services Board – Decision Notice issued under Part 1 of Schedule 10 to the Legal Services Act 2007

The Legal Services Board (LSB) has decided to make a recommendation to the Lord Chancellor that an order be made designating Chartered Institute of Legal Executives (CILEx) as a licensing authority for the reserved legal activities for which it is currently an approved regulator.

This Notice sets out the basis for the LSB decision.

Authority for the decision

1. The authority under which the LSB has made this decision is set out in **Annex 1**.

Background and purpose of application

2. On 29 August 2017 CILEx Regulation made an application on behalf of CILEx under Part 1 of Schedule 10 to the Legal Services Act 2007 (**the Act**), for the LSB to recommend to the Lord Chancellor that an order be made designating CILEx as a licensing authority for its existing reserved legal activities.
3. The regulatory functions of CILEx are delegated to CILEx Regulation. The effect of the application therefore, would be to allow CILEx Regulation to authorise and regulate entities as alternative business structures (**ABS**)¹ on behalf of CILEx.
4. Under the Act, CILEx Regulation authorises Legal Executives to carry out reserved legal activities. In 2015, CILEx Regulation started registering and regulating entities in its capacity as an approved regulator. In December 2015, CILEx Regulation issued a consultation document on becoming a licensing authority for ABS. Following the consultation, CILEx Regulation concluded it should submit an application to the LSB.

Scope of application

5. The application is made with a view to extending CILEx Regulation’s entity regulation framework to the licensing of ABS. It does not seek to go beyond CILEx Regulation’s current regulatory scope. Specifically, CILEx regulation is applying to be designated to licence and regulate ABS in respect to the following reserved legal activities:

¹ An Alternative Business Structure is a “licensable body” as defined in section 72 of the Act.

- The administration of oaths
 - The exercise of a right of audience
 - The conduct of litigation
 - Reserved instrument activities
 - Reserved probate activities
6. CILEx is already an approved regulator for all of the reserved legal activities above, when undertaken by legal executives. The rights sought in this application do not extend beyond these current rights, but will allow CILEx Regulation to licence and regulate ABS firms with non-lawyer managers, owners and investors. CILEx Regulation already has experience of authorising and regulating a small number of firms in its capacity as a regulator of entities. It has adapted many of its rules and assessment tools so they can be used for both entities and ABS.
7. The application further makes clear that CILEx Regulation will continue to be an activity based regulator, awarding practice rights and entity authorisation by specialism. It is not proposing to authorise multi-disciplinary practice ABS, and would need to submit an application to the LSB for changes to its regulatory arrangements in order to do so.
8. In summary, CILEx Regulation is not seeking to authorise, regulate or to otherwise go beyond its current organisational expertise as a regulator.

Assessment process of the application and key issues considered

9. The LSB undertook an assessment of the application against the criteria for designation as a licensing authority as set out in its Rules for Licensing Authority Designation Applications (**LSB Rules**)², which have been made for the purposes of paragraph 11 of Schedule 10 to the Act. The table at **Annex 2** summarises the LSB's assessment in respect of the key criteria for designation as a licensing authority. The main conclusions of the LSB's assessment are set out below.
10. The LSB is satisfied that CILEx Regulation's approach to the drafting of the licensing rules is compatible with section 28 of the Act in respect of the regulatory objectives. For example, CILEx Regulation's application was clear that protection and promotion of the interests of consumers and the public is central to its regulatory arrangements. This comes through in its Code of Conduct and risk based approach to authorisation and supervision of entities. Its regulatory arrangements also comply with the better regulation principles set out in section 28(3)(a) of the Act.
11. The LSB is satisfied that there will be an appropriate appeals body in place to hear and determine appeals against licensing decisions. CILEx Regulation will use the General Regulatory Chamber of the First Tier Tribunal (**FTT**) to hear

² The LSB rules for applications to be designated as an LA are published on the LSB website at: http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/designating_la_rules_v2_june_2011_final.pdf

appeals against licensing decisions it makes when acting as a licensing authority. An order under section 80 of the Act will be made to establish the FTT as the appellate body.³ Should CILEx Regulation wish to commence licensing prior to a section 80 order coming into force, it can put in place interim appeals arrangements that must comply with licensing rules. The LSB will need to be assured that any interim arrangements are compliant with the relevant requirements in the licensing rules.

12. During the assessment process the LSB identified specific substantive matters concerning CILEx Regulation's:

- capacity and capability to authorise ABS, and
- approach to risk.

13. Our assessment of these issues is explained in further detail below.

Authorisation and Enforcement Assurance – Capacity & Capability

14. As referred to above, CILEx Regulation has been authorising entities since 2015 and has processed a modest number of applications since then. In order to provide additional assurance, the LSB conducted a site visit to CILEx Regulation in February 2018. Further information was requested about the experience of CILEx Regulation's entity team, to provide assurance that it has the capacity and capability to authorise ABS and that its staffing resources are sufficiently resilient.

15. CILEx Regulation's Training and Retention Strategy provides a framework that enables staff dealing with individual practitioner authorisation to also deliver entity and ABS authorisation. It has an extensive training budget, flexible working arrangements and a three-month notice period for permanent contracts. The senior management of the authorisation team has significant relevant background experience in the commercial sector and in assessing business ownership. Therefore, the LSB's assessment is that the authorisation team has the experience, flexibility and capacity to undertake both entity and ABS authorisation.

Approach to risk

16. CILEx Regulation's Licensing Rules are broad and would allow it to licence a range of ABS with different business structures. To assure ourselves that CILEx Regulation is able to assess licensing applications appropriately, the LSB looked closely at its approach to risk.

17. CILEx Regulation will use its risk assessment framework to assess ABS applications against the delivery of the principles and supporting outcomes in its Code of Conduct. It already uses the framework to assess entity applications and has developed the framework to take into consideration risks around ABS

³ Section 80 of Part 4 to the Act refers to Functions of appellate bodies.

ownership such as undue influence from non-lawyers. The LSB's assessment is that this provides sufficient assurance in relation to its approach to assessing risk through its authorisation process.

Advice received on the application from mandatory consultees

18. Under paragraphs 3(1) and 3(2) of Schedule 10 to the Act, the LSB is required to seek advice from the Competition and Markets Authority (**CMA**), the Legal Services Consumer Panel (**the Panel**) and the Lord Chief Justice (**LCJ**). The mandatory consultees were largely content to support the application and the following key points emerged from their advice.

Competition and Markets Authority

19. The CMA raised no objections or concerns about the application. It considered that allowing CILEx Regulation to authorise ABS may indeed strengthen competition and promote innovation in legal services.

The Legal Services Consumer Panel

20. The Panel supported the application and noted that CILEx Regulation has made a convincing case for the role that ABS can play in promoting and enhancing diversity and innovation. It made one suggestion to strengthen the proposal, advising that CILEx Regulation should publish complaints data in a contextualised and meaningful way.

21. In its representations in response, CILEx Regulation noted that given the small number of existing entities that it authorises, it does not have complaints data that would be meaningful. Publishing it could also allow specific firms to be identified. We consider this is an issue shared by other regulators. However, the LSB welcomes CILEx Regulation's commitment that it will continue to monitor the approach of the other regulators and, as the number of its firms grows, will work to ensure that consumers have the information they need to make comparisons between firms.

22. Neither the advice from the Panel nor the CILEx Regulation representations raised any issues that would prevent us from making an approval recommendation.

The Lord Chief Justice

23. The LCJ was broadly content with the application as a "sensible, incremental extension to [CILEx Regulation's] existing regulatory arrangements". Nonetheless, he did raise two concerns about the proposed licensing rules.

24. Firstly, in relation to CILEx Regulation's rules, the LCJ stated that he was not persuaded that requiring the Head of Legal Practice (**HoLP**) only to be an employee of the ABS would be adequate. He noted that the Bar Standards Board (**BSB**) require the HoLP to be a manager.

25. In its representations in response, CILEx Regulation confirmed that it would expect the usual structure for ABS that it will authorise to include a HoLP as a manager owner. It will use its risk framework to flag structures that do not have the HoLP as a manager, which would make them less likely to be authorised. However, it wishes to have the flexibility to consider other models if sufficient safeguards are in place.
26. Whilst the licensing rules of some approved regulators do require the HoLP to be a manager, the Solicitors Regulation Authority and Council for Licenced Conveyancers licensing rules do not. After careful consideration of the LCJ views and CILEx Regulation's response, the LSB concluded that it is reasonable that licensing authorities have rules that reflect the type of ABS model they are most likely to authorise and do not put in place unnecessary mandatory licensing restrictions. Moreover, there is nothing in the Act or in the LSB's requirements for licensing rules that requires a HoLP to be a manager.
27. Secondly, the LCJ strongly recommended that CILEx Regulation revisit its proposed rule that only one manager is required to be an authorised person. He considered that that there was too great a scope for improper influence by non-authorised owners and managers. Again the LCJ pointed to the BSB as an alternative approach.
28. In consideration of the LCJ's observations, the LSB clarified that the BSB does not have licensing rules that require more than one manager to be an authorised person. It is the case, however, that in a policy statement it notes that an entity will be more appropriate for the BSB to regulate if 75% or more of owners and managers are authorised individuals. However, none of the other regulators designated as licensing authorities have licensing rules or policy statements in place as to the number or proportion of authorised persons as managers or owners.
29. CILEx Regulation's representations stated that it will only look to regulate entities that present a low risk business ownership model, limiting the opportunities for undue influence. It expects the majority of its applications for ABS to come from sole practitioners who want to bring additional skills and investment into their business, so its rules and policies need to allow it the flexibility to regulate this small type of ABS.
30. Taking all of this into account, the LSB was assured that CILEx Regulation's risk framework will identify in the authorisation process any ownership structures that increase the risk of undue-influence from non-authorised owners. There is nothing in the Act or in the LSB's criteria for licensing rules that requires that more than one manager is an authorised person.
31. While the LSB recognises the concerns raised by the LCJ, neither the advice from the LCJ nor the CILEx Regulation representations in response raised any issues that would prevent us from making an approval recommendation.

Rules that are approved with effect from the date of this decision notice

32. The rules that are approved are the CILEx Regulation Licensing Rules, which are attached to this notice at **Annex 3**.

Decision

33. The LSB Rules giving effect to paragraphs 11(2) and 11(3) of Schedule 10 to the Act set out the matters on which the LSB must be satisfied when granting an application for designation as a licensing authority.

34. The Board has considered the application and satisfied itself that the issues raised have been satisfactorily addressed. It is satisfied that the criteria for granting a licensing authority application have been met.

35. Therefore the LSB has decided to:

- Grant the application in accordance with paragraph 12(1) of Schedule 10 to the Act.
- Recommend to the Lord Chancellor that CILEx be designated as a licensing authority for the following reserved legal activities⁴:
 - The administration of oaths
 - The exercise of a right of audience
 - The conduct of litigation
 - Reserved instrument activities
 - Reserved probate activities
- Include in the recommendation to the Lord Chancellor, the recommendation that the licensing rules be approved for use by CILEx Regulation when the Lord Chancellor exercises his authority under paragraph 16(1) of Schedule 10 to the Act.

36. This document constitutes the decision notice which is being provided to the applicant under paragraph 12(3) of Schedule 10 to the Act. It is being published under paragraph 12(5) of Schedule 10 to the Act.

⁴ CILEx Regulation is also a qualifying regulator under Part 1 of Schedule 18 to the Act for the provision of immigration advice and immigration services. For the purposes of the Act, Immigration services are not a reserved legal activity, so no application by the approved regulator to become a licensing authority with respect to such activity is necessary.

Chronology

- The application was formally made by CILEx Regulation to the LSB on 29 August 2017.
- The decision period started formally on 29 August 2017 and ends on 28 August 2018.
- The application was published on the LSB website on 19 September 2017.
- The advice from mandatory consultees and CILEx Regulation's representation response were published on the LSB website on 15 March 2018.
- The decision notice is being published on the LSB website on 12 June 2018.

Legal Services Board

8 June 2018

Annex 1

Authority for the decision

Applications for designation as a licensing authority

1. Paragraph 1(2) of Schedule 10 to the Act enables a body to make an application requesting that the LSB recommends that an order be made by the Lord Chancellor to designate that body as a licensing authority in respect of identified reserved legal activities. Paragraph 1(3) of Schedule 10 to the Act provides that a body may only make such an application if it is an existing approved regulator in relation to the activity or it has made an application under Part 2 of Schedule 4 to the Act (designation of approved regulators) for the Board to recommend that an order be made by the Lord Chancellor designating the body as an approved regulator in relation to the activity.⁵
2. Part 1 of Schedule 10 to the Act also documents the processes, participants and criteria that will be applied to any such application that is made. These provisions enable the LSB to make rules at paragraphs 1(4) specifying the form and manner of the application and 1(5) for the amount of the prescribed (application) fee. In accordance with paragraph 2(2), the LSB must make rules about the procedures and criteria that it will apply when determining whether to refuse to consider or to continue its consideration of an application. Additionally, in accordance with paragraph 9(3) of Schedule 10 to the Act, the LSB must make rules governing the making of oral and written representations.
3. Paragraph 11(1) of Schedule 10 to the Act also requires the LSB to make rules about how it will determine if it should recommend to the Lord Chancellor that an application for designation by a body to become a licensing authority in relation to identified reserved legal activities should be made. These Rules for Licensing Authority Designation Applications came into effect on 1 January 2010 (LSB Rules).⁶
4. The LSB may only grant an application in relation to a particular reserved legal activity if it is satisfied in relation to the requirements under its Rules giving effect

⁵ The term “approved regulator” is defined in section 20 of the Act and a list of the Approved Regulators and the reserved legal activities for which they are approved is contained in Schedule 4 Part 1 of the Act. The term “reserved legal activities” is defined at Section 12 of the act and a list of the reserved legal activities and a definition of what is comprised within each of them is contained in Schedule 2 of the Act. Both Schedules will be amended from time to time in accordance with activities conducted in accordance with provisions of the Act.

⁶ The Rules for Licensing Authority Designation Applications can be found on the LSB website: http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/designating_la_rules_v2_june_2011_final.pdf.

to paragraphs 11(2)⁷ and 11(3)⁸ of Schedule 10 to the Act. The LSB Rules provide the mechanism through which the LSB carries out its assessment against these requirements and the LSB has therefore satisfied itself of compliance with the requirements of paragraphs 11(2) and 11(3) by an assessment of the application and proposed regulatory arrangements against the LSB Rules.

5. Paragraph 16(1) provides that where an order is made by the Lord Chancellor under Paragraph 15 of Schedule 10, the applicant's proposed licensing rules are at the same time treated as having been approved by the LSB.

⁷ Paragraphs 11(2)(a) to (d) provide that the LSB may only grant an application if satisfied that the applicant's proposed licensing rules in relation to the activity comply with the requirements of section 83; that if an order to be made under paragraph 15 designating the body in relation to the activity there would be a body with power to hear and determine appeals; the applicant would have appropriate internal governance arrangements in place at the time the order takes effect; and the applicant would be competent, and have sufficient resources to perform the role of licensing authority in relation to the activity at the time the order takes effect.

⁸ Paragraphs 11(3)(a) and (b) of Schedule 4 provides that the LSB must in particular be satisfied that the exercise of the applicant's regulatory functions would not be prejudiced by any of its representative functions and that decisions relating to the exercise of regulatory functions would, so far as reasonably practicable, be taken independently from decisions relating to the exercise of representative functions.

Annex 2

Table of the assessment against the criteria for designation as a licensing authority (LA) as set out in sections 28, 82 and Schedule 10, Part 1, paragraph 11 of the LSA 2007 (the Act)

Criteria for designation as an LA	Summary of the LSB assessment	MET or not MET by the applicant
<p>Licensing Rules comply with s.83 of the Act. When considering the application the Board will consider how consistent an applicant's proposed licensing rules are with the LSB's guidance on licensing rules.</p>	<p>The LSB is satisfied that CILEx Regulation has drafted appropriate rules in relation to licensing bodies. We consider that these, together with its Accounts Rules, Authorisation Rules, Code of Conduct, Enforcement Rules, PII Rules and Compensation Arrangement Rules, satisfy all the licensing rules requirements in the Act and the LSB Rules.</p>	<p>MET</p>
<p>An appeals body in place to hear and determine appeals against decisions of the applicant</p>	<p>The LSB is satisfied there will be an Appeals process in place.</p> <p>CILEx Regulation will use the General Regulatory Chamber (GRC) of the First Tier Tribunal to hear appeals against decisions it makes when acting as a licensing authority. An order under section 80 of the Act will be needed to establish the GRC as the appeals body.</p>	<p>MET</p>
<p>Appropriate internal governance arrangements at point of designation; regulatory functions not to be prejudiced by its representative functions; as far as reasonably practical, regulatory decisions to be taken independently of representative ones</p>	<p>In the application CILEx Regulation states that its independence from CILEx is safeguarded under its existing governance rules and the Act. The governance structure shows that the CILEx Regulation Board has overall responsibility for its strategy, performance and management.</p> <p>The LSB is satisfied that CILEx Regulation has in place governance rules that will protect its independence. There is no reason to believe that CILEx prejudices the functions of CILEx Regulation.</p>	<p>MET</p>
<p>Applicant competent, has sufficient resources to perform the role of LA in</p>	<p>The LSB is satisfied that the applicant, through CILEx Regulation, is competent and has sufficient resources in place. CILEx Regulation has already demonstrated experience and competence as an</p>	<p>MET</p>

Criteria for designation as an LA	Summary of the LSB assessment	MET or not MET by the applicant
<p>relation to all the relevant reserved legal activities it is authorised for</p>	<p>approved regulator in regulating the reserved legal activities of legal executives, including experience of authorising firms.</p> <p>The LSB is also satisfied that CILEx Regulation has planned and will introduce increased but proportionate resource provision (both permanent staff and access to external resource) by estimating demand through previous experience, research and information such as annual practising fee returns, to enable it to assess size and number of firms likely to apply for authorisation and require supervision.</p>	
<p>Approach to licensing rules are consistent with requirements in s.28 of the Act (RO, BRP etc)</p>	<p>The LSB is satisfied that CILEx Regulation has framed the application with regard to the Regulatory Objectives and better regulation principles (set out in section 28(3)(a) of the LSA 2007) in Part 4 of the application. The LSB is also satisfied that CILEx Regulation has a set of risk-based, proportionate regulatory arrangements as required to meet the better regulation principles. The rules are not overly detailed but broadly provide a clear regulatory framework for practitioners regulated by CILEx Regulation.</p>	<p>MET</p>
<p>In accordance with s.82 of the Act, an applicant must prepare and issue a policy statement as to how, in exercising functions under Part 5 of the Act, it will comply with s.28 of the Act</p>	<p>Part 4 of the application is the statement of how CILEx Regulation intends to exercise its authority as an LA in accordance with the requirements set out in section 28 of the Act. The statement is aimed at demonstrating how CILEx Regulation's proposed regulatory arrangements will support the regulatory objectives and professional principles in section 1 of the Act.</p>	<p>MET</p>