



Legal Services Board – Decision Notice issued under Part 2 of Schedule 4 to the Legal Services Act 2007

1. The Legal Services Board (**LSB**) has decided to grant an application to make a recommendation to the Lord Chancellor that an order be made designating the Chartered Institute of Legal Executives (**CILEx**) as an approved regulator for the reserved legal activities of reserved instrument activities and probate activities.
2. In making the recommendations, the LSB also recommends that the related regulatory arrangements are, at the same time treated as having been approved by the LSB. (see **Annex 3**).
3. This Notice sets out the basis for the LSB's decision.

Authority for the decision

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

Background

5. CILEx is an approved regulator under the Legal Services Act 2007 (**the Act**) for the reserved legal activities of the exercise of a right of audience, the conduct of litigation and the administration of oaths. ILEX Professional Standards Limited (**IPS**) is the body to which CILEx has delegated its regulatory functions.
6. On 25 March 2013, IPS, on behalf of CILEx, submitted an application under Part 2 of Schedule 4 to the Act seeking a recommendation from the LSB to the Lord Chancellor that an order be made designating CILEx as an approved regulator for the reserved legal activities of reserved instrument activities and probate activities.
7. In July 2010, CILEx (then the Institute for Legal Executives) made an application to the LSB seeking designation for probate activities but subsequently withdrew the application to allow itself time to consider in more detail the regulatory arrangements and IPS organisational structure and resources needed to be an effective regulator of these additional reserved legal activities and entities.

Analysis of the application

8. The LSB performed an analysis of the application in line with the requirements specified in Schedule 4 to the Act and the LSB's Designation Rules¹. The analysis was presented to a meeting of the Board of the LSB (**the Board**) on 27 November 2013 and is summarised at **Annex 2**.

Specific issues

IPS regulatory arrangements and structure

9. Since 2011, CILEx has committed considerable resources to IPS to allow it to develop its regulatory arrangements and structure. Of particular note are:
- A research project to identify the interest in and appetite for the new reserved legal activities and the opportunity to set up independent practices
 - Development of the IPS organisational structure
 - Recruitment of staff with firsthand relevant experience of regulating entities
 - In relation to the authorisation and supervision process, piloting (albeit in a very narrow set of situations) the proposed operating arrangements
 - The development of a risk committee structure which will enable risks to be actively identified and managed. The Strategic Risk Committee (**SRC**) will be made up of Fellows of CILEx (who cannot also be on the Professional Conduct Panel, Disciplinary Tribunal or Appeals Panel) and independent appointees appointed by the IPS Board. The SRC will set the risk appetite and oversee the application of the risk framework to ensure that risks are appropriately identified. The independent membership of the SRC is a good “check and balance” for the IPS executive as the system is implemented and becomes established
 - The IPS team now consists of 16 roles, 15 of which have been filled.
10. A significant change in the team structure does in itself attract some operational risks, particularly if the scope of activity is expanding significantly. IPS has managed this through a phased recruitment which has enabled it to bring in people with relevant experience, thus mitigating the risks associated with carrying out a new and expanded scope of activity.

¹ The rules made by the LSB are published on the LSB's website at this link: http://www.legalservicesboard.org.uk/what_we_do/regulation/index.htm

11. We are satisfied that IPS has taken appropriate steps to put itself into a position of having sufficient resources with relevant experience to enable it to authorise and regulate both the new reserved legal activities and the entities.

Authorising persons to carry on reserved legal activities

12. IPS has extensive experience in authorising individuals to conduct reserved legal activities where they have met the education and qualification criteria. Those arrangements will continue to apply to individuals wishing to exercise the new reserved legal activities.
13. The regulatory arrangements considered by the Board allow IPS to authorise and regulate entities for the first time – this would enable Chartered Legal Executives undertaking reserved legal activities to set up independent businesses (until now those who have been undertaking reserved legal activities have done so under the supervision of another authorised person, most commonly a solicitor).
14. The proposed entity regulation regime has the following features:
 - A risk assessment framework which assesses impact (environment, size) and probability (history, leverage, dependency, systems) criteria
 - Applicants being subject to a basic risk assessment which will lead to a risk score which will determine, first, whether they should be authorised by IPS and, second, if they are so authorised, the supervision regime that will follow
 - An advanced risk assessment, which would include a pre-authorisation site visit, for firms where higher level or more risks are identified
 - Annual data returns
 - Annual risk assessment once authorised
 - A consumer feedback mechanism to be delivered through a “specialist lawyers” website; all authorised firms will be required to participate in the website.
15. The risk assessment framework has been piloted with IPS firms who offer immigration advice and services. Although this was a small sample and consisted mainly of sole traders, this has enabled some testing of the framework. Following this initial trial, some amendments were made and a second pilot is now underway with Chartered Legal Executives who currently operate independently (but who do not deliver reserved legal activities – e.g. employment advisers).

16. Inevitably, the pilots being small mean that there is the risk that they may not have identified all of the issues. IPS is aware of and continues to be alert to this possibility.
17. Another risk factor is that the risk assessment methodology is currently a paper based system. IPS is in the process of developing an IT system, which will include a risk assessment element, as part of a wider systems development project. Until that is in place (currently expected to be late summer 2014), then the results of any risk assessment will be recorded on a central database but this has some limitations in terms of reporting and identifying issues.
18. While this has some risks, IPS projections on the number of entities seeking authorisation is modest; mid-range estimate is that 30 - 85 individuals seeking authorisation to conduct the new reserved activities may also seek entity authorisation in the first year. At this level, IPS will be able to develop more detailed knowledge of firms, thus mitigating the risk that a significant or systemic issue will be missed.
19. The same risk assessment framework will be used as part of the ongoing supervision of firms. Post authorisation, firms will be required to submit an annual return and the information from this and other intelligence will be used to determine the degree and timing of supervisory activity. All firms will be allocated to a Relationship Officer who will propose the supervisory regime for each. IPS is aware of the risk of “regulatory capture” of Relationship Officers. This will be mitigated by ongoing reviews of individual assessments and randomly selected risk review visits to test the assessment process.

Indemnification arrangements

20. The proposed regulatory arrangements include a requirement that regulated entities maintain an appropriate level of professional indemnity insurance (PII).
21. The arrangements include a qualifying insurers agreement (between IPS and insurers); minimum terms with a minimum level of cover of £2 million and a requirement to maintain a higher level of cover if the business requires it; specific requirements on the actions to be taken in the event that the firm cannot secure PII at renewal, including a requirement to arrange run-off cover.
22. In developing these arrangements IPS has sought expert advice through which they have gained assurance that there is capacity and willingness in the open market to provide the necessary cover.
23. Our assessment is that these arrangements are appropriate.

Compensation arrangements

24. IPS has decided to establish a compensation fund. This will initially be funded by CILEx from reserves with an insurance policy alongside. Over time, the fund is expected to build up with a view to removing or reducing the requirement for an insurance policy.
25. It is necessary for the fund to be established by CILEx, as the approved regulator, but it will be run by independent trustees who will be appointed by IPS. The trustees will make the final decision on whether a grant is made from the compensation fund.
26. IPS intends that all entities will be required to make a contribution to the compensation fund. The LSB has received external legal advice that a compulsory contribution to compensation arrangements must have a statutory basis. This is to be achieved through an order under section 69 of the Act² which is currently being considered by Ministry of Justice. The section 69 order needs to be in place before an order designating CILEx as an approved regulator can be made.

Decision

27. The LSB Rules (Rules for applications for Approved Regulator and Qualifying Regulator designation) giving effect to paragraphs 13(2) and 13(3) of Schedule 4 to the Act set out the matters on which the LSB must be satisfied when granting an application for designation as an approved regulator.
28. The LSB has considered the application and is satisfied that the criteria for granting an approved regulator designation application have been met.
29. Therefore the LSB has decided to:
 - grant the application under Paragraphs 14(1) of Part 2 of Schedule 4 and recommend to the Lord Chancellor under paragraph 16(2) of Schedule 4 that CILEx be designated as an approved regulator for reserved instrument activities and probate activities; and
 - include in the recommendation to the Lord Chancellor, the recommendation that CILEx's regulatory arrangements be approved when the Lord Chancellor exercises his authority under Paragraph 18(1) of Schedule 4.

² Section 69 of Part 4 to the Act refers to Modification of the functions of approved regulators etc.

30. This document constitutes the decision notice which is being provided to the applicant under paragraph 14(3) of Schedule 4 and is being published under paragraph 14(5) of Schedule 4 to the Act.

Chronology

- IPS made the application to the LSB on 25 March 2013;
- The LSB confirmed receipt of the application on 25 March 2013;
- The decision period started on 25 March 2013 and ends on 24 March 2014;
- The application was published on the LSB website on 3 April 2013;
- The advice from the mandatory consultees and the CILEx/IPS representations on that advice were published on the LSB website on 19 August 2013;
- This decision notice will be published on our website on 10 December 2013.

Legal Services Board
9 December 2013

Authority for the decisions

Applications for designation as an approved regulator

1. Paragraph 3(2) of Schedule 4 to the Legal Services Act 2007 (**the Act**) enables any body to apply to the Legal Services Board (**LSB**) requesting that the LSB recommends that an order be made by the Lord Chancellor to designate that body as an approved regulator in respect of identified reserved legal activities³. The remainder of paragraph 3 of Schedule 4 to the Act identifies other requirements that are imposed by the Act or given effect to by the LSB Rules in relation to the application made by that body.
2. Part 2 of Schedule 4 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 3(3) for the form and manner of the application and 3(4) for the amount of the prescribed (application) fee. In accordance with paragraph 4(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 11(3), the LSB must make rules governing the making of oral and written representations.
3. Paragraph 13(1) of Schedule 4 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 an approved regulator in relation to identified reserved legal activities should be made. These Rules for Approved Regulator and Qualifying Regulator designation came into effect on 1 January 2010 (“Designation Rules”)⁴.
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 the Designation Rules giving effect to paragraphs 13(2)⁵ and 13(3)⁶ of Schedule 4. The

³ 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.

⁴ The Rules for Approved Regulator designation application can be found at http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Qualifying_Regulator_status/20110328_Rules_for_applications_Approved_Regulator_Qualifying_Regulator_designation_1_April.pdf

⁵ Paragraph 13 (2) of Schedule 4 states that rules under sub-paragraph 1 must, in particular provide that the Board may grant an application in relation to a particular reserved legal activity only if it is satisfied – (a) that, if an order were to be made under paragraph 17 designating the body in relation to that activity, the applicant would have appropriate internal governance arrangements in place at the time the order takes effect, (b) that, if such an order were to be made, the applicant would be competent, and have sufficient resources, to perform the role of

Designation 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 13(2) and 13(3) by an assessment of the application and proposed regulatory arrangements against the Designation Rules.

5. The LSB is also required to approve what the body proposes as its regulatory arrangements if the proposed order is made.
6. The LSB will approve regulatory arrangements in so far that they appear to achieve their intended outcome and satisfy the conditions in paragraphs 13(2) (a) to have appropriate internal governance arrangements in place and 13(2) (c) of Schedule 4 that the proposed regulatory arrangements make appropriate provision for the proposed reserved legal activity. The LSB must, under paragraph 13(2)(b) be satisfied that the applicant will be competent and have sufficient resources. The LSB is also required under paragraph 13(2)(d) to ensure that the proposed regulatory arrangements comply with the requirement imposed by sections 52 and 54 of the Act (resolution of regulatory conflict) and that such arrangements comply with the requirements imposed in relation to the handling of complaints (sections 112 and 145) – under paragraph 13(2)(e).

approved regulator in relation to the reserved legal activity at that time, (c) that the applicant's proposed regulatory arrangements make appropriate provision, (d) that the applicant's proposed regulatory arrangements comply with the requirement imposed by sections 52 and 54 (resolution of regulatory conflict) and (e) that those arrangements comply with the requirements imposed by sections 112 and 145 (requirements imposed in relation to the handling of complaints).

⁶ Paragraphs 13(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

Assessment of the application against the criteria for approval in the Legal Services Act 2007 (the Act) and the LSB’s Rules for Approved Regulator and Qualifying Regulator designation (“Designation Rules”)

The following table is a summary of the criteria to be satisfied for designation as an approved regulator as set out in Schedule 4, Part 2, paragraph 13 of the Act and the LSB’s Designation Rules.

Criteria	LSB Assessment
The applicant would have appropriate internal governance arrangements (paragraph 13(2)(a) of Schedule 4)	Criteria met Under the LSB’s Internal Governance Rules (IGR) CILEx is an applicable approved regulator ⁷ and has been required to submit dual self-certificates on compliance with the IGRs. The last certificate was submitted in May 2013 and no issues relating to independence were identified. No issues on independence have been raised in the assessment of this application.
The applicant would be competent, and have sufficient resources, to perform the role of approved regulator in relation to the reserved legal activity at that time [point of designation]. (paragraph 13(2)(b) of Schedule 4)	Criteria met Please see paragraphs 9 – 11 of the decision notice
The proposed regulatory arrangements make appropriate provision (paragraph 13(2)(c) of Schedule 4)	Criteria met We are satisfied that the proposed regulatory arrangements are fit for purpose. This includes regulations for: <ul style="list-style-type: none"> • Authorisation – please see paragraphs 12 – 19 of the

⁷ An applicable approved regulator is one 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 persons’ qualifications to practise a reserved legal activity regulated by that approved regulator

	<p>decision notice</p> <ul style="list-style-type: none">• Practice rules – minimum practice requirements are set out in the Scheme Authorisation Rules as:<ul style="list-style-type: none">○ Practising address in England and Wales○ Requirement to comply with the Code of Conduct (including PII and Compensation Fund provisions)○ Duty to declare prior misconduct○ At least one approved manager must be able to conduct reserved legal activities○ Obligation to meet any requirement or conditions placed on the authorisation○ Requirement to notify IPS of any material changes• Conduct rules – the Code of Conduct is clear about the standards that must be achieved• Disciplinary arrangements – the Investigation, Disciplinary and Appeal Rule have been appropriately amended so that they cover the new reserved legal activities and apply to authorised bodies (entities) as well as individuals.• Qualification arrangements – CILEx has a long history of developing and awarding qualifications to individuals to allow them to undertake reserved legal activities and the qualification schemes for reserved instrument activities and probate activities are built on these existing arrangements. The application contains a qualification regime for both of the reserved legal activities set out in this application. The regime is based upon competency frameworks setting out the learning outcomes to be evidenced from both knowledge and experience. In addition, anyone who seeks to be authorised as a Compliance Manager in an IPS authorised entity will be required to demonstrate competence in practice management and accounts management and administration. Continuing Professional Development Rules are also in place.• Indemnification arrangements – see paragraphs 20 to 23 of the decision notice• Compensation arrangements – see paragraphs 24 to 26 of the decision notice• Other rules and regulations:
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	<ul style="list-style-type: none"> ○ Accounts Rules (which include the requirements for the handling of client money) have been developed and are appropriate.
<p>The proposed regulatory arrangements comply with the requirements imposed by sections 52 and 54 of the Act relating to the resolution of regulatory conflict</p> <p>(paragraph 13(2)(d) of Schedule 4)</p>	<p>Criteria met</p> <p>The Authorisation Rules (Rule 8) stipulate that where there is a conflict between the requirements of the individual’s and entity’s regulators, the requirement of the entity regulator prevails.</p> <p>IPS recognises the risk of conflicts with other (non-legal) regulatory regimes and will rely on the principles contained in the Framework Memorandum of Understanding (of which IPS and a number of other regulators are signatories) to resolve any conflicts.</p>
<p>The proposed regulatory arrangements comply with the requirements imposed by sections 112 and 145 of the Act in relation to the handling of complaints</p> <p>(paragraph 13(2)(e) of Schedule 4)</p>	<p>Criteria met</p> <p>The Code of Conduct requires that those regulated by IPS act competently in the best interests of the client. This includes an obligation to provide full information on the complaints procedure and the right to refer the matter to the Legal Ombudsman (Code of Conduct Principle 5).</p> <p>In addition, Principle 4 of the Code requires that those regulated by IPS comply with “legal and regulatory obligations and deal with regulators and ombudsmen openly, promptly and co-operatively”.</p>

Annex 3

Regulatory arrangements

The regulatory arrangements in relation to this application have been published separately.

[CILExSchemeRulesProbateandReservedInstruments.pdf](#)