



Ms Dawn Reid
The Legal Services Board
Victoria House
Southampton Row
London WC1B 4AD

Sent by email and post

14 November 2013

Dear Dawn,

ICAEW's application to become an approved regulator & licensing authority for probate activities under the Legal Services Act 2007

Background

On 14 December 2012 ICAEW submitted an application to the Legal Services Board (LSB) to become an approved regulator and licensing authority for the reserved service of probate under the provisions of the Legal Services Act 2007 (the Act). Furthermore, on 1 July ICAEW submitted a final submission letter outlining supplemental information and amendments that had been made to its application which were required in order to clarify and or amplify various aspects of its application.

The Probate Regulations submitted as part of ICAEW's application provide that a firm or person who is the subject of a decision from ICAEW's Review Committee or ICAEW's Disciplinary Committee and is dissatisfied with that decision can appeal to the General Regulatory Chamber of the First-tier Tribunal (FTT).

As you are aware, in order for appeals to be sent to and heard by the FTT the Ministry of Justice needs to ensure that both a section 69 order and a section 80 order are made and approved. The ICAEW has been liaising with the LSB and the Ministry of Justice for quite some considerable time about the drafting of these orders.

On 26 September we were advised that the Ministry of Justice would be unable to prepare the necessary statutory orders until the middle of 2014 and therefore, due to the summer recess, the orders were unlikely to be laid before Parliament until the autumn of 2014 at the earliest. This would mean that ICAEW's application would take nearly 2 years to be decided and may possibly take longer.

As you can no doubt appreciate, we feel this would not promote the regulatory objectives of the Legal Services Act 2007 (the Act) most particularly – improving access to justice; promoting competition in the provision of service; and encouraging an independent, strong, diverse and effective legal profession.

Proposed amendment to our application

Whilst ICAEW fully understands the LSB's policy for probate appeals to be heard by the FTT, it appears to us that to promote the Act's objectives, an alternative interim appeals procedure has to be applied, albeit one that has the necessary safeguards to ensure sufficient independence and protection. ICAEW's Appeals Committee can provide such an appeals procedure. It is independent from ICAEW as the representative body and deals with appeals from decisions made in ICAEW's other regulated areas of audit, insolvency and investment business.

We are therefore applying for agreement to amend our application and more specifically the appeals procedure in our Probate Regulations to allow probate appeals to be heard by ICAEW's Appeals Committee. This arrangement would be on an interim basis whilst the section 69 and section 80 orders were being made to allow such appeals to be sent to and heard by the First-tier tribunal. It should be noted however, that during the short period of approximately 9 months when this temporary arrangement would apply, ICAEW's Appeals Committee would be unlikely to have to address many appeals.

ICAEW's powers under its Charter and Disciplinary Bye-laws

In relation to this application, we can confirm that ICAEW has the necessary powers under its Charter and Disciplinary Bye-law (DBLs) to enable its Appeals Committee to hear probate appeals. Furthermore, whilst, in order to ensure consistency, we will continue to apply by way of section 69 order for the same powers of intervention in our capacity as an Approved Regulator that we will have under the Act as a Licensing Authority, we can confirm that ICAEW currently has sufficient powers of intervention to protect the consumer and the wider public interest and therefore sufficient intervention powers to be granted designation as an Approved Regulator.

With regard to ICAEW's Charter, in order to ensure that ICAEW has the power to become an approved regulator and licencing authority, ICAEW made some amendments to its Supplemental Charter of 1948 and these amendments were agreed by ICAEW Council in June 2012. These amendments were sent to the Privy Council for allowance. However the Privy Council Office has said that it will not present these amendments for allowance until the LSB has confirmed that it has recommended that ICAEW's application be approved. These amendments will therefore be presented for allowance in December should the LSB's recommendation be positive.

We should also point out that, in relation to the Terms of Reference of ICAEW's Appeals Committee, in order to satisfy the requirements of ICAEW's oversight bodies, under a decision of the Privy Council in June this year, ICAEW secured the power to amend the quorum and membership of its regulatory committees. Under this power ICAEW will be amending the Terms of Reference of the Appeals Committee for legal services related cases (in order to satisfy a request by the LSB) and Irish audits to ensure it has a lay majority and this amendment will be made in December 2013.

Our application

We are therefore seeking agreement to amend our application and Probate Regulations as set out above. As stated, ICAEW has the power under both its Charter (when amended) and DBLs for probate appeals to be heard by its Appeals Committee. It will also have the power for such appeals to be heard by the First-tier Tribunal without further amendment once the required statutory orders are made.

If you require any further information please do not hesitate to contact me or Pat Adair as we will be happy to assist in this respect.

Yours sincerely,

A handwritten signature in blue ink that reads "Vernon Soare". The signature is written in a cursive style with a long, sweeping tail on the letter 'e'.

Vernon Soare
Executive Director, Professional Standards

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