

29 June 2009

Our ref: ICAEW REP 84/09

Mr Craig Robb
Legal Services Board
7th Floor, Victoria House
Southampton Row
London WC1B 4AD

By email

Dear Mr Robb

REGULATORY INDEPENDENCE– PROPOSED RULES TO BE MADE UNDER SECTIONS 30 AND 51 OF THE LEGAL SERVICES ACT 2007

The Institute of Chartered Accountants in England and Wales (the ICAEW) welcomes the opportunity to comment on the consultation paper Regulatory Independence: Consultation on Proposed Rules to be made under Sections 30 and 51 of the Legal Services Act 2007 (LSA), published by the Legal Services Board in March 2009.

The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 132,000 members in more than 165 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 775,000 members worldwide.

We have no comments to make on the Legal Service Board's proposals as they apply to those front line legal services regulators which are professional bodies for lawyers, but they would be unnecessarily burdensome in other circumstances.

The planned introduction of alternative business structures (ABS) will impose dual requirements in this area for those accountancy bodies which seek to become a legal services regulator. The implications of ABS and the need for further informed debate are considered later in this response. We consider the debate is essential before any rules are issued under sections 30 and 51.

Provision of legal services by accountants

Accounting services include such activities as taxation, company law and business recovery where there is a significant legal element, and other business services with a legal component such as financial reporting, audit and investment business which require a detailed legal knowledge. Many activities which are described as legal services or legal activities are *in fact* a significant element of the work and practice of accountants. There is considerable duplication and overlap in the provision of such legal services by accountants and lawyers.

For the purpose of this response, the phrase “legal services” means the non reserved legal services that can be and are currently supplied by accountants and lawyers, or either of them, depending on the choice of the consumer.

Definition of reserved and non reserved legal activities and the issue of Section 30 internal governance rules

The Institute considers it advisable, desirable and indeed imperative that a new regulatory framework, with the stated aim of modernising the provision of reserved legal services in the interests of consumers, must have full regard to

- professional and commercial arrangements that already exist for unreserved yet overlapping legal services, as set out above
- the impact of ABS as set out below, on the delivery of reserved and non reserved legal services
- the appropriate regulatory framework needed to allow all ABS providing reserved and unreserved services to compete on an equal basis, irrespective of their constitutional make up and history

And that such debate must occur before, not after, any “internal governance rules” are issued under section 30 of the Act. The Institute is happy to take this forward with the Legal Services Board as a priority issue.

The development of alternative business structures

The Institute considers that the accountancy profession could provide significant commercial impetus for the formation of ABS. Many ABS will have been accountancy practices previously, or will certainly have a majority of accountants within them, with lawyers (providing reserved and unreserved legal services or a mix of them) in the minority. Many smaller law firms and sole practitioners will want to join accountancy led ABS, with its existing *regulatory framework overseen by the FRC*, for the mutual commercial benefits that result.

It is not the intent of the Act to subject these new entities to another form of direct regulation, but without further considered debate on the potential constitutional makeup, history and business operation of an ABS, it may be the unintended result.

Regulation and competition

We do not believe that it was the intent of the Act to increase the regulation of such unreserved legal services work, in particular where services provided by chartered accountants are already regulated. Furthermore, clause 24 of the Act permits the Lord Chancellor to “add any legal activity” to the list of reserved activities at a later date and therefore it is essential that there is an informed debate at this stage.

The Act’s defined regulatory objectives include the

- promotion of competition in the provision of legal services and
- protection and promotion of the public interest.

It may be the unintended effect of the Legal Services Board following the introduction of ABS to annex all legal services, whether they are provided by accountants or lawyers, and put them under the aegis of one regulator. This is highly restrictive, and in the case of accountants unnecessary.

It is contrary to the BERR Principles of Good Regulation which require regulators to take account of existing regulations, and for regulators to be mindful of “unintended consequences” in one area by regulating in another.

One of the main thrusts of the Act is to act in the public benefit, and thereby encourage open competition for the supply of legal services. The Institute is concerned that any increased regulation on accountants will be anti competitive and put accountants at a positive economic disadvantage to lawyers.

Regulatory debate

The existence of this overlap in the provision of legal services by accountants and lawyers necessitates a considered discussion of the regulatory frameworks that will apply. The Institute is happy to participate in this debate on regulatory frameworks with the Legal Services Board and believes it is essential for the Legal Services Board to do so.

Section 51 rules

The Institute makes no observations at this stage and believes it premature to do so in the light of the comments herein.

Please contact me should you wish to discuss any of the points raised in this response.

Yours sincerely

Michael D M Izza