



ACCOUNTANTS: THE PI IMPLICATIONS OF PROVIDING LEGAL SERVICES

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On 11 December 2013 the Legal Services Board (LSB) approved the application of the Institute of Chartered Accountants in England and Wales (ICAEW) to become a regulator of legal services. As the accountancy body with the largest UK membership, this represents a significant step forward for the profession as a whole. But what sort of PII issues are likely to face practitioners contemplating accreditation and their insurers?

EARLY AMBITION

A foothold in the legal services sector is neither a new nor a surprising aspiration for accountants. Not only is the legal sector estimated to be worth some £23 billion, but the services it provides frequently overlap with those of accountants.

Realising this in the 1990s, it was the big accountancy firms who set about establishing affiliated legal practices. Subsequently however and with the exception of PwC Legal LLP (the only “big four” branded law firm still operating in the UK), most of these died out.

LEGAL SERVICES ACT 2007

With its aim of delivering increased competition for the consumer, the 2007 Act has opened the gateway to the legal services sector for non-solicitors.

Under the 2007 Act, the LSB may receive applications from governing bodies wishing to become approved regulators of those reserved legal services currently prescribed by the 2007 Act. Simultaneously, those same bodies may also apply to become licensing authorities, in order to regulate the creation of Alternative Business Structures (ABSs).

There are currently six reserved legal services, which include the conduct of litigation, exercising rights of audience and probate services.

APPLICATIONS BY ACCOUNTANTS

While the applications by the ICAEW for approved regulator and licensing authority status are likely to be the most significant, they are not the first. As long ago as 1 August 2008, the Institute of Chartered Accountants of Scotland became an approved regulator, followed by the Association of Chartered Certified Accountants on 1 August 2009. However, in neither case does it appear that any members have been accredited to undertake legal services.

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While the ICAEW's applications must now await approval from the Lord Chancellor, this is widely regarded as a rubber-stamping exercise. In each case and once granted, accredited ICAEW members will then be able to provide probate service, although not, at this stage, any of the other reserved services.

According to research by the ICAEW, approximately 250 firms of accountants are expected to seek authorisation to provide probate services, the majority without creating an ABS. Although these numbers might seem low, they may well represent just the front runners. Moreover, the majority of these firms have expressed a desire to offer probate-related services, such as will writing and estate administration.

The ICAEW has additionally expressed an interest in extending the scope of its authority to include the regulation of litigation services, which has been welcomed by the LSB and is likely to broaden appeal. Further, interested parties could include heavyweights such as KPMG, who is reported to be considering an ABS application.

PII IMPLICATIONS OF PROVIDING LEGAL SERVICES

The commercial opportunity on entering the legal market will, no doubt, be the primary focus for many. But there are important PII implications that should also be considered. These should include:

1. Scope of cover – is a wider policy required to cover legal work and complaints?

Happily the cover provided by the ICAEW minimum terms for “professional business” is already widely defined so as to include advice given or services provided of “whatsoever nature”. Further, and as a result of amendments made to the ICAEW minimum terms, from 1 January 2014 cover will also now include awards made against accountants by the Legal Ombudsman Service, as well as the Financial Ombudsman Service.

2. Limit of indemnity - is a greater amount of cover likely to be required?

For those carrying the current minimum of £100,000, an increase will be required. Under the ICAEW PII regulations a minimum indemnity limit of £500,000 will be needed by those providing probate service. However, this still falls far short of the minimum requirement of £2 million to £3 million for solicitors. A greater amount of cover may therefore be prudent.

3. Level of premiums – will the cost of obtaining PII cover increase?

This will depend on a very large range of factors. It should be noted that probate (and litigation) work generates a significant proportion of the claims against solicitors and engaging in it may well adversely affect risk profile and in turn, premiums.

4. Run off – will an extended period of cover be required?

Under the ICAEW PII regulations, the minimum period of run off cover for accountants remains two years. However, more is recommended and sensible, given the propensity for claims in connection with legal work. The minimum run off cover for solicitors is six years, which all accountants may do well to adopt.

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MILLS & REEVE



Professional
Indemnity

Professional Indemnity Ltd | 11 King Alfred Mews Church Street Wedmore Somerset BS28 4AB
Company Registration 07165987 | T: 01934 710144 | E: info@professionalindemnity.co.uk

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