



Converting your practice to an ABS

Michael Stacey explains how you can best convert your accountancy practice to an alternative business structure (ABS)

As the lines between law firms and accountancy firms become increasingly blurred, many accountancy practices are considering whether to become an ABS. ICAEW has now been designated as an approved regulator and licensing authority for ABSs under the Legal Services Act 2007 and is hoping to accept applications from its members from July 2014 onwards. This provides accountants with the opportunity to offer probate services to the public without involving solicitors or other lawyers. But are practitioners aware of the regulatory framework for probate services and other reserved legal activities?

Probate services

ICAEW will soon be able to regulate practices that wish to provide probate services. Individuals providing probate services must also be authorised.

Now that ICAEW is an approved regulator, individual Chartered Accountants can also be authorised, subject to completing an appropriate probate course and passing an assessment.

Alternatively, solicitors (or other lawyers appropriately authorised, such as licensed conveyancers) can provide probate services through an ICAEW regulated practice.

ICAEW's probate rules set out the requirements in detail. In summary, the options available if you wish to provide probate services are:

- Become an ICAEW "authorised firm", in which case all of the principals (and shareholders in the case of a company) will have to be individually authorised to undertake probate work.
- Become an ICAEW "licensed firm" (ABS) if you wish to avoid the need for all the principals and shareholders to become individually authorised to undertake probate work. Becoming an ABS means that additional statutory requirements apply, such as the requirement for a Head of Legal Practice and Head of Finance & Administration, and the requirement for managers and owners who are not individually authorised to be approved.
- Apply to another regulator such as the Solicitors Regulation Authority (SRA) to become licensed as an ABS, provided you have at least one principal who is authorised as an individual to provide probate services (either authorised by ICAEW or a solicitor or other authorised lawyer).

Corporate structures

The regulatory requirements may impact on your choice of corporate structure.

The options are to “ring fence” legal services provision in a separate entity, or obtain an authorisation for the practice as a whole.

Separation may have attractions, particularly if you are considering regulation by a regulator other than ICAEW. It ensures the scope of regulated activity is well defined, as well as limiting the liability of your practice in relation to the legal services subsidiary and potentially making professional indemnity insurance cover more straightforward and cost effective.

However, separation raises potentially complex issues concerning the relationship between the legal services subsidiary and the parent accountancy practice – for example:

- What referral and/or fee sharing arrangements are proposed and do they comply with the relevant regulatory rules?
- How will you ensure the subsidiary’s ability to provide independent advice is not compromised by overreliance on your practice?

The SRA is proposing to change its approach to regulating multi-disciplinary practices. If this change is implemented, authorising the whole accountancy practice as an ABS will be more straightforward because the SRA will not regulate “non-reserved” legal work, which is already adequately regulated by ICAEW, avoiding unnecessary duplication.

Other reserved legal services

If you wish to provide a broader range of reserved legal services (for example conveyancing, conducting litigation or representing your clients in court), you will need to be authorised by another ABS licensing authority and involve solicitors or other lawyers with the relevant authorisations. The SRA is currently the only Licensing Authority able to grant authorisation across the full range of reserved legal activities (apart from notarial services).

Practical tips

The following issues will require early consideration:

Insurance

Engage with your broker to define the scope of professional indemnity insurance cover required in relation to legal services, and the likely costs.

Compliance

Consider the key risks associated with the legal work you are proposing to do. Do you plan to handle client money, and if so how will you ensure compliance with the relevant regulatory rules?

If you plan to be an ABS, identify a Head of Finance & Administration and a Head of Legal Practice of sufficient seniority and in a position of sufficient responsibility.

Supervision and training

Consider who needs to be individually authorised. Ensure that your proposed structure provides an appropriate level of supervision of unqualified staff involved in providing reserved legal services.

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