



CONSULTATION - MAY 2012

RISK-BASED AND OUTCOMES-FOCUSSED REGULATION

INTRODUCTION

ILEX Professional Standards Ltd (IPS) is the regulatory body for Legal Executives and other grades of members registered with the Chartered Institute of Legal Executives (CILEx). CILEx is an approved regulator under the Legal Services Act 2007.

IPS is preparing applications to seek Practice Rights for CILEx members in litigation, conveyancing and probate and to become a regulator of legal practices. IPS will be submitting applications to the Legal Services Board (LSB) to achieve these aims. As part of this process we wish to seek your views on our proposed approach to regulating entities providing legal services based on risk and outcomes.

THIS CONSULTATION WILL CLOSE ON 10TH AUGUST 2012

(12 weeks from 18th MAY 2012)

THE IPS APPROACH TO RISK-BASED REGULATION

SUMMARY

1. IPS is working on making applications to become an approved regulator for conveyancing and probate rights. IPS is already an approved regulator for the purpose of granting litigation rights. It seeks to extend the award of litigation rights to CILEx Fellows. It also seeks to develop regulatory arrangements for self employed immigration practitioners.
2. IPS seeks to become a regulator of entities. Becoming an entity regulator is closely linked with the IPS applications for practice rights and to the development of regulatory arrangements for self employed immigration practitioners authorised by IPS. Attaining practice rights will allow CILEx members to practise independently in the aforementioned areas. Therefore, it is necessary for IPS to ensure that it has the necessary regulatory arrangements for the authorisation and monitoring of entities.
3. IPS conducted research in 2011 to establish the likely demand amongst CILEX members for the aforementioned practice rights. The research concluded that members want to have the option to obtain and exercise the practice rights, (on the basis that the individual member has attained the required competency to exercise the relevant practice rights).
4. IPS has developed a risk-based (and outcomes-focussed) approach to the regulation of entities. This regulatory approach will recognise entities that meet the outcomes. It will focus IPS on working constructively with the entities it regulates with the aim of improving standards in the delivery of services to consumers, to reducing risks and thereby providing better protection to consumers. IPS will take appropriate action against entities that do not engage constructively and do not manage risk effectively.

THE IPS RISK FRAMEWORK – THE RISK MATRIX

5. IPS has developed a Risk Framework in order to regulate legal services entities effectively. The Risk Framework has been developed through research and analysis conducted by CFE (Research and Consulting) Ltd of legal practices covering a range

of business models. The Framework draws on primary and secondary sources, to understand the likely emergent operating models for legal services entities which IPS may regulate and the risks they pose to the delivery of the regulatory outcomes. The Risk Framework is explained in detail at **Annex 1**.

6. The Risk Framework includes a Risk Matrix for the assessment of risk based on an entity's Size and Environment, and their History, Leverage, Dependency (on specific clients) and Systems. IPS proposes to use this model as its Basic (desk-based) Risk Assessment Process.
7. The Risk Matrix will continue to be refined on an ongoing basis to cater for developments in the legal sector and the different types of risks that may materialise in future as the delivery of services and service models develop.
8. The result of the Basic Risk Assessment will determine whether the entity can be authorised or whether further assessment is required through an Advanced Risk Assessment (visit). The decision to carry out an Advanced Risk Assessment will depend on the result of the Basic Risk Assessment including the level of remotely verifiable data the entity provides in support of its application, and whether or not the information supplied sufficiently answers all of the questions in the application.

QUESTION

Q1 – Provide your comments on the Risk Framework described at Annex 1.

THE IPS RISK FRAMEWORK – ROLES AND FUNCTIONS

9. The Risk Framework will be implemented through organisational functions which cover the activities of Authorisation, Monitoring, Investigation and Enforcement. Proposals for the authorisation process and a broad outline of the other functions and processes are shown at **Annex 2**.
10. In summary the roles will encompass the following:
 - Authorisation – ensuring that those individuals and entities applying to be authorised by IPS are suitable to be regulated and either present no risk or acceptable/manageable risks;
 - Monitoring – ensuring those regulated by IPS continue to meet their compliance obligations and that any risks they present remain acceptable/manageable;

- Investigation – undertaking further investigation to gather evidence to ascertain and assess whether material (serious) risks have or are likely to materialise at an entity;
- Enforcement – taking regulatory action against entities or individuals who are either unwilling or unable to meet the compliance obligations placed upon them or who present unacceptable risks.

11. IPS will set in place a Governance Framework for the management of its approach to risk. The framework will be made up of the following:

The IPS Risk Unit (IRU)

12. The IRU will perform day to day risk functions including intelligence gathering, Authorisation, Monitoring, Investigation and Enforcement.

The (ORB) Operation Risk Board

13. The ORB will be responsible for oversight of the entity regulation and risk management activities. The ORB will ensure that the IPS Risk Framework continues to operate effectively in terms of its consistency and ability to adapt to external market developments such as emerging markets, new legislation, and new types of alternative business structures.

The Strategic Risk Board (SRB)

14. The SRB will define IPS risk strategy using the information it receives from the ORB. The SRB will consist of members of the IPS Board.

QUESTION

Q2 – Provide your comments on the proposed IPS Roles, Functions and Processes shown at Annex 2

PROPOSED APPROACH TO THE COSTS OF REGULATION

15. IPS will charge entities for regulation based on the level of risk they pose and thereby the volume of regulatory activity that IPS has to undertake. The IPS Strategic Risk Board (SRB) will set the fees for regulation. The overall approach will be to reduce the costs of regulation for those that demonstrate good risk management.

16. An entity can demonstrate a positive approach to risk management in a number of ways, including through the attainment of quality standards, and/or working with IPS in evidencing the delivery of better outcomes for consumers.

QUESTION

Q3 – Provide your comments on the proposed basis of charging which will seek to reward those that best manage risk with lower regulatory costs.