FORENSIC accounting update

September 2020

# Do you want a Single Joint Expert?

The use of Single Joint Experts (SJEs) is encouraged under the Civil Procedure Rules with the Court considering *inter alia* whether instructing SJEs is likely to help it to resolve issues more speedily and in a more cost-effective way than with separately instructed experts. This newsletter explores general considerations which lawyers should take into account when instructing SJEs with particular regard to the involvement of forensic accountants.

**An overview**

Since all parties intend to place reliance upon SJEs' evidence, it implicitly has greater influence on the outcome of cases than the evidence of experts instructed separately by each party. It is therefore important that SJEs should be selected primarily by reference to their competence and independence by taking into account the following key considerations:

- the expert should be able to exhibit relevant experience and expertise in relation to the type of assignment involved, e.g. previous business valuation work undertaken;
- the expert should provide written confirmation that there are no conflicts of interest, e.g. advising one of the parties;
- evidence should be obtained of the extent of the expert's previous involvement as a SJE and separately on behalf of claimants and defendants; and
- the expert should be informed explicitly that his or her duty is to the Court and that it is therefore necessary to include a signed Expert's Declaration within the report.

**Agreeing terms and conditions**

Terms and conditions should be agreed after an exchange of views between solicitors representing the parties and the prospective expert. The expert will need to undertake work within the required time frame and to be available at a prospective trial. Instructing parties will need to agree to be jointly liable for the expert's fees, to accept that joint instructions will be issued and to agree the process to be followed by the expert for communicating with both parties, e.g. that the expert's communications will be with one firm only with that firm concurrently forwarding these to the other side. Some forensic accountancy experts are unwilling to undertake work as SJEs because of Court-imposed fee

constraints and the effort required to ensure that all instructing parties are satisfied with the prospective outcome.

It is important to ensure that forensic accountants instructed as SJEs identify their key information requirements before being formally instructed to ensure that all parties are willing and able to provide the information within an agreed time frame. Agreement at the outset is more likely to result in the parties being cooperative in comparison to situations in which information sought after instructions are issued cannot be provided within a pre-determined timetable.

**Scope of instructions**

It is important to agree the scope of the prospective instructions with the expert to ensure that the prospective Court Order, if applicable, reflects achievable objectives in the following context:

- the expert should agree that the objectives sought are achievable based on the available information and the agreed time frame;
- there should be agreement on the precise objectives, e.g. if a holding company is to be valued, agreement will be needed as to whether subsidiary company valuations are also required and as to the date on which the companies are to be valued;
- the expert should communicate at the outset the key assumptions underlying the objectives, e.g. in certain situations it may be agreed that a business valuation can be based on past financial data on the assumption that it fairly represents the business' prospects; and
- there should be agreement as to whether copies of the draft report are to be circulated to ensure that the final report is factually accurate with agreement also being required as to whether questions on behalf of the parties are to be raised at the draft or final report stages.

**Conclusions**

Interaction with prospective SJEs before formally issuing instructions is important given the need to consider various pertinent issues. On this basis, instructing parties will need to co-operate to ensure that the expert's information and other requirements are satisfied on a constructive basis.

*To obtain further details of our activities or to benefit from the firm's experience and expertise, please contact Rakesh Kapila or George Sim.*

*Please note that this newsletter has been written for the general interest of readers and is intended for guidance only. It is therefore essential to take specific professional advice before taking any action.*