



Alternative Business Structures

Mandie Lavin
Director
Bar Standards Board

Order of presentation

- Background
- What is an ABS?
- Examples of ABSs
- Partnerships and dual practice
- ProcureCos
- Regulatory risks
- The BSB's role
- Access to justice
- Commencing ABS Regulation

Objectives for today

I hope you will be able to take from today:

- Ideas about whether ABSs might hold opportunities for you
- Views about the potential risks they might pose



What is an ABS?

- 'Tesco Law'
- Slater and Gordon
- The Co-operative Group
- A number of large law firms are expressing interest in floating on the stock exchange



The Legal Services Act 2007

Part 5 refers to “licensable body”, meaning ABS:

“Licensable body”

(1) A body (“B”) is a licensable body if a non-authorised person—

(a) is a manager of B, or

(b) has an interest in B.

(2) A body (“B”) is also a licensable body if—

(a) another body (“A”) is a manager of B, or has an interest in B, and

(b) non-authorised persons are entitled to exercise, or control the exercise of, at least 10% of the voting rights in A



(3) For the purposes of this Act, a person has an interest in a body if—

- (a) the person holds shares in the body, or
- (b) the person is entitled to exercise, or control the exercise of, voting rights in the body.



Examples of ABSs

- Model 1 'LDP Plus'
- LDP comprising three lawyers and one non-lawyer manager
- No external ownership
- All LDPs existing under the interim regime which have a non-lawyer manager will need to become an ABS
- Likely where a firm employs as a manager its former Head of HR, Head of IT or Head of Finance



- Model 2 – 100% externally-owned + owner has no interest in the supply of the ABS's services
- Owner has commercial interest in ABS only
- Ring-fenced legal services arm of the external owner

- Model 3 – 100% externally-owned + owner has an interest in the supply of the ABS's services
- Parent-owner might have an interest in 'cross-selling' services
- External owner could be regulated by a regulator from a different sector



- Model 4 – Multi-disciplinary practice (MDP)
- A ‘one-stop shop’ including managers from legal and other professions
- No external ownership
- Model 5 – Co-op model – external ownership + legal + non-legal services
- Model 6 – Private Equity Investment
- Model 7 – Floated company
- Model 8 – Hub and spoke
- Model 9 – (Model 2 or 3+) i.e. 100% external ownership + more than one ‘ring-fenced’ company
- Model 10 – Not for profit
- Model 11 – Local authorities/ in-house



Partnerships and Dual Practice

1 April 2010, the LSB approved the following BSB applications designed to relax provisions in the Code of Conduct:

- **Barristers** to be permitted to become managers of LDPs regulated by the SRA, or bodies regulated by other authorised regulators, without having to re-qualify as solicitors or another type of authorised person.
- **Barristers** to be permitted to be shareholders in LDPs whether or not they are employees or managers of the LDP in question.
- **Barristers** to be permitted to practice in more than one capacity at the same time - in other words part-time as a self-employed barrister within chambers and part-time as a barrister in an employed or managerial capacity.



ProcureCos

- A company or partnership with the aim of procuring legal services
- Only procures legal services from others; would not supply legal services itself
- Would not require regulation under the Legal Services Act



Regulatory Risks

- Ability to maintain autonomy and control over practice (personal independence)
- Opportunities for growth of practice / increased income
- Maintaining the cab rank rule
- Avoiding conflicts of interest
- Retaining regulation by the BSB
- Improved stability and financial security

- Access to new methods of distributing profits
- Ability to provide a more efficient and cheaper service
- Ability to raise capital and investment
- Facilitation of joint tendering for work
- Remaining a member of the Bar as a separate and independent legal profession
- Ability to work in management or partnership with non-barristers



Risks to the future of the Bar

- The Cab Rank Rule
- In 2008 the BSB consulted on whether the rule should apply to:
 - barristers practising in ABS firms or LDPs;
 - barristers practising in partnerships with each other (if such practice is permitted in the future);
 - the self-employed Bar.



Risks to the public

- Conflicts of interest arising from instructions having already been taken by the opposing party in a case
- Conflicts of interest arising from commercial pressures – e.g. ‘cross-selling



Access to justice

- Increasing the quality and breadth of provision of legal services
- BSB regulatory objective ‘to promote accessible and flexible high quality legal services in a competitive market’
- Need to keep equalities considerations to the forefront
- The effect of ABSs on diversity in the profession

Commencement

- In order to implement the ABS regime, three things are necessary:

- The Legal Services Board (LSB), as the overarching regulator of legal services, must be permitted to recommend to the Lord Chancellor that individual 'approved regulators' can be designated as 'licensing authorities', which will in turn license ABS;

- Existing approved regulators, such as the BSB and the Solicitors Regulation Authority (SRA), must be permitted to apply to the LSB to become licensing authorities;

- The specific regulatory procedures contained in the LSA, which any ABS and licensing authority must follow in order to become operational, must be commenced. (These include procedures for management, penalties, suspension or revocation of licenses etc.)

The Legal Services Act 2007 (Commencement Order No 7)

- Brings into force provisions in the LSA which are necessary to allow bodies to submit applications to the LSB to be designated as licensing authorities
- Further regulation(s) will be necessary to commence the remaining provisions in Part 5 LSA, which 'switch on' the operational provisions for the ABS licensing regime

The Timing of Implementation

- Government has brought forward commencement of provisions that initiate the ABS timetable
- First licensing authorities will be designated in spring 2011
- First ABSs to come into existence in summer /autumn 2011
- Political interest in the timing of commencement

Conclusions

Things to take away from today:

- Will ABSs hold further opportunities for you?
- What are the potential risks for the future of the Bar, and for the public?
- Should the BSB regulate entities in the future?