

of making companies liable for anyone who pays a bribe to win or retain business on their behalf, even if senior management had no involvement or knowledge, has been very contentious. The only defence which protects firms is the ability to prove that “adequate procedures” are in place to prevent bribery. This was deemed too vague by many firms, so the implementation of the Act was delayed until recently when government guidance was published at the end of March 2011. Most firms are now busy drafting policies and procedures preparing to communicate the changes that will be ushered in by the Act, which will come into force from the 1st of July 2011. Amy Bell looks in more detail at how the new processes might work and brings us up to date on (see p 104).

Legal Process Outsourcing (LPO) is another emerging area that is changing methods of working in the legal community. The practice of outsourcing work has taken off and Mark Ross (p 95) gives us an overview of the ethical issues in relation to client obligations whilst Loyita Worley examines outsourcing as it affects legal information provision (97).

Legal aid is another area where significant change is likely this year as the government has announced extensive changes to the way public funding will be allocated. Cuts are expected to affect over 500,000 cases, effectively removing access for clients in housing, employment, family and other areas of civil legal aid. Vicky Ling looks at family cases and how the impact will be felt in terms of access to justice (on p 92).

Despite the long lead in time since the introduction of the LSA 2007, many law firms are only just beginning to consider what OFR and the introduction of ABSs will really mean for their daily practices. The time allocated to a consideration of regulatory issues by practitioners is, at best, limited. Hopefully, information providers and the Law Society will be able to assist the busy practitioner with all the changes in regulatory, financial and client expectations.

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Alternative Business Structures – the Long Pregnancy

Abstract: In this article, Nick Jarrett-Kerr examines the long delayed implementation of the ABS structure which is likely to be finally implemented in October 2011. He reviews the plans of some early movers towards ABS and considers the possible benefits to law firms, to external investors and to clients.

Keywords: law firms; alternative business structures

Introduction

Some four years have passed since the Legal Services Act 2007 (LSA) was enacted and its potential impact has, through the passage of time, become somewhat discounted by many law firms and sector observers. The long period of gestation is set to end on 6th October 2011, barring last minute hitches in an ambitious implementation and regulatory programme which requires a score, or more, of statutory



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instruments. It will then at last be possible for Alternative Business Structures (ABS) to come into being.

The reasoning behind the legislation includes a blatant attempt to apply a greater degree of market forces to a professional services sector which has been seen as traditionally monopolistic and restrictive. The rationale is that the changes will, amongst other things, empower or facilitate both greater efficiency and lower cost to the consumer. As a

reminder, one of the objectives of the LSA is to enable lawyers of all types including solicitors, barristers, licensed conveyancers and legal executives, to share ownership, management and control both with other types of lawyer and with non-lawyers. The regime will also allow traditional law firms to link up with non-lawyers and non-legal firms such as insurance companies, banks and estate agents to offer integrated legal and other services. More radically, the new regime also allows external investment and ownership in law firms.

Few now argue, at least in England and Wales, that lawyers should continue to enjoy their traditional, highly protected, position in society. Yet, the removal or dilution of ownership restrictions seems likely to mainly favour investors, both inside the legal profession and outside it, who are large, entrepreneurial, or merely cunning. Small high street practices, for example, are under threat from organisations such as Co-operative Legal Services which have built a very substantial legal business in less than five years. At much the same time, we are also seeing the inexorable decline in the provision of legal aid. The latest changes which make legal aid unavailable in marital disputes (except where domestic violence is involved) will effectively favour Goliath over David in that a spouse who can afford to hire a lawyer will have a distinct litigation advantage over a spouse who cannot afford to be represented. The ABS legislation will not answer that possible imbalance in access to justice unless some Not-for-Profit Alternative Business Structures emerge to supply an alternative to legal aid on a pro bono or charitable basis.

The first change in the movement towards ABSs has already been made. As from 31 March 2009, Legal Disciplinary Practices (LDPs) of mixed types of lawyers and with up to twenty-five per cent of non-lawyers, have been permitted. These will be converted to become ABSs when the new regulations are in force. The new regulatory framework will allow new types of providers to seek a licence to offer legal services as an ABS.

It has, of course, been possible for some years for law firms to reorganise themselves on corporate lines, or to diversify outside the core legal services market into other areas of professional services, but the requirement for ownership and control by lawyers has meant that some of the structures and legal mechanisms which have had to be used have been unwieldy and restrictive. Particularly problematic has been the restrictions on both external investment and non-lawyer partners, which have prevented law firms from diversifying to the same extent as other professions.

What's in it for the law firm?

I have long held the view that law firms are likely to consider an Alternative Business Structure for one or more of three strategic reasons¹. Firstly, a law firm's strategy for survival and prosperity may require growth or

diversification which needs funding to a greater extent than they can manage internally. Hence, one early mover, arguably jumping the gun, was a law firm known as Optima Legal Services which obtained investment from Capita to fund acquisitions. These investments were organised as loans to satisfy the current regulations but the Solicitors Regulation Authority took a different view and found the arrangements to be in breach of the current rules governing non-solicitor investment. However, the scheme is an early harbinger of what might come in due course.

Secondly, a law firm might perceive the need to protect or increase its market share by being part of a bigger or better positioned brand. Hence a number of entities are already seeking to position themselves to move towards national branding. Early moves have to be carried out under the present regime and are therefore currently restricted to lawyer-only ownership and internal investment, but with a clear view to gaining external investment when the time is right and regulations permit. QualitySolicitors, Face2Face Solicitors and High Street Lawyer.com are all franchises or umbrella organisations which seek to build networks of member law firms across the UK serving mainly consumers and small businesses. These networks presently look like fairly loose alliances designed to develop a recognisable brand which will help smaller law firms to compete in an increasingly uncertain marketplace whilst still retaining their names and individual identities. The strategic intent of at least some of these is to build an overall seamless service which can provide systems, processes, training and quality standards which will benefit clients. Alternatively some, like Get Solicitors, will remain as marketing machines designed to enable small firms to access their local markets. Some, such as Contact Law, will be established merely to provide introductions and referrals to law firms. To be successful many loose alliances will need to develop into tight knit firms and there is probably not enough room in the market for all of the current and likely contenders to succeed.

The third motive for an ABS is that the law firm partners may hope that an Alternative Business Structure might give them a possibility of realising a capital value for their share in the law firm which they own. Hence, in Australia, Slater and Gordon became the first law firm to float on a stock market. Slater & Gordon converted to a corporation in 2001 which was both a step towards going public and an essential precursor to growth in that it gave the firm the ability to offer paper and earn-out solutions to the partners of acquired firms. For a period of five years, the firm acquired five smaller firms and a number of lateral hires which virtually doubled the firm in size from about 100 lawyers to over 200 lawyers. By 2006, the firm realised its growth ambitions were limited without further equity funding and it ultimately decided to float on the Australian stock market. Interestingly, Slater and Gordon apparently considered selling a minority stake to a private equity house but rejected this

strategy, as the firm was concerned about the amount of autonomy it would have to cede in return for a stake and also, how much of a contribution would a private equity fund actually make?

What's in it for the external investor?

For external investors, the law firm sector's record of high profitability is likely to hold some attractions, as they will perceive there to be opportunities to obtain both a return on their investment and capital growth in the share value. The traditionally high margins comparative to other sectors (at least up until the recession) and the prospect of gaining high growth in an unstructured market are both alluring. After all, part of the reasoning behind the LSA was that the limitations on innovation and competition caused by the tightly restrictive regulatory environment acted to constrain consumer choice and to restrain normal market pressures to deliver efficient and effective legal services. Some investors may see the opportunity to make a financial gain and to reap an investment harvest in due course. Other external entities will also see synergies with their existing businesses, or opportunities to diversify into both related and unrelated sectors. Global networks may also see the possibility of leveraging their brand by introducing it to a new service sector.

Given the economic situation and particularly its recent depressive effect on the legal profession, it is no surprise that nobody is expecting an October deluge of ABS licence applications. The early movers are largely from within the legal profession. In addition to the first flush of firms in the consumer sector, such as QualitySolicitors, Face2Face Solicitors and High Street Lawyer.com, other firms are aligning themselves to partner with commercial enterprises. One example is Parabis Law. This law firm group owns both Plexus Law which offers legal services to defendants to litigation claims, and Cogent Law which serves claimants. The latter has entered into an arrangement with the AA and Saga to provide insurance claims services as well as advice on many other consumer matters, such as wills, matrimonial disputes and general consumer claims. Parabis remains a traditional law firm at present, owned and managed by solicitors but it is interesting to note that both the AA and Saga are owned by a group of private equity firms for whom eventual ownership of a law firm would seem to be an obvious extension.

What's in it for the client?

As noted previously, the changes are likely to benefit the Goliaths of the legal sector rather than the Davids

amongst High Street firms. Consolidation of the profession into a smaller number of household names will make consumer choice and comparisons easier to identify and are bound to lead to cost savings and efficiency gains. Not only are legal services likely to become cheaper with the advent of more competition, but clients will also benefit from fee certainty as more and more services become packaged into fixed fees arrangements. There will be problem areas, of which one is the issue of regulation. This challenge has long been recognised and has been the focus of much media and industry attention. The Legal Services Board provides oversight regulation, but underneath that a number of other regulatory bodies are likely to vie for supremacy. The Law Society, for instance, has recently set out its stall to become a licensing authority for Alternative Business Structures via the Solicitors Regulation Authority. If a proliferation of regulatory bodies is confusing, there will also be huge swathes of consumer and contract law which will continue to be outside the ambit of any regulator. Already, there are a number of business and personal advisory firms that offer services to clients in the provision of contract advice, employment disputes and will drafting which are not currently regulated at all and which will continue operating their various business models without regulatory interference or supervision. Some of these may prove to be either unscrupulous or dangerously lacking in technical qualification. Another potential problem area is the possible gradual disappearance of the local high street firm as the market for legal services consolidates. Here, I do draw some degree of comfort from other deregulated professional sectors such as opticians, where it is still possible to find a small number of independent firms on most high streets to compete with the household names. Even so, the victim of an accident claim is likely to find that his choice of legal service provider is constrained by his insurers and the buyer of a house is already channelled more and more to conveyancers suggested by his house agent, bank or building society. Face-to-face meetings with a personal adviser may become more difficult if the firm to whom the client is directed is many miles away.

Conclusion

Current and future market pressures will require every firm to revisit their strategies to remain or become competitive. Not every firm will want or need to become an ABS, but every firm does need to look very closely at the competitive pressures it will face and work out its own answers to the key question "Why should clients choose our firm?" Like merger, which is a means of implementing strategy, an Alternative Business Structure may be an option that some firms may want to consider to help survival, growth or development.

Footnote

¹Jarrett-Kerr NC (2009) *Strategy for Law Firms – After the Legal Services Act* (Law Society Publishing), Chapter 6. In this Chapter I set out some 15 models of ABS which might be utilised by law firms or by external investors, and the strategies behind each of the models

Biography

Nick Jarrett-Kerr is a specialist adviser to law firms worldwide on issues of strategy, governance and leadership development, as well as all important business issues facing law firms as they compete in difficult market conditions. He is a founder member of the Law Society's Law Management Section. Nick is Visiting Professor to Nottingham Trent University in the Nottingham Law School, College of Business, Law and Social Sciences and is the author of a book published by the Law Society *Strategy for Law Firms – After the Legal Services Act*.

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Outcomes Focused Regulation – a New Approach to the Regulation of Legal Services

Abstract: Bronwen Still explains the provisions of the new SRA Handbook in implementing an entirely new system of outcomes focused regulation. This approach sets out to give firms much more freedom to tailor their services to individual clients, rather than the previous system of detailed regulation.

Keywords: solicitors; regulation

Introduction

On the 6 October 2011 significant changes will take place to the legal services market. From that date, new non-lawyer owned businesses (Alternative Business Structures – ABSs) will be able to be licensed by the Solicitors Regulation Authority (SRA) to provide legal services. To regulate these new businesses, and also conventional law firms, a new SRA rulebook called the SRA Handbook will come into force. It introduces the concept of Outcomes Focused Regulation (OFR) which makes the achievement of high level outcomes the focus of a firm's relationship with clients. The intention is that this will give firms much greater freedom to tailor their

services to the needs of individual clients rather than, as at present, require them to adhere to a “one size fits all” approach dictated by detailed rules.

Background to the changes

The Legal Services Act 2007

The Legal Services Act was the catalyst for change. It provides the statutory framework for ABSs and a more modern approach to regulating legal services. It sets out regulatory objectives for the first time, setting a new tone for regulators. All regulators of legal services, including the SRA, must have regard to these objectives