

**Minutes of the twelfth meeting of the  
Alternative Business Structures (ABS) Implementation Group**

**Held on Thursday 2 December 2010 from 13:00 to 14:00**

**Legal Services Board, Victoria House, Southampton Row, London, WC1B 4AD**

**Attendees**

|                 |   |
|-----------------|---|
| Chris Kenny     | Legal Services Board (LSB) (Chair Person)                   |
| Michael Stacey  | Legal Services Board (LSB)                                  |
| Luke McInerney  | Legal services Board (LSB)                                  |
| Michelle Jacobs | Legal services Board (LSB)                                  |
| Fran Gillon     | Legal services Board (LSB)                                  |
| Chris Baas      | Legal services Board (LSB)                                  |
| Alanna Linn     | Legal Services Consumer Panel                               |
| Imelda Moffat   | Institute of Chartered Accountant England and Wales (ICAEW) |
| Geraint Davies  | Bar Standards Board (BSB)                                   |

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**Background**

This was the twelfth meeting of the ABS Implementation Group.

Numerous apologies from members were received due to adverse weather conditions.

**Agenda**

1. Minutes
2. Matters arising
3. SRA to update on Handbook CBA
4. LSB to discuss consultations
5. LSB to present on ABS impact assessment
6. Any other business

## **Minutes**

1. The minutes from the previous meeting were considered.
2. Minutes were agreed.

## **Matters arising out of the minutes**

3. No matters arose. Minutes were approved.

## **SRA to update on Handbook CBA**

4. As the SRA was not present, Luke McInerney gave an overview of the Handbook CBA, noting that it was especially useful in identifying costs to regulators and also possible future costs for ABS.
5. While the handbook outlines indicative costs only, the overall framework to identifying costs can usefully be applied in understanding what an ABS 'world' looks like and the LSB have used the costing information in informing the impact assessment of commencement of Part 5 of the LSA 2007.

## **LSB to discuss consultations**

### ***Appeals***

6. On the ABS appeals consultation, Michael Stacey noted that the LSB received six responses. Some responses raised objections to the proposal that the First-tier Tribunal, General Regulatory Chamber (GRC) should serve as the single ABS appeals mechanism. While this was not the main focus of the consultation (having been consulted on previously as part of the consultation on *Approaches to Licensing*), the LSB has considered the arguments made. On balance, the LSB still considers that a single appeals mechanism provided by the GRC is the best approach.
7. In relation to the detailed implementation proposals that were the main focus of the consultation, the following key issues emerged:
  - Whether the onward appeal route from decisions of the appellate body should be changed to the Upper Tribunal from the High Court. The LSB was not convinced by the arguments put forward opposing this change and intends to proceed on the basis proposed in the consultation paper.
  - Whether the GRC should have a general power to award costs against a party to the proceedings. A number of consultees made strong arguments that the GRC rules should be amended to provide a broader power. The LSB is persuaded by these arguments and is discussing with the Tribunals Service how best to take this forward (the Tribunals Procedure committee is responsible for making/amending the GRC rules).
  - The appropriate composition of panels: consultees have a preference for panels consisting of 3 rather than 2 people. The LSB agrees with this approach in principle, although the composition of panels is a matter of judicial discretion for the GRC President.
8. In terms of membership of Panels, the LSB has looked at the existing membership of the Solicitors Disciplinary Tribunal and CLC Discipline and Appeals committee and identified four members who are also members of the First-tier Tribunal. These members could potentially be cross-ticketed to hear ABS appeals once the new

mechanism is established. The GRC President has asked for an indication of the expertise required of panel members.

9. The LSB's Board is considering the responses received to the consultation on 13 December and intends to make a recommendation to the Lord Chancellor, hopefully before Christmas. In order to make a recommendation to the Lord Chancellor the LSB needs to have secured the consent of the First-tier Tribunal, CLC and SRA.

### ***Rules on keeping registers, Section 69 & maximum financial penalty***

10. Chris Baas noted that in relation to the LSB's planned consultation about changes to the holding of interests in, keeping registers of, and ownership of licensed bodies (Schedule 13) - the Ministry of Justice has had an opportunity to consider the draft consultation documents and already provided some feedback. More detailed consideration by MoJ lawyers was required specifically in relation to the draft SI.
11. Keeping of lists of disqualified persons will draw from the keeping of lists of disqualified directors. The consultation on this will close in February 2011.
12. Section 69 – the LSB Board agreed to the policy that the LSB consulted on and this will be published in the next few days.
13. In terms of maximum financial penalty the advice that the LSB has is that we cannot have an unlimited maximum financial penalty and hence need to have a number limit.
14. The LSB hopes to publish a consultation on the maximum financial penalty before Christmas. The consultation will not see a change in the policy justification, just as alteration in the final figure which is large enough to act as a deterrent.

### **LSB to present on ABS impact assessment**

15. The LSB's impact assessment (IA) is currently in draft form and undergoing a second iteration.
16. The IA is based on three scenarios for ABS uptake and uses both quantification and qualification in identifying possible future impacts of commencement of Part 5 of the LSA 2007. Given difficulties in understanding the full impacts of ABS, the IA outlines possible impacts, depending on the level of initial uptake.
17. Key points in the IA include: (1) ABS will have differential impacts on small firms. However, a 'big bang' impact is unlikely and many new opportunities will open up to innovative small firms (2) ABS will intensify already extant trends of commoditisation in the legal services sector (3) Medium sized City firms (not quite top tier) are likely to be the primary recipients of external private capital and benefit from external equity and access to different management structures, etc.
18. Much of the data collected so far has been due to the helpful input by the SRA and CLC. The LSB thanks both the SRA and CLC for their assistance.
19. The LSB intends to informally consult on the IA in the New Year.

### **Other business**

20. Imelda Moffat (ICAEW) has written to SRA regarding the discussion of the Code at the MDP meeting. Imelda will send through to LSB the letter.

21. Geraint Davies (BSB) noted that the BSB's consultation on entity regulation closes on 23 December 2010. Presently, it is envisaged that the BSB will be sorting through responses in January with a view to going to the Board for a decision in March/April 2011.

22. In the event of the BSB Board agreeing to regulate entities it could be in a position to do so in 2012.