

# **Alternative Business Structures LSB Forum**

**3<sup>rd</sup> November 2009**

# Some givens

- The SRA seeks to be a licensor of ABSs at the earliest available stage
- The SRA is working with the LSB and other regulators to deliver to the agreed timetable
- The SRA wishes to work with all stakeholders
  - to achieve consensus wherever possible
  - to ensure that all those involved are prepared to meet the challenges

# Some reminders

- Key objectives of the ABS provisions in the Legal Services Act were the reduction of restrictions and the promotion of competition and choice
- The presumption is that liberalisation of the market will achieve those ends – regulatory restrictions need to be clearly justified
- The legal services sector is a regulated sector – asymmetry exists and consumer protections are required

# Where has the SRA reached on ABSs?

- Consultation document issued in the spring, responses reported to SRA Board last month
- Some main conclusions reached, key areas for resolution identified
- Work with LSB and other regulators in hand to take matters forward
- Next consultation from LSB awaited

# What conclusions has the SRA reached?



- The ABS framework should not add unnecessarily, if at all, to the minimum conditions required in the Act
- Protections for consumers using ABSs should be the same as for those using other kinds of law firms, except where the risks associated with ABSs are demonstrably and significantly different

# What conclusions has the SRA reached?



- Regulators should not attempt to define ABS models, save for modelling purposes
- The focus should be on outcomes, appropriate supervision, and risk assessment, not upon restricting models, except where a particularly high risk to consumers is identified
- Further work is required in relation to Multi-Disciplinary Practices, which pose particular regulatory issues

# What conclusions has the SRA reached?



- The current reserved/non-reserved legal activities regime is defective, and runs the risk of consumer confusion. Further work with the LSB and its consumer panel is required
- There should be no general prohibition on categories of owner or investor, but there should be a proper fitness to own test, differentiated according to level of ownership

# What conclusions has the SRA reached?



- Further work is required to determine how the “access to justice” criterion should be applied – the SRA’s provisional view is that the presumption should be that opening the market will improve it, unless demonstrated otherwise
- There should be continual monitoring of the E&D impacts of ABSs



# What conclusions has the SRA reached?



- There should be requirements to ensure that suitably qualified and empowered people are employed as Heads of Legal Practice in ABSs
- Multi-disciplinary practices should be permitted without ring-fencing
- Insurance and Compensation Fund arrangements for ABSs should provide the same protections as other law firms

# What conclusions has the SRA reached?



- There should be agreed descriptions across the sector to promote consumer clarity
- More work is required on conflict between regulators in relation to Multi-Disciplinary Practices

# Skilling up



- The SRA is employing new staff with broader regulatory experience
- The SRA has contracts with a major law firm and an accountancy firm to provide additional skills in the rapid development of a new regulatory regime suitable for ABSs

# Some history

- The regulation of solicitors is based upon the notion of the accountability of individual professionals working in a relatively homogeneous environment, not upon the quality assurance of legal services suppliers
- The regulation of solicitors is based upon core principles, but with an extensive elaboration of those principles through rules
- The historic focus has been on compliance, not outcomes

# The need for change

- The current regime is ill-suited to the regulation of corporate entities (even without ABSs)
- A more flexible, outcomes focussed approach is required

# All of this requires

- A new approach to monitoring and supervision
- A new approach to compliance (Code of Conduct and methods of enforcement)

# The SRA has



- Established a Corporate Regulation Project to pilot new approaches to firm based regulation (piloting work to begin early in 2010)
- Published a discussion document on moving to full Principles-Based Regulation

# Principles, outcomes, rules – an old debate



- Circumcision, the treatment of withered hands, and rescuing sheep from pits (see Matthew 12:10)
- Client care letters, unclaimed client balances, referral fees (see SRA Code of Conduct Rules 2 and 9)

(We're all in favour of principles-based regulation, but are we agreed on what it means?)



# Competing risks

- ABSs offer the ideal opportunity to start as you mean to go on – outcomes-focussed regulation
- If you build the limitations of the past into the new model you may never get there
- There are dangers to consumers in a move to full Principles Based Regulation if the regulated community and the regulator are not fully prepared
- We might delay the major benefits of ABSs if we overload the launch

# We need to determine

- What we can deliver within the agreed ABS timetable
- What the competing risks are of the different approaches

# We need to be realistic

- There will be risks whichever approach is adopted
- We need to focus on where the maximum benefits lie
- We will only learn through implementation – the lessons from the introduction of LDPs are limited, and it is foolish for a regulator to attempt to second-guess the market

# A successful outcome?

- Increased competition
- Maintained standards of consumer protection
- Buy-in from members of the profession
- Cost-effective transition
- Outcomes-focused supervision
- Risks of transition mitigated through the manner of delivery and the new approach to regulation