

Non Lawyer Ownership: The View from England and Wales

Developments in the global market place continue to drive and increase pressure for new approaches to be taken in the provision of legal services. One such development in England and Wales is the licensing of Alternative Business Structures (“ABS”). These are regulated organisations providing legal services which have some form of non-lawyer involvement. The first ABS were licensed in 2012 and since then the Law Society’s regulatory arm, the Solicitors Regulation Authority (“SRA”), has issued over 266 licences.

While we were not the first jurisdiction to go down this route, and will not be the last, we have certainly received a lot of international attention. I am aware that my predecessors have spoken around the world about the English and Welsh experience of ABS. As the current president of the Law Society of England and Wales, I expect that I too will find myself frequently talking on the subject. It comes as no surprise to me that Singapore is the first jurisdiction with which I share the view from England and Wales.

It is natural for a leading nation in finance, business and other professional services like Singapore to seek a modern and progressive legal services sector, with a pro-business environment and a facilitative platform that is conducive to global market developments. Therefore, it makes sense that the Final Report of the Committee to Review the Regulatory Framework of the Singapore Legal Sector recommends exploring the introduction of ABS.

Alternative Business Structures (“ABS”) in England and Wales

But who are these ABS we keep talking about? It is worth keeping in mind that the 266 ABS licensed by the SRA vary widely. We have spoken to many members about why they chose to become an ABS. Some want to bring external business expertise into the partnership to allow solicitors to focus on legal services and leave the management to those better suited. Others want to promote to partnership a non-lawyer who has been with the firm for years such as the office manager or IT director. Some want to join up with other professions to offer a seamless service to clients. Some want to raise external capital to grow their firm or invest in new ways of delivering services to their clients.

Everyone has a different story to tell and ABS come in many different shapes and forms. Perhaps one reason for this is why and how ABS came about in England and Wales.

The Introduction of ABS

In 2001, the Office of Fair Trading recommended that unjustified restriction on competition in the legal services market should be removed. A subsequent government report concluded that the then framework was “outdated, inflexible, over-complex and insufficiently accountable or transparent”. A later independent review by former deputy governor of the Bank of England Sir David Clementi recommended, among other things, the establishment of ABS that could see different types of lawyers and non-lawyers managing and owning legal practices. The following legislative process resulted in the Legal Services Act (2007).

The Legal Services Act changed the regulatory landscape in England and Wales. It introduced a new oversight regulator, the Legal Services Board, and frontline regulators such as the Law Society and Bar Council created independent structures to deal with regulation and discipline. We lobbied hard and worked with Government during this time to make sure that there was a robust and level regulatory playing field between all providers of legal services. When it came to ABS, we made sure that non-lawyers would be regulated to the same high standards as solicitors. We could do this thanks to the introduction of entity-based regulation.

Entity-based regulation means our regulatory system does not only target solicitors, but also the structure in which they practise. The SRA regulates and authorises non-solicitors working in authorised legal services providers. In order to protect the interest of consumers, if you are a body which provides, as any part of your services, reserved legal activities, you need to be authorised and regulated to exactly the same high standards and robust framework as a firm comprised solely of solicitors – including privilege, financial and professional compliance. Both the SRA and the Solicitors Disciplinary Tribunal have power to impose sanctions on non-solicitor managers and employees of any type of legal practices.

This leaves England and Wales with a system that enables the jurisdiction to regulate the many shapes of ABS to the traditional high standard that legal service consumer have become accustomed to. “Outdated, inflexible, over-complex and insufficiently accountable or transparent” are truly now descriptions of the past.

The Story so Far

The early signs of the impact on the legal services market are generally positive. The Legal Services Board published an initial report and concluded that ABS were associated with more frequent reports of new innovations when compared to other providers regulated by the SRA.

While the legal system in England and Wales is one of the most traditional in the world, tradition and innovation are not exclusive to ABS – they are simply a vehicle that allow law firms to innovate in new ways.

The development of integrated services (legal and bank; funeral and probate, barristers and solicitors, for example) offers clients the opportunity to shop from a single provider, perhaps one with an established presence locally – which helps businesses reap economies of scale potentially helping to bring down their costs. This is particularly relevant in the global context of economic downturn. But none of this is revolutionary. Today, people shop smarter and differently from before. They expect to be able to shop around for the best value and most convenient service for them.

Individually, each of the traditionally structured law firms and ABS provide an attractive package for businesses and clients looking for lawyers, and in combination they showcase all that is best about English and Welsh legal services and solicitors.

Already, foreign firms are starting to come to England and Wales to take advantage of the business models offered by our jurisdiction and the new channels to market. They are confident in the regulation we offer and the many ways in which they can structure their businesses to best serve the changing needs of their clients, which after all is why law firms exist.

Conclusion

These trends provide a favourable context for the legal services sector to continue growing as a high-value segment of the economy. We believe the continued innovation of legal practice and regulation allows law firms in England and Wales a competitive advantage over jurisdictions with

more conservative approaches, giving firms access to outside capital and business expertise in the partnership.

Likewise, as Singapore’s economy grows, it is natural that it too will continue to develop a legal sector that is well-placed to meet domestic needs that are increasingly varied and complex.

ABS are not a break away from the past. In a 2009 independent review commissioned by the Law Society, Lord Hunt, a solicitor and former cabinet minister, said, “Successful ABS will not be those firms that look and behave least like traditional law firms; they will be those that demonstrate the most admirable qualities of current practices.”

The Law Society echoes his view as we look to adapt to and help shape the future of legal services and encourage others to do the same.

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