



26 April 2011

Our ref: ICAEW Rep 40/11

Alison Crawley
Solicitors Regulation Authority
Ipsley Court
Berrington Close
Redditch
B98 0TD

By email: abscontact@sra.org.uk

Dear Ms Crawley

ALTERNATIVE BUSINESS STRUCTURES FEE STRUCTURE

ICAEW is pleased to respond to your request for comments on *Alternative business structures fee structure*.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

Imelda Moffat
Manager, Information Law & Legal Services

T +44 (0)20 7920 3521
E Imelda.moffat@icaew.com



ICAEW REPRESENTATION

ALTERNATIVE BUSINESS STRUCTURES FEE STRUCTURE

Memorandum of comment submitted in April 2011 by ICAEW, in response to Solicitors Regulation Authority consultation paper Alternative business structures fee structure published in March 2011

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation paper *Alternative business structures fee structure* published by Solicitors Regulation Authority.

WHO WE ARE

2. ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, we provide leadership and practical support to over 136,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. We ensure these skills are constantly developed, recognised and valued.

RESPONSES TO SPECIFIC QUESTIONS/POINTS

Q1: Do you agree with the overall approach, assumptions and principles outlined in paragraphs 2-6 above?

4. Yes, although we query the assumption that all existing Authorised Regulators will become licensing authorities, and there may be new entrants to regulation who may remain at the Approved Regulator stage.

Q2: Do you think that the proposal to apply the existing fee structure to ABS might have a negative or positive effect on any particular group?

5. We have not seen the data and therefore cannot comment meaningfully.

Q3: Do you agree that the firm fee should be based on turnover? If you disagree, please specify what different basis should be used.

6. As a general point, we note that in house lawyers (who are neither principals in the firm or client facing) should pay the same amount as those in private practice or an ABS. Should this be reconsidered?

Q4: Do you agree that MDP ABS should not be charged on a different basis from other ABS? If not, please explain your view; and

Q5: Do you see any difficulties in relating turnover to "regulated activities"? Please give details.

7. The proposal is that fees for MDPs will be based upon turnover arising from "regulated activities".
8. In an MDP it may be difficult for firms to decide which activities are regulated and which are not. For example in an MDP of say one solicitor and ten accountants, a large part of the firm's work could be tax related which the SRA would claim is legal advice but an accountant would claim is accountancy advice if given by the accountant. A similar issue would arise if a surveyor joined and gave advice on lease drafting – he would say it was surveying advice and the SRA would claim it is legal advice. Would ABS fee calculations include all such work? Whose judgment prevails? The SRA or the MDP concerned?

9. There is a leap to be made between regulating the individual and the firm. In the example given above, what strategies/ guidance does the SRA envisage for handling disputes in establishing what constitutes regulated advice?
10. This turnover basis arising from regulated activities basis appears to work on the premise that:
- The separate business rule preventing a lawyer from providing non regulated legal work through another entity (except in limited cases) will transfer across smoothly to an MDP, and all legal advice given within it is regulated and therefore calculable for fee purposes.
 - This is not so. As stated above, an MDP could be a firm of lawyers with non lawyer professionals added. It could also be a firm of non lawyers (such as accountants or surveyors) with a few solicitors added, or a 'true' MDP with say a solicitor, accountant and IFA. The approach is overly simplistic for MDPs. We think more information is required to clarify how it will work in practice.
 - Firms will be able to distinguish between 'regulated activities' and non regulated activities.
 - There is a leap to be made between regulating the individual and the firm. In the example given above, what strategies/ guidance does the SRA envisage for handling disputes in establishing what constitutes regulated advice?
 - We have commented on several occasions that the new Solicitors Accounts Rules for ABS require more work and will be difficult to operate in practice but our comments have not been taken on board to date. The fact that the new handbook says MDPs will be required to distinguish between regulated and non regulated activities when receiving monies and raising fees should not be assumed to be evidence that this approach is workable without considerably more testing on MDP models.

Q6: Do you agree with the underlying principles set out in paragraph 31?

11. We have no specific comment but are of the view that in practice this will be unwieldy to operate. If the merger etc creates a new legal entity, then it should apply for a licence in that new legal form and pay the application fee, we see no reason why a credit should be given for previous fees, the change is a choice of the firm.

Q7: Do you agree that estimated turnover is a better basis for such new ABS than historic turnover?

12. It may not be correct to assume that most non-traditional law firm/LDP businesses will be seeking to expand their legal offerings on authorisation as an ABS. They are already existing firms and this should not be a basis upon which to treat them differently to a traditional firm - indeed this adds more complexity than required.
13. In the light of the issues identified earlier in the classification of regulated activities within an MDP, it will be difficult for such non-traditional law firm/LDP businesses to make any attempt to calculate fees at all. How is an estimated turnover figure capable of verification?

Q8: Do you agree that basing the initial fees on estimated turnover for the whole new business, and giving credit for fees already paid, is a sensible way to deal with such new firms?

14. This also seems complex. Utilising the example above in our response to Questions 4 and 5, there will be MDPs whose business is comprised of regulated and non regulated activities and if the SRA intends to override existing work classifications by other professions it may be preferable to indicate this now so approaches can be agreed with other regulators.
15. It would seem far simpler if the firm pays an application fee, with no credit for prior fees, so in the first period the application fee need be all that is paid. What regulatory activity is going to be applied to that firm, other than the application process?

Q9: Do you agree that it is fairer to base the charges for a brand new ABS on estimated turnover?

16. It seems to be the only viable method but presumably there should be an ability to rebate if figures turn out to be wildly wrong in practice. However, a fee based on, for example the number of fee earners in a firm, avoids all the issues of estimating turnover etc.

Q10: Do you agree that ABS should pay a compensation fund contribution on the same basis as recognised bodies?

17. We are not cognisant with current arrangements so cannot comment further. However, it seems to us that as the compensation fund only pays in cases of loss of clients' monies, if an ABS does not hold clients' monies, then it should be exempt from making any contribution to the compensation fund.

E imelda.moffat@icaew.com

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