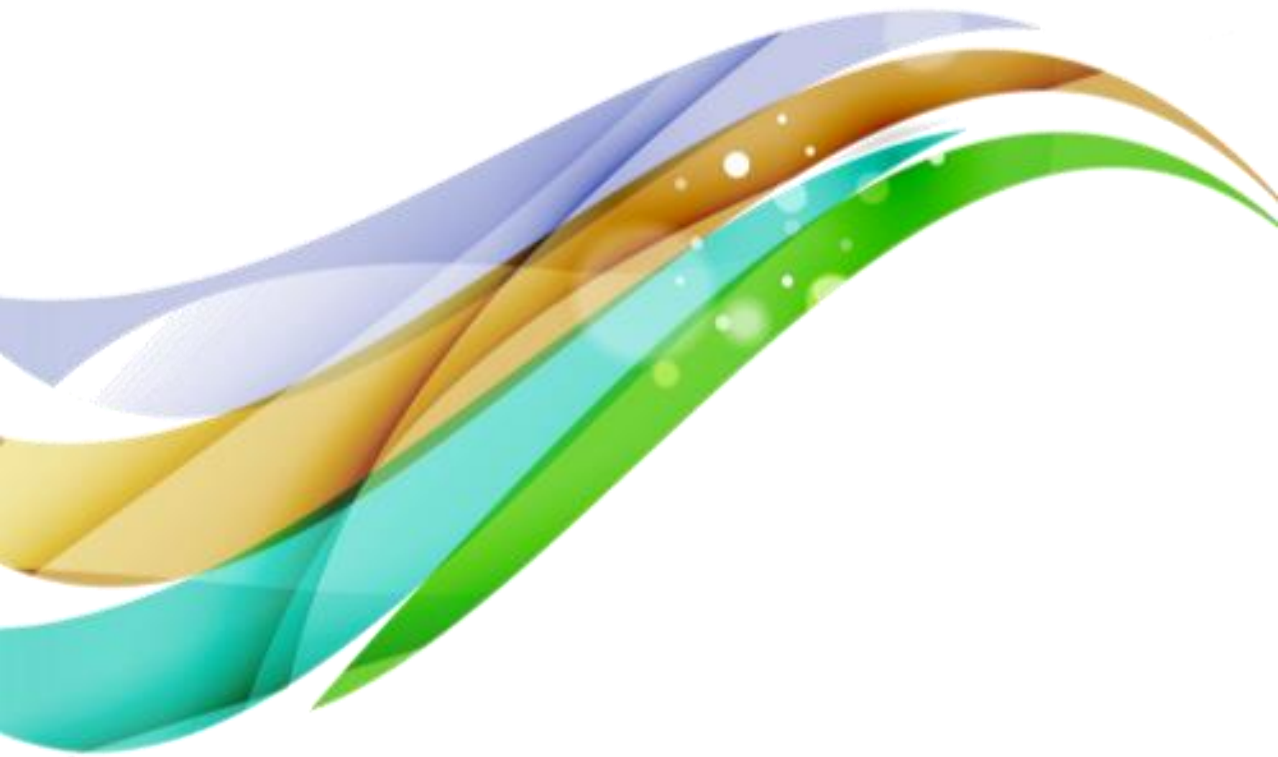


Alternative business structures and multi-disciplinary practices

A working paper

Prepared for the Independent Review of the Regulation of
Lawyers and Legal Services in Aotearoa New Zealand

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Glossary

Abbreviation

ABS

AP

COLP

COFA

ILP

LLP

MDP

NSW

SRA

ULP

Stands for

Alternative business structure

Authorised principal

Compliance Officer for Legal Practice

Compliance Officer for Finance and Administration

Incorporated legal practice

Limited liability partnership

Multi-disciplinary practice

New South Wales

Solicitors Regulatory Authority

Unincorporated legal practice

1. Introduction

The Lawyers and Conveyancers Act 2006 imposes two main restrictions on the business arrangements that can be used by lawyers in New Zealand:

1. The Act essentially prevents anyone other than actively involved lawyers from holding shares or being a director in an incorporated firm.¹
2. The Act prohibits barristers and solicitors from entering into a partnership with a member of another profession, such as an accountant, while holding themselves out as a lawyer.²

This paper summarises developments overseas where a number of jurisdictions have removed similar business restrictions. It was provided as a background paper to the independent panel reviewing the regulation of lawyers in New Zealand.

Technology and globalisation are stimulating changes in the practice of law and the regulation of the legal profession worldwide.³ One aspect of this change is the liberalisation of legal practice, such as permitting the ownership of law firms by non-lawyers in alternative business structures (ABSs) and allowing law firms to offer legal and other professional services in multidisciplinary practices (MDPs).

These developments have implications for how lawyers and legal services are regulated to ensure the ethical responsibilities owed by lawyers to their clients are not compromised, while enabling more competition, efficiencies of scale, technology, innovation and specialisation in the provision of legal services.⁴ The Australian states of Victoria, New South Wales (NSW) and Western Australia as well as England and Wales in the United Kingdom are at the forefront of these regulatory reforms and provide useful lessons in how the changes have been implemented.

In section 2 this paper outlines how ABSs and MDPs are regulated. Section 3 surveys international experience in the regulation of ABSs and MDPs. Finally, section 4 summarises the common features of the regulation of ABSs and MDPs.

¹ See the definition of ‘incorporated law firm’ in the Lawyers and Conveyancers Act, s 6. In narrow circumstances family members (as nonvoting directors) and administrators of a deceased director’s estate can have ownership rights.

² The definition of ‘misconduct’ in the Act includes employed lawyers providing regulated services if they do so while employed by a partnership that is not comprised entirely of lawyers: s 9 (1)(b).

³ See for example CBA. (2014). *Futures: Transforming the Delivery of Legal Services in Canada*. Canadian Bar Association; Hunter, D. (2020). The Death of the Legal Profession and the Future of Law. *University of New South Wales Law Journal*, 43(4), 1199–1225; Susskind, R., & Susskind, D. (2015). *The Future of the Professions: How Technology Will Transform the Work of Human Experts*. Oxford University Press; Wilkins, D. B., & Esteban Ferrer, M. J. (2019). Taking the ‘Alternative’ out of Alternative Legal Service Providers: Remapping the Corporate Legal Ecosystem in the Age of Integrated Solutions. In M. DeStefano & G. Dobrauz-Saldapenna (Eds.), *New Suits: Appetite for Disruption in the Legal World*. Stampfli Verlag.

⁴ Hill, L. L. (2016). Alternative Business Structure for Lawyers and Law Firms: A View from the Global Legal Services Market. *Oregon Review of International Law*, 18, 135–184.

2. Regulation of corporate form

In most jurisdictions, legal services are provided through firms. However, the nature and form of these law firms is typically regulated. A common organisational restriction is that providers of legal services must operate as independent providers or in partnership only with other qualified lawyers. These restrictions appear to be motivated by a desire to keep at arm's length commercial or profit considerations on the part of lawyers to ensure that they act in the best interests of consumers.⁵

An alternative view is that these restrictions are motivated by a desire to protect lawyers from competition. Such protectionism raises the cost of legal services while reducing their availability, stifles new start-ups and constrains competition.⁶ Constraints on corporate form also forgo the cost-reducing efficiencies of scale, technology, innovation and specialisation that could be expected were other business models available.

The main arguments against lifting restrictions on corporate form are that doing so may:⁷

- threaten lawyer-client privilege, in circumstances where regulated lawyers cooperate with other professionals who are not bound by a similar duty of professional secrecy
- cause conflicts of interest to the detriment of the consumers
- subordinate the duty of lawyers to clients to the pursuit of profit.

An issue is whether regulation ought to focus on lawyer behaviour or law firm structure.⁸ In sum, the argument in favour of allowing non-lawyer ownership of law firms stresses the point that the potential for conflicts of interest may justify regulation, but not prohibition.⁹

So where alternative corporate forms for law firms are permitted, they are accompanied by regulation of the entity as well as regulation of individual lawyers.

⁵ See for example Carr, J., & Mathewson, F. (1990). The Economics of Law Firms: A Study in the Legal Organization of the Firm. *The Journal of Law and Economics*, 33(2), 307–330; Hillman, R. W. (2003). Organizational Choices of Professional Service Firms: An Empirical Study. *The Business Lawyer*, 58(4), 1387–1411; Parker, C. (2004). Law firms incorporated: How incorporation could and should make firms more ethically responsible. *University of Queensland Law Journal*, 23(2), 347–380; Wright, B. (2007). Incorporated Law Firms: The Practical and Ethical Considerations. *Auckland University Law Review*, 13(1–29).

⁶ Hadfield, G. K. (forthcoming). Legal Markets. *Journal of Economic Literature*.

⁷ van den Bergh, R. J. (2007). *Towards Better Regulation of the Legal Professions* (pp. 17–72) [Background Paper for OECD Roundtable on Competitive Restrictions in Legal Professions]. Organisation for Economic Co-operation and Development. <https://www.oecd.org/competition/sectors/40080343.pdf>

⁸ Garoupa, N. (2008). Providing a Framework for Reforming the Legal Profession: Insights from the European Experience. *European Business Organization Law Review*, 9, 463–495; Hadfield, G. K. (forthcoming). Legal Markets. *Journal of Economic Literature*; Steinitz, M. (2022). The Partnership Mystique: Law Firm Finance and Governance for the 21st Century American Law Firm. *William and Mary Law Review*, 63(3), 939–1013; van den Bergh, R. J. (2007). *Towards Better Regulation of the Legal Professions* (pp. 17–72) [Background Paper for OECD Roundtable on Competitive Restrictions in Legal Professions]. Organisation for Economic Co-operation and Development.

⁹ Weberstaedt, J. (2014). English Alternative Business Structures and the European single market. *International Journal of the Legal Profession*, 21(1), 103–141.

2.1 Alternative corporate forms

The ABS model allows providers of legal services to utilise the most appropriate corporate form for their business including publicly listed companies, joint ventures with non-legal businesses, employee ownership and group structures, including holding companies. It permits investment and shareholding in law firms by non-lawyers.

The principal advantage of ABSs is that they allow access to investment from outside the firm. Wider public benefits can include increased entry by new firms, greater competition and innovation and more choice, and potentially higher quality and lower costs for consumers. The main argument against ABSs is that allowing non-lawyer ownership may compromise the independence of the legal profession and create conflicts of interest between the interests of investors and the duty of lawyers to their clients.

ABSs also typically involve multi-disciplinary practices (MDPs) where lawyers and non-lawyers provide clients a 'one stop shop' for a number of professional services. The most common combinations are law firms offering tax, consulting and forensic services, or accounting firms offering legal services. The MDP structure enables the sharing of profits, risk and information with non-lawyers.

MDPs offer a number of advantages for consumers. They can bring together the expertise of several professions to provide a full service to consumers with complex needs. They can generate economies of scope and economise on the transaction costs of interactions between different professionals. In addition, MDPs allow internal risk spreading across professional offerings. MDPs may also provide easier access to capital to invest in equipment, infrastructure and innovation to improve consumer services.¹⁰

2.2 Entity regulation

Traditionally regulation (including licensing, codes of conduct, and discipline) has been aimed at individual practitioners.¹¹ Law firms large and small were functionally invisible to regulation, and not mentioned in professional codes. However, the traditional prohibition against non-lawyers having an interest in the corporate structures for the provision of legal services has come under pressure, and many jurisdictions have permitted various forms of incorporation (see section 3).

The advent of ABSs and MDPs has been accompanied by a new regulatory structure that includes regulation of individual lawyers as well as regulation of the entities themselves to ensure the duties

¹⁰ Philipsen, N., & Zhou, Q. (2016). Business Restrictions in the Legal Professions: Do We Need More Market Integration? In N. Philipsen, S. E. Weishaar, & G. Xu (Eds.), *Market Integration: The EU Experience and Implications for Regulatory Reform in China* (pp. 211–238). Springer; Stephen, F. H., & Love, J. H. (1999). Regulation of the Legal Profession. In G. de Geest (Ed.), *Encyclopedia of Law and Economics* (pp. 987–1017). Edward Elgar Publishing; van den Bergh, R. J. (2007). *Towards Better Regulation of the Legal Professions* (pp. 17–72) [Background Paper for OECD Roundtable on Competitive Restrictions in Legal Professions]. Organisation for Economic Co-operation and Development.

¹¹ Semple, N. (2017). Legal Services Regulation in Canada: Plus Ça Change? *International Perspectives on the Regulation of Lawyers and Legal Services*.

and obligations of legal service providers are being met.¹² Entity regulation shifts from prescriptive rules to a focus on outcomes and principles that entrench an ethical infrastructure in the firm to ensure the services they offer are of high quality and protect consumer interests.¹³

An alternative approach to immediate liberalisation taken by some jurisdictions, including Utah, California and British Columbia, is the use of 'sandboxes' as pilots to inform decisions about how MDPs should be regulated.¹⁴ The regulatory sandbox allows innovative legal services to be piloted and evaluated. The goal is to allow regulators and aspiring innovators to develop new offerings that could benefit the public, validate them with the public, and understand how current regulations might need to be formulated to permit these and other innovations.

¹² CBA. (2014). *Futures: Transforming the Delivery of Legal Services in Canada*. Canadian Bar Association; Henderson, W. D. (2018). *Legal Market Landscape Report* (pp. 5–32) [Report commissioned by the State Bar of California]; McMorrow, J. A. (2016). *UK Alternative Business Structures for Legal Practice: Emerging Models and Lessons for the US*. 47(2), 665–711.

¹³ Boon, A. (2011). Professionalism Under the Legal Services Act 2007. *International Journal of the Legal Profession*, 17(3), 195–232; Dodek, A. M. (2011). Regulating Law Firms in Canada. *Canadian Bar Review*, 90, 381–438; Parker, C., Evans, A., & Haller, L. (2008). The Ethical Infrastructure of Legal Practice in Larger Law Firms: Values, Policy and Behaviour. *University of New South Wales Law Journal*, 31(1), 158–188; Salyzyn, A. (2015). What if We Didn't Wait? Canadian Law Societies and The Promotion of Effective Ethical Infrastructure in Law Practices. *The Canadian Bar Review*, 92(3), 507–554.

¹⁴ See for example Law Society of Ontario. (2021). *Report on Regulatory Sandbox for Innovative Technological Legal Services*. Ontario; Utah Work Group on Regulatory Reform. (2019). *Narrowing the Access-to-Justice Gap by Reimagining Regulation*. Utah Work Group on Regulatory Reform.

3. International experience

The reforms in the regulation of legal services in England and Wales and in Victoria, New South Wales and Western Australia are at the forefront of changes to the way the legal profession is regulated worldwide. This section outlines how ABSs and MDPs are regulated in those jurisdictions that have undertaken reforms, and the results of those experiences.

3.1 England and Wales

The Law Society of England and Wales (representing solicitors) voiced support for permitting multi-disciplinary practice in 1999. In 2001, a report by the Office of Fair Trading, the UK's competition and antitrust authority, found "restrictions that barred multi-disciplinary firms were unreasonable market restraints that gave rise to inflationary pricing and resulted in an anticompetitive practice".¹⁵

The Legal Services Act was introduced in 2007 and created the Legal Services Board, the Legal Ombudsman and the Solicitors Regulatory Authority (SRA) that regulates legal services. While formally an arm of the Law Society, the SRA is operationally independent. It is not representative of, or responsive to, the profession.

The legislative changes also aimed in part to increase competition in the legal services market by enabling ABSs to provide legal services, facilitate entry by new and diverse participants, enhance competition and innovation in the supply of legal services, provide firms access to external capital, and diversify the supply of legal services to better meet the needs of consumers.¹⁶

3.1.1 Entity regulation

The Legal Services Act sets out reserved legal services that can only be undertaken by individuals and firms authorised by the SRA. A legal services business must be authorised by the SRA if it provides reserved legal services to the public, which are:

- the exercise of a right of audience
- the conduct of litigation
- reserved instrument activities
- probate activities
- notarial activities
- administration of oaths.

¹⁵ Paton, P. (2010). Multidisciplinary Practice Redux: Globalization, Core Values, and Reviving the MDP Debate in America. *Fordham Law Review*, 78(5), 2193–2244.

¹⁶ Decker, C. (2021a). *Reform and 'modernisation' of legal services in England and Wales: Motivations, impacts and insights for the OECD PMR Indicators*. Organisation for Economic Co-operation and Development; Rab, S. (2021, March 1). [Thomson Reuters Practical Law]. *Regulation of the Legal Profession in the UK (England and Wales): Overview*; Solicitors Regulation Authority. (2014). *Research on alternative business structures (ABSs). Findings from surveys with ABSs and applicants that withdrew from the licensing process*. <https://www.sra.org.uk/globalassets/documents/sra/research/abs-quantitative-research-may-2014.pdf?version=4a1ac4>

A business that only provides non-reserved legal services does not need to be authorised.

There are three types of providers of legal services in England and Wales:¹⁷

- entities that are authorised and regulated by the SRA
- entities that conduct certain legal activities (such as claims management and immigration activities) that are subject to other specialist forms of regulatory oversight
- providers that are not subject to any form of legal services regulation.

3.1.2 Alternative business structures

The Act enabled ABSs¹⁸ as new legal structures for providers of legal services by enabling non-lawyers to invest in and manage law firms. ABSs must be licensed, and non-lawyer owners and managers are subject to competency tests.¹⁹

Further reforms in 2019 have allowed solicitors to provide unreserved services to the public without being authorised as an entity, in order to make it easier for people to access legal services.

ABSs are authorised to do at least one of the six reserved activities, although most ABSs authorised by the SRA are licensed to carry out all the reserved activities. Entities providing immigration services and reserved legal services to the public must be authorised and regulated by the SRA. Entities providing only non-reserved legal services do not need to be authorised.

The SRA can authorise and regulate different types of business entities including:

- licensable bodies in which the managers/interest holders include both lawyers and non-lawyers (i.e. ABS) as a “licensed body”. They vary widely with some being nearly entirely comprised of lawyers, and others being nearly entirely managed and/or owned by non-lawyers. In simple terms, they must have at least one lawyer manager and one non-lawyer manager or interest holder. They can solely provide legal services, or they can provide a mixture of legal and non-legal services (i.e. MDPs).
- legal services bodies (partnership, company or limited liability partnership) in which all managers/interest holders are lawyers as a “recognised body”.
- solicitors in sole practice delivering legal services as a “recognised sole practice”.

A firm wishing to be authorised as an ABS must apply to the SRA.²⁰ The SRA must be satisfied that:

- the managers, management and governance arrangements are suitable to operate or control a business providing regulated legal services

¹⁷ Decker, C. (2021a). *Reform and ‘modernisation’ of legal services in England and Wales: Motivations, impacts and insights for the OECD PMR Indicators*. Organisation for Economic Co-operation and Development.

¹⁸ The Law Society defines an alternative business structure as “a regulated organisation which provides legal services and has some form of non-lawyer involvement. This involvement can either be at the management level (eg as a partner, director or member); or as an owner (eg an investor or shareholder)”.

¹⁹ Hill, L. L. (2016). Alternative Business Structure for Lawyers and Law Firms: A View from the Global Legal Services Market. *Oregon Review of International Law*, 18, 135–184.

²⁰ Solicitors Regulation Authority *SRA Authorisation of Firms Rules* <https://www.sra.org.uk/solicitors/standards-regulations/authorisation-firms-rules/>

- the firm will comply with the SRA's requirements and regulatory arrangements
- it is not against the public interest to grant the application.

The ultimate responsibility for compliance by entities remains with the governing body of a firm. Each firm, including ABS firms, must designate a compliance officer responsible for ensuring that professional legal obligations are met (the Compliance Officer for Legal Practice) and a compliance officer responsible for ensuring that sound financial measures and management practices are maintained (the Compliance Officer for Finance and Administration). The compliance officers must be authorised by the SRA.²¹

The roles of the compliance officers are set out in the Code of Conduct for Firms.²² They must ensure firms put in place systems and controls for compliance and oversee those controls. Failure to do so can lead to disciplinary action.

Both categories of compliance officer must have sufficient seniority and responsibility to fulfil their roles. The Compliance Officer for Legal Practice must be authorised to carry out reserved legal activities and must take all reasonable steps to ensure the ABS complies with the SRA's regulatory arrangements and any statutory obligations of the body. The Compliance Officer for Finance and Administration must take all reasonable steps to ensure that the body complies with the SRA Accounts Rules. Any failures to comply must be reported to the SRA. In addition, firms that are authorised by the SRA must take out and maintain professional indemnity insurance.

The manager, owner, and compliance officers of an authorised body must be approved by the SRA, and the SRA must be satisfied that the individual is fit and proper to undertake the role.

3.1.3 Multi-disciplinary practices

ABSs cover a range of different types of business model, including multi-disciplinary firms in which lawyers and non-lawyers work together to provide a range of legal and non-legal services. The MDP as a whole is authorised and regulated by the SRA as a licensed body. The MDP, its owners and employees need to comply with the authorisation and practising requirements for licensed bodies.

The SRA regulates reserved legal activities and immigration work carried out in an MDP and is flexible about whether it needs to regulate non-reserved legal activity performed by non-legal professionals – driven by the risks posed by the particular circumstances.²³

Barristers can work as employees, owners or managers of MDPs, although about 80 per cent of barristers are self-employed as independent practitioners.

²¹ Law Society. (2022). *Alternative Business Structure* [Practice Note]. Law Society.

²² Solicitors Regulation Authority *SRA Code of Conduct for Firms* <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/>

²³ <https://www.sra.org.uk/solicitors/guidance/non-reserved-legal-activity/>

3.1.4 The impact of new business structures in England and Wales

Applications for ABSs opened in January 2012, with the first firms licensed by March the same year. By 2015, there were over 400 approved firms.²⁴ The number of providers registering as ABSs has grown significantly in the past few years, and it is estimated that there are now over 1,400 licensed ABSs, accounting for around 1 in 10 regulated firms (see Figure 1).²⁵ ABSs encompass a range of types of organisations, from small family-owned firms to very large corporate groups and major retail brands, to charities, insurers and universities. All of the Big Four accounting firms have been authorised as ABSs. Six ABS law firms are publicly traded on the London Stock Exchange.

Figure 1: Impact of greater non-lawyer involvement in law firms

What changed	<ul style="list-style-type: none"> • Introduction of alternative business structures (ABS) which allow for some form of non-lawyer involvement, either at the management level (e.g. partner, director or member) or as an owner (e.g. investor or shareholder).
Rationale for change	<ul style="list-style-type: none"> • Traditional ownership and management structures seen as unduly restrictive and impeding competition and innovation. • Allowed for access to external capital which could provide for greater innovation. • But some argued could lead to greater conflicts of interest; lower quality; and change the culture of law firms.
Impacts to date	<ul style="list-style-type: none"> • Initially slow uptake, but now significant entry – 1 in 10 entities are an ABS. • Type of ABS entities are diverse: small family owned to large retail brands, charities, university, not for profits etc. • Six ABS firms now listed on stock exchange. • Seen as competitive threat by some traditional firms. • Consistently found to be more innovative than traditional law firms. • No evidence of higher disciplinary proceedings against ABSs.

Source: Decker (2021b)

ABSs have viewed by some as transforming the legal services market through increased competition and diversity in services.²⁶ A survey by the Royal Bank of Scotland in 2022 found 22 per cent of traditional law firms see ABSs as a competitive threat.²⁷ A recent report by the Legal Services Board (2020) found that ABSs:²⁸

- provided more choice for consumers by providing a broad range of services
- facilitated access to legal services e.g. through ABSs used by charities and universities

²⁴ McMorrow, J. A. (2016). *UK Alternative Business Structures for Legal Practice: Emerging Models and Lessons for the US*. 47(2), 665–711.

²⁵ Decker, C. (2021a). *Reform and 'modernisation' of legal services in England and Wales: Motivations, impacts and insights for the OECD PMR Indicators*. Organisation for Economic Co-operation and Development.

²⁶ Hill, L. L. (2016). *Alternative Business Structure for Lawyers and Law Firms: A View from the Global Legal Services Market*. *Oregon Review of International Law*, 18, 135–184.

²⁷ RBS. (2022). *Legal benchmarking report 2019*. Royal Bank of Scotland.

²⁸ LSB. (2020). *The State of Legal Services: A reflection on ten years of regulation*. Legal Services Board. <https://legalservicesboard.org.uk/wp-content/uploads/2020/11/The-State-of-Legal-Services-Narrative-Volume-Final.pdf>

- are more innovative than traditional law firms
- have no worse a disciplinary record than other types of law firm
- have obtained private equity financing in order to boost their capital reserves, and to grow their businesses
- have had a positive impact on competition, and the scale and multi-disciplinary approach of the Big Four accounting firms holds the potential to disrupt the corporate market.

A report by Boston Consulting Group (2021)²⁹ found that the introduction of ABSs:

- has been useful to a sizeable share of providers, with 10 per cent using the ABS model
- has not reduced the profitability of providers, suggesting that it has not increased competition
- has increased the scale of providers, with the top 100 law firms increasing their market share from 53 per cent to 72 per cent of the market
- has not materially altered the structure of the market as most firms continue to be professional partnerships.

A review by Garoupa and Markovic (2021)³⁰ concludes that while the market for legal services today differs from that of a decade ago and features a greater variety of providers, there is little evidence that the reforms have fundamentally altered the provision of legal services.

3.2 Australia: New South Wales, Victoria and Western Australia

In Australia, the legal profession is regulated independently by each state and territory. Australian states began reforms of the regulation of the legal profession to promote competition and advance consumer interests in the 1990s following a number of reviews across states and territories.³¹ New South Wales enacted legislation in 1990 allowing lawyers to incorporate their practices. In 1994 it authorised MDPs and in 2001 permitted incorporated legal practices (ILP) and non-lawyer investment in law firm entities.³²

The Legal Profession Uniform Law³³ came into operation in NSW and Victoria on 1 July 2015, creating a common legal services market across the states. It aims to harmonise regulatory obligations while

²⁹ BCG. (2021). *The Effects of Deregulating Legal Services in England and Wales Effects of Deregulating Legal Services in England and Wales* [Report prepared for The Danish Bar and Law Society ("Advokatsamfundet"), The Norwegian Bar Association ("Advokatforeningen") and The Swedish Bar Association ("Sveriges Advokatsamfund")]. Boston Consulting Group.

³⁰ Garoupa, N., & Markovic, M. (2021). *Deregulation and the Lawyers' Cartel* (Law & Economics Research Paper No. 21–16). George Mason University.

³¹ Parker, D., Comley, B., & Beri, V. (1997). *The Reform of Occupational Regulation in Australia* [Asia-Pacific Economic Cooperation (APEC) Workshop on Competition Policy and Deregulation, Quebec, Canada, May 1997].

³² Fortney, S., & Gordon, T. (2012). Adopting Law Firm Management System to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation. *University of St Thomas Law Journal*, 10(1), 152–194; Hill, L. L. (2016). Alternative Business Structure for Lawyers and Law Firms: A View from the Global Legal Services Market. *Oregon Review of International Law*, 18, 135–184.

³³ <https://legislation.nsw.gov.au/view/html/inforce/current/act-2014-16a#sec.45>

retaining local performance of regulatory functions. It applies in each state by local application Acts. The Uniform Law was adopted by Western Australia in 2022 and now covers 75 per cent of the 96,808 legal practitioners in Australia.

3.2.1 Alternative business structures

Under the Uniform Law, both individuals and entities are regulated. An entity is prohibited from engaging in legal practice unless it is qualified.

The Uniform Law permits both ABSs and MDPs. However, because the legal profession in NSW is not fused, there are different requirements for solicitors and barristers. Only solicitors can practise under any form of business structure and with other professional service providers, and barristers must be sole practitioners.

The Uniform Law allows legal service providers to form incorporated legal practices (ILPs) that may provide both legal and non-legal services. ILPs are included in the definition of “law practice”, and as such, fall within the meaning of “qualified entity” and are therefore entitled to engage in legal practice. An ILP is a company and may provide both legal and non-legal services, and lawyers and other service providers may practise together. External investment in ILPs is allowed, and the ILP may be listed on the Australian Stock Exchange. Compliance with the Australian Federal Corporations Act is required, as is registration with the Australian Securities and Investment Commission.

An ILP does not itself hold a practising certificate. An ILP must notify the Victorian Legal Services Board, the Law Society Council in NSW or the Legal Practice Board of Western Australia of its intention to engage in legal practice before it starts to practise. It must also notify the relevant regulator if it intends to cease practising.

An ILP must have at least one “authorised principal” (AP) who holds a practising certificate as a principal of a law practice authorising them to engage in legal practice. The AP must also be authorised by their certificate to supervise others and must be a validly appointed director of the company. Where the ILP provides both legal and non-legal services, certain disclosure obligations apply, for example whether the services are legal services.

Each legal practitioner associated with an ILP must comply with all rules and regulations that govern the legal profession. ILPs are required to appoint a “legal practitioner director” and be able to demonstrate that the incorporated firms have “appropriate management systems” in place to ensure that all legal services are provided in accord with professional conduct obligations. The legal practitioner director must take all reasonable action to address any professional misconduct or unsatisfactory professional conduct and report misconduct to the regulator.³⁴ All principals (generally partners or directors) are required to be responsible for ensuring that all legal practitioners in the firm comply with all professional obligations and that legal services are provided in accordance with the law and with professional obligations. An ILP is required to hold professional indemnity insurance.

³⁴ Schneyer, T. (2011). On Further Reflection: How “Professional Self-Regulation” Should Promote Compliance with Broad Ethical Duties of Law Firm Management. *Arizona Law Review*, 53, 577–628.

Partnerships are defined as unincorporated legal practices (ULPs). ULPs are included in the definition of “law practice”. As such, they fall within the meaning of “qualified entity” and are therefore entitled to engage in legal practice under the Uniform Law. ULPs may provide both legal and non-legal services, in which case certain disclosure obligations apply. An ULP must have at least one authorised principal (AP) authorised by the practising certificate to supervise others. If the law practice is a partnership, the AP must also be a partner in the partnership. Professional indemnity insurance is required in order to practise and may be issued on either a practitioner basis or on a law practice basis.

These requirements involve proactive collaboration with regulators to establish a system to promote ethical behaviour, as regulators scrutinise the system to determine its results.³⁵ The ethical infrastructure developed by law firms involves principles of sound practice, along with strategies to address concerns that commonly result in complaints against practitioners.³⁶

3.2.2 Multi-disciplinary partnerships

Under the Uniform Law, lawyers may form MDPs, and an ILP may provide both legal and non-legal services, offering clients a ‘one stop shop’ for a number of professional services.

All services offered by a law practice, legal and non-legal, are subject to the general consumer protection requirements of the Australian Consumer Law & Fair Trading Act 2012. This means that the services must be:

- provided with due care and skill
- fit for any specified purpose (express or implied)
- provided within a reasonable time (when no time is set).

Any non-legal professional services, such as counselling, will need to comply with the regulations and requirements attaching to those services, including licensing and registration.

Each lawyer partner is responsible for the management of the legal services provided by the MDP and must ensure that appropriate management systems are implemented and maintained as required by the rules and regulations governing the professional obligations of Australian legal practitioners.

Requirements for professional liability insurance apply, and the Australian legal practitioner partners retain the attorney-client and other applicable legal professional privileges.

³⁵ Mark, S., & Gordon, T. (2009). Innovations in Regulation—Responding to a Changing Legal Services Market. *Georgetown Journal of Legal Ethics*, 22, 510–534; Reardon, J. R. (2017). Alternative Business Structures: Good for the Public, Good for the Lawyers. *St. Mary's Journal on Legal Malpractice and Ethics*, 7(2), 304.

³⁶ Fortney, S., & Gordon, T. (2012). Adopting Law Firm Management System to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation. *University of St Thomas Law Journal*, 10(1), 152–194; Schneyer, T. (2011). On Further Reflection: How “Professional Self-Regulation” Should Promote Compliance with Broad Ethical Duties of Law Firm Management. *Arizona Law Review*, 53, 577–628.

3.2.3 The impact of new business structures in Australia

The Australian experience has been cited widely in other jurisdictions considering allowing ABSs.³⁷ However, there is a dearth of robust reviews of the Australian experience. On the other hand, the recent willingness of Western Australia to adopt the Uniform Law, eight years after it was introduced in Victoria, suggests that the changes are seen as beneficial – or, at the very least, not causing widespread issues.

A review by Parker, Gordon and Mark³⁸ finds that the requirement that firms self-assess their ethics management leads to a large and statistically significant drop in complaints.

The perceived clash between duty to shareholder and duty to client has not, at this stage, given rise to the problems that such a duality might be expected to present. It does however raise a multitude of questions, such as, whether a director has a primary duty to the shareholders or the community. In fact, it seems the commercial pressure brought to bear upon practitioners in a traditionally structured firm by large corporate clients to provide potentially ethically bankrupt advice in fact exceeds the pressure exerted by shareholders in search of the almighty dollar upon solicitor directors. We say this because, with the introduction of “appropriate management systems”, we have a codification of certain ethical and business principles. There will always be ethical and unethical people. What is now explicit is that “appropriate management systems” provide the framework for ethical behaviour, and they can also be enforced. In this way, it is clear that a solicitor director’s duty to shareholders to return profit is in fact contingent upon the lawyer’s professional duties to his or her client. Put another way, in an ILP, “appropriate management systems” (and the ethical and legislative responsibilities they encompass) can be seen as a derivative director’s duty, much like occupational health and safety requirements and environmental responsibilities have come to be regarded in companies at large.³⁹

3.3 United States: Utah, Arizona and the District of Columbia

Every state in the USA aside from Utah, Arizona and the District of Columbia prohibits business structures that allow non-lawyer ownership of law firms and the sharing of legal fees with non-lawyers under the American Bar Association Model Rule 5.4, whose objective is to preserve the professional independence of lawyers.

³⁷ See for example ABA. (2011). *For Comment: Issues paper concerning Alternative Business Structures*. American Bar Association Commission on Ethics 20/20 Working Group on Alternative Business Structures; Iacobucci, E. M., & Trebilcock, M. J. (2014). *An Economic Analysis of Alternative Business Structures for the Practice of Law*. *Canadian Bar Review*, 92(1), 57–103; McMorrow, J. A. (2016). *UK Alternative Business Structures for Legal Practice: Emerging Models and Lessons for the US*. 47(2), 665–711.

³⁸ Parker, C., Gordon, T., & Mark, S. (2010). *Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales*. *Journal of Law and Society*, 37(3), 466–500, p. 531.

³⁹ Mark, S., & Gordon, T. (2009). *Innovations in Regulation—Responding to a Changing Legal Services Market*. *Georgetown Journal of Legal Ethics*, 22, 510–534, p. 531.

In 1991, the District of Columbia allowed lawyers and non-lawyers to jointly own law firms, as long as they only provided legal services. In 2020, the Utah Supreme Court launched a two-year pilot legal regulatory sandbox project whereby court-approved legal services entities could have non-lawyer owners.⁴⁰ The idea is that by allowing more companies to provide legal services, it will become more affordable for consumers. The legal sandbox allows a wide range of new legal business models, including:

- law firms taking on non-lawyer investment or ownership
- fee-sharing with non-lawyers
- non-lawyer owned entities employing lawyers
- legal-tech companies and non-lawyer service providers offering legal services
- joint ventures between lawyers and non-lawyers.

From 1 January 2021 Arizona has allowed a law firm that includes non-lawyer owners or investors to be certified as an ABS, following a recommendation by the Supreme Court of Arizona to “remove the explicit barrier to lawyers and non-lawyers co-owning businesses that engage in the practice of law while preserving the dual goals of ensuring the professional independence of lawyers and protecting the public”.⁴¹ The ABS would also be enabled to act as an MDP, offering a “one stop shop” providing a wide array of services to clients. The advantages of ABSs are seen as:

- stimulating greater technological innovations in the delivery of legal services to the public
- encouraging additional capital to be infused in legal firms
- allowing firms to attract the best and brightest non-lawyer partners (as they desire equity in a firm just as lawyers want to be firm partners)
- enabling “one-stop shops” to provide legal and non-legal services to a client.

ABSs are legal practice entities with non-lawyer ownership or management, but only lawyers practise law. They must comply with numerous requirements to participate, including having an Arizona lawyer in a compliance officer role. ABSs are licensed by the Supreme Court,⁴² taking into consideration the regulatory objectives that underlie their creation: promoting and protecting the public interest; promoting access to legal services; advancing the administration of justice and the rule of law; encouraging an independent, strong, diverse and effective legal profession; and promoting and maintaining adherence to professional principles.⁴³ Applicants must demonstrate adequate governance structures and policies to ensure: the professional independence of lawyers providing legal services; proper standards of work; the freedom for lawyers to make decisions in the best interest of clients; the confidentiality required by the Rules of Professional Conduct; and that any business policies or procedures do not interfere with lawyers’ duties and responsibilities to clients.

⁴⁰ Himonas, D. G., & Hubbard, T. J. (2020). Democratizing the Rule of Law. *Stanford Journal of Civil Right and Civil Liberties*, 16, 261–282.

⁴¹ Supreme Court State of Arizona. (2019). *Task Force on the Delivery of Legal Services* [Report and Recommendations]. Supreme Court Stat of Arizona.

⁴² Arizona Courts *Legal Services Reforms: Alternative Business Structures (ABS) Questions and Answers* <https://www.azcourts.gov/accesstolegalservices/Questions-and-Answers/abs>

⁴³ ABA. (2021, June). *For the Times, They Are A-Changin’*. https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2021/mj21/tepper/

As noted, the ABS must have at least one lawyer licensed to practise law in Arizona to serve as its Compliance Lawyer. The Compliance Lawyer's duties and responsibilities include ensuring that the ABS complies with requirements, including policies and procedures to prevent non-lawyers in the business from interfering with lawyers' ethical duties to clients.

Twenty ABSs have been licensed in Arizona to May 2022. Many of the entities are lawyers partnering with non-lawyers offering other professional services such as tax advice. ABSs include larger-scale virtual entities with robust software platforms that help consumers assemble and complete legal documents, such as LegalZoom, which also employs lawyers to help clients with legal issues beyond the capacity of the software.⁴⁴

There is ongoing recognition that the legal marketplace is changing. Florida, California and Illinois are all considering relaxing restrictions on non-lawyer ownership of organisations that provide legal services. In June 2021, the Florida State Supreme Court's Special Committee to Improve the Delivery of Legal Services called for further study on allowing some non-lawyers to have an ownership interest in law firms and fee-splitting with non-lawyer entities, as well the creation of a legal "lab" to allow testing of innovative ways of providing legal services.⁴⁵

In September 2021, the American Bar Association Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 499,⁴⁶ allowing a lawyer "passively [to] invest in a law firm that includes non-lawyer owners... operating in a jurisdiction that permits ABS entities, even if the lawyer is admitted to practise law in a jurisdiction that does not authorise non-lawyer ownership of law firms". The opinion appears to recognise that innovation in the provision of legal services is becoming more widespread.

3.4 Scotland

Scotland has its own distinct judicial system from the rest of the United Kingdom. Scotland's law is based primarily on Roman law, rather than English common law.⁴⁷ The key difference is that Scotland recognises the titles of advocate and solicitor, whereas England and Wales recognise barrister and solicitor.⁴⁸

Historically, Scotland was opposed to multi-disciplinary practice. However, following England and Wales's 2007 Legal Services Act, the Council of Law Society of Scotland "recognised the need to engage the profession further in the alternative business structure debate".⁴⁹ Following this, the Law

⁴⁴ Engstrom, D. F. (2022, May 18). Rethinking the Regulation of Legal Services: What States Are Doing to Move the Needle on Access to Justice. *Stanford Law School*.

⁴⁵ Stewart, J., Alvarez, C., Corsmeier, J., Dewey, J., DiGangi, S., Gonzalez, A., Harkness, J. F., Hoffman-Childress, S., Scriven, Lansing, & Sullivan, S. (2021). *Final Report of the Special Committee to Improve the Delivery of Legal Services*. Florida Bar.

⁴⁶ American Bar Association *Formal Opinion 499 – Passive Investment in Alternative Business Structures* (8 September 2021) <https://www.lawnext.com/wp-content/uploads/2021/09/aba-formal-opinion-499.pdf>

⁴⁷ LT Scotland. (2022). *The Differences Between The English And Scottish Law* | LTSCOTLAND.ORG.UK. <http://www.ltscotland.org.uk/the-differences-between-the-english-and-scottish-law/>

⁴⁸ Hill, L. L. (2016). Alternative Business Structure for Lawyers and Law Firms: A View from the Global Legal Services Market. *Oregon Review of International Law*, 18, 135–184.

⁴⁹ Adamson, H. (1995). The English System. In *Rights, Liability, and Ethics in International Legal Practice* 43.

Society of Scotland published a Consultation Paper,⁵⁰ determining that “the legal profession in Scotland should be able to offer its services through structures which best meet the demands of modern society and a global economy. Practitioners should be free to retain the traditional legal services business model, but this should not be their only choice”.

In 2010, the Legal Services Act (Scotland) Act 2010 was passed. The Act removed restrictions on legal services previously prohibited, specifically allowing:

- solicitors to enter into business relationships with non-solicitors,
- investment by non-solicitors and external ownership, and
- created a regulatory framework in which new types of business structures could operate.⁵¹

The Legal Services (Scotland) Act 2010 allows investment in law firms by both solicitors and non-solicitors. There still remained several important restrictions – lawyers were required to hold at least a 51 per cent majority stake in the business and the structure was not available to non-profit firms. The Act also set out regulation for the establishment of multi-disciplinary firms. However, implementation has stalled since 2017.⁵²

In December 2022 the Scottish government concluded further liberalisation was required to enable the introduction of ABSs⁵³:

The [Competition and Markets Authority] view that the adoption of ABS in other jurisdictions illustrates that they have an important role to play in breaking down the regulatory restrictions on business models, with little apparent downside. It has also been reported that the Solicitors Regulatory Authority in England and Wales view that there is little evidence that non-lawyer ownership has increased professional risk.

The Scottish government announced it would permit employee and community ownership of ABSs as well as removing the requirement that lawyers should hold at least a 51 per cent stake of law firms. It also announced the introduction of entity-regulation of law firms.

⁵⁰ Law Society of Scotland. (2008). *The Public Interest: Delivering Scottish Legal Services Policy Paper on Alternative Business Structure*. https://www.lawscot.org.uk/media/226267/abs_policy.pdf

⁵¹ Hill, L. L. (2016). Alternative Business Structure for Lawyers and Law Firms: A View from the Global Legal Services Market. *Oregon Review of International Law*, 18, 135–184.

⁵² Hill, L. L. (2016). Alternative Business Structure for Lawyers and Law Firms: A View from the Global Legal Services Market. *Oregon Review of International Law*, 18, 135–184; Lafferty, A. (2013). *President's column*. Law Society of Scotland. <https://www.lawscot.org.uk/members/journal/issues/vol-58-issue-04/presidents-column/>

⁵³ Scottish Government *Legal services regulation reform – consultation analysis: Scottish Government Response* (22 December 2022).

4. Regulating new business structures

Professional regulation of lawyers has traditionally been premised on a predominantly individual basis: lawyers are regulated in their personal capacity. However, as regulatory approaches have evolved in response to changes in technology, globalisation and consumer demand, there has been increasing recognition of the need to also consider the regulation of entities providing legal services.

The details of regulation vary across jurisdictions that have liberalised the regulation of corporate form by allowing ABSs and MDPs, but there are some common features:⁵⁴

- Individual lawyers continue to be regulated.
- Entities wishing to act as ABSs and/or MDPs are regulated:
 - They must be licensed.
 - They must have adequate governance and management systems in place to ensure that all legal services are provided in accordance with the law and professional conduct obligations.
 - They must have at least one lawyer responsible for ensuring that all legal practitioners in the firm comply with all professional obligations and that legal services are provided in accordance with the law and with professional obligations.
 - They are required to hold professional indemnity insurance.

Opening the legal market to different business arrangements for the provision of legal services has seen steady uptake of the ABS model. A review by Steinitz (2022) concludes that the purported disadvantages of liberalisation and non-lawyer participation in the practice of law can be addressed through entity regulation that ensures the businesses meet the professional responsibilities involved in providing legal services.⁵⁵

Summarizing several empirical studies of the effects of liberalization of the prohibition on non-lawyer participation in Australia and the United Kingdom, the ABA Commission on the Future of the Legal Profession in the United States [(2015)] noted in an informal issues paper that “[t]here is no evidence that [non-lawyer participation] has caused harm. There is currently no evidence that the introduction of ABS has resulted in a deterioration of the legal profession’s ‘core values.’” The Commission quoted a report from the U.K. Legal Consumer Panel [(2014)], which concluded that “the dire predictions about a collapse in ethics and reduction in access to justice as a result of ABS have not materialised.” Studies of Australia similarly support the conclusion that allowing non-lawyer participation in providing legal services will not precipitate a collapse in the core values of the profession [(ABA, 2015)].

⁵⁴ Henderson, W. D. (2018). *Legal Market Landscape Report* (pp. 5–32) [Report commissioned by the State Bar of California]. <https://perma.cc/X2KM-UTL5>; McMorrow, J. A. (2016). *UK Alternative Business Structures for Legal Practice: Emerging Models and Lessons for the US*. 47(2), 665–711.

⁵⁵ Steinitz, M. (2022). The Partnership Mystique: Law Firm Finance and Governance for the 21st Century American Law Firm. *William and Mary Law Review*, 63(3), 939–1013, pp. 998–999.

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