



## Other Global ABS Initiatives




### *Legal Services Reform in the United Kingdom: What Does It Mean for Firms with a Foot on Both Sides of the Pond?*

Assoc. of Professional Responsibility Lawyers

May 7, 2008, Amsterdam


© Professor Laurel S. Terry

[LTerry@psu.edu](mailto:LTerry@psu.edu)



## Introduction



- Truism: Politics are local
    - *E.g.*, problems with the UK lawyer discipline system
  - BUT .... global trends exist & have influence
  - The UK developments exemplify a global trend
  - This makes it more likely that ABS developments will affect US-based law firms
  - ▶ Thus, U.S. lawyers should be ready to respond<sub>2</sub>
- 

## Australia



- **1994:** Law Council of Australia's "Blueprint" & MDP rule changes
- **1995:** Competition Principles Agreement signed
- **1998:** NSW National Competition Policy Review
  - Thereafter, many rule changes, including MDP rules
- **2001:** NSW legislation permits publicly traded firms
- **2002:** Model Laws Project of the Attorneys General
- **2004-05:** Updated NSW laws & regulations
- **2007:** Slater & Gordon: first publicly traded law firm
- **2008:** Slater & Gordon first year profits -56%

3

## OECD



- **1994:** The GATS (General Agreement on Trade in Services) is signed
- **1994-97:** Workshops on Professional Services
- **1999:** Professional Services Roundtable
- **2003:** Indicators of regulatory conditions *in Prof. Services*
- **2005:** *Guiding Principles for Regulatory Quality and Performance*
- **2007:** Legal Services Competition Roundtable
  - This analysis includes the "ABS" issues

4



## EU Developments

- **2003:** DG Competition launches investigation of professional services; IHS (Vienna) Study
- **2004:** Commission Report raises questions
  - Five issues, including alternative business structures
  - Commission relied on lengthy IHS Study
- **2005:** Commission's Follow-up Report & Staff Report cite changes favorably and raise questions
  - They show many EU Member State initiatives and many changes to lawyer regulations
  - There are no other EU (non UK) proposals for publicly-traded firms (yet?), but Reports have raised the *ABS* issue

## Regulation Indices in the IHS Study (p.3)

	Accountants	Legal	Architects	Engineers	Pharmacists
Austria	6.2	7.3	5.1	5	7.3
Belgium	6.3	4.6	3.9	1.2	5.4
Denmark	2.8	3.0	0	0	5.9
Finland	3.5	0.3	1.4	1.3	7.0
France	5.8	6.6	3.1	0	7.3
Germany	6.1	6.5	4.5	7.4	5.7
Greece	5.1	9.5	n.a.	n.a.	8.9
Ireland	3.0	4.5	0	0	2.7
Italy	5.1	6.4	6.2	6.4	8.4
Luxembourg	5	6.6	5.3	5.3	7.9
Netherlands	4.5	3.9	0	1.5	3.0
Portugal	n.a.	5.7	2.8	n.a.	8
Spain	3.4	6.5	4.0	3.2	7.5
Sweden	3.3	2.4	0	0	12
UK	3.0	4.0	0	0	4.1

## Calculating the Regulation Index

- The “Legal” regulation index was the sum of its market entry index and the conduct index
- 25% of conduct index was based on *ABS* rules



<i>MCIC</i>	<i>Regulations on form of business and interprofessional co-operation (general)</i>	MCIC1*0.5+ MCIC2*0.5	0 to 6		25%
<i>MCIC1</i>	<i>MCIC1 Regulations on form of business</i>	0 = all forms (incl. incorporation allowed in any case) 2 = partnership allowed, incorporation only allowed in specific cases (regulations on ownership etc.) 5 = incorporation forbidden in any case 6 = partnership and incorporation forbidden in any case; only sole practitioners etc. allowed.	0 to 6	50%	
<i>MCIC2</i>	<i>MCIC2 Regulations on interprofessional co-operation</i>	0 = all forms allowed 3= with all professions but no incorporation; or only with comparable professions in all forms allowed etc. 4.5 = only with comparable professions and no incorporation 6=generally forbidden	0 to 6	50%	

7

## Canadian Developments

- Dec. 2007 Canadian Competition Report
- Cites the 2005 OECD *Guiding Principles* and OECD findings
- MDPs are allowed in Upper Canada & Quebec
- Report addresses *ABS* (in the form of MDPs, not publicly traded firms.... yet???)



8

## US Developments....



- US lawyers are regulated by US states
- No state permits publicly traded law firms
- Only DC permits MDPs and they're limited
- Many think *ABS* can't or won't happen here
- BUT....note worldwide regulator persistence
- There are competing market forces & views



▶ My advice: Be prepared to respond

▶ This development could “jump the pond”

9

## To Read More About It...



- New South Wales' Office of Legal Services Commissioner, Incorporated Legal Practices, [http://www.lawlink.nsw.gov.au/lawlink/olsc/ll\\_olsc.nsf/pages/OLSC\\_ilp](http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_ilp)
- Law Council of Australia, Further Reading, <http://www.lawcouncil.asn.au/natpractice/furtherreading.html>
- Steve Mark & Georgina Cowdroy, Incorporated Legal Practices, 22 Penn State Int'l L. R. 671 (2004), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=673021](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=673021)
- EU DG Competition, Professional Services Sector, [http://ec.europa.eu/comm/competition/sectors/professional\\_services/overview\\_en.html](http://ec.europa.eu/comm/competition/sectors/professional_services/overview_en.html)
- OECD, Guiding Principles for Regulatory Quality and Performance (2005), [www.oecd.org/dataoecd/19/51/37318586.pdf](http://www.oecd.org/dataoecd/19/51/37318586.pdf)
- OECD, Competition In Professional Services, DAFFE/CLP(2000)2, <http://www.oecd.org/dataoecd/35/4/1920231.pdf>
- OECD: Competitive Restrictions in Legal Professions, DAF/COMP (2007) 39, <http://www.oecd.org/dataoecd/12/38/40080343.pdf>
- Law Society of England and Wales' Links Page for Legal Services Reform,, <http://www.lawsociety.org.uk/newsandevents/news/majorcampaigns/view=newsarticle.law?CAMPAIGNSID=169105>
- [UK] Solicitors' Regulation Authority, ABS Consultation (responses were due April 21, 2008), <http://www.sra.org.uk/consultations/429.article>
- Competition Bureau Canada, Self-Regulated Professions - Balancing Competition and Regulation (Dec. 2007), <http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02523e.html>

10