Facing a Transformed Global Legal Landscape: Introduction to the UK Legal Services Act

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Overview

- Background of the 2007 UK Legal Services Act (LSA)
- Structure of the LSA
- Implementation of the LSA
- Likely future developments
- The LSA in a global context
- Implications for U.S. lawyers and firms
Background of the 2007 LSA

- Impetus: the 2001 UK Office of Fair Trading Report and problems with the lawyer complaint system
- Legislation: Multi-year drafting process
- Became Final: Received royal assent Oct. 30, 2007
  - The LSA applies to England and Wales only
  - It has radically changed the lawyer regulatory structure

Structure of the Legal Services Act

1. Creates a new Legal Services Board (LSB)
2. Establishes the Office for Legal Complaints, which will:
   - administer an ombudsman scheme to deal with all consumer complaints
   - be chaired by a non-lawyer and have a non-lawyer majority
3. Permits (but doesn’t require) alternative business structures: LDPs, outside equity, and publicly-traded firms
The Legal Services Board:

- is independent of the government & legal profession
- must have a non-lawyer majority & non-lawyer chair
- provides a single independent oversight regulator for the various legal professions
- regulates the “front-line” regulators
- regulates lawyers and firms doing “reserved” work
- regulates according to specified objectives

Acceptable Regulatory Objectives:

- protect and promote the public interest
- support the rule of law
- improve access to justice
- protect and promote the interests of consumers
- promote competition in the provision of legal services
- encourage an independent, strong, diverse and effective legal profession
- increase public understanding of citizens’ legal rights & duties
- promote & maintain adherence to professional principles
LSA Implementation

- The Legal Services Board (LSB) is now active
  - Chair David Edmonds took office May 2008 (until 5-2011)
  - 9 new board members took office 9-1-08 (for 3 year terms)
- The LSB hopes to be up and running by early 2010
- Right now, the Solicitors Regulatory Authority & Bar Standards Board are “approved regulators”
- SRA & BSB have conducted extensive consultations
- SRA issued LDP (and other) regulations that take effect March 2009 (if approved)

What is an LDP?
(Legal Disciplinary Practice)

- This term was used in the Clementi Report
- LDPs offer legal services
- LDPs may have up to 25% non-lawyer owners or managers and will be regulated by the SRA
- There can be no external investment in an LDP
- SRA has drafted regulations to permit and regulate LDPs, effective March 2009
  - These changes still need final approval
What is *ABS*?

- *ABS* refers to “alternative business structures”
- *ABS* could be adopted in many forms
- The term includes multidisciplinary practices offering legal and non-legal services
- *ABS* rules might allow non-lawyers, including commercial firms, to own law firms
- “Tesco law” is possible!

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**ABS-related Future Developments**

- LSB should be fully operational by early 2010
- *ABS* regulations aren’t likely until late 2011 or 2012
- If regs are adopted, LSB will decide whether the SRA and BSB will become *ABS* licensing authorities
- Despite this…there already is UK investment interest
- See also: April 2008 predictions about UK firms’ use of any new LDP and *ABS* rules
Other Future Developments

- Firm-based regulation begins March 2009
- Solo practitioner regulation begins July 2009
- Both will receive “passporting” letters
- SRA has consulted (and may issue new regulations) on numerous issues including:
  - the Qualified Lawyer’s Transfer Test
  - compensation fund rules
  - trainee salaries

Global Context of the LSA

- **Australia**: Developments started in 1994; Australia now has MDPs and several publicly traded law firms
- **EU**: *Professional Services Competition Initiative* focused on five areas including *ABS* (see 2004/2005 Reports)
- **Canada**: Dec. 2007 *Self-Regulated Professionals Review* includes MDPs but not *ABS* in report
- **France**: in 7-08, announced a Clementi-like review
Implications for US Lawyers & Firms

- 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 in the US
- BUT….note worldwide regulator persistence
  - This development could “jump the pond”
  - My advice: Be prepared to respond

To Read More About It…

- For citations to global developments, see articles on Prof. Terry’s webpage, http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm
- See Prof. Cone’s Northwestern article and Maute, Paton, & Terry ABA Canons Centennial articles, http://www.abanet.org/cpr/centennial.html
To Read More About It (cont.)


Law Firm Leaders Forum
October 22-23, 2008