Legal Services Regulatory Authority

Multi-Disciplinary Practices

Report to the Tánaiste and Minister for Justice and Equality, Ms Frances Fitzgerald TD

Report to the Tánaiste and Minister for Justice and Equality, Ms Frances Fitzgerald TD from the Legal Services Regulatory Authority regarding Multi-Disciplinary Practices

PART 1 - REPORT OF THE LEGAL SERVICES REGULATORY AUTHORITY

Introduction

1. Legal Services Regulatory Authority ("the Authority") is happy to present this initial report from the Authority on the establishment, regulation, monitoring, operation and impact of multi-disciplinary practices (MDPs) in the State.

2. This report has been prepared on foot of the requirements of subsections 119 (1) and (2) of the Legal Services Regulation Act 2015 ("the Act"). Part 1 of this report reflects the conclusions of the Authority arising from its reflections and analysis of the independent consultancy study which is appended as Part 2 of this report, and which it commissioned from McDowell Purcell Solicitors in collaboration with Alison Hook of Hook Tangaza.

3. The Act defines a multi-disciplinary practice as a partnership formed under the law of the State by written agreement, by two or more individuals, at least one of whom is a legal practitioner, for the purpose of providing legal services and services other than legal services.

4. In commissioning the study in Part 2, and in drawing its own preliminary conclusions contained in this report, the Authority was mindful not only of the terms of Section 119 of the Act itself but also of the Authority's commitments as set out under section 13(4) of the Act to protect and promote the public interest and the interests of consumers of legal services; to support the proper and effective administration of justice; to promote competition in the provision of legal services in the State; to encourage an independent, strong and effective legal profession, and to promote and maintain adherence to professional principles.

Next steps

5. The Act requires that following its receipt by the Minister for Justice and Equality ("the Minister"), the report should be laid before the Houses of the Oireachtas within 30 days. The intent in the legislation is that the release of this report into the public domain should, following this step, provide the stimulus and researched basis for informed public consultation conducted by the Authority on the subject of multi-disciplinary practices. Following the completion of the public consultation phase, and based on the contributions from that process, a further report will be made to Minister which will include recommendations for consideration on providing a framework for the operation of MDPs. This further report will be presented to the Minister by the end of September 2017 as required under the Act.

Preliminary conclusions

6. Following this consultation process the Authority expects that it will need to consider a range of options. These could include:

a) Endorsing the approach proposed by the Act - MDPs with control by a "managing legal practitioner"
b) Recommending MDP models different from those proposed in the Act
c) Recommending variants on the model in the Act but with a focus on a stated list of regulated professions
d) Recommending a model which would afford MDPs the ability to incorporate with limited liability (which is not permitted under current legislation)
e) Proposing a model such as the UK Alternative Business Structure (ABS) which would incentivise new entrants to enter the market
f) Recommending that MDPs are not introduced

The members of the Authority wish to express their thanks to McDowell Purcell Solicitors and Alison Hook of Hook Tangaza for their authorship of Part 2 of this report.

31 March 2017

Note about the Authority

The Authority was established on 1 October, 2016 under the Legal Services Regulation Act, 2015 ("the Act"). In accordance with Section 9(3) of the Act, the Authority comprises membership with knowledge and expertise in one or more of the following areas specified in the Act:

- ***a)*** the provision of legal services;
- ***b)*** legal education and legal training;
- ***c)*** competition law and policy;
- ***d)*** the maintenance of standards in professions regulated by a statutory body;
- ***e)*** dealing with complaints against members of professions regulated by a statutory body;
- ***f)*** business and commercial matters;
- ***g)*** the needs of consumers of legal services.

The members of the Authority are nominated by organisations prescribed in the Act, appointed by Government and approved by the Oireachtas. The members do not act in in a representative capacity. The Authority has a lay majority and a lay Chairperson.

The Members of the Legal Services Regulatory Authority:

Name	Nominating Body
Don Thornhill (Chair)	The Higher Education Authority
Angela Black	The Citizens Information Board
Deirdre McHugh	The Competition and Consumer Protection Commission
Gerry Whyte	The Irish Human Rights and Equality Commission
Stephen Fitzpatrick	The Institute of Legal Costs Accountants
Dermot Jewell	The Consumers Association of Ireland
David Barniville	The Bar Council
Eileen Barrington	The Honorable Society of King's Inns
Joan Crawford	The Legal Aid Board
Geraldine Clarke	The Law Society
James MacGuill	The Law Society

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PART 2 – INDEPENDENT STUDY

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Study into International Experience of Multi-Disciplinary Practices and the Likely Impact on Ireland of Adopting them

Hook Tangaza

March 2017

Table of Contents

Disclaimer

This study was commissioned by the Legal Services Regulatory Authority to assist it in addressing its obligations under section 119(1) of the Legal Services Regulation Act 2015. It was prepared by legal market consultants Hook Tangaza working in conjunction with McDowell Purcell Solicitors. It has benefitted from the helpful input of McDowell Purcell Solicitors and individual members of the Board and staff of the Authority, however, the views expressed in it and any errors and omissions remain the responsibility of Hook Tangaza.

Glossary of Acronyms

ABA	American Bar Association
ABS	Alternative Business Structure
BSB	Bar Standards Board (E&W)
CA	Chartered Accountants
CCBE	Council of European Bars and Law Societies
CGAE	Consejo General de la Abogacia Espanola (Spanish Bar)
CILeX	Chartered Institute of Legal Executives
CJEU	European Court of Justice
CLC	Council of Licensed Conveyancers (UK)
CMA	Competition and Markets Authority
COLP	Compliance Officer for Legal Practice
CRR	Cab Rank Rule
EU	European Union
FOS	Financial Ombudsman Service
FSA	Financial Services Authority
ICAEW	Institute of Chartered Accountants of England and Wales
ICAS	Institute of Chartered Accountants of Scotland
ILP	Incorporated Legal Practice
IPReg	Intellectual Property Regulation Board
IPS	ILEX Professional Standards
LDP	Legal Disciplinary Partnership
LeO	Legal Ombudsman (E&W)
LIP	Litigant in Person
LLP	Limited Liability Partnership
LSS	Law Society of Scotland
LSA	Legal Services Act 2007 (UK)
LSB	Legal Services Board (UK)
LSRA	Legal Services Regulation Authority (Ireland) LSRA
(Singapore)	Legal Services Regulation Authority (Singapore)
MDP	Multidisciplinary partnership/practices
NFOPP	National Federation of Property Professionals
NLP	Non-Lawyer Owned Legal Practice
NOVA	Nederlandse Orde Van Advocaten (Netherlands Bar)
NSW	New South Wales, Australia
OECD	Organisation for Economic Cooperation and Development
OLSC	Office of the Legal Services Commissioner (NSW, Australia)
OS	Ombudsman Services
RICS	Royal Institute of Chartered Surveyors (UK)
SRA	Solicitors Regulation Authority (E&W)
ULP	Unincorporated Legal Practice
WB	World Bank
WTO	World Trade Organization

Executive Summary

This study is intended to assist the Authority (the "Authority") to fulfil its obligations under section 119 of the Legal Services Regulation Act 2015 ("the Act"). Section 119 requires the Authority to make an initial report to the Minister for Justice and Equality ("the Minister") on the establishment, regulation, monitoring, operation and impact of multi-disciplinary practices ("MDPs") in the State. This initial report is required to include information on the operation of similar practices in other jurisdictions, the likely consequences for existing models of legal practice in Ireland and the likely impact of MDPs on legal costs, on the provision of legal services to consumers, on access to legal practitioners and on the regulatory objectives set out in the Act.

The initial section 119 report is then intended to provide the basis for a public consultation by the Authority. The information gathered through the initial report and public consultation should then feed into a final report which will be presented to the Minister no later than six months after the initial report. The final report will set out the recommendations of the Authority in relation to MDPs.

It is important to note that, although the Act contains some suggested regulatory arrangements for the introduction of MDPs in Ireland, it does not pre-empt the decision of whether this new form of business structure should be introduced at all.

The research set out below, takes the form of a background study designed to feed into the 'initial report' required in section 119(1) and to help the Authority to formulate its eventual recommendations, following the public consultation on whether MDPs should be introduced, and if so, how they should be regulated. As required by the Act, this research sets out evidence on the legal framework, regulatory regime and impact of MDPs in a number of other jurisdictions. The study also draws some lessons from the experience of MDPs elsewhere that will assist the Authority both in undertaking the proposed public consultation and in shaping its eventual recommendations to the Minister.

To provide some wider context for the discussion of non-lawyer ownership of law firms, this study looks first, in part two, at the question of why lawyers might merit special consideration in relation to business structures, and the different aspects of law firm ownership which are affected by this including Scope of practice, limitation of liability and type of owner. This breakdown of the different features of business structures then helps to provide a framework for analysing the MDP models adopted in the other jurisdictions.

Key Points

The research into MDP experience in other jurisdictions, which is set out in part 3, produces the following headline findings:

- There are a growing number of jurisdictions around the world in which some form of non- lawyer ownership of law firms is permitted. The possibility of introducing MDPs envisaged by the Act is not, now, unusual. However, the default position remains that most jurisdictions do not permit non-lawyers to enter into partnership, or fee share, with

lawyers. This is the case in a number of important common law jurisdictions such as New Zealand, Northern Ireland, Hong Kong and South Africa, as well as in many other Member States of the European Union and States of the United States.

- Within those jurisdictions that have introduced non-lawyer ownership, there is a wide variety of models that have been used. These have been influenced to some extent by the objectives each jurisdiction had in introducing them. In Singapore for example, the objective was to remain internationally competitive, while in England and Wales the objective was to drive competition and innovation in the legal sector, whereas the debate in Canada and the US has focused more on access to justice.

- All the non-lawyer ownership models that have been introduced elsewhere have put in place specific features designed to deal, to a greater or lesser extent, with the fundamental issues of lawyer independence and conflicts of interest. These models have been employed in order to enable lawyers to have control, at the very least, over the parts of the practice that are providing legal services. The approaches used have included:

    - Majority lawyer ownership of the equity and voting rights in the firm;
    - Application of lawyer codes to all partners and employees working in the firm;
    - Contractual requirements in respect of non-lawyer partners that they must not interfere with the ability of the lawyers in the firm to follow their professional duties;
    - Use of a 'head of legal practice' or authorised principal model as a mechanism for holding the firm overall to account for its compliance with ethical codes;
    - 'Carve-outs' of particularly sensitive modes of practice, for example amongst barristers, for example in Australia.

- The MDP models used in other jurisdictions have also all, to varying degrees, removed limitations on the scope of services that business structures owned by lawyers can provide, removed barriers to co-ownership and permitted the limitation of liability:

    - On the scope of services that may be provided by an MDP - some jurisdictions have allowed non-lawyer ownership but still required that the resulting business is only supplying legal services or services ancillary to legal services. This is perceived by those using this model as a way of reducing the risk that the legal profession might behave in a way that is inappropriate for providers of legal services, although it reduces the extent to which such businesses can, for example, offer new channels for clients to access legal services.

    - On co-ownership – some jurisdictions have been more cautious than others in opening up ownership to new types of owners. Some, like the Netherlands, have restricted non-lawyer owners to other quasi-legal professions; In Italy and Quebec, non-lawyer owners can include a wider range of individuals but who are required to be members of regulated professions; In Australia and the UK, anyone can have an ownership interest in a law firm, including another corporate entity. Then there are jurisdictions, like Denmark and Singapore, who have chosen to limit non-lawyer ownership to those who are active in the legal practice.

- On the issue of limited liability, it is particularly striking that none of the other jurisdictions which permit diversified ownership also prohibit limited liability. Although permitting non-lawyer ownership only through unlimited liability partnerships was the approach used initially in a few jurisdictions, like Australia, this has nearly always been revisited as such a model is not optimal in terms of facilitating the diversification of ownership.

- A further point of interest for the Authority, is the extent to which other jurisdictions adopting MDPs have rigorously subjected their regulatory models to prior tests of necessity (i.e. are the restrictions imposed in a model permitting MDPs really required in order to achieve the desired objectives?) and proportionality (i.e. are the restrictions imposed in the model reasonable or do they risk undermining take-up through over- regulation?). The very low rate of take-up of MDPs in many jurisdictions and the fact that regulations governing MDPs have nearly always been revised within a few years of their adoption, suggests that these tests have rarely been applied rigorously prior to adoption.

- Lastly, it is worth noting that the overall level of take-up of MDPs is low in every jurisdiction where they are permitted. Far from becoming the norm for legal practice, they remain simply one additional minority option through which legal services are offered.

The fact that the MDP share of the market is very small in all jurisdictions which have adopted the model, makes it very difficult to point to any significant effects they have wrought on the legal sector in any country, either positive or negative. However, some tentative observations can be offered:

- So far, there appear to have been no problems arising from MDPs in relation to standards or ethical behaviour, or any obvious undermining of independence. On the contrary, there is some evidence that models which require a law firm to think consciously about how it addresses ethical questions as "a business" can have a beneficial impact on discipline and standards.

- Aside from this, perhaps the most common effect of introducing MDPs elsewhere has been the impact on the diversity of services available from the legal sector and the ability of clients to obtain bundled services which can offer economies of scope and scale.

Part 4 of the study then considers in the light of this experience from elsewhere, what the likely implications might be of introducing MDPs in Ireland. As the study makes clear, this is an impossible task at this stage, since the impact depends on the level of take-up. Since the model suggested by the Act would, if the experience of other jurisdictions is an indication, have few, if any takers, then the impact would likely be negligible.

The assessment which the study provides therefore focuses rather more on identifying the issues which the Authority might wish to address in more detail in its public consultation. It also recommends that the Authority:

- Gives more consideration to the objectives or outcomes which it would want to achieve in the legal market through the introduction of MDPs.

- Seeks more evidence on potential entrants into the legal market in Ireland in order to understand what features of any MDP model might act as barriers, or attractors for them when considering whether or not to engage in the sector.

- Recognises that MDPs, if introduced, would only ever be likely to represent a small share of the total market for legal services, at least for the foreseeable future. This suggests that business structures should not be relied on alone as mechanisms for transforming the legal market. There are other tools which should perhaps be considered on the demand side of the equation and which may impact wider on behaviour in the traditional legal sector.

Part 5 of the study then sets out some suggestions about the shape of the proposed public consultation in the light of the findings from other jurisdictions. It recommends that a wide-ranging discussion is held in a variety of different forms and with many different audiences. It suggests that the debate should cover fundamental questions of principle, including whether Ireland should introduce a MDP regime at all, and if so, what the objectives of doing so would be? It also recommends that points of detail about potential models are also discussed during this consultation process, because it is only by doing so that those who might be interested in utilising this model for their own law practice, or in buying services from such a business, can see what the implications might be and help to make any resulting MDP regime as effective as it can be.

Conclusions

In summing up, the study suggests in **part 6** that, following the public consultation exercise, the Authority is likely to be faced with a range of possible options on how best to proceed.

Whatever approach the Authority does ultimately recommend, this study would suggest that the introduction of more choice in the business structures providing legal services should be regarded as only one tool for trying to improve the functioning of the legal market and to fulfil the ultimate purpose of the Legal Services Regulation Act 2015.

Hook Tangaza
March 2017

Part 1: Introduction

1. The Legal Services Regulatory Authority ("the Authority") was established by the Legal Services Regulation Act 2015 ("the Act"). The Authority is required by section 13(4) of the Act to have regard to the following regulatory objectives in carrying out its functions:

    (a) protecting and promoting the public interest,
    (b) supporting the proper and effective administration of justice,
    (c) protecting and promoting the interests of consumers relating to the provision of legal services,
    (d) promoting competition in the provision of legal services in the State,
    (e) encouraging an independent, strong and effective legal profession, and
    (f) promoting and maintaining adherence to the professional principles as specified in subsection 5.

2. These objectives will guide the Authority in the execution of its specific responsibilities under the Act. One of these is the requirement to make an initial report to the Minister for Justice and Equality on multi-disciplinary practices ("MDPs") within six months of the establishment of the Authority (section 119(1)), i.e. on or before 31 March 2017. A multi-disciplinary practice, in general parlance, has the meaning of some form of non-lawyer ownership of a legal practice. It has been given the specific meaning in the Legal Services Regulation Act 2015 of "a partnership where at least on one of the partners is a practising barrister or solicitor and which provides both legal and other services". Following the submission of this initial report, the Authority is then required to undertake a public consultation on options in respect of the establishment of multi- disciplinary practices in Ireland, touching on how they might operate as well as how they could be regulated and monitored (section 119(3)). The results of this consultation exercise are then expected to feed into a final report not later than 6 months after this report which will make recommendations to the Minister for Justice and Equality on the possible establishment, introduction and regulation of multi-disciplinary practices (section 119(4)).

3. This study is intended to fulfil the Authority's obligations under section119(1) and has been designed to inform the required public consultation on MDPs. It does so by exploring how other countries have approached the question of non-lawyer law firm ownership, the considerations which might shape any possible future regulations on MDPs and what the possible impact of MDPs might be in Ireland, given the evidence available from other jurisdictions. It contains the following sections:

    - Part 2 provides some essential background context in the form of key definitions, a description of the different types of business structure used for legal practice generally, and a reminder of some of the most frequently cited arguments for and against MDPs, including those aired during the legislative passage of the Legal Services Regulation Act 2015.

    - Part 3 contains evidence on the operation and impact of MDPs in other jurisdictions and draws out lessons from them which might be of relevance to Ireland.

    - Part 4 considers how the potential impact of introducing MDPs in Ireland might be assessed and what information it would be useful for the Authority to obtain from a public consultation in order to complete this assessment.

- Part 5 addresses the proposed regulatory framework for MDPs which is set out in the Act and identifies the issues on which the Authority would need to have views from others before it could advance any specific recommendations to the Minister.

- Part 6 concludes by suggesting some further issues the Authority may wish to consider in the light of its wider obligations under the Act.

Part 2: Background and Context

4. This section of the study sets out some essential background which will help to provide the context for the subsequent discussion of multi-disciplinary practices. It:

- Explains the range of business structures covered by the Act;
- Provides some essential definitions;
- Recaps on the main theoretical pros and cons of permitting different types of business structures to legal professionals;
- Explains the methodology which has been adopted in this study for assessing the impact of changing regulations on business structures.

Form of Practice in the Legal Profession

5. Anyone who is starting a business needs to decide what structure they will use for conducting this business and whether they will co-own that business with others. Ireland permits business to be conducted through a range of different structures, including: Sole traders, general partnerships[1], limited partnerships[2], private limited companies or public limited companies. These different structures offer a range of different options to the owners of businesses, enabling them in the case of limited structures to distance their own personal affairs from those of the business they are running. The overall advantages of allowing businesses to have their own corporate or "separate legal personality" is that it is easier for individuals to start businesses, grow them through borrowing or external investment, and wind them up or sell them on. This is possible because the owner's personal assets can be separated from any liability for the acts or debts of their business.

6. Solicitors and barristers[3] in Ireland face three limitations when setting up in practice which do not apply to most other economic activities:

- Firstly, they are restricted in respect of the form in which they can practice, since most limited liability business structures are not currently available to solicitors or barristers because of the different restrictions that arise from current legislation and codes of conduct[4]. Whilst Solicitors are theoretically permitted to form limited partnerships per the Limited Partnership Act, 1907 ("the 1907 Act"), the model is rarely, if ever, employed given the restrictions that are imposed by the 1907 Act. These include the fact that the partnership should not consist of more than 20 persons and that the general partner(s), of which there must be at least one, is/are liable for all the debts and obligations of the firm. The limited partners contribute a stated amount of capital and are not liable for the debts of the partnership beyond the amount contributed. The limited partners' liability can therefore be very restricted.

[1] The Partnership Act, 1890
[2] The Limited Partnership Act, 1907
[3] Collectively defined by the Legal Services Regulation Act 2015 as 'legal practitioners'
[4] Section 64 Solicitors Act 1954 and Para 7.14 of the Bar Council's Code of Conduct

- Secondly, they are limited in the choice of who they can go into business with: Solicitors are currently only permitted to enter into general unlimited or limited partnerships with other solicitors, and barristers are only permitted to operate as sole traders.

- Finally, they face restrictions on the range of services they can offer as legal practitioners, either through limitations imposed by codes of conduct implicitly or explicitly, or in practice because of the restrictions on the individuals or other businesses with whom they can share ownership.

7. These restrictions matter because they not only influence the size, efficiency and profitability of legal practices but they also affect the range of services they can offer and their cost. They impose limitations on how a legal business can expand - any ancillary services must generally be related to the practice of law and the pool of potential partners is limited to other lawyers. This then makes it harder for law firms to expand and develop the specialisms and efficiencies which can be developed in a larger business. It also increases the challenge, which exists for all small businesses, in raising finance to invest in business systems and technology. And finally, it increases the risk of losing key non-legal staff, as they cannot be given the status and interest of a partner. All of this then affects the market for legal services – leaving it over-fragmented and unable to serve consumers as effectively as it might otherwise be able to do.

8. Set against these purely economic concerns, are the equally important considerations of why legal services around the world have been organised in this way – either through sole traders in the form of independent barristers, or in small general partnerships of solicitors. These reasons arise from the essential role that lawyers play in the administration of justice and the rule of law. It is in the public interest for individuals, businesses and other organisations, and indeed the State, to be able to obtain legal advice and representation which stand apart from any vested interest of their lawyers. This is the most important justification for regulation of the legal market, and leads to the imposition of professional standards and codes of conduct requiring lawyers to adhere to a set of core values that are common to the legal profession around the world[5]. There are also other justifications for regulation of legal services, such as the 'asymmetry of information' which may exist between lawyers and their clients and this is often given a far greater emphasis in economic literature on lawyer regulation[6] than the public interest arguments, even though the latter are of a far greater overall significance.

9. So, on the one hand, a better functioning legal market might be brought about by granting lawyers more flexibility in how they organise their practises, which could in turn entail economic benefits to consumers and lawyers and possible improvements in the cost and accessibility of legal services. But introducing more flexibility into how lawyers practise could undermine the application of professional rules and standards, with concomitant damage to the wider public interest and expose individual clients to greater risks. The Legal Services Regulation Act 2015 goes to the heart of the tension between these two issues, by addressing the question of how "to provide for new structures in which legal practitioners may provide services together or with others".

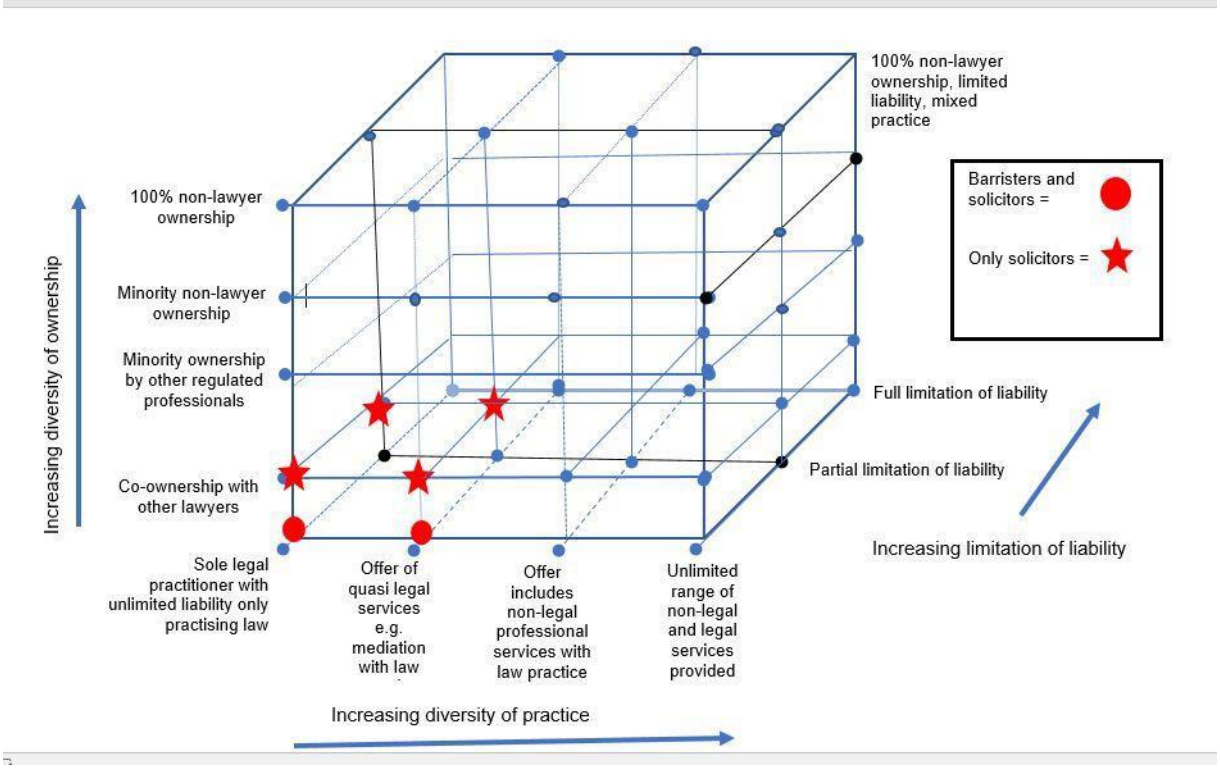
[5] UN Basic Principles on the Role of Lawyers

[6] PROTECTING AND PROMOTING COMPETITION IN RESPONSE TO "DISRUPTIVE INNOVATION" - Note by OECD Secretariat

The challenge for the Authority, as for similar regulators of legal services in other parts of the world, is to determine what level of regulation would be necessary and proportionate in order to uphold the public interest but also whether this could potentially be achieved by any other less onerous approach. Part 8 of the Act sets out a range of options which could be enabled to permit legal practitioners to work in such new structures and provides the starting point for the discussion in this study.

10. Before looking at the suggested new business structures for legal practitioners contained in the Act, it is worth recapping on the overall range of possibilities that could, in theory be open to lawyers. Figure 1, below, illustrates the various options available to any jurisdiction when it is considering how to provide for new business structures for their lawyers. These options usually involve some combination of the following elements: Increasing diversity of ownership, increasing the possibilities for limiting liability or words along those lines and widening scope of practice, which can be combined in different ways to produce different results. For example, it is possible to allow lawyers to limit their liability through incorporation without necessarily allowing them to share ownership with non-lawyers. Each jurisdiction which has looked at the question of business structures for lawyers has selected the combination of these variables that help it to meet the goals that it has set for the legal services sector and the choice in each case might be different.

Figure 1: Potential Forms of Business Structure for Legal Practice



11. The options available currently to Irish practitioners are shown in figure 1 in red. They are for barristers and solicitors to practise only law as sole practitioners with unlimited liability, or to offer some services like mediation or arbitration which are closely connected. Solicitors may also form limited (per the 1907 Act) or unlimited partnerships but only with each other.

12. The options proposed for Ireland in the Act could potentially offer greater diversity in all of the dimensions shown in figure 1. The Act proposes:

- The introduction of ***Legal Partnerships***, which for the first time will permit barristers and solicitors in Ireland to go into partnership together.
- The potential introduction of ***Multi-disciplinary practices***, which could then allow solicitors and barristers to enter into partnership with non-lawyers.
- The adoption of ***Limited Liability Partnerships*** between legal practitioners (applies only to firms of solicitors and legal partnerships but not to Multi-Disciplinary Practices)

However, if MDPs are enacted in Ireland, the Act would not permit lawyers and non-lawyers to participate jointly in business structures in which their liability can be fully limited and it would not permit another business to be a partner in multi-disciplinary partnership.

13. The rest of this study focuses on the possible introduction of multi-disciplinary practices and is intended to meet the commitment made by the Minister in the Daíl when introducing the second stage of the Bill:

> "..*Multidisciplinary practices, that is to say practices in which legal practitioners provide their services alongside other non-legal service providers, will now be supported by detail research. This will focus on the likely effects their introduction may have on competition, on the legal services market and on the legal professions. The findings of this research on multi- disciplinary practices will then inform the six-month public consultation process already envisaged under the Bill and will also be laid before the Houses. The commencement of the provisions governing multi-disciplinary practices will then become a matter for the Minister following these processes and on foot of their outcomes and recommendations."*

14. It should be noted that this study is only the first stage of the research process mentioned in the Minister's remarks to the Daíl. There are many questions which need more substantive information or which require the input of others that will need to be addressed in a second stage of research.

Definitions - What is a Multi-Disciplinary Practice?

15. The Act defines a multi-disciplinary practice as:

"a partnership formed under the law of the State by written agreement, by two or more individuals, at least one of whom is a legal practitioner, for the purpose of providing legal services and services other than legal services". (section 2(1)).

It is also important to note that section 107(8) states "nothing in this section shall be construed as permitting investment in a multidisciplinary practice by a person other than an individual" and that section 107(1) requires that "Each partner in a multi-disciplinary practice shall be jointly and severally liable in respect of his or her acts or omissions."

Taken together, these provisions imply that the following forms of unlimited partnership would qualify as MDPs under the Act:

- One or more legal practitioners plus at least one other regulated professional;
- One or more legal practitioners plus at least one other non-lawyer, non-regulated individual who may either be an active participant in the business or a passive investor;
- One or more legal practitioners plus at least one foreign (non-EEA) lawyer; or
- Some combination of the above.

It is important to note that MDPs are defined differently in other jurisdictions and this then influences what they can do and how they can operate. This is examined in more detail in Part 3.

A recap on the arguments for and against MDPs

16. The Legal Services Regulation Act 2015 sets out the possibility that MDPs could be enabled as a form in which solicitors and barristers can conduct business in partnership with non-lawyers. By requiring a report on "the establishment, regulation, monitoring, operation and impact" of MDPs, the Act requests a deeper examination of how a model for MDPs might work in Ireland. This is materially different to the provisions in the Act relating to Legal Partnerships which were enacted by the Act only subject to the introduction of implementing regulations. There is extensive literature on the general pros and cons of MDPs, which is referenced in Annex 1 and it is not the purpose of this study to revisit these largely theoretical discussions in detail. It is nonetheless worth recapping briefly on some of the arguments that are generally made for and against MDP since these will help to inform the subsequent debate in Ireland about whether they should be introduced and if so, how they should be regulated.

The arguments for MDPs

17. The following are often advanced as arguments in favour of allowing lawyers and non-lawyers to co-own businesses:

- MDPs permit 'one stop shopping'. There are potential temporal and financial savings that could be realised, for example, for small businesses if they could obtain their legal services alongside other services they require.

- MDPs can promote innovation by enabling legal practitioners to work in partnership with others. New types of services can be created from the integration of different services that might otherwise not arise.

- MDPs can alter the risk profile of legal practices through diversification and access to new clients.

- MDPs may offer greater access to capital, although this is more likely to be the case for incorporated entities. Access to capital is going to become increasingly important for legal practice in future as the influence of technology in the sector grows.

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- MDPs can provide consumers with better access to legal services. Research[7] suggests that a common aspect of unmet need may be that consumers do not recognise or define their problem as a 'legal problem' and may therefore not approach a legal practitioner for assistance. Some types of MDP could therefore provide new access points for individuals to receive legal help.

18. These are potentially material considerations which could enhance the access or consumers to legal services, improve efficiency in the legal services market and provide the opportunity for cost savings. However, as the Competition Authority noted in its 2006 report "Competition in Professional Services – Solicitors and Barristers", "*It is clear that there are competition benefits to allowing both LDPs and MDPs. However, there are undoubtedly a number of other issues outside the realm of competition policy which require further exploration. For this reason the Competition Authority recommends that the issues surrounding LDPs and MDPs should be explored in more detail".*

The arguments against MDPs

19. On the other hand, any discussion about non-lawyer involvement in the ownership of legal practices also needs to take the following considerations into account:

- MDPs could face a tough challenge in protecting client confidentiality when providing an integrated service involving legal and other services. The implications for legal privilege of providing legal services through a business with mixed ownership also needs to be thought through carefully.

- The potential for the independence of legal advice and representation to be undermined is possibly greater in a business in which not all owners, directors or members of the practice are governed by the same professional obligation to discharge their duties to their clients and to the Court, independently of other interests, personal or external.

- MDPs may face more challenges in relation to conflicts of interest, depending on how the ownership of the business is structured. The fear is that circumstances might arise in which partners who are unconstrained by professional obligations put pressure on the legal practitioners in an MDP to conduct business that is not in the client's interests (a solicitor- client conflict) or to act for competitors (a client conflict).

- Where MDPs involve partners, who are qualified and regulated by different professional codes, there may be a conflict in the requirements of these codes which creates difficulties for either or both professionals involved.

- MDPs could result in the lowering of consumer protections since the protections that are offered by solicitors and barristers (for example in the form of the compensation fund in respect of solicitors and professional indemnity insurance cover in respect of solicitors and barristers) might not apply to the non-legal services provided by the practice (or indeed at all) unless appropriate restrictions are put in place.

- MDPs can present particular challenges for barristers and for the application of the Cab Rank Rule. Different jurisdictions adopting MDPs have chosen to take different approaches to this issue.

20. For many years, the arguments against MDPs held sway but over the last ten to fifteen years, the position has shifted in many countries and MDPs are now a reality in many parts of the world. Part 3 of this study will look in more detail at how the introduction of MDPs in other jurisdictions has addressed the above arguments and what lessons might be drawn from this. First, however, it is important to set out the way in which the analysis in the rest of this study has been approached.

[7] Unmet Consumer Need - LSB Survey 2015

Methodology

21. The Act requires the Authority to examine how MDPs might impact on the legal services market in Ireland in three respects: In terms of legal costs, the provision of legal services to consumers and the access of persons to legal practitioners. The Act also requires the Authority to assess the experience of other jurisdictions against these considerations. It is therefore important to explain how these issues have been defined for the purposes of this study:

- ***Legal costs*** – "legal costs" are defined in the Act as "fees, charges, disbursements and other costs incurred or charged in relation to contentious or non-contentious business". Given the widespread lack of transparency around charging in the legal services sector, apart from in relation to court fees and publicly funded work, this study has placed a slightly wider construction on these words than the Act itself. The analysis takes into account therefore, not only evidence relating to fees for legal services, but also any impact which changes in business structures could have that would reduce the costs of doing business. The underlying assumption is that a lower 'cost of production' for legal practitioners, when coupled with effective competition, has the potential ultimately to reduce the fees paid by clients and users of legal services. This also highlights for the Authority itself, the importance of paying attention to the costs imposed directly or indirectly on new forms of business structure by regulation.

- ***Provision of legal services to consumers*** – the Act defines "legal services" as legal services provided by a solicitor or barrister. The relevant dimensions for assessing how new business structures might impact on consumers relate to choice, cost and selection of legal services. A consumer is defined in Irish law as "someone who is buying goods or a service for personal use or consumption from someone whose business it is to sell goods or provide service"[8].

- ***Access to legal practitioners*** – this is not defined in the Act but is assumed here to mean the extent to which new business structures impact on the identification, selection and use of legal practitioners. It is assumed to encompass the concept of "direct access" to barristers and the "cab rank rule" but is by no means exclusively limited to these questions. It also includes consideration of whether channels for accessing legal services are widened or narrowed by new business structures and whether competition within the market for legal services might be affected. It also considers the extent to which new structures might impact on the availability of legal services geographically.

22. It is also worth observing that although these are the parameters which are identified by the Act as measures for assessing the impact of MDPs in Ireland, other jurisdictions have sometimes chosen other measures of success driven by the different objectives they have chosen for MDPs. These different objectives have led them to shape the business structures they make available for legal services in a slightly different way. This means that whilst lessons can be learnt from other jurisdictions, there are no formulae which can necessarily simply be reapplied without adaptation to Irish circumstances.

[8] www.citizensinformation.ie

Part 3: The Operation of MDPs and similar forms of practice in other jurisdictions (s.119(2)(a))

Some History

23. The issue of whether lawyers should be able to form MDPs is not new. In the 1990s interest in this topic around the world was being driven by the expansion of accountancy practices into legal services, as the tied law firms of the then, five global accounting partnerships, made significant inroads into the legal market in several jurisdictions. However, the collapse of Enron, Arthur Andersen, and Andersen Legal along with it, led to a pushback against the acceptance of MDPs as a business model for lawyers, both from the profession, and from regulators like the US Securities and Exchange Commission, who were particularly concerned about the potential for conflict in MDPs that included auditors and lawyers, given their conflicting duties on disclosure and confidentiality.

24. Nonetheless, within a few years, various national competition agencies and multilateral institutions, such as the World Bank, the IMF and the OECD, began to look more closely at the way in which professions in general were regulated, given their important contribution to economic value added and their role as key inputs for other businesses[9].

25. In 2004, the European Commission under the leadership of Internal Market Commissioner Mario Monti, initiated a reflection on the rationale for maintaining restrictions on ownership of professional businesses[10]. The extent to which the Commission itself could require Member States to take any measures in this area was however curtailed by the earlier finding of the European Court of Justice (CJEU) in the Wouters case (2002)[11]. This case dealt with the prohibition of multi-disciplinary partnerships between lawyers and accountants and, although the Court held that *a prohibition of members of the Bar and accountants [is] liable to limit production and technical development*", it upheld the right of the Dutch Bar to determine how best to regulate the legal profession in the Netherlands. The Commission's approach since then has largely been restricted to exhorting Member States to reflect on how they regulate professions[12] and encouraging them to seek the most proportionate way of achieving any legitimate objectives for regulation. Although for Ireland and the other Member States who required "bailout" action in the period 2010-13, the approach was more prescriptive and led to the proposal for a Legal Services Regulation Bill, now the 2015 Act.

26. The conclusion that can be drawn from this brief history is that the regulation of professional services, such as legal services, is recognised in international trade and competition law[13] as a matter for individual countries to determine in accordance with their own public interest objectives. But there is nonetheless an accepted international consensus on best practice in regulation, which holds that any limitations on the structures through which professions can be conducted need to be justified because of their potentially inhibiting effect on the operation of the market for those professional services. Any restrictions

[9] The Economic Impact of Professional Services Liberalisation - European Commission
[10] "Competition in Professional Services: New Lights and New Challenges" European Competition Commissioner Mario Monti, Speech to Bundesrechtsanwaltkammer, 21 March 2003
[11] Case C-3 09/99, J.C.J. Wouters and Others v Algemene Raad van de Nederlandse Orde van Advocaten
[12] See Article 25 of Directive 2006/123/EC - On Services in the Internal Market
[13] "The GATS and Domestic Regulation - Fact or Fiction" WTO Website

imposed need to be justified by public policy objectives and should be proportionate to the objective they are trying to realise. Applying the right balance between public interest objectives and legitimate and proportionate regulation in the regulation of legal services is the task that has been set for the Authority by the Legal Services Regulation Act 2015 in deciding whether to permit MDPs, and if so, in what form.

27. The next section of this study looks in more detail at the experience of a number of jurisdictions that have removed restrictions on the form in which lawyers can conduct business and explores how they have sought to meet this challenge.

Selected Jurisdictions of Interest

28. When looking at how other jurisdictions have approached the question of business structures for lawyers, it is important to be conscious that they may be doing so from different starting points. The way in which lawyers are regulated varies widely from jurisdiction to jurisdiction. For example, some, like Ireland, regulate certain specific services (reserved activities) and protect the titles of regulated lawyers like 'solicitor' and 'barrister'. Others, like some states in the USA, India and the Philippines, may adopt very wide definitions of the services reserved to lawyers, which amount in effect to a monopoly for lawyers in "whatever a lawyer does". In contrast, other countries may only reserve the title of 'a lawyer' to certain regulated individuals but not grant them a monopoly over any services, or limit their monopoly rights purely to the representation of clients in court. The result of this is that what a lawyer does, and what only a lawyer can do, varies widely across jurisdictions.

29. This is significant for this discussion because it illustrates that there is no single acceptable way for lawyers to conduct legal business because what only a lawyer is permitted to do varies so significantly in different parts of the world. Secondly, it reveals that lawyer/non-lawyer businesses are more common than is sometimes realised. MDPs have never been perceived as an issue in countries like Chile, for example, where the monopoly for lawyers is restricted only to court work. And in Norway, where the only absolute right of members of the Bar is the right to the title of 'advokat', new non-lawyer owned entrants to the market such as HELP[14], have created consumer focused legal businesses based on entirely new business models.

30. Since Ireland is coming from a different starting point, it is more useful to look at jurisdictions that have tackled the issue of diversifying business structures from a more analogous position. The discussion below therefore concentrates on the Common Law jurisdictions in Australia, Canada, the United States and the United Kingdom which have adopted some form of MDP model. It then goes on to look briefly at the situation in the rest of the European Union and finally, some consideration is also given to the discussion of this issue in a number of other jurisdictions which have a comparable common law referral bar system to Ireland and which have chosen not to adopt an MDP model. Where possible, examples of the MDPs that have been created in the different jurisdictions have been included in the text in order to illustrate how the ability to diversify business structures for legal services has been used in practice.

31. Table 1 (below) summarises the position in the most significant jurisdictions of most relevance to Ireland. To avoid confusion, this section of the study uses the terminology 'Non-Lawyer Owned Legal Practices' (NLPs) instead of MDPs because, as will become evident, other jurisdictions have a different definition for the terms "multi-disciplinary practice" or "multi-disciplinary partnership" to that contained within the Act.

[14] HELP - Norwegian non-lawyer owned law firm

Table 1: Jurisdictions around the World which have introduced forms of Non-Lawyer Practice[15]

Definitions: ILP: Incorporated Legal Practice; ULP: Unincorporated Legal Practice; LLP: Limited Liability Partnership; NLP: Non-Lawyer Practice

Jurisdiction	Date non-lawyer ownership permitted	NLP Forms permitted	Number of active NLPs (non-lawyer practices)	Number of Registered Lawyers	Size of Population
Australia – New South Wales	MDPs since 1994; ILPs since 2004	ILPs (Limited companies (public or private) or Limited Liability partnerships (up to 100% non-lawyer ownership); MDPs (General partnership between lawyers and non-lawyers)	Estimated 30% of Australian practices incorporated (breakdown of pure lawyer incorporated practices and mixed lawyer-non-lawyer practices within this not known).	30,846 solicitors 2,353 barristers	7.7 million
Australia – Queensland	MDPs and ILPs since 2010	ILPs (Limited companies (public or private) or Limited Liability partnerships (up to 100% non-lawyer ownership); MDPs (General partnership between lawyers and non-lawyers)	See above	13,252 solicitors 1,322 barristers	4.86 million
Australia – Victoria	MDPs and ILPs since 2007	ILPs (Limited companies (public or private) or Limited Liability partnerships up to 100% non-lawyer ownership); MDPs (General partnership between lawyers and non- lawyers)	See above	18,716 solicitors 2,031 barristers	6.1 million
Canada – British Columbia	2010	MDPs (General partnerships or LLPs) can involve individuals or entity owners. Scope restricted to services related to or supporting legal services	4 MDPs	11,433 lawyers	4.75 million
Canada – Ontario	1999	MDPs (General partnerships or LLPs) can involve individuals or entity owners. Scope restricted to services related to or supporting legal services	12 MDPs	49,048 lawyers	13.98 million
Canada – Quebec	2004	MDPs (general partnerships or LLPs) only with designated regulated professions.	40 MDPs – approximately 4% of registered law firm entities	25,847 lawyers	8.16 million

[15] This table does not include those jurisdictions which have not introduced non-lawyer ownership

Jurisdiction	Date non-lawyer ownership permitted	NLP Forms permitted	Number of active NLPs (non-lawyer practices)	Number of Registered Lawyers	Size of Population
United States – Washington DC	1999	MDPs (general partnerships, limited liability partnerships or limited liability companies)	Unknown – no registration scheme – some take-up but not significant	52,711 lawyers	681,170
Singapore	2014	Up to 25% non-lawyer ownership (must be active in business)	7 non-lawyer owners registered in 5 legal practices	4,885 lawyers	5.69 million
Denmark	2007	Up to 10% non-lawyer ownership by employees of a lawyer's professional corporation permitted	Currently 5 law firms have 1 non-lawyer employee-owner	6,140 lawyers	5.69 million
Germany	1968[16]	Lawyer majority owned MDPs permitted with limited list of regulated professions.	Unknown (no central register) but common	163,772 lawyers	80.68 million
Italy	1939	MDPs permitted with many other regulated professions	Unknown (no registration required) but common	233,852 lawyers	59.8 million
Netherlands	1993	MDPs with certain professions	Unknown (no registration required) but common	16,942 lawyers	16.9 million
Spain	De facto since 1983; de jure since 2001	Professional majority owned MDPs permitted	Unknown (no central registration required) but common	130,038 lawyers	46 million
UK - England and Wales	Legislation passed in 2007; ABSs since 2012; LDPs permitted 2009-12	Up to 100% non-lawyer ownership; public listing; multi-disciplinary practices.	735 (less than 1% of the total number of legal practices) but 33% of turnover?	136,596 solicitors 15,000 barristers	57.9 million
UK – Scotland	Legislation passed in 2010 (implanting regulations not yet in agreed)	Up to 49% non-lawyer ownership	None – provisions not active	11,358 solicitors 454 Advocates	5.37 million

[16]Bundesgerichtshof [BGH][Supreme Court], 4.1.1968.

(i) Australia

What kind of NLPs are permitted, since when, and what has the take-up been?

32. Two kinds of NLP are permitted in Australia: Multi-disciplinary partnerships (MDPs) and Incorporated Legal Practices (ILPs). ILPs are now permitted across Australia although in varying forms. MDPs are permitted in New South Wales, Victoria, Australian Capital Territory, Tasmania, Queensland and Western Australia.

33. Multi-disciplinary partnerships were first permitted in New South Wales by the *Legal Profession Act 1987*. In this Act MDPs were *defined* as "*a partnership between one or more solicitors and one or more other persons who are not solicitors, where the business of the partnership includes the provision of legal services in this jurisdiction as well as other services*"[17]. These partnerships were subject to a limitation of the non-lawyer share of ownership of 49% and partner liability was unlimited. As a result, the take up of MDPs as a structure for legal practice was negligible.

34. A subsequent report by the Attorney General's Department in 1998 entitled the "National Competition Policy Review of the Legal Profession Act" [18] was highly critical of these restrictions and made recommendations for changes that led the New South Wales Government to pass new legislation in 2001[19]. The Legal Profession Act 2001 liberalised the ownership of MDPs, requiring only that there was at least one legal practitioner partner in an MDP that engaged in the practice of law. More significantly it introduced a new business structure for legal practice, the ILP, which then co-existed alongside MDPs. An ILP was defined as "a corporation or company which may provide both legal and non-legal services". An ILP could be owned by one or more lawyers, wholly by non-lawyers, or by any combination of lawyers and non-lawyers together. Crucially the ILP allowed for the limitation of liability.

35. All other Australian jurisdictions subsequently amended their legislation to permit ILPs but many placed different levels of restrictions on who could be involved. By 2010, the range of ownership models in Australia was extremely diverse, ranging from the possibility for law firms to be 100% owned by non-lawyers and list on the stock exchange in New South Wales, through to the limitation in South Australia on lawyers co-owning an incorporated legal practice there if they were resident outside the State.

36. By the end of 2014, after two decades, there were still only around 30 MDPs in NSW and reportedly a handful of others in Victoria, Queensland and Australia Capital Territory. Examples of businesses choosing this model included lawyers providing legal services together with real estate agents, financial advisers or chartered tax advisers[20]. These partnerships are inevitably small due to the constraints of the partnership model and have been largely overshadowed by the ILP structure, which has generally been preferred.

[17] Legal Profession Act 1987 (New South Wales)
[18] National Competition Policy Review of the Legal Profession Act 1987: Final Report
[19] Legal Profession Act 2001 (New South Wales)
[20] See, for example, http://www.dwyerlawyers.com.au/home/about/

37. In contrast by 2010, within only six years of being permitted, there were over 1,200 approved ILPs in NSW, representing roughly 30% of all legal practices. The vast majority of these ILPs were either sole practitioners or firms with 3-10 partners. Some of the larger national law firms were discouraged from adopting this structure because they have offices in a number of different Australian states that treated ILPs differently and were lobbying for the creation of a more integrated national approach.

38. These efforts resulted in the Legal Profession Uniform Law Act 2014 which harmonised requirements for ILPs and MDPs, and renamed the latter Unincorporated Legal Practices (ULPs).

39. Throughout this experience with NLPs, all the Australian jurisdictions have continued to require legal practitioners who wish to operate as barristers, to be self-employed. However, the Australian model also permits full rights of audience to those legal practitioners operating out of alternative business models.

How are NLPs regulated in Australia?

40. The original approach to regulating MDPs in New South Wales in the 1990s was highly precautionary and extended the professional standards and ethical duties and obligations of lawyers across the practice. This understandably impacted on the take up of the MDP model.

41. When the 2001 legislation was being considered, with the proposed introduction of incorporation as an option for law firms, the Law Council of Australia, the overseeing professional body for lawyers in Australia, issued a position paper on MDPs[21]. This set out the following important philosophy towards the adoption of new business structures:

> *"The following principles enshrine the Law Council policy:*
>
> *a) that the regulatory regime should be directed to the individual lawyer who is bound by ethical obligations and professional responsibilities;*
> *b) that regulation of business structures should no longer be regarded as critical or necessary to the maintenance of professional standards; and*
> *c) that individual lawyers should be free to choose the manner and style in which they wish to practice law, including the right to choose to practice at an independent Bar, which requires practice as a sole practitioner and adherence to the cab-rank rule, recognising the important of the sole practice rule in the administration of justice".*

42. This helped to shape the approach taken to the regulation of MDPs and ILPs in the subsequent legislation and implementing rules made in New South Wales and other Australian States.

43. In essence, under the 2004 legislation, MDPs and ILPs were subject to broadly similar regulatory controls which attempted to reconcile lawyer obligations with different business forms. In the MDP, each legal practitioner partner of a multidisciplinary partnership was held responsible for the management of the legal services provided by the MDP and had to ensure that appropriate management systems were implemented to enable legal services to be provided by the MDP in accordance with the professional

[21] MDPs Issues Paper, Law Council of Australia

obligations of Australian legal practitioners. In the case of the ILP, this role was assumed by a Legal Practitioner Director.

44. The responsible partners or directors under MDPs and ILPs were also required by the legislation to carry out a self-assessment procedure to ensure that their practice had in place "appropriate management systems" which would ensure that the practice was providing legal services in accordance with the professional obligations of the Australian legal practitioners in it (see Box 1, below). These management systems were also intended to ensure that the professional obligations of Australian legal practitioners, whether partners, directors or employees, were not adversely affected by the acts or omissions of other officers or employees of the practice.

45. The Legal Profession Uniform Law 2014, which replaced the Legal Practitioner Act in New South Wales and Victoria and harmonised the approach to regulation across these two states has modified this approach in several noteworthy ways.

46. Firstly, the choice of structures was simplified and the approaches to regulating MDPs, ILPs and traditional forms of practice (general partnership, sole practice) were simplified into 'Incorporated Legal Practices' (ILPs) and Unincorporated Legal Practices (ULPs). ULPs now included both MDPs (which had to be general partnerships) and other unincorporated models. In other words, less distinction was placed on who owned the practice than the business model chosen.

47. Secondly, it has taken the legal practitioner director framework for regulating ILPs and extended it to all law firms, irrespective of their business structure. All legal practices are now required to appoint an authorised "principal" holding a valid practising certificate who must be:

- in the case of a sole practitioner, the sole practitioner; or
- in the case of a law firm, a partner in the firm; or
- in the case of an incorporated legal practice - a validly appointed director of the company; or
- in the case of an unincorporated practice - a partner in the partnership.

48. The principal of a law practice, as the legal practitioner director was previously, is responsible for ensuring that reasonable steps are taken to ensure that all the lawyers in the law firm comply with their obligations under the Uniform Law and the Uniform Rules and their other professional obligations; and that the legal services provided by the law practice are provided in accordance with the Uniform Law, the Uniform Rules and other professional obligations. Failure to fulfil these responsibilities can constitute unsatisfactory professional conduct or professional misconduct.

49. Thirdly, the Uniform Law has adopted a slightly different approach to appropriate management systems. These systems are now only required if a law firm receives a "management systems direction", either to rectify a problem following a complaint or notice of a breach, or in response to a request for a periodic report on compliance. A management system direction can be given to any law firm or a class of law firms if the regulator considers it reasonable to do so after the conduct of any examination, investigation or audit.

Box 1: Management Systems Direction

The 10 Fundamental Objectives for Legal Practices to Address to Ensure Compliance

(1) Negligence: Providing for competent work practices

(2) Communication: Providing for effective, timely and courteous communication

(3) Delay: Providing for timely review, delivery and follow up of legal services

(4) Liens/file transfers (providing for timely resolution of document/file transfers

(5) Cost disclosure/billing practices/termination of retainer: Providing for shared understanding and appropriate documentation on commencement and termination of retainer as well as appropriate billing practices during the retainer

(6) Conflict of interests: Providing for timely identification and resolution of conflict of interests, including when acting for both parties or acting against previous clients as well as potential conflicts which may arise in relationships with debt collectors and mercantile agencies, or conducting another business, referral fees and commissions etc.

(7) Records management: Minimising the likelihood of loss or destruction of correspondence and documents through appropriate document retention, filing, archiving etc. and providing for compliance with requirements regarding registers of files, safe custody, financial interests)

(8) Undertakings: Providing for undertakings to be given, monitoring of compliance and timely compliance with notices, orders, rulings, directions or other requirements of regulatory authorities such as the OLSC, courts, costs assessor

(9) Supervision of practice and staff: Providing for compliance with statutory obligations covering licence and practising certificate conditions, employment of persons and providing for proper quality assurance of work outputs and performance of legal, paralegal and non- legal staff involved in the delivery of legal services.

(10) Trust account requirements: Providing for compliance with Part 4 of the Legal Profession Uniform Law and proper accounting procedures.

(source OLSC)

50. Here are, however, a couple of additional requirements for ILPs and ULPs above those imposed on traditional legal partnerships.

- ILPs and ULPs must give at least 14 days' prior notice of their intention to engage in legal practice. They must also provide basic information about the practice (e.g. owners, employees, practising address) before they can offer legal services. Failure to do so is a criminal offence.

- Where the ILP or the ULP provides both legal and non-legal services, certain disclosure obligations apply. The law practice must disclose to the client which of the services are legal services and who will be providing those services.

- An incorporated or unincorporated legal practice must have at least one authorised principal whose practising certificate authorises him or her to supervise others. A ULP/ILP cannot provide legal services if it does not have an authorised principal for longer than seven days.

What has been the Impact of NLPs in Australia?

51. As previously mentioned, the take up of MDPs/ULPs as a model for offering legal services has been very low, so the main impacts, if any of NLPs, will have come from incorporated legal practices.

52. Figures available from the Australian Statistical Office for June 2002[22]., around the time that ILPs were first introduced, there was a baseline of 7,566 solicitor practices, 3,670 barrister practices and 258 other legal services organisations operating in Australia, with a total employment of 36,124 solicitors and barristers, and 57,628 other staff. Altogether these practices and organisations generated Aus $10.6 bn in income, which included Aus $598.9m in government funding for government solicitor and public prosecutor offices, legal aid authorities and community legal centres. The latest available comparable figures, for June 2008, show that there were 3,869 barristers and 7,530 unincorporated solicitor practices and 2,264 incorporated practices. Total employment in the sector stood at 99,696 persons (compared to 93,752 six years earlier) and the total turnover of the sector was Aus $18 bn.

53. These figures are now somewhat out of date and it would be more informative to have a comparative picture from a more recent year, when ILPs had been introduced in more states. Nonetheless, some tentative observations can be made about this data. Firstly, the introduction of alternative forms of business structure does not appear to have had any impact on the total number of independent barristers in practice or on the number of unincorporated solicitors' practices. Statements from the OLSC in New South Wales[23] suggest that many traditional solicitor partnerships and sole practitioners have chosen to convert to the ILP model; this then implies that new entrants to the market are continuing to choose both the unincorporated partnership model and the ILP structure. Secondly, employment in the sector has grown and this seems to be attributable to the hiring of both qualified and non-qualified staff. Incorporated legal practices (ILPs) have significantly more non-legal employees per lawyer employee than traditional partnership firms and sole proprietorships[24]. This may be accounted for either by the possibility that ILPs have a more rigorous approach to controlling cost than traditional law firms, but may also be because new business models have created a demand for new types of employees in the legal services sector. Law firms are now adding contract, multidisciplinary consulting and other kinds of support to their client offering. See for example the case study in box 2.

[22] Australian Bureau of Statistics, Legal Practices, 2001-02

[23] Steve Mark, "Commercialisation of Legal Practice – Regulatory Reflections from NSW", Commonwealth Law Conference 2012

[24] "Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation", Fortney and Gordon, 2013

54. Research into ILPs in Australia suggests that the main motivation for incorporation has been to allow for improved succession planning and the smoother entry and exit of partners as well as tax reasons [25]. Interviews conducted as part of a study into ILPs for Hofstra University in the United States, revealed that for sole practitioners, the choice of an ILP structure gave them the confidence to expand in circumstances in which they would otherwise have been reluctant to do so because of the implications of joint and several liability in the unlimited partnership model.

55. The take up of the ILP model is not restricted to small firms. Plans by the larger accounting practices to expand their legal departments in Australia have been widely reported[26], although public statements by the Managing Partner for PwC in Australia[27] suggest that they intend to approach the market differently than in the late 1990s. Growth is expected to be targeted in key areas that complement the rest of the PwC offering in Australia, particularly international and domestic tax, deals, corporate finance, regulatory and human resource consulting. KPMG, EY and Deloitte have also all flagged interest in growing their legal capability. There is also some notable expansion of real estate firms into legal services with the inclusion of conveyancing and leasing services in some businesses as part of a move to create one-stop shops.

56. Finally, it is not only commercial operations from outside the legal sector that have adopted the ILP model. Salvos Legal is a commercial law firm owned by the Salvation Army which channels all its profits into the humanitarian efforts.

Box 2: Case Study: Integroe Partners, New South Wales

Integroe Partners are 'workplace experts'. They specialise in executive coaching, professional development and training, alternative dispute resolution, sensitive workplace investigations, and legal and HR services.

The firm was founded by an employment lawyer and a leadership, organisational development and change management consultant. There are seven people in the firm in total, with a mixture of backgrounds ranging from HR specialists, mediators and lawyers. Their particular mix of expertise allows them to provide the following services to businesses: Leadership and executive team coaching and mentoring, professional development, training and facilitation; Work place solutions (Legal advice in relation to: employment, education, governance, discrimination, professional standards); Employment relations and HR services: performance management and policy development and implementation; Mediation services; Workplace investigations) as well as governance and strategy services and organisational planning

Source: http://integroe.com.au/index.php

57. So, the evidence of take up within the legal sector appears to reinforce the statistical picture. ILPs have provided new mechanisms for lawyers, who wish to adopt them, to provide new services alongside others but have not entirely displaced traditional forms of practice. Innovation in the Australian sector has also by no means been limited to incorporated practices[28] but the role that their introduction may have played, alongside other market forces, on culture and attitudes within the sector should not be discounted.

58. The question of how ILPs might have influenced professional standards is an easier one to address because several research studies have been conducted in this area. These have generally looked at how new structures have impacted on complaints from users of legal services since this was the key objective

[25] Ibid.
[26] "Shake up as accountants beef up law", 22 August 2014, The Australian Business Review
[27] The Australian Lawyer, 24 November 2014
[28] Australia: State of the Legal Market 2015

of the responsible Australian state regulators[29], although this is not exactly synonymous with adherence to professional principles it is the best available proxy.

59. A research study conducted in 2008 by Dr Christine Parker of the University of Melbourne Law School[30] found that the complaints rate for incorporated legal practices was one-third of the number of complaints registered against similar non-incorporated legal practices. The conclusion reached by this research was that the process of self-assessment which was required of ILPs created a culture of compliance with professional standards and ethics, and more thought given by the practice on how to reflect professional codes applying to individuals in the day-to-day business of running a law firm.

60. These findings were subsequently supported by research undertaken by Professor Susan Fortney of Hofstra University[31], who surveyed 356 Incorporated Legal Practices in New South Wales with two or more solicitors. The survey addressed the relationship between self-assessment and professional principles, systems, conduct and culture in firms. The study reported that 71% of respondents said they had revised firm systems, policies and procedures as a result of the self- assessment process and 47% had adopted new systems, policies and procedures. The greatest impact was reportedly on firm management and risk management, followed by client service.

61. The conclusion that Professor Fortney reached was that adoption of the ILP structure had enabled those practices to more clearly identify and distinguish the separate roles of 'management' and 'provision of legal services' and to understand better how to resource them. The success of the management systems approach in Australia led to its inclusion as an approach for all law firms, incorporated or unincorporated, in the Uniform Legal Practitioner Act 2014.

62. A final issue worth touching on is the question of the impact of ILPs on access to legal services, particularly in remote rural areas. The availability of legal services in rural areas is one that has particularly exercised the Law Council of Australia in recent years[32] and has therefore prompted some examination. A study by Law and Justice Foundation of New South Wales in 2014[33] found that the actual number of solicitors in rural areas had increased, not decreased, between 2000 and 2011. It did note, however, that the relative growth rate in the number of solicitors in non-rural areas had been higher so there was an apparent relative decline in the share of private practice solicitors in rural areas, but overall the ratio of solicitors to population had remained stable. The main reason for concern was the growth in unfilled positions in government funded legal posts in rural areas. This was of concern since most legal aid in Australia is provided through lawyers who are employed by the Legal Aid Agency.

63. The New South Wales study which suggested a benign, or at least neutral, impact of ILPs on rural practice, was backed up a study focused on rural practice in Queensland[34]. This suggested that ILPs had helped to sustain legal practice in rural areas by providing a mechanism for succession planning and risk sharing.

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[29] Regulating Law Firm Ethics, Parker, Mark and Gordon, 2008
[30] Parker, Mark and Gordon, 2008, Ibid.
[31] Fortney and Gordon, 2013, Ibid.
[32] Report into the rural, regional and remote areas lawyers survey, Law Council of Australia, 2009
[33] Lawyer availability and population change in regional, rural and remote areas of New South Wales, September 2014, Law and Justice Foundation of NSW
[34] Sustainable Regional Legal Practice, Caroline Hart, Deakin Law Review, 2014

Possible lessons from the Australian Experience for Ireland

64. The Australian experience suggests the following:

- New forms of business structure can seemingly happily coexist with traditional structures and both may be valid choices for different types of business.
- It is not only large or highly commercial practices that find the incorporated model beneficial.
- There is a limit on the change that might be wrought by a pure MDP model which simply expands the selection of individuals who might be permitted in a lawyers' general partnership.
- Regulatory approaches which simply extend the professional obligations of lawyers to all who are involved in the partnership or which require lawyer control over ownership or management will simply make practices with non-lawyer owners unworkable. Australia's approach to the role of the lawyer guardian of professional ethics and principles in a non- wholly lawyer owned practice, changed between the first legislation on MDPs in 1994 and the introduction of ILPs and new rules on MDPs in 2004. The post-2004 approach gave far more discretion to the managing legal practitioner to manage how professional principles were reflected in their practice.
- The adoption of different business structures for law firms has neither undermined the legal market in Australia, nor solved all its problems. It may, however, have helped to the sector to think differently about running law practices as businesses and the evidence for this seems to come through in the form of lower client complaints, which was significantly lower than in similar non-incorporated legal practices.
- The adoption of the ILP structure also appears to have enabled practices to more clearly identify and distinguish the separate roles of 'management' and 'provision of legal services' and to understand better how to resource them.

Box 3: The Canadian Bar Association Position on MDPs

"MDPs and other forms of ABSs should be permitted to deliver non-legal services together with legal services on the basis that the rules should require protection of privileged information by requiring that nonlawyers, including partners/owners, not have access to privileged information except with express informed client consent.

The rule or the commentary should provide that:

(a) the confidentiality rules apply and privilege must be protected;

(b) the conflicts rules apply, including where other services are offered by the MDP to clients receiving legal services; and

(c) the candour rule applies, including with respect to any conflicts of interest that may exist.

Breach should attract entity and individual sanction. If the public interest demonstrably requires that some non-legal services should not be provided together with legal services, the rules should so provide. Otherwise there should be no restrictions."

Source: Canadian Bar Association, Futures: Transforming the Delivery of Legal Services in Canada, 2014

(ii) Canada

65. The issue of non-lawyer ownership has also been debated extensively in Canada. The practice of law in Canada is regulated on a provincial basis, although there have been extensive moves to adopt a uniform approach to practice across the country. In 2014 the Canadian Bar Association issued a report[35] which outlined a shift in policy in favour of a more liberal approach (see box 3).

66. At present, however, non-lawyer ownership in law firms is limited. In Québec and British Columbia, lawyers are permitted to practise and share profits with some other regulated professionals, whilst in Ontario, lawyers may practise and share profits both with paralegals and some other regulated professions.

(a) British Columbia

What kind of NLPs are permitted, since when, and what has the take-up been?

67. The British Columbia Legal Profession Act of 1998 grants the power to the Law Society of British Columbia to make rules in relation to lawyers and law firms. In 2010, the Law Society amended its rules to permit barristers and solicitors of British Columbia to practice in and form MDPs.

68. The Society defined "multi-disciplinary practice" as a partnership, including a limited liability partnership or a partnership of law corporations, that is

a) owned by at least one lawyer or law corporation and at least one individual non-lawyer or professional corporation that is not a law corporation, and

b) provides to the public legal services supported or supplemented by the services of another profession, trade or occupation.

This definition is therefore more permissive than that adopted in Ireland's Legal Services Regulation Act, since it permits MDPs to include incorporated forms and allows for the participation of corporations as well as individuals.

69. Nonetheless, only a handful of MDPs have reportedly been authorised in British Columbia since the new rules entered into force in late 2010. The reason many commentators have given for this is that rules and regulations applying to MDPs are too restrictive and onerous[36].

How are NLPs regulated in British Columbia?

70. The new rules on MDPs in British Columbia entered into force on July 1, 2010. The principles on which these rules were developed were the following:

- An MDP is the only vehicle through which a lawyer can co-own a law firm with a non-lawyer.
- MDPs can only exist where they have obtained prior approval from the Law Society and are regulated in accordance with the rules of the Law Society.

[35] Legal Futures Initiative, Canadian Bar Association

[36] See for example this blog by BC practitioner Tom Spraggs

71. The approval requirements for an MDP are set out in rule 2-39 which states that:

"A lawyer must not practise law in an MDP unless

(a) the lawyer and all members of the MDP are in compliance with Rules 2-38 to 2-49 and the Code of Professional Conduct,

(b) all lawyers who are members of the MDP have obtained express permission under this division to practise law in the MDP,

(c) all non-lawyer members of the MDP are of good character and repute,

(d) all members of the MDP agree in writing

(i) that practising lawyers who are members of the MDP will have actual control over the delivery of legal services by the MDP,
(ii) that non-lawyer members of the MDP will not interfere, directly or indirectly with the lawyer's (A) obligation to comply with the Act, these rules and the Code of Professional Conduct, and (B) exercise of independent professional judgement,
(iii) to comply with the Act, these rules and the Code of Professional Conduct, and
(iv) to co-operate with and assist the Society or its agents in the conduct of a practice review, examination or investigation

(e) all members of the MDP who are governed by the regulatory body of another profession agree to report to the MDP any proceedings concerning their conduct or competence. "

72. These requirements are intended to ensure that lawyers retain control over the delivery of legal services, where control is defined as the ability of the lawyer "in all cases and without any further agreement of any member of the MDP, to (a) exercise independent professional judgement, and (b) take any action necessary to ensure that the lawyer complies with the Act, these rules and the Code of Professional Conduct" (rule 2.39)

73. The application process specifies payment of an application fee and an investigation fee, to cover the costs of approving any non-lawyer members of the proposed MDP[37]. The other requirements are:

- Copies of all partnership agreements and other contracts that the lawyer proposes to enter into with other members of the proposed MDP.

- A full report explaining the arrangements that have been made to ensure that no non-lawyer member of the MDP will be providing services to the public except where these services support or supplement the practice of law and that these are provided under the supervision of a practising lawyer.

- A detailed explanation of how privileged and confidential information will be protected and what will be done to comply with the rules respecting conflicts of interest.

[37] See more at the Law Society of British Columbia's website

- A declaration that all members of the MDP have and will maintain liability insurance to the same extent as required of the lawyers in the practice; and that

- the lawyer and the MDP will maintain trust accounts and trust accounting records in accordance with the rules applying to lawyers.

- All non-lawyer members of the MDP must be party to the agreement on the application of the above rules.

74. Once in practice, an MDP must essentially follow the rules applying to law firms. This however, creates some particular issues for MDPs.

- The supervision requirement, for example, implies that lawyers are required to supervise and assure the competence of non-legal work, which is likely to impose some limits on who a lawyer may feel it is reasonable for them to enter into partnership.

- The trust account requirements mean that all fees, whether for legal or non-legal work are paid into the firm's trust account, from which only the lawyer can release funds.

- Any marketing or advertising activity of the firm must make it clear that the firm is an MDP and that any non-lawyers are not held out as entitled to practise law in British Columbia.

What has been the Impact of NLPs?

75. Not surprisingly, given the onerous nature of the rules applying in British Columbia, the take up of this form of business structure has been extremely limited. The introduction of MDPs has therefore had virtually no impact on the legal market in British Columbia.

76. The limited number of MDPs that do exist, such as the example below, nonetheless illustrate how legal services can be bundled with other services for the benefit of clients.

Box 4: Case Study- Merizzi, Ramsbottom & Forster, British Columbia

Merizzi, Ramsbottom & Forster are experts in intellectual property, patent portfolio strategy and development, trademark portfolio strategy and development and law counsel, servicing clients in high-tech fields. All three of the founding partners have a background in science, with two then qualifying as patent agents in the US and Canada and the third qualifying as a lawyer.

They offer the following services:

- Registered Patent Agency Services
- Patent Policy Development advice
- Registered Trademark Agency Services
- Commercial Risk/Opportunity Assessments such as: Patent infringement analyses and validity assessments
- Legal Services in the following areas: Contract drafting and review, Intellectual property license drafting, Freedom-to-operate opinions, Infringement analyses and opinions, Dispute resolution, Virtual in-house IP and/or legal counsel

Source: http://www.mrfip.com

(b) Ontario

What kind of NLPs are permitted, since when, and what has the take-up been?

77. "Multi-Discipline Practices" have been permitted in Ontario since 1999, by virtue of the powers granted to the Law Society of Upper Canada under section 62 of the Law Society Act to make by- laws on how lawyers and law firms can practice law.

78. The situation in Ontario is as follows:

- Lawyers and licensed paralegals may form a Multi-Discipline Practice with professionals who practise a profession, trade or occupation that supports or supplements their practice of law or provision of legal service.
- A "professional" for the purposes of MDPs, mean an individual or a professional corporation established under an Act of the Legislature of Ontario other than the Law Society Act.
- Fees may only be shared within an MDP with MDP partners who provide client services. The definition of an MDP is therefore slightly tighter than in British Columbia since it does not permit passive interests in lawyer practice and only allows statutorily regulated professions to partner with lawyers.

79. The take-up of MDPs in Ontario has been virtually non-existent and examples of functioning MDPs are very difficult to find.

How are NLPs regulated in Ontario?

80. MDPs are regulated in Ontario, under the Law Society of Upper Canada By-Law 7 Part III. This sets out the requirements governing the formation and operation of MDPs in Ontario. It provides that:

- Any formal partnership agreement between a lawyer and other professional will be considered to be a Multi-Discipline Partnership, which must be approved by the Law Society by application.
- The application process requires all partners in the partnership to be of good character.
- The non-lawyer professional must undertake to provide services to the public only through the MDP.
- The non-lawyer professional must agree that the lawyer has effective control of the business
- The non-lawyer professional must agree in writing that they will comply with "the Act, the regulations, the bylaws, the rules of practice and procedure, the Society's rules of professional conduct …and the Society's policies and guidelines" in carrying out their profession, trade or occupation in partnership or association with the lawyer.
- The non-lawyer professional must agree in writing to comply with the Society's rules, policies and guidelines on conflicts of interest.

81. Once the Multi-Discipline Partnership is approved, the lawyer partners are required to submit an annual report by 31 January each year covering any changes in participants, agreements and/or other relevant information for the previous year.

82. As the lawyers have effective control over the MDP business, they are also held responsible for the actions of their professional partners and must maintain professional liability insurance for all professional partners in the business.

What has been the Impact of NLPs?

83. Given the stringency of the requirements governing MDPs, the take up has been almost non- existent. In 2014, prompted by developments elsewhere in the world, the Law Society of Upper Canada decided to launch a major review of business models for legal practice[38]. Following an extensive consultation process, the Professional Regulation Committee reported to the Law Society Convocation[39] that:

- There was insufficient support to proceed with 100% non-lawyer owned vehicles for legal practice but there was further reflection to be undertaken on the appropriate level and nature of minority ownership by non-lawyers;
- Some exception to this general rule might be made to allow majority external ownership for civil society entities delivering services dedicated to facilitating access to legal service.

84. The report had also noted that:

- "One of the access to justice challenges is that the legal nature of everyday legal problems frequently goes unnoticed by Ontarians. In enhanced multidisciplinary service settings, clients seeking assistance in non-legal areas may benefit from the "one stop shop" experience to learn about, and possibly benefit from, legal services available. Multidisciplinary ABSs could provide one avenue to attempt to address Ontario's unmet civil legal needs challenges"; and that

- "enhanced multidisciplinary structures may also facilitate access to justice by better serving clients' legal and non-legal needs. In family law in particular, as responses to the Discussion Paper indicated, there may be opportunities to combine family law services with related services such as financial and counselling services. These models could foster early resolution of disputes where possible, engaging legal, financial, counselling and other services as appropriate".

85. The Law Society of Upper Canada is therefore continuing to keep its policy in this area under review.

[38] Law Society of Upper Canada Discussion Paper 2014
[39] Professional Regulation Committee, Report to Convocation, 201

(c) Quebec

What kind of NLPs are permitted, since when, and what has the take-up been?

86. Multi-disciplinary partnerships ("exercise en multidisciplinarité ") have been permitted to Quebec avocats since 2004 under rules[40] made by the Barreau de Quebec, which is responsible for regulating lawyers and law firms in Quebec.

87. MDPs can contain any individual professionals regulated according to the Quebec Code of Professions or entities wholly formed of those professionals. The MDP may take the form of a general partnership, a limited liability partnerships (société en nom collectif à responsabilité limitée (SENCRL)) or a limited company (société par actions (SPA.))

88. There were 6 MDPs registered with the Barreau du Quebec in 2006 and 40 by 2013, accounting for 4% of the total number of private practices registered.

How are NLPs regulated in Quebec?

89. The rules governing MDPs in Quebec were modified in 2008 due to the low take-up and a recognition that the risks involved in adopting less restrictive rules were low.

90. The rules state that MDPs must be registered with the Barreau and the process for doing so requires the lawyer or law firm engaging with other professionals to complete a registration form giving full details of the organisations and/or individuals who will be involved in the MDP, whether partners or employees and the practising address details. Each non-lawyer individual involved in the MDP must identify the body that regulates them in their professional capacity and give their practising certificate number. The application form for the entity also requires the non-lawyer partners in the MDP to make a declaration that they will respect professional obligations of the lawyers in the practice.[41]

What has been the Impact of NLPs in Quebec?

91. The slightly higher rate of take up of MDPs in Quebec compared to the other Canadian provinces that have permitted them may in part be because foreign law firms operating in partnership with Quebecois avocats may structure themselves as MDPs. But it also stems from the less restrictive regulatory model adopted and the overall framework law for the professions, which makes collaboration between the 45 professions relatively straightforward. Although around 40 MDPs have registered with the Barreau du Quebec some of these are foreign law firms. The overall number of MDPs as a proportion of law firms practising remains low.

92. There appears to have been no discernible impact of the MDP model on the profession and the practice of law and apart from a limited number of practices which now offer one-stop shops, there seems to be little impact on the consumer market.

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[40] Regulation on MDPs (Règlement sur l'exercice de la profession d'avocat en société et en multidisciplinarité)

[41] Barreau du Quebec, MDP Registration Form

Lessons from the Canadian Experience for Ireland

93. Although there has been little take up in the three Canadian provinces that have adopted some form of MDP model, there are nonetheless some useful lesson for Ireland in this experience:

- All the Canadian provinces adopting MDPs have used a model which restricts non-lawyer ownership to regulated professionals. This brought with it additional limitations on take- up, which have also been identified elsewhere (see for example, the England and Wales experience with MDPs below);
- The approaches used in Ontario and British Columbia have sought to maintain lawyer independence via total lawyer control, for example, over the payments in and out of the business etc. This has made it difficult for non-lawyers to enter into genuine partnerships with lawyers.

(iii) United Kingdom

(a) England and Wales

What kind of NLPs are permitted, since when, and what has the take-up been?

94. Non-lawyer ownership of bodies providing legal services to the public was first permitted to any significant degree by the Legal Services Act 2007, although up to 10% non-lawyer ownership of solicitors' firms had previously been allowed. Solicitors had also been permitted to form limited companies since the passage of the Administration of Justice Act 1985[42] and LLPs since the introduction of the Limited Liability Partnerships Act 2000.

95. The Legal Services Act 2007 (LSA) marked the conclusion of a long period of reflection in England and Wales on the pros and cons of different forms and degrees of non-lawyer ownership and alternative structures for the practice of law. This debate had been initiated by a report from the Office of Fair Trading in 2001[43] and subsequently explored in great depth by the Report on Regulatory review of legal services, known as the "Clementi Review"[44]. The Clementi Review provided much of the background analysis on which the LSA was based. The UK Government picked up on many of the recommendations of the Clementi review in a White Paper in October 2005, and subsequently a draft Legal Services Bill in May 2006.

96. The Legal Services Act entered into force on 30 October 2007. It introduced "licensed bodies" (also known as 'alternative business structures'), which were bodies that were permitted to provide legal services[45] in England and Wales and which could have up to 100% non-lawyer ownership with no restrictions on corporate form. Other aspects of the business structures permitted by the LSA worth noting are:

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[42] Although subject to the limitation in section 9 that these must provide "solicitor services or solicitor services and other relevant legal services".
[43] Competition in Professions Office of Fair Trading, March 2001
[44] http://webarchive.nationalarchives.gov.uk/+/http://www.legal-services-review.org.uk/
[45] But only where such legal services were required to be regulated because they were 'reserved activities'

- The Act, for the first time in England and Wales, distinguished between ownership and management and the delivery of reserved legal services. It made it possible for non- lawyers to own and/or manage an entity providing legal services, provided that those reserved services were delivered under the supervision of a qualified legal practitioner ('an authorised person' in the Act).

- Any entity wishing to provide reserved legal activities[46] in England and Wales as an alternative business structure had to obtain a licence from a licensing authority.

- Licensing is required if an individual non-lawyer (a "non-authorised person" in the Act) has an interest either as an owner or a manager; or if another organisation which itself has more than 10% non-lawyer ownership, is an owner or manager of the legal services provider.

- Otherwise, for the first time the Act permitted different types of lawyers to form law firms or other types of partnerships without restrictions, as they were all identified as 'authorised persons[47]' in the Act. These individuals could then choose the approved entity regulator (see below) to suit the form in which they intended to undertake legal practice.

- The Act allowed for special treatment for trades unions, not-for-profit organisations, community interest companies and low-risk bodies (see section 108). This was in part a recognition that many such bodies already had special dispensation as non-lawyer owned bodies, to employ lawyers to provide legal services to defined segments of the public.

97. As part of the transitional arrangements set out in the Act, "Legal Disciplinary Practices" (LDPs), were permitted from 31 March 2009. LDPs allowed authorised persons to enter into partnerships together for the first time and enabled non-lawyers to own up 25% of a law firm. 'Authorised persons' are individuals who hold practising certificates that permit them to conduct some, or all reserved activities. These are: Solicitors, barristers, licensed conveyancers, notaries, patent attorneys, trade mark attorneys, legal executives and costs lawyers. Authorisation has also been granted to certain types of chartered accountants to conduct probate services. It was no longer possible to authorisation to operate as an LDP once the full licensing scheme for ABSs was launched, and all LDPs were expected to convert to full ABS status.

98. Multi-disciplinary partnerships (MDPs) were not explicitly mentioned in the Legal Services Act but had been considered in the Clementi Review. This review had suggested that MDPs, defined as businesses jointly owned by lawyers and other professionals, would raise particular risks and regulatory challenges and so should be left to the second phase of reform of alternative business structures, after an initial period of operating an LDP model. Arrangements were subsequently put in place to enable MDPs (considered below) and these are now considered as a specific type of ABS.

99. There are now more 735 ABS operating in England and Wales (355 licensed by the Solicitors Regulation Authority, 61 by the Council of Licensed Conveyancers, 283 by the Institute of Chartered Accountants of England and Wales (ICAEW) and 36 by the Intellectual Property Regulation Board (IPReg)).

[46] See Schedule 2 of the Legal Services Act 2007

[47] Solicitor, barrister, licensed conveyancer, legal executive, trademark attorney, patent attorney, notary, legal costs draftsman

How are NLPs regulated in England and Wales?

100. The following description may seem to offer more detail than is immediately relevant for Ireland, but it is included for two reasons. First to emphasise the particularities of the English legal market and why Ireland is not addressing this issue from the same starting point. Second, it is useful as a reminder of the dangers of overregulation - the 2007 Act created an incredibly complex architecture for regulation which has allowed regulatory costs to multiply and it is only in recent years, that efforts have been made to rebalance the approach.

101. The LSA 2007 was designed to introduce more competition into the market for legal services in England and Wales. It did so not only by permitting more diversity in the ownership of entities allowed to provide legal services but also by creating more diversity in the types of licences available. It did so by creating a Legal Services Board to act as the statutory "overarching regulator" of the legal services market, and empowering it to authorize a range of "approved" or "front line" regulators to become licensing authorities for alternative business structures (ABS), alongside their existing statutory roles in regulating individual lawyers[48].

102. Each approved regulator of ABSs had to set out in the detail how it intended to implement the provisions of the Act in the form of an approved regulatory scheme before it could get approval to begin issuing licences. Approval to regulate licensed bodies was granted to the Council of Licensed Conveyancers (CLC) from October 2011, the Solicitors Regulation Authority (SRA) from December 2011, the Institute of Chartered Accountants of England and Wales from August 2014 and the Intellectual Property Regulation Board (IPReg) from December 2014.

[48] The full list of approved regulators under the LSA 2007 is listed here http://www.legalservicesboard.org.uk/can_we_help/approved_regulators/index.htm

103. The Bar Standards Board and the Chartered Institute of Legal Executives Regulation Board are both able to authorise entities comprising authorised persons (i.e. Any type of lawyer recognised under the Act and not only those regulated by them as individuals) but have not yet applied to be licensing authorities for entities involving non-lawyer ownership. The complexity of the regulatory system introduced by the Legal Services Act, both for ABS and traditional legal practices, has prompted the regulators to join forces to set up a website to explain to consumers what different type of lawyers are on offer and how to choose between them.[49]

104. The position of barristers is worth noting as there are specific provisions which apply to them. Since the Legal Services Act 2007, barristers of England and Wales are permitted to supply legal services to the public in three different ways: as a self-employed barrister, as an employed barrister or as a manager or employee of a lawyer-only body. Although the Bar Standards Board did not apply to become an approved regulator of entities until 2015, it has been, and continues to be possible for a barrister to become a manager[50] in an SRA regulated legal practice alongside solicitors, other qualified lawyers and non-lawyers. However, in these circumstances, the barrister's practice is limited explicitly to clients of the ABS.

105. The basic principles for all approved regulatory schemes for licensed bodies were set out in the Act.

- Any non-lawyer individual who is an employee or manager of a licensed body, or has a direct or indirect interest in a licensed body has a duty imposed by the Act not to do anything to cause or contribute to a breach either by the body or by an authorised person who is an employee or manager of the licensed body.

- All licensed bodies must have a Head of Legal Practice who is responsible for compliance with professional duties and standards and a Head of Finance and Administration.

- The Act gives the regulators of ABS fining powers in relation to breaches and the right to disqualify individuals from participating in any legal practice in future.

- The Act also recognises that there may be regulatory conflicts in the codes of different types of lawyers participating in the same ABS. It establishes that the rules of the licensing regulator will apply to the body regardless of the rules applying to individuals. This is relevant notably in relation to accounts rules, which require barristers using an SRA authorised entity to adhere to the solicitors' accounts rules.

- Schedule 11 of the LSA also set out the broad parameters which any licensing scheme needs to follow. This covers licensing procedure (notification process etc.), structural requirements (composition of any licensed body etc.), practising requirements (compliance, accounts, insurance etc.), suspension or revocation of licences.

106. The Act also dealt with some of the common concerns of the legal profession when contemplating non-lawyer participation in the ownership of legal practices:

[49] http://www.legalchoices.org.uk/

[50] Where 'manager' has the meaning given in section 207 LSA 2007, namely: a) a member of an LLP; b) a director of a company; c) a partner in a partnership; or d) in relation to any other body, a member of its governing body

- Section 176 reinforced the duty of a regulated person (which includes those who are lawyers ("authorised persons") and non-lawyer owners/managers or employees "to comply with the regulatory arrangements of the approved regulator as they apply to that person". This recognises that regulatory arrangements might apply differently to the different individuals participating in an ABS.

- Section 188 requires the duties of advocates and litigators to act with independence in the interests of justice in their dealings with any court.

- Section 190 states that legal professional privilege will apply to licensed bodies but only where legal services are supplied to the client by an authorised lawyer or under the supervision of an authorised lawyer.

107. The overall approach enshrined in the LSA 2007 was designed to safeguard the standards and principles of the legal profession. It did so by ensuring that legal services were only provided under the control of authorised lawyers who were held accountable through their personal duties under the Act to adhere to professional codes and statutory requirements. The practice as a whole was also held accountable both directly through its owners and managers, as well through the controls imposed on a designated Head of Legal Practice. The objective was to meet the challenge of upholding standards and protecting consumers without adopting the restrictions which had stymied NLPs in other markets.

108. The SRA, and other frontline regulators, made their own rules for ABS which were subsequently approved by the Legal Services Board in 2011. The SRA chose to apply a single regulatory regime for practice to all individuals and entities it regulated, regardless of whether they were law firms or alternative business structures. This meant that all bodies providing legal services were subject to the same standards of professional behaviour as set out in the SRA Code of Conduct 2011. They were also required to hold the same levels of indemnity insurance, contribute to the compensation fund and follow the same accounts rules. However, there were different processes involved in the formation of a legal business, depending on whether it was being set up as a traditional law firm or as an alternative business structure. Alternative Business Structures were also subject to considerably larger potential fines for any breach of the SRA's rules, compared to traditional firms.

Multi-Disciplinary Partnerships

109. Although the LSA permitted the formation of partnerships between lawyers and non-lawyers, it identified MDPs (partnerships between members of different regulated professions) as a potentially difficult type of ABS to regulate. Section 54 of the LSA attempted to outline an approach which would help to make MDPs workable. It granted powers to the LSB, by virtue of section 54(4) to act as an honest broker and arbitrate between the various regulators involved.

110. In 2009, the LSB set up a working group to consider section 54 and to draw up arrangements to facilitate the licensing of MDPs. The working group included: The Bar Standards Board, the Council for Licensed Conveyancers (CLC), the Financial Ombudsman Service (FOS), the Financial Services Authority (FSA), ILEX Professional Standards (IPS), the Institute of Chartered Accountants in England and Wales (ICAEW), the Institute of Chartered Accountants of Scotland (ICAS), the Intellectual Property Regulation Board (IPReg), the Law Society of Scotland (LSS), the Legal Ombudsman (LeO), the Legal Services Board (LSB), the National Federation of Property Professionals (NFOPP), Ombudsman Services: Property (OS), the Royal Institution of Chartered Surveyors (RICS) and the Solicitors Regulation Authority (SRA). The group drew up a Framework Memorandum of Understanding[51] which was used to help these bodies to work together in circumstances in which more than one of them was involved in regulating the same entity which was authorised to provide legal services.

111. The approach enshrined in the LSA 2007, was to prevent over-regulation of the type that had stymied NLPs in other markets. Approved legal regulators were not permitted through their licensing rules to seek to regulate non-legal work undertaken in a licensed body but this still left a problem with MDPs, since the definition of what is, or isn't legal work is not always clear. Although the SRA attempted to deal with cases that came up in a pragmatic way by granting waivers to allow solicitors in MDPs to work under supervision of non-lawyers in non-reserved services, this was regarded as a sub-optimal solution to the problem.

Box 5: Regulatory conflict with other regulatory regimes
Section 54, LSA 2007

(1) The regulatory arrangements of an approved regulator must make such provision as is reasonably practicable and, in all the circumstances, appropriate:

(a) to prevent external regulatory conflicts,

(b) to provide for the resolution of any external regulatory conflicts which arise, and

(c) to prevent unnecessary duplication of regulatory provisions made by an external regulatory body.

(2) For the purposes of this section, an external regulatory conflict is a conflict between:

(a) a requirement of the regulatory arrangements of the approved regulator, and

(b) a requirement of any regulatory provision made by an external regulatory body.

(3) For this purpose "external regulatory body" means a person (other than an approved regulator) who exercises regulatory functions in relation to a particular description of persons with a view to ensuring compliance with rules (whether statutory or non-statutory) by those persons.

[51] MoU between MDP Regulators

112. In April 2014, the SRA issued a policy paper which stated:

"Our discussions with some MDPs have shown that there are some circumstances where the authorised person (lawyer) will be involved in a minor or subsidiary role in a mixed team and will not be providing a service identifiable to the client as a legal service. We propose that we may, if appropriate in relation to the circumstances of the individual MDP, allow a non- reserved legal activity carried on by a multi professional team to be included in the external regulation exception on the licence despite the involvement of the authorised person where the other conditions are met and all of the following apply:

- *The involvement of the authorised person is subsidiary*
- *The authorised person is not providing reserved services in the same matter*
- *The client has not directly engaged the authorised person or legal team*
- *The authorised person is not carrying out a discrete piece of work that is identifiable to the client as a legal service.*
- *The authorised person's work is not separately billed to the client*
- *The authorised person is not handling client's money.".*

It went on to add that

"in these circumstances, authorised persons that are practising solicitors (and those working under their supervision) will remain SRA regulated as individuals even if the work stream that they are taking part in is not SRA regulated as a whole. Thus the SRA Principles 2011 will continue to apply. However, we do not think it practical or necessary to apply the whole SRA Code of Conduct to the work that the solicitor will be carrying out as this is likely to cause conflict with the other professional regulation. Instead we propose that (certain specific) … provisions of the Code will apply to the solicitor in this category of mixed case"

113. The implications of these proposed rule changes, which were approved by the Legal Services Board in October 2014, was that they allowed solicitors to work more flexibly within mixed multi- disciplinary teams without risk to the client. The relevance of this to the possible regulation of MDPs in Ireland is that it illustrates that regulators elsewhere increasingly perceive that they can achieve the required protection of clients, uphold professional principles and maintain standards, through individual lawyer regulation. Elaborate entity regulation schemes for alternative business structures in England and Wales are increasingly being seen as counterproductive since they reduce the benefits of introducing ABS by impacting on take-up of different models for practice.

What has been the Impact of NLPs in England and Wales?

114. On 15 March 2017, there were 735 authorised ABSs in England and Wales, according to the public registers of the approved licensing authorities. Forty-nine per cent of these ABS are regulated by the SRA and are licensed to provide a wide range of reserved services. Around 36% of ABSs are regulated by the ICAEW and can only provide probate services, 8% of ABS are regulated by the Council for Licensed Conveyancers and are only permitted to undertake conveyancing and the remaining 6% mostly undertake patent or trademark litigation and are regulated by the Intellectual Property Registration Board.

Box 6: Case Studies of MDP-type ABS

- DR Solicitors Ltd provides a 'one stop shop' for the legal needs of primary care providers. They only work with GP practices, Dentists, and other primary care providers and have deep expertise in the requisite NHS regulations and associated area of law. The firm was founded in 2013 by a solicitor and a chartered accountant and there are now 12 people working at the firm. In addition to offering legal advice the firm also provides consultancy, business advisory and training services to their clients. (http://www.drsolicitors.com/about-us/people/)

- South East Leasehold is a firm of chartered surveyors and solicitors which specialises in residential lease extensions and freehold purchases for flats (enfranchisement) in London and across the South East including Worthing, Brighton, Hove, Eastbourne, Lewes. They are regulated by the SRA and by the Royal Institute of Chartered Surveyors. (http://www.lease-extension.co.uk/services/legal-services)

- Meridien Private client LLP is a 7-lawyer ABS based in the Warwickshire in the West Midlands, which is owned by 2 solicitors and a tax planner. The firm provides services lifetime personal tax planning, technical trust advice and management of trusts, administration of estates and trust and probate disputes, contentious probate and disputes involving Wills and trusts and specialist tax planning for internationally mobile clients. (http://www.meridianprivateclient.co.uk/)

115. The Legal Services Board's assessment is that most ABSs are traditional law firms who have converted to alternative business structures ('licensed bodies'). The LSB estimate is that only around 25-30% of ABS are new entrants to the legal market. In terms of corporate form, an examination[52] of the number of ABS approved by the SRA at July 2015 revealed that 61% of ABS were limited companies, 33% were limited liability partnerships and 6% were general partnerships. Most ABS firms were already active in the legal market and took the opportunity to convert to ABS status in order to bring non-lawyers into the management structure of the firm. In many cases the non-lawyers were non-fee earning and purely engaged in management. However, there are also many examples of ABS which contain both lawyer and non-lawyer fee- earners, as shown in Box 6 below.

116. In July 2016, the Legal Services Board issued a report entitled "*Evaluation: Changes in the legal services market 2006/07 - 2014/15*" which provides a helpful summary of how ABS have impacted on the English and Welsh legal market over the past decade. Naturally, these changes cannot be attributed (or blamed) on the Legal Services Act. The impact of the financial crisis, of ongoing globalisation, technological and social change as well as changing public funding arrangements for legal advice and a growing body of legislation around compliance, have all contributed to the sector's evolution. The following developments highlighted by the LSB, the CMA and other sources are worth noting for their relevance to the debate in Ireland:

[52] Unpublished research undertaken by Hook Tangaza

- There have been positive developments in competition within the legal market since 2007 as the sector has grown substantially and overall, the market share of ABS is significant. SRA data for 2014/15 suggests that around a third the total turnover of SRA regulated entities is accounted for by ABS and most evident in the personal injury, welfare and benefits, civil liberties and employment segments of the market. Various research studies have also found that alternative business structures are around more likely to introduce new legal services than their traditional counterparts[53] [54].

- However, the impact of this on consumers has been limited to date. The consumer market in England and Wales is estimated to generate an annual turnover of around £11–£12 billion (around a third of the total turnover of the legal market). The main services sought in this market are: Conveyancing (and other property matters), Wills/probate/estate management, family matters, accident or injury claims, housing/tenant/landlord problems and employment issues[55]. The development of greater consumer buying power is hampered by limited price transparency, limited advertising and the lack of high profile comparison websites which might encourage the sort of shopping around that has grown up in other sectors. Although evidence suggests that fees for legal services have continued to rise, there is also a growing trend towards fixed fee deals which offer consumers greater certainty.

- In terms of access, the spread of ABS across the country has been, more or less, proportional to the distribution of the population, but perhaps with some overrepresentation from London and the North West. The LSB also found that the same proportion of the population was acting in 2015 as in 2006, but there was also a growth in the tendency of individuals to try to 'go it alone' rather than seeking advice. The LSB's analysis of official data suggests that some of this trend can be attributed to the application of technology to legal markets (e.g. online probate applications and commercial DIY services) but also to cutbacks in legal aid provision (i.e. an increase in litigants-in-person).

- Quality of legal services – The CMA report found no evidence of any harm caused to consumers nor a deterioration in the profession's 'core values' as had been feared. Whilst the overall volume of complaints about SRA regulated entities has increased, the record of ABS entities compared to traditional law firms is marginally better. Complaints against the former tend to be less serious (assessed based on the penalties or disciplinary measures imposed) and more complaints about ABS are resolved directly by the business itself.

117. Despite this overall picture, which suggests that there has not been radical change in the market, the ABS model has encouraged new entrants to the market, such as the examples shown in box 7, below, who may be expected to have a greater impact over time.

[53] Legal Services Board - Innovation in Legal Services
[54] Alternative Business Structures - Learning from Entities Already in the Market
[55] Competition and Markets Authority - Legal Services Market Study - Final Report, 2016

Box 7: Post Legal Services Act, 2007 – Examples of New Entrants to the legal market

Riverview Law is an alternative business structure set up by mixture of lawyers, technologists and experienced entrepreneurs. It offers fixed fee billing and long term contracts covering all non-litigation work to businesses. Originally set up to serve an SME market it has also won business from the FTSE 100. Since launching in 2012 it has grown to a team of over 100 and has now opened US offices. It has made significant investments in business processes, human capital and technology, enabling it to launch services such as its In-house Solutions, its separate technology business, and its Artificial Intelligence Partnership with Liverpool University. It also has a linked, but separate, barristers' chambers, Riverview Barristers, which also offers largely fixed price services (See www.riverviewlaw.com and www.riverviewbarristers.com)

Richmond Chambers is a barrister-only immigration specialist ABS, co-owned by two barristers and the finance director of the chambers. It controls costs and cuts overheads through use of technology and by utilising direct access to the Bar. First licensed in 2013, it now has 12 practising barristers, one pupil barrister and a number of legal associates. (see http://www.immigrationbarrister.co.uk/

Co-op Legal Services is part of the Co-op group and has been licensed as an ABS since 2012. It has 300 staff based in Manchester, Bristol and London, 55 of whom are practising solicitors. It provides fixed cost services to individuals in six areas: Probate, wills, family law, personal injury, employment and conveyancing.
(See: www.co-oplegalservices.co.uk/)

Further Reform

118. On 30 November 2015, the UK Treasury published a paper entitled '*A Better Deal: boosting competition to bring down bills for families and firms*'[56], which announced the government's intention to introduce further legal service sector reform in order to increase the propensity of new businesses to enter the legal market and to reduce the cost of legal services for consumers and small businesses. This was followed on 13 January 2016 by the launch of a study into legal services[57]by the Competition and Markets Authority (CMA), designed as part of an ongoing monitoring exercise into the effectiveness of the Legal Services Act 2007. The CMA justified this new study on the grounds that "perceptions in the sector, supported by market research (suggest) that demand in legal services is 'unmet' (i.e. that consumers may not be seeking to purchase legal services when they have legal needs)". It also cited concerns around the affordability of legal services, of service standards offered by both regulated and unregulated providers of legal services and about the complexity of the current regulatory framework. It published an interim report on the sector on 8 July 2016 and a final report on 15 December 2016[58].

119. The final CMA report made several important recommendations, notably that:

[56] HM Treasury -"A Better Deal for Families and Firms" (2016)
[57] Competition and Markets Authority, Legal Services Market Study - Statement of Scope
[58] Competition and Markets Authority - Legal Services Market, Final Report (2016)

- Action was needed to help consumers understand the price and service they will receive for legal services, the redress that is available, the regulatory status of their provider and how to compare providers. The Authority recommended that regulators should require providers to make minimum standard for disclosures on price and service provided.

- Independent price comparison and feedback platforms should be encouraged, a consumer education hub should be developed and government should review the case for extending redress to consumers using unauthorised providers.

- The CMA suggested some short-term action on regulation. In particular, it highlighted the need to reduce regulatory costs:" We recommend that regulators continue existing work to reduce costs relating to professional indemnity insurance (PII), training and codes of conduct". It also recommended further liberalisation of the ABS model, which would allow solicitors regulated on an individual basis, greater freedom to provide legal services to clients from businesses that did not need to be licensed as ABS because they were not providing reserved activities.

- In the longer term, the CMA suggested a more radical rethink of the regulatory framework in England and Wales: "Regulation should be proportionate and its costs justified on the basis of risk assessment. It should focus on activities and risks to consumers, with a shift away from regulation attaching solely to professional titles. An implication would be that some activities of currently unauthorised providers may fall within the regulatory net".

120. Meanwhile, the Ministry of Justice issued a consultation on 7 July 2016[59] which looked at the proposal for some detailed amendment to the Legal Services Act which had been requested by the Legal Services Board and the front-line regulators, prompted by the 2015 Treasury "Better Deal" paper. This consultation focused on some practical amendments to the LSA 2007 regime which were intended to make it work better, which included:

- The simplification of the procedural and structural requirements placed on ABS applicants, in particular the prior checks on individuals, and PLC and group structures involving investors with certain material interests.

- Removal of explicit consideration of each ABS applicant's compliance with the regulatory objective of improving access to justice. This is not perceived to offer any tangible value.

- Removal of the reporting requirements placed upon the Heads of Legal Practice and the Heads of Legal Finance and Administration within ABS.

- Simplify and enhance the enforcement powers the LSB are endowed with when dealing with ABS.

[59] Legal Services: removing barriers to competition Consultation on proposals to make amendments to the Legal Services Act 2007, Ministry of Justice (2016)

Lessons from the England and Wales Experience for Ireland

121. There are some interesting observations to draw out of the experience of England and Wales for Ireland:

- Unlike many other jurisdictions that have experimented with MDPs, England and Wales has permitted the greatest introduction of new entrants to the market. These new entrants have brought new services but do not yet appear to have made a material difference to the consumer experience of legal services.

- The 'traditional legal sector' may have seen its overall share of a growing market eroded by ABS, but since around 2/3^{rds} of ABS were traditional practices which had converted, the solicitor/barrister share of the market has been much less affected.

- When it was designed, the English and Welsh regulatory model for ABS offset its liberal approach to the share that non-lawyers could have in a legal business by imposing heavy, and expensive, compliance regulation. Although this has not deterred ABS from entering the market, it has undoubtedly slowed down the pace of change. As in most other jurisdictions in which MDPs have been implemented, the regulatory model has been revisited to improve take-up. This has meant a renewed emphasis on individual ethics and responsibility rather than an approach which appeared to lay most of the burden of compliance with professional standards on the firm's Compliance Officer for Legal Practice (COLP – referred to as the Head of Legal Practice (HOLP) in LSA 2007).

- The company structure chosen for ABS practice is also instructive for Ireland, since only a small proportion (6%) of ABSs utilised the general partnership structure, which might point to some underlying incompatibility between that structure and non-lawyer ownership.

- Although the effects on the market for legal services overall has been somewhat limited, due to the small number of ABS in comparison to the total number of law firms, nonetheless, where there is evidence of an effect, it is positive. ABS have deeper pockets to invest in advertising, which help to promote consumer access to legal services and appear also to have a greater tendency to invest in technology and processes that enable them to offer fixed price services.

(b) Scotland

122. Scotland has a long experience of solicitor-run mixed legal and estate agency or legal and financial services practices but it was only through the Legal Services (Scotland) Act 2010 that moves were first made to allow formal partnerships with other professions and some degree of non-lawyer ownership of legal businesses. Scottish solicitors have nonetheless been permitted to practise through incorporated practices since 1985[60] and as limited liability partnerships since 2001[61].

123. The Legal Services (Scotland) Act 2010 allows solicitors to provide legal services via a range of previously prohibited business models, including partnerships or incorporated practices which are jointly owned with "non-qualifying investors", who can hold up to 49% of the equity. Qualified investors, who must hold at

[60] See the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985

[61] Following the UK Limited Liability Partnerships Act 2000 and the Limited Liability Partnerships (Scotland) Regulations 2001

least 51% of the ownership of a business licensed to provide legal services, include not only Scottish solicitors and lawyers from other jurisdictions but also other regulated professions including various types of accountant, architects, actuaries and surveyors. The Act was intended to increase choice for those running law firms, adding to the option of traditionally structured, wholly owned solicitor practices.

124. The Act set out very similar regulatory objectives and professional principles to those included in the LSRA 2015. The professional principles were explicitly applied through the legislation to regulated businesses and to all legal professionals practising within it. The duty contained in the Act for a licensed provider of legal services to adhere to the professional principles was not applied to any non-lawyer individuals within the business but the Act included a duty (Section 66) on non-lawyer owners not to act in a way that was incompatible with the regulatory objectives or professional principles, or to interfere in the ability of the solicitors in the practice to fulfil their duties. Undue influence was explicitly flagged as a particular type of interference.

125. The Act also required the appointment of a Head of Legal Services and a Head of Practice with responsibilities that were slightly different to the English Head of Legal Practice and Head of Finance and Administration. The proposed approach in Scotland was that the Head of Legal Services should be responsible for the adherence of the practice to professional principles and obligations, whilst the Head of Practice had more general duties under the Act to ensure adherence to licensing conditions overall. Whilst the Head of Legal Services had to be a solicitor, the Head of Practice only needed to be 'fit and proper' and 'suitably qualified'. Interestingly, the Act provided that a Practice Committee could be appointed in place of a Head of Practice, to perform the role of ensuring that the business was meeting its obligations under the Act.

126. The Act also empowered Scottish Ministers to designate approved regulators of licensed bodies once suitable regulatory schemes had been designed. Regulatory schemes for new licensed bodies in Scotland were required by the Act to contain rules covering:

- **(a)** The procedure for becoming a licensed provider, including:
  - the making of applications,
  - the criteria to be met by applicants
  - the determination of applications,
  - the issuing of licences.
- **(b)** the terms of licences and attaching to licences of conditions or restrictions,
- **(c)** The (i) renewal of licences, (ii) circumstances in which licences may be revoked or suspended
- **(d)** licensing provision affecting non-solicitor investors in licensed providers,
- **(e)** licensing fees that are chargeable by the approved regulator.

127. Although the Act passed in late 2010, and the Law Society of Scotland applied to become an approved regulator of licensed bodies in 2012, agreement has not yet been reached with the Government on the final shape of the licensing rules. The reasons for this would appear to lie in the difficulty of extending the Law Society's professional rules and standards for individual solicitors to licensed entities, as well as provisions of the Act dealing with potential conflict of rules between different regulated professions which could make existing solicitor practices which combine estate agency services more difficult to operate. There are therefore no non-lawyer businesses which have yet been licensed in Scotland, however, there is evidence of demand for such licences should the provisions of the Act ever enter into force[62].

[62] http://www.scottishlegal.com/2016/01/25/lawyers-attack-failure-to-modernise-legal-services-market-in-scotland/

(iv) United States

128. Legal services are regulated on a state-by-state basis in the United States and each State Supreme Court may make its own rules about legal practice. Over time, most States, except for California, have adopted a common approach, basing their rulemaking on the American Bar Association's (ABA) Model Rules. Periodic consideration of non-lawyer practice in the United States has therefore been led by the ABA. The most recent examination of the issues was undertaken by the ABA Commission on the Future of Legal Services (2014-16). The report from this Commission noted that *"The Model Rules of Professional Conduct prohibit nonlawyer ownership of law firms, nonlawyer management of law firms, and sharing fees with nonlawyers (except under very limited circumstances). Almost every U.S. jurisdiction follows this restriction".*[63]

129. The Commission on the Future of Legal Services did not make any recommendations on non- lawyer ownership to the ABA House of Delegates, which determines the contents of the ABA Model Rules, but it did submit a policy resolution which was passed, recommending *"that each state's highest court, and those of each territory and tribe, use clearly identified regulatory objectives to help (1) assess the court's existing regulatory framework and (2) identify and implement regulatory innovations related to legal services beyond the traditional regulation of the legal profession".*

(a) Washington DC

What kind of NLPs are permitted, since when, and what has the take-up been?

130. Washington DC has permitted lawyers and non-lawyers to enter business together since 1999, when the DC Court of Appeals accepted the recommendation of the DC Bar Board of Governors to allow MDPs. The DC rules contain no restrictions on the professions which can partner with lawyers, however, the sole purpose of the MDP must be the 'provision of legal services' to clients, and individual non-lawyers must provide professional services which assist the organization in providing legal services to its clients. There are no requirements for lawyers to have the controlling financial interest or voting rights in the law firm, but it is not permissible for a nonlawyer merely to invest in an MDP without participating in the delivery of services. MDPs may take any of the forms of business co-operation permitted to lawyers, which include general or limited liability partnerships or limited liability companies.

131. The take-up of MDPs in Washington DC has been low, although exact numbers are unavailable because there is no registration scheme for such bodies. The low take-up is often attributed to the fact that many DC firms have offices or are headquartered in other US States which maintain a prohibition on fees-haring with non-lawyers. This therefore acts as a barrier on wider take-up of this model in DC itself.

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63 https://www.americanbar.org/content/dam/aba/images/office_president/alternative_business_issues_paper.pdf

Nonetheless, there are examples of niche law firms who have added non-legal practices to their services, notably around lobbying and public affairs.

How are they regulated?

132. The model for regulating MDPs is very simple in comparison with the elaborate regulations that have been put in place in the UK and (to a lesser extent) in Australia. Rule 5.4(b) of the DC Bar Rules of Conduct requires that:

- *"All persons having such managerial authority or holding a financial interest undertake to abide by the [D.C. Bar] Rules of Professional Conduct";* and that

- *"The lawyers who have a financial interest or managerial authority in the partnership or organization undertake to be responsible for the nonlawyer participants to the same extent as if nonlawyer participants were lawyers".*

133. Interestingly, not long after adoption, when some initial experience of MDPs was becoming evident, the DC Bar modified its rules in relation to conflicts of interest. The modified approach no longer prohibits lawyers from participating in the fees generated by non-legal work, but simply requires that clients and potential clients be given sufficient information to decide for themselves how and by whom they wish to be represented as to both legal and non-legal work.

What has been the Impact of NLP in Washington DC?

134. The stated view of the District of Columbia Bar is that the introduction of MDPs has not resulted in any damage to the public or to the profession. They have also noted that it has not led to a significant increase in the non-lawyer partners of law firms. They attribute this 'failure' to the restrictions that continue to exist in other US States.

Box 8: Case Study - Washington DC- Eisenstein Malanchuk LLP

Eisenstein Malanchuk LLP is an innovative, multidisciplinary law office, where lawyers and non-lawyers work together as partners. The firm was set up in 2002 and the largest part of their practice involves representing clients in insurance claims for large liability exposures, including environmental clean-up costs, asbestos and toxic tort payments.

They claim that their multidisciplinary knowledge and experience makes them highly efficient. Their approach to recovery utilises their skills and experience in negotiation and mediation and they focus on resolving claims on an expedited schedule and without litigation.

There are six people in the firm with a range of specialist backgrounds: an expert insurance lawyer, a financial modelling expert, professionals from the insurance industry as well as a former University Professor who specialises in environmental matters. Typically, their clients are large corporates, but they also represent not-for-profits, towns, municipalities and individuals.

Source: http://www.em-law.com/whoweare.html

135. Amongst the unknown number of MDPs in existence, there are law firms providing lobbying, real estate, financial consulting and other related services. At the very least, therefore, the introduction of MDPs has enabled some degree of one-stop shopping for legal services in DC. An example of the sort of practice that has been made possible by the MDP rule is shown in box 8.

(v) Singapore

136. On 18 November 2015 Singapore established a new Legal Services Regulatory Authority as a department under the Ministry of Law which would act as a co-regulator of legal practice alongside the Law Society of Singapore. This new authority was established on the recommendation of the Committee to Review the Regulatory Framework of the Singapore Legal Services Sector ("the committee") and following the passage of the Legal Practice Act 2014 (LPA 2014). The committee's review also prompted some other changes to regulation focused, on law firm (or "entity" regulation) and with the objective of reinforcing Singapore's position as an international hub for legal services.

137. The legal profession in Singapore is fused and practitioners are formally referred to as "Advocates and Solicitors" or more colloquially as "lawyers". Legal practice in Singapore have traditionally been managed and owned only by lawyers through structures which are limited in form to sole proprietorships, partnerships, LLCs and LLPs. However, the new regulatory framework, established in the LPA 2014, allows non-lawyer employee ownership of up to 25%.

138. This model contains the following features:

- Only individuals can own a stake in an LDP;
- Any non-lawyer employee who wishes to become an owner, partner, director or shareholder or share in the profits of a law firm, must first be approved by the LSRA as an "Authorised Person". Approval as an authorised person is subject to the employee fulfilling "suitability" and "fitness" tests, which are designed to mirror the current requirements for issuing practising certificates to lawyers
- The LSRA is permitted to register some other persons in the firm in order to prevent conflicts of interest.
- Certificates of Registration for Registered Non-Practitioners may be valid for 1, 2 or 3 years.
- The Legal Profession (Regulated Individuals) Rules 2015[64] set out the events which require notification to the Authority (e.g. change in ownership of non-lawyer), the fees to be charged and other registration conditions.
- Authorised non-lawyers are subject to the same professional standards and ethics rules as their lawyer counterparts and are subject to the same disciplinary process in the event of a breach.
- The Court is empowered to make the following orders against any individual non- lawyers in breach, namely imposition of a fine or other penalty or require the divestment of the individual's interest(s) in the LDP.
- The LDP is also subject to the same business criteria as with other law firm entities operating in Singapore. If it is found to have breached its licence conditions, the management of the LDP is subject to a disciplinary process.

[64] Legal Profession (Regulated Individuals) Rules 2015

139. One interesting aspect of the Singapore model which stands in sharp contrast to the regulatory systems adopted for individual non-lawyers elsewhere is that a much clearer distinction has been made between the regulation of the law firm entity (which is governed by business and licensing regulation) and professional ethics and standards. Powers of regulation are shared between the LSRA, which is responsible for licensing entities, foreign lawyers and non-lawyers, and the Law Society of Singapore which is responsible for regulating individual advocates and solicitors of Singapore and maintaining the Professional Conduct Rules.

140. The Committee to Review the Regulatory Framework also considered the issue of whether more significant non-lawyer ownership should be permitted, as in Australia and the UK. It concluded that

> "There is no pressing need for the Singapore market to take a "big bang" approach in the area of ABS. Singapore should not be a first mover in this area, and any shift should be made having close regard to developments in other jurisdictions, and done in a graduated way".

141. Any future decision about whether, or not, to introduce a more radical approach to non-lawyer ownership is likely to be driven for Singapore by its strategic objective of being a business hub for South East Asia. The committee recommended that the issue be kept under review and considered again in 2018.

vi) Hong Kong

142. Hong Kong legislation prohibits solicitors from sharing profits with those not qualified in law. Barristers in Hong Kong are not allowed to enter into partnership and must work as sole practitioners, although they can group together into a set of Chambers with a view to sharing overheads – but not profits. Hong Kong's lawyers are cautious about multidisciplinary practices, but at the same time the city's law firms acknowledge that they may be getting left behind by accounting firms as they have been actively stretching beyond their traditional scope of accounting and auditing services to cover a diversified range of consultancy work including tax, mergers and acquisitions, business recovery, capital markets, risk controls, visa solutions and human resources. The Law Society of Hong Kong is open-minded about the potential for non- lawyer involvement in law firms, whilst there is no debate of the topic by the Hong Kong Bar Association.

143. The Law Society of Hong Kong set up a Working Party to look at many issues, including that of 'Alternative Business Structures'. The Working Party conducted studies on ABS and various other forms of legal practice adopted in overseas jurisdictions including legal disciplinary practice (legal practice with participation by non-lawyer managers) and multi-disciplinary practice (integrated professional practice). In 2013 the Working Party delivered their report[65]. The committee saw benefits to law firms being able to provide one-stop services and cited the possible expansion of the legal market and provision of value added services to clients amongst these. But it also recognised the potential problems for the core values of the legal profession which might be posed by passive non-lawyer investment in legal services providers.

[65] Study of the Development of the Legal Profession in Qianhai, Hong Kong Law Society 2013

144. The Report thus recommended that, as a first step, partnership associations between Chinese and Hong Kong lawyers in Qianhai, should be allowed to operate as a legal disciplinary practice ("LDPs"), with non-lawyer partners holding up to 25% of the equity in such businesses. The committee also noted that Hong Kong had just legislated to introduce limited liability partnerships[66]. The committee argued that an LDP-model of practice would widen the range of services that could be provided to clients, and helps to retain non-lawyer talent by opening up partnership prospects to non-lawyers, whilst also retaining control of the legal practice by qualified legal practitioners. The report was welcomed by the Law Society[67], however, as yet, none of the recommendations have been adopted and there is no indication as to when, or if, this may happen.

vii) New Zealand

145. The practice of law in New Zealand is governed by the Lawyers and Conveyancers Act 2006 (LCA 2006). In New Zealand, all practitioners are admitted to the High Court of New Zealand as barristers and solicitors and no person may be admitted as a barrister or solicitor only.

146. Barristers and solicitors are not permitted to practise in partnership with members of other professions. This is recognised by the prohibition on income sharing between lawyers and non- lawyers in relation to the provision of regulated services (s 7(3) of the LCA). Such income sharing amounts to misconduct. There is a statutory exception to this in respect of Patent Attorneys (see LCA (Lawyers: Income Sharing with Patent Attorneys) Regulations 2008). Lawyers must therefore take care to ensure that any arrangement with patent professionals does not infringe this rule.

147. In 2014, the New Zealand Law Society reported that it had been receiving an increasing number of enquiries from its members about the possibility for them to provide both regulated and non-regulated services in association with other professionals. The Society responded with an article which clarified the regulatory position and highlighted examples of the types of collaborative arrangements which were likely to meet regulatory requirements. These included:

- *A lawyer practising in a law firm who provides legal services and also complementary non-regulated services directly to clients (provided that the requirements of rules 5. 5 and 5.5.1 of the Lawyers Rules of Conduct and Client Care[68]:*

> *"Conflicting business interests*
>
> *5.5 A lawyer must not engage in a business or professional activity other than the practice of law where the business or professional activity would or could reasonably be expected to compromise the discharge of the lawyer's professional obligations.*
>
> *5.5.1 Where a lawyer or the lawyer's practice provides, or intends to provide to clients, services other than regulated services, the services must—*
> *(a) be associated with the provision of regulated services; and*

[66] http://www.doj.gov.hk/eng/public/llp.html
[67] See, for example: https://www.lawgazette.co.uk/practice/hong-kong-ponders-abs-model/5037620.article and http://www.hk-lawyer.org/content/presidents-message
[68] NZ Lawyers Rules of Conduct and Client Care, 2008

(b) be provided by the lawyer or the lawyer's practice or by an entity in which the lawyer or the lawyer's practice has a controlling interest."

- *A law firm working closely with a related non-law firm organisation. Legal staff should be employed only by the law firm and provide legal services through the law firm to clients of the non-law firm. Care would need to be taken to ensure the arrangement did not create any "income-sharing" or conflict of interest issues. Lawyers in this situation also need to manage their obligations of confidentiality to clients and be aware of the need to protect and preserve privilege.*

- *A non-law firm which employs an "in-house" lawyer to assist it to provide legal services which are not within the "reserved areas" for lawyers as defined in s 6 of the LCA. In such an arrangement, the "in-house" lawyer cannot provide services directly to clients (ss 9-10 of the LCA) and needs to ensure that no lawyer-client relationship arises between the lawyer and those who receive the legal services (s 10(4) of the LCA).*

- *A secondment arrangement under which a law firm provides employed lawyers to a non-law firm for a period by way of a secondment. The secondment arrangement should be structured to avoid any income sharing issues. Employed lawyers cannot work on "secondment" as contractors (i.e. under a contract for services) to the non-law firm because a contractor must be entitled to practise on own account.*

148. There is no evidence of any more recent debate around changing the regulations to allow partnerships between lawyers and other professionals/non-lawyers.

viii) South Africa

149. South Africa's legal profession is currently made up of both barristers and attorneys, and dual-qualification across these separate professional categories is not permitted. In 2014, the South African Parliament passed the Legal Practice Act (LPA 2014) after more than a decade of discussion about reform in the legal sector. The reform process was driven primarily by the declared need to make the legal profession in South Africa more representative of its population, and more accessible to the public.

150. The new Act makes major changes to the regulatory architecture for lawyers in South Africa. It will introduce a new, single regulatory body -the South African Legal Practice Council (SALPC) – which will enforce a single code of conduct for all lawyers and oversee disciplinary actions against practitioners. Day-to-day regulatory activity will take place through the existing provincial law societies, who will divest themselves of representative functions and become purely regulatory in nature.

151. The Act reiterates the current state of play in relation to business structures available to South African lawyers: Advocates can only practise as sole practitioners, limitation of liability is prohibited, and only South African attorneys may be partners in South African law firms. The relevant passages of the LPA 2014 are set out below:

Extracts from the South African Legal Practitioners Act, 2014

Section 34 (6), Legal Practitioners Act 2014

(6) Advocates may only practise—

(a) for their own account and as such may not make over to, share or divide any portion of their professional fee whether by way of partnership, commission, allowance or otherwise;

(b) as part of a law clinic established in terms of subsection (8);

(c) as part of Legal Aid South Africa; or

(d) as an advocate in the full-time employment of the State as a state advocate or

Section 34 (7), Legal Practitioners Act 2014

A commercial juristic entity may be established to conduct a legal practice provided that, in terms of its founding documents—

(a) its shareholding, partnership or membership as the case may be, is comprised exclusively of attorneys;

(b) provision is made for legal services to be rendered only by or under the supervision of admitted and enrolled attorneys; and

(c) all present and past shareholders, partners or members, as the case may be, are liable jointly and severally together with the commercial juristic entity for—

(i) the debts and liabilities of the commercial juristic entity as are or were contracted during their period of office; and

(ii) in respect of any theft committed during their period of office.

152. During the passage of the LPA, the issue of other forms of ownership was raised by the South African Competition Commission who made the following submission:

"The Commission is of the view that the prohibition on multi-disciplinary work does not take into account recent development where law firms provide a one-stop service providing legal advice and working with other non-legal professions. As much as the Commission recognizes the need to protect the integrity of the legal profession, growing synergies between the legal profession and other relevant associated professions must be accommodated, properly recognized and regulated. The Bill must provide for defined modalities and the rules under which multi-disciplinary practices can evolve. Provisions relating to the appropriate regime to allow other legal professionals like paralegals to offer their services could also be provided for in the Bill.

The Commission recommends that section 6(5)(i) of the Bill that provides that the Council must advise the Minister on multi-disciplinary legal practices with the view to promoting legislative and other interventions on multi-disciplinary legal practices should be expanded to expressly provide for limited forms of ownership with the majority ownership by legal practitioners so to safeguards the public from fraudulent conduct by non-legal professionals".

153. This amendment was not accepted and so the LPA 2014 does not provide for MDPs.

ix) The Rest of the European Union

154. Across the rest of the European Union the picture in relation to involvement of non-lawyers in the ownership and management of law firms is mixed, and more nuanced than is sometimes suggested. A recent report[69] from the European Commission summarised the state of play in the EU-28 and called on all Member States to assess their legal form and shareholding requirements, any rules prohibiting the joint practice of law and other economic activities, and restrictions on multidisciplinary practice.

155. Some EU Member States, notably Bulgaria and the Czech Republic, are very conservative on issues of lawyer ownership, including on limited liability structures. Whilst in others, prohibitions are less absolute. In Finland, for example, it is possible for the Bar Association to grant a waiver of the requirement that the shares in lawyer limited liability companies must all be owned by advocates. There are also several Member States in which non-lawyer participation in the ownership of law firms is more structured, even if it is less permissive than in the United Kingdom. The main examples of these are described in more detail below.

(a) Denmark

156. The rules of the Danish Bar and Law Society, following the Danish Administration of Justice Act of 2007, permit an advokat to practise law as a sole practitioner or in a grouping of lawyers. Such a grouping may be in various forms of general or limited partnership, or, since 2007, in the form of a professional corporation. Further reforms introduced in 2015[70] allowed lawyers and law firms to establish holding structures. However, since the only permitted object of a professional corporation of lawyers is to practise law, multidisciplinary partnerships are, by default, not permitted.

157. Professional corporations also impose other restrictions on practice structures. Only up to 10% the equity can be owned by non-lawyers and this possibility is only open to employees actively working in the corporation, who must also pass a special test (Order No. 1426 of 11 December 2007[71]). This 'Partner Test' is organised by the Danish Bar and Law Society at least once a year and covers "rules of special importance to the profession of lawyer". Any non-lawyer who owns shares in a Danish law firm has a duty to sit the next available test after acquiring shares in the company. If the candidate fails the test on two occasions then they are required to sell their shares. The Danish Code of Professional Conduct applies to all owners in Danish law firms whether they are lawyers or not. As at 2017, there are currently 5 Danish law firms who have one non-lawyer owner. Two of the non-lawyer individuals concerned however are expected to qualify in the near future as Danish advokater, which will reduce the number of law firms with a non-laywer to three[72].

[69] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Reform Recommendations for Regulation in Professional Services Brussels, 10.1.2017 COM(2016) 820 final

[70] Danish Administration of Justice Act 2015

[71] www.advokatsamfundet.dk - rules

158. In 2014, a joint committee was set up by the Danish government and the Danish Bar and Law Society to examine whether changes in the regulation of the legal profession could create more competition and lead to lower prices for legal services. The independent research organisation conducting the study was also asked to assess the advantages and disadvantages of liberalising the legal profession further and to look at the impact of relaxing the rules of non-lawyer ownership in Danish law firms.

159. The report[73] found that:

- The legal services market was already very competitive and quality was more important than price for Danish consumers.

- The researchers concluded that an amendment of the regulation on non-lawyer ownership would have little impact. Although the 10% non-lawyer ownership existed there were very few examples of it being used. In fact, only one example was evident by September 2014. This was a law firm, Accura, which had 27 partners and 175 employees and which appointed a non-lawyer partner in 2011.

160. They also concluded that whilst there seems to be little appetite for an increase in non- lawyer ownership there also appears to be little risk in increasing the proportion of non-lawyers as internal owners as long as lawyers retained majority control of the law firm.

(b) Germany

161. In Germany, lawyers ("Rechtsanwälte") are permitted to practise as sole practitioners, in general or limited partnerships and in corporate bodies. Lawyers are also permitted to form MDPs with German patent attorneys (*Patentanwalt*), tax consultants (*Steuerberater)*, tax agents (*Steuerbevollmächtigte*), auditors or certified accountants. Partnerships with notaries are also permitted under slightly more limited conditions. These other professionals must be practising in Germany and each professional must observe his or her own code of conduct[74].

162. Paragraph 59e of the Federal Lawyers Act (BRAO) requires that the majority of the shares and voting rights in any MDP must be held by the lawyers and corporate bodies are not permitted to hold shares in law firms. Paragraph 59f further states that the majority of the managing directors of a law firm must be lawyers, other managing directors may only come from the legal professions of other countries or from the list of permitted German professions. The Act also stipulates that the independence of the lawyers in the firm may not be constrained by their partners through instructions or contractual obligations.

[72] Source: Advokatsamfundet/Danish Bar and Law Society

[73] Competition and Regulation of the Legal Sector in Denmark, Copenhagen Economics (2014)

[74] Professional Code of Conduct for Patent Attorneys (*Patentanwaltsordnung*), the Tax Consultancy Act (*Steuerberatungsgesetz*) and Professional Code of Conduct for Auditors (*Wirtschaftsprüferordnung*)

163. In practice, the inherent difficulties of marrying up professional obligations between accountants and lawyers have made such partnerships impossible. It is however, very common for larger German firms to contain *Steuerberater* and *Patentanwalt* and this makes it very difficult to estimate the overall number of MDPs in Germany with any certainty. An example, of the sort of MDP that exists is shown in Box 9.

164. Until recently, MDPs with other regulated professions, beyond the limited permitted list, were prohibited. However, in February 2016, the German Constitutional Court declared that the prohibition of professional partnerships between lawyers and physicians and pharmacists should be struck down. Professor Matthias Killian of Cologne University has produced a thorough and extremely useful analysis of this judgment[75] which contains a number of points of particular relevance to the current discussion in Ireland on how to regulate MDPs:

Box 9: Case Study – A German MDP - Specialist Compliance for corporations

Pohlmann & Company is the first interdisciplinary law and consulting firm for Corporate, Compliance & Governance, also offering specialized legal advice in the fields of environmental and real estate law.

This is a seven partner firm consisting of four lawyer partners and three management consultants specialising in compliance systems, corporate governance and environmental risk management

http://www.pohlmann-company.com/en/

- Firstly, the Constitutional Court maintained that, although the restrictions in Section 59 of the BRAO served a legitimate purpose in protecting the core professional duties of a lawyer, they were disproportionate to the public interest objective they were aiming to serve.

- Secondly, it was unrealistic to require an absolute ban on the sharing of information in an MDP. The Court also held that it was both in the interest of clients of an MDP and reasonably to be expected by them, that information would be shared between the lawyers and non- lawyers in the practice, otherwise the advantages of a multidisciplinary firm would be undermined.

- Thirdly, the Court pointed out that any form of joint practice, even with other lawyers carried a risk to professional independence. The only way of guaranteeing unfettered independence would be to ban any form of joint practice. The Court, suggested that it was entirely possible that the less the professions involved in an MDP had in common, the less risk they would be likely to pose to each other in terms of interference in the way in which they conducted their respective professions. Moreover, given that the BRAO applied the lawyers' code of conduct to non-lawyer partners in an MDP, this should be sufficient to protect the independence of lawyers practising in that MDP.

165. The German Federal Ministry of Justice is now considering potential statutory change, given that there are other regulated professions which are affected but not covered by the Constitutional Court's judgment. This is unlikely to be a quick reform given German elections in 2017, and in any case, a 2015 survey of the German legal profession[76] suggests that there is no strong interest in the MDP model.

[75] Matthias Kilian (2016) All hail the MDP: the German Federal Constitutional Court paves the way for multidisciplinary service firms, Legal Ethics, 19:1, 163-168,
[76] Matthias Kilian, Berufsrechtsbarometer (Anwaltverlag, 2015), 69

Apparently, 56% had no interest in participating in an MDP, whilst 34% had no strong views and only 10% were interested in the idea.

(C) Italy

166. In Italy, there has been no prohibition against MDPs for since 1939 (Law No. 1815 of November 23, 1939). This has more recently been updated by regulation 247/12 dated 31 December 2012, which now governs the Italian Legal Profession[77], and article 4 of this regulation is concerned with multidisciplinary practices, it provisions on this point state that:

- Participation in an association between lawyers and other professionals cannot 'compromise the independence, freedom and the intellectual independence of the lawyer.
- A list of associations between lawyers and other professionals must be maintained by the local Bar Council.

167. Professionals participating in a multidisciplinary association must belong to the following categories and be members of these professional associations and bodies: Order of agronomists and forest experts; of architects, planners, landscape architects and conservators; Order of Social Workers; Order of Actuaries; National biologists order; Order of Chemists; Order of Chartered Accountants and accounting experts; Order of Geologists; Order of Engineers; Order of food technologists; Order of labour consultants; Order of surgeons and dentists; order of veterinary surgeons; Order of Psychologists; Order of customs agents; College of land surveyors and experts agricultural graduates; College of agro and agro-technical graduates; College of industrial experts and graduate industrial experts; College of surveyors and land surveyors graduates. This list of authorised professionals was only updated in 2016[78], prior to that the list was much more restrictive and allowed Italian lawyers to go into partnership with tax advisers, accounts and notaries only.

168. In the autumn of 2011, the government passed the Legge di Stabilità (the Stability Law), which aimed to further liberalise the Italian legal sector. Amongst the new regulations were provisions for alternative business structures and the possibility for law firms to form companies with up to 33 per cent non-lawyer ownership.

169. Despite MDPs being permitted for a long time in Italy they have so far only really been used by accountants/tax advisors, economists and lawyers working in partnership. This may change now that the list of permitted professionals with whom lawyers can enter partnerships has been increased. Commentators claim that MDPs have not had a bigger impact on the legal market as they were held back by the fact that legislation that did not permit lawyers to practise in corporate form with non-lawyers (as distinguished from partnership form).[79]

[77] http://www.gazzettaufficiale.it/eli/id/2013/01/18/13G00018/sg
[78] Law of 31 December 2012, n. 247
[79] Reserving the Core Values of the American Legal Profession - The Place of Multidisciplinary Practice in the Law Governing Lawyers, 2000, New York State Bar Association

(d) Netherlands

170. MDPs have been permitted in the Netherlands since 1993. Under article 5.4 of the Regulation of the Legal Profession[80], the Netherlands Bar (Nederlandse Orde Van Advocaten (NOVA)) allows MDPs between lawyers and a few specified professions recognised by theGeneral Council of the Bar. MDPs are restricted to advocates and members of the Royal Notarial Fraternity, the Order of Patent Agents and the Netherlands Order of Tax Advisers. Lawyers, Patent Agents, Tax Advisers and Notaries are permitted to form general or limited liability partnerships. The professionals are subject to disciplinary action, similar to that of the lawyer.

171. Cooperation between these professions is deemed to be permissible because they are not judged by the Bar to endanger the freedom and independence of lawyers, or risk conflicts of interest. They are also professions which involve similar academic and practical training. And finally, that all the professions involved are engaged in some form of practice of law.

172. NOVA has also set out further requirements for lawyers who are entering into partnerships with non- lawyer professionals. These include:

- The requirement that a lawyer involved in a multi-disciplinary collaboration should always be able to comply with the Bar's rules and regulations. If there is a conflict of these rules, the lawyer must adhere to the Bar's code of professional ethics and cannot be held responsible for any problems that this may cause the other professionals in the partnership in complying with their own rules of professional conduct.

Box 10: Case Study: The Netherlands - V.O. Patents & Trademarks

V.O. is a sixteen-partner specialist intellectual property office based in the Netherlands which supports midsize innovators, multinationals and technology start-ups.

The partnership brings lawyers, together with patent attorneys and trademark specialists who are qualified chemists, physicists, life scientists and electronic and mechanical engineers.

The firm provides the full range of IP services: drafting and prosecuting patent applications all over the world. They help their clients to defend or attack patents; conduct infringement suits and act in opposition and cancellation proceedings. They also offer other services such as IP audits and Supplementary Protection Certificates for pharmaceuticals and agrochemicals.

- Lawyers in MDPs who are acting on a matter with another professional must open their own files and archive separately from those held by the other professionals. This is to protect legal privilege and the confidentiality of the client's information in circumstances in which the other profession(s) involved in the matter do not have the concept of privilege or the same confidentiality requirements, or their interpretation is different.

- Lawyers in MDPs who are acting on a matter with another professional must keep a record of all the letters and documents that they have brought to the attention of the other professional. These documents would then be considered to be privileged as they originate from the lawyer and are therefore protected.

173. The possibility for wider MDPs in the Netherlands was raised in the early 2000s, when the prohibition on partnership between lawyers and accountants was challenged. The case was ultimately decided by the European Court of Justice, which found that the Dutch Bar's regulations were not excessive nor contrary to the European rules of competition. Ernst & Young has nonetheless, obtained permission from the

[80] Regulations on the Legal Profession, Verordening op de Advocatuur, NOVA

Dutch Bar for accountants to profit share in its law/tax advisory partnership in the Netherlands. However, to avoid breaching Dutch Bar rules the firm's accountants will have no say in the organisation of the legal side of the business. Furthermore, accountants working for the tax law partnership will not be able to vote on the firm's future direction, although they will share in the profits.

(e) Spain

174. Spain allows MDPs and they have been part of the legal marketplace for a significant period. Although historically MDPs were neither expressly permitted, nor prohibited in Spain and no mention was made of them in the General Statute for Lawyers (Estatuto General de la Abogacia Espanola) of 1982, there is a history of MDPs in this market. The big five (in those days) accounting firms were all active in the Spanish market in the 1990s and in April 1997 one of Madrid's largest law firms, J & A Garrigues merged with Arthur Andersen's Spanish tax and law network to form Garrigues & Andersen. Although this merger was reversed after the collapse of Enron and the Andersen network, the website of the, now, independent firm Garrigues states:

> *"No one at Garrigues would dispute the positive outcome of the 1997 merger. The figures speak for themselves: in the five years following the merger, billings at Garrigues were up 130%, while professional headcount had increased twofold (from 500 to more than 1000)".*

175. In 2001, a review of the Spanish lawyers' statute led to the inclusion of an explicit provision on MDPs. Article 29 of the General By-Laws of Spanish Lawyers (Royal Decree 658/2001) states that lawyers can associate with other compatible liberal professions on a multi-professional cooperation basis, as long as this does not undermine the ability of lawyers to practise as independent representatives before any jurisdiction or Court. The following are some additional conditions on their operation:

- The firm's non-lawyer services should be other professional services which are complementary to those provided by lawyers.
- The rules and conditions which apply to legal practice should be applied equally to multi- professional legal practices, with minor exceptions. Effectively, therefore, law firms and MDPs are to be treated/subject to the same controls. MDPs can also take all of the same legal forms as law firms, including incorporation.
- A special register is held by the Local Bar Associations, which includes multi-professional associations.
- Lawyers are required to leave the practice if any professionals in the practice break the rules of professional conduct or if there are any perceived incompatibilities between the associated professionals.
- The CGAE[81] by-laws also emphasise the importance of legal professional privilege and that lawyers cannot share premises or services if there is a risk to the safeguarding of Legal Professional Privilege.

[81] Consejo General de la Abogacia Española/the General Council of the Spanish Bars

176. In 2007, there was some further relaxation of the law on MDPs to allow a wider range of professions to work in partnership with lawyers. Law 2/2007, of March 15, 2007 now permits multi-professional companies to exercise any professional activities, provided that these have not been declared incompatible by law. The professional company must also be composed of qualified individuals who are licensed to exercise the professional activity that constitutes the corporate purpose of their firm. In addition, at least 51% of the capital and voting rights, or the majority of the shareholders' equity must belong to professional partners. Up to 49% of the equity could therefore be owned not only by non-lawyers but 'non-professionals'.

177. In addition to the ownership controls there are also management controls. At least half plus one of the members of the governing body of any multi-professional firm must be professional partners. If the governing body is one-person, or if there is a CEO, these functions must be performed by a professional partner. Decisions of the governing bodies of multi-professional firms must always be taken by a majority of professional members.

Box 11 - Case study: Arcos & Lamers Asociados

A team of lawyers, solicitors, tax advisers and accountants based in Marbella and Málaga, who advise on legal, tax and accountancy issues.

"At this law firm based in Spain you will find all the skills and experience under one roof. In this way, you will not only save both time and costs, but you will also have the assurance that at all times you will be able to obtain personal, efficient and effective advice tailored to your own needs.

Our legal, economic, accountancy and tax consultants are all members of their respective professional bodies and associations in Málaga".

https://www.arcos-lamersasociados.com

178. Each professional working within the multi-professional company must adhere to the ethical and disciplinary regime which corresponds to their professional activity. Depending on the issue, the whole professional company may also be sanctioned under the terms established in the corresponding disciplinary regime.

Conclusions

179. This tour of non-lawyer ownership around the world suggests several conclusions of relevance to Ireland:

i) There are a growing number of jurisdictions around the world in which some form of non- lawyer ownership of law firms. What the Act outlines as a possibility is therefore by no means unique.

ii) The models that have been used to introduce non-lawyer ownership have varied widely and have usually been driven by the objectives of the jurisdiction itself and the extent to which limitations have been actively argued for by the incumbent providers. As a rule, where non-

lawyer ownership has been introduced, the regulatory regime accompanying this liberalisation has endeavoured to deal with the issues of lawyer independence and conflict of interest by requiring lawyer control, to a greater or less extent.

iii) The models employed to assert lawyer control have used the following range of approaches, alone or in combination:

- Majority lawyer ownership of the equity and voting rights in the firm;
- Application of lawyer codes to all partners and employees working in the firm;
- Contractual requirement in respect of non-lawyer partners that they must not interfere with the ability of the lawyers in the firm to follow their professional duties;
- Use of a 'head of legal practice' or authorised principal model as a mechanism for holding the firm overall to account for its compliance with lawyer ethics;
- Carve-outs or explicit exclusion of barristers or their equivalents in order to ensure lawyer independence in representing client interests in legal proceedings.

iv) The NLP/MDP models used in other jurisdictions have also all employed different combinations of the three different dimensions of non-lawyer ownership depicted in figure 1. They have, to varying degrees, removed limitations on the scope of services that lawyers can provide, they have removed barriers to co-ownership and they have permitted the limitation of liability.

- On scope of services that may be provided by an NLP/MDP - some jurisdictions have allowed non-lawyer ownership but still required that the resulting business is supplying legal services or services ancillary to legal services. This is perceived by those using this model as a way of reducing the risk that the legal profession might behave in a way that is inappropriate for providers of legal services, although it reduces the extent to which such businesses can, for example, offer new channels for clients to access legal services.

- On co-ownership – some jurisdictions have been more cautious than others in opening up ownership to new types of owners. Some, like the Netherlands have restricted non-lawyer owners to other quasi-legal professions; In Italy and Quebec, non-lawyer owners can include a much wider range of individuals who are members of regulated professions; In Australia and the UK, anyone can have an ownership interest in a law firm, including another corporate entity. And there are jurisdictions, like Denmark and Singapore, who have chosen to require owners to be active in the legal practice.

- On limitation of liability – it is noteworthy that none of the other jurisdictions currently allowing diversified ownership prohibit limited liability. The most common approach has been first to permit limited liability to lawyers and subsequently to diversify ownership. Moreover, international experience suggests that introducing a model of non-lawyer ownership without any limitation of liability is unlikely to have any significant take-up (see for example, Australia pre-2004).

v) The question then arises of whether jurisdictions adopting these regimes subjected them to prior tests of necessity (are the restrictions imposed in a model permitting NLP/MDP practice really required in order to achieve the desired objectives?) and proportionality (are the restrictions imposed in the model reasonable or do they result in overkill?). Both the rate of take-up and the fact that regulations have nearly always been reviewed sometime after their adoption, suggests that these tests have not always been rigorously applied.

vi) In none of the jurisdictions in which MDPs are allowed, have they become the norm for legal practice. Instead they remain simply one option through which legal services are offered. The two caveats to add to this are firstly, that where lawyers can limit their liability they will choose this form in which to practice; and secondly, where external passive capital investment in law firms is permitted, which is currently the case only in the UK and Australia, there are signs that perhaps greater change in the market may be prompted for consumers, notably by the application of technology to legal practice and by the arrival of new entrants into the market.

vii) Given that the MDP share of the market is very small, it is not yet possible to point to significant change that they have wrought on the legal sector in any country, even in those adopting the most radical versions of the model. So the effects of non-lawyer ownership on the cost of legal services is very difficult to determine as pricing in the legal sector is not transparent. It is however relevant that there is a higher tendency amongst MDPs serving the consumer end of the market to use fixed fees and there is good reason to believe that MDPs can help to reduce the operating costs of a legal practice.

viii) It is possible to say that, so far, no problems in terms of standards or ethical behaviour have been observed or reported in any jurisdiction in which MDPs have been permitted. In fact, there is some evidence that the take up of models which enable legal practitioners to bring in practice directors have had a beneficial impact on discipline and standards.

ix) There does appear amongst MDPs in the UK to be improved access to legal services for consumers but this has been achieved mostly in the segment of the market which has attracted external investment because of the opportunities for commoditisation, which is not an option currently being considered in Ireland.

x) Perhaps the clearest and most widespread effect of non-lawyer ownership has been the impact this has had on diversity of service offerings from the legal sector and the development of economies of scope.

180. It is also striking that the jurisdictions that have taken up non-lawyer ownership have virtually all revisited their initial regulatory schemes after a few years. Subsequent modifications are always in the direction of more relaxed requirements and less stringent lawyer control. In fact, there would appear to be a direct and inverse relationship between the extent to which a regulatory scheme for NLPs requires lawyer control of the business in which they are practising and the beneficial impact a regulatory scheme can have on innovation, costs, competition, choice and quality in the legal market.

Part 4: The Likely Consequences and Impact of Introducing MDPs in Ireland (Section 119(2)(b) &(c))

The Current Position

181. In Ireland, solicitors and barristers have both historically been prohibited from sharing fees for legal services provides with non-lawyers. Solicitors by provisions in the *Solicitors Act 1954,* and barristers by Rule 7.14 of the Bar Council's Code of Conduct. Barristers are more restricted than solicitors and currently cannot enter partnerships with anyone else, either other barristers and solicitors. Both professions are also prohibited from limiting their liability. Although the purpose of this study is to look at the issue of lawyer/non-lawyer partnerships, it is worth reiterating the point previously made that ownership, liability and scope of service are all interlinked considerations.

Previous Consideration of MDPs in Ireland

182. The debate about the form in which legal practitioners could deliver legal services has a long history. In 1990 the Fair Trade Commission recommended that there *"should be the greatest possible freedom allowed to individual solicitors and barristers to decide themselves upon the most suitable form of business organisation through which to offer their services to clients, with adequate safeguards to ensure the preservation of standards."* [82] . These recommendations fed into the *Solicitors (Amendment) Act 1994,* which permitted the Law Society to make regulations to permit solicitors and non-solicitors to share fees through a partnership. To date these powers have not been used.

183. In 2006, the Competition Authority issued a report[83] on the solicitors and barristers profession as part of a series on competition in the professions in Ireland. This report recommended further research into possible alternative business structures with the objective of permitting solicitors and barristers the greatest possible freedom in choosing their preferred structure.

184. In December 2010, as part of the IMF/Troika bailout process following the financial crisis, the Irish Government committed to introduce legislative changes to remove or reduce restrictions on the legal profession and to implement outstanding Competition Authority recommendations to reduce legal costs[84]. The subsequent Legal Services Regulation Bill 2011 contained provisions on business structures for legal practitioners.

185. The Bill's passage through the Oireachtas was protracted and many concerns were raised, including on the form of MDPs proposed. The main points raised in submissions were:

- The Law Society and Bar Council both argued that there was a need for a detailed impact assessment of MDPs which would unpick the potential costs and benefits of introducing them for the legal profession and competition in the market.

[82] Report of Study into Restrictive Practices in the Legal Profession (March 1990)

[83] Competition in Professional Services – Solicitors and Barristers, The Competition Authority, December 2006

[84] Government of Ireland - Memorandum of Understanding on Specific Economic Policy Conditionality, November 28, 2010

- An assessment also needed to be made of the impact of the introduction of MDPs on the public interest. The Dublin Solicitors Bar Association, for example, raised concerns over the potential erosion of the independence of lawyers and the risks to consumers of allowing them to purchase legal services provided by alternative business structures.
- The possible costs of the new system that would be required to regulate MDPs.
- The Law Society of Ireland was concerned by the risks MDPs might pose to the Compensation Fund and the potential exposure of the profession to dishonest and malevolent actions by non-solicitors practising in them.

186. Many of these points were addressed by amendments to the Bill and were incorporated in the final Act was enacted at the end of December 2015.

What the Act provides for

187. The Act sets out a requirement for the Authority to undertake research into the potential impact of MDPs on the legal services market in Ireland in order to determine if there is a case for their introduction. However, the Act also contains some provisions which might apply if MDPs were to be permitted.

188. The detail in the Act appears to set out a model for the possible introduction of MDPs in Ireland. This model would, in principle, permit barristers and solicitors (collectively 'legal practitioners') to provide legal services as partners or employees of MDPs (section 102) together with other individuals who are not lawyers, whether to provide legal or other services (section 2(1)). It would also permit passive investment in law firms by individuals (section 107(8)), although this could not include any of the unsuitable persons listed in section 107(4). The MDP model provided for in the Act would operate by way of general partnership (section 107(1)) and none of the benefits of limited liability introduced by Chapter 3 within Part 8 are afforded to MDP's. The Act therefore implies that, if MDPs were to be permitted in Ireland, the following would be the potential forms such partnerships could take:

- Legal practitioner(s) plus other regulated professional(s)
- Legal practitioner(s) plus other non-lawyer(s) and otherwise unregulated partner(s)
- Legal practitioner(s) plus passive non-lawyer partner(s)
- Legal practitioner(s) plus foreign (non-EU) lawyer(s)

189. The Act then suggests the possible model for regulating MDPs by setting out the following detailed provisions:

i) An MDP must notify the Authority before it can begin providing services that include legal services. This notification must be in the form prescribed by the Authority and be accompanied with the required fee. MDPs should then be entered on a register to be maintained and made publicly available by the Authority.

ii) The restrictions on who can be a partner in an MDP contained in section 104 suggest that some prior approval process is required.

iii) All MDPs need to have at least one legal practitioner ("the managing legal practitioner") who is responsible for the management and supervision of legal services by the practice.

iv) The MDP must notify the Authority and cease to provide legal services if it does not have a managing legal practitioner in place for a period of 7 days or longer.

v) The managing legal practitioner must ensure that any legal services supplied are made in accordance with the Act, regulations and professional principles.

vi) The Authority is required to make regulations setting out the standards applying to the provision of legal services through MDPs covering: Ethical conduct, confidentiality, information to clients, handling of client money, management and control of the practice, conflict of interest, record keeping, use of name and advertising of the practice. Emphasis is also placed on the maintenance of appropriate accounting records by the MDP.

vii) The managing legal practitioner is responsible for ensuring compliance with these standards and other legal requirements and remedying defaults.

viii) Failure to notify the Authority of a default is a summary criminal offence incurring a fine or 12 months' imprisonment.

ix) However, the complaints scheme applying to legal practitioners also covers all of the legal practitioner partners and employees of MDPs individually.

x) The MDP must have written procedures in place that ensure compliance and facilitate the managing legal practitioner in fulfilling their obligations.

xi) The MDP must put in place arrangements which assure confidentiality, appropriate handling of client money and the maintenance of required levels of indemnity insurance. Legal practitioners in MDPs are not required to contribute to the compensation fund and this must be made clear to clients. Clarity over protections and applicable rules through letter of engagement.

xii) The Act acknowledges that other statutory authorities responsible for regulating other parties in an MDP may have rights of inspection or rights to require information about the non-legal services of the MDP. This however does not impinge of information which is subject to legal privilege.

xiii) The Authority has the right to require the MDP to take remedial measures ("directions"), and to seek an order from the High Court to require the MDP to suspend or cease providing legal services.

190. Overall therefore, within some clear parameters, the Act would give the Authority some flexibility to determine the regime that would apply and some significant powers to enforce compliance.

191. The provisions contained in the Act, which would apply to MDPs in the event they are permitted, provide a useful starting point for considering how this type of business structure might impact on the legal market in Ireland. A detailed consideration of any impact can only be done following further market research and consultation, but the model set out in the Act at least provides the Authority with a point of reference which enables it to raise questions that need to be addressed.

The Possible Impact of Multi-Disciplinary Practices on Existing Models of Legal Practice (section 119(2)(b))

192. Any potential impact of the introduction of MDPs on existing models of legal practice, i.e. traditional solicitor firms and barrister practices, will ultimately depend on the take-up, focus of potential MDPs and their market share. At this stage, therefore, it is only possible to hypothesize on the possible impact of MDPs based on the current shape of the Irish legal market and experience of introducing similar practices elsewhere.

193. The Irish legal sector today is perhaps best characterised as (at least) two separate markets: The traditional "retail" market for legal services which is highly fragmented and which consists of 'high street' or 'general practice' type legal services provided to a largely consumer client base; and a more concentrated corporate market, based largely in Dublin. Almost 90% of law firms have fewer than five solicitors and 42% of all law firms are sole practitioners. The number of law firms employing more than ten solicitors is less than 4%. However around 20% of all solicitors work in the top 20 Dublin law firms. These key statistics, shown in tables 2-4 below, illustrate the asymmetry of the Irish legal market. This underlying structure needs to be borne in mind when considering the potential impact of MDPs, since they will most likely impact differently in the different segments of the market.

Table 2: The Irish Legal Market

	2015/16
Total number of solicitors (PC holders)	9688
Number of solicitors in private practice	7,807
Number of practices	2,220
Average size (mean)	<2 solicitors
Average size (median)	<2 solicitors
Number of barristers in practice	2200[85]

Sources: Law Society of Ireland and Bar Council

Table 3: Geographical Distribution of Solicitors

	Number of Solicitors	Share of total PC holders
Dublin	6358	59%
Munster	1829	17%
Leinster	1201	11%
Connaught	692	6%
Outside Ireland	395	4%
Ulster	350	3%
Total	10825	100%

Source: Law Society of Ireland

[85] Latest figure confirmed by the Bar Council but that does not include a figure of circa 50 barristers who may be practising but who are not members of the Law Library

Table 4 – Distribution of solicitors by firm size

Number of Solicitors	Number of Firms
1	951
2	572
3	317
4	140
5	72
6-10	98
11-20	44
>21	26
Total	2220

Source: Law Society of Ireland

194. The structure of the profession in Ireland is not unique but resembles the structure of the legal profession in Australia and New South Wales in particular[86]. It is therefore not unreasonable to assume that the experience of New South Wales might offer a useful precedent when considering how MDPs might impact on legal practice.

195. The NSW experience, as set out in Part 3 of this study, was that there was very little take up of the initial relatively restricted MDP model and much more interest in the more flexible incorporated model. The greatest take up of any form of alternative structure was by the smaller practices at the 'retail' end of the legal profession. This has also been the experience in England and Wales, where the vast majority of ABSs are small law firms that have diversified their ownership. Although in England and Wales there have been new volume entrants to the consumer market, these are generally corporate entrants who would not be interested in the partnership model on offer in Ireland.

196. The take up of ILPs and ABSs by smaller firms in England and Wales suggests that there may be real advantages to small law firms in working through alternative forms of business structure to the traditional partnership model. The NSW and England and Wales experience suggest that the following benefits may arise, a wider choice of partner and therefore expansion of risk sharing, wider options for adding new services, potential to incentivise staff through share ownership and even potential tax benefits for partners. However, it is important to note that the model offered in New South Wales and in England and Wales is not solely based on non-lawyer ownership but also permits incorporation. Evidence on take up in both jurisdictions and the timing of this, suggest that it is incorporation, either on its own, or alongside some non-lawyer ownership, which appears to be most attractive to smaller practices.

197. Given that the MDP model suggested by the Act does not permit limited liability, the take-up rates amongst smaller practices in Ireland would most likely be much lower than in the aforementioned jurisdictions. The Authority may wish to explore through its consultation exercise, what level of interest there might be amongst smaller consumer oriented solicitor practices in the MDP model suggested in the Act and what features they would be looking for in a business structure as an alternative to the traditional partnership model.

[86] Profile of the Australian Legal Profession 2015 e.g. 58% of Australian practitioners work in major cities, 76% of law firms in Australia are sole practitioners , 30% of the profession work in firms with more than 20 partners

198. At the corporate end of the market, there are different scenarios that might be envisaged for the potential impact if MDPs were to be permitted:

- In both England and Wales and Australia, the largest corporate firms have stood aloof from changing business structures. This is partly because the largest firms in these markets are multi-jurisdictional and do not want to complicate their position by adopting models which do not work elsewhere. Nonetheless, many UK law firms in the top 200 have converted to ABS status, although this has almost always been done in order to allow individual non-lawyers (e.g. finance directors, IT directors) to become full members of the firm's LLP. The change of constitution has generally made very little obvious difference either to their way of practising or to their outward appearance to clients. On the available evidence, the attitude of Ireland's largest law firms to the prospect of MDPs would also appear to be negative at present. In 2015, accountancy firm Smith & Williamson's annual survey of law firms found that 87% of the top 20 firms were opposed to MDPs. This would appear to suggest that there would be little, if any, interest in taking up an MDP option at this end of the Irish market.

Box 12: Chartered Accountants of Ireland, Public Practice Regulations

8.10 The committee may grant general affiliate status if the committee is satisfied that the applicant:

(a) is a principal, or has been offered the position of a principal, in a firm and such has been confirmed in writing in a manner acceptable to the Committee;

(b) is a fit and proper person to be granted general affiliate status;

(c) has agreed to comply with these regulations and with all other obligations and liabilities of a member of the Institute and to be bound by the Charter, the Principal Bye-Laws, the Disciplinary Bye-Laws and other any other rules, regulations, codes and standards of the Institute and CARB; and

(d) has agreed to observe and uphold the Code of Ethics.

- On the other hand, it is likely that the large accountancy practices will be interested in growing their share of the legal services market in Ireland, as they are doing in England and Wales and Australia. However, even if an Irish model for MDPs were to permit such partnerships, there may be issues arising from the Company legislation that will affect their take up by the larger Irish accountancy and solicitors' practices. Although Section 13(1) of the Companies (Amendment) Act 1982 allows accountants and solicitors to form partnerships with more than 20 partners, it also requires that all the partners in such large practices are either accountants or solicitors. This would appear to suggest that even if there were interest amongst Ireland's largest solicitor firms, there may be a legislative barrier to take up which would need to be dealt with. This is a matter in respect of which the Authority should take legal advice.

- A further potential impact on the more corporate end of the legal market could arise if the introduction of MDPs encouraged the creation of new specialist practices, based on partnerships between lawyers and other professionals. This one-stop shop type of MDP may increase the diversity of services on offer, but as such practices are generally small scale, they tend to have little overall impact on the market. Nonetheless, this form of MDP is evident even in jurisdictions where the total take-up of the MDP model is minimal and would be an obvious starting point for MDPs should Ireland wish to go down this route.

- However, even if permitted, there may be barriers to take-up in Ireland of this type of model. These arise from the restrictions imposed through the professional codes of other regulated professions. Chartered Surveyors and Architects, for example, are both in principle permitted to form multi-disciplinary partnerships with other professions, which could in future include lawyers, but only if majority control remains with the surveyor or architect. Chartered accountants (CAs) may go into partnership with non-CAs but only if those individuals are recognised as "general affiliates", which requires them to fulfil certain conditions (see box 12). Similarly, patent agents cannot enter partnership with individuals who are not registered as patent agents (Irish Patents Act 1992) and there are also restrictions on how a partnership with Trade Mark Agents can be held out (Irish Trade Mark Acts 1996). These various rules may make the creation of one-stop shops difficult to achieve without further legislative action.

199. The extent to which the Bar might be affected by MDPs was also raised during the passage of the Act. Particular points of concern that were highlighted, include risks that an MDP model would compromise the independence of any barristers entering such partnerships, undermine the Cab Rank rule and disrupt the Bar's training model.

200. The available evidence from other jurisdictions is again rather limited. Non-lawyer partnerships have not impacted to a discernible degree on barristers' practice in Australia, in terms of numbers or profitability, according to figures from the Australian Statistics Office. This is largely because, although there is no distinction between barristers and solicitors on admission to the Australian profession as 'legal practitioners', separate barrister regulation for specialist advocacy work is an option[87]. Practising barristers who are regulated by the Bar of New SouthWales or the Victorian Bar, have therefore been carved out of any permission to participate in non-lawyer owned business structures. In these jurisdictions barristers can only operate as sole traders.

201. Although the position is more complicated in England and Wales, to some extent the same range of options exists. It is possible for a barrister there to operate entirely as a traditional self- employed independent barrister, or to be regulated by the Solicitors Regulation Authority as a barrister "manager" of an SRA regulated entity. In this latter case, the barrister is bound by the same professional obligations as his or her self-employed counterpart, apart from the Cab Rank Rule, which is disapplied. However, there are restrictions on who can work for the barrister in such circumstances. A barrister in an ABS cannot take instructions except through that entity, which to some extent reduces the risk of clients being misled as to the nature of the relationship.

202. In practice, there are relatively few barristers in England and Wales who have chosen to work in ABS and most of those who have done are working in traditional, larger law firms who have converted to ABS status simply to bring one or more non-lawyer individual director-employees into the ownership of the firm.

203. In jurisdictions with fused professions, where it would be much harder to put in place any regulatory carve-out, MDPs appear to have had no impact on advocacy or court work. This is perhaps attributable to the fact that the incentive for specialist advocates, or for their potential partners in any MDP, to adopt this model is low. Forming an MDP would only makes sense for the potential non-lawyer partner if they had a large volume of similar cases requiring the same set of advocacy skills and expertise. And even if they did, there would be longer term disadvantages for the barrister in tying up with a single source of cases.

[87] See the New South Wales Bar Association and the Victorian Bar

204. It is possible that forming an MDP which could offer opportunities for the middle and junior ranks of the Bar to develop more specialist advisory practices in collaboration with other professionals. It could also allow barristers to develop chambers-type practices with a practice manager who is a partner rather than an employee.

205. Based on the information currently available and the restrictions contained within the model for MDPs proposed in the Act, it seems likely that the take up of MDPs, and their impact on the current models of legal practice, would be limited.

The Possible Impact of the Operation of Multi-Disciplinary Practices in the State on Legal Costs, Provision of Legal Services to Consumers and Access to Legal Practitioners (Section 119 (2)(c))

206. The question of how any possible MDP model might impact on costs, provision of legal services to consumers and access to legal practitioners depends heavily on the form of the model adopted, which will in turn affect the rate of take-up. The following are therefore observations which might help to guide any future consultation on MDPs.

(i) Legal Costs

207. The reduction of the cost of legal services was an issue at the forefront of the debate during the passage of the Legal Services Regulation Bill. The argument was advanced that legal costs in Ireland were relatively high compared to comparable economies, with evidence cited from various World Bank Doing Business surveys, the Competition Authority's 2006 report and to the structural reforms recommended by the Troika. Although this premise was challenged in other representations made during the debates on the Bill, reducing the costs of legal services remains a major objective of the Act.

208. The cost of legal services to the client or consumer, is made up of three elements:

- The cost of producing and delivering those services (i.e. salaries, overheads, indemnity insurance etc.);
- The profit margin on those services (i.e. partner remuneration); and
- Any market requirements on how those services can be supplied or consumed (e.g. court fees, taxes, costs of a split profession etc.), which includes the costs of regulation.

209. Any model of MDPs could potentially impact on each of these cost components. Firstly, if the model chosen for the introduction of MDPs were to increase competition in the legal market this might be expected to impact on the fees charged for legal services. Secondly, it is possible that an MDP structure could bring efficiencies by allowing legal practitioners to bring into their partnerships individuals with more experience in running businesses. This would enable the legal practitioners to focus on delivering legal services and the business managers on efficiently managing the business side of the practice. Thirdly, if an MDP involved a solicitor and barrister, there might be some cost savings that derive from the efficiencies in bundling the different legal services they provide. Fourthly consumers may benefit from the convenience and fluidity that will flow from having providers of various legal and other services "under one roof".

210. On the other hand, if the MDP model chosen simply involved the introduction of new passive owners (e.g. family members to share equity in law firms), this would not change the balance of competition within the market. On the other hand, such a model would potentially bring tax savings which would benefit the owners of such practices. Equally, if a model for MDPs is chosen which involves very heavy regulation, which was the case in the first few years of the England and Wales experience, then any potential benefits of the model would be undermined.

211. Whether MDPs could offer any potential avenues for cost savings to be realised would depend to a very large extent on the model chosen and the level of take-up of MDPs. Nonetheless, it is worth bearing in mind that even the most radical MDP models have had limited effect yet on legal costs. This is not necessarily an argument against MDPs but suggests that any proposal to establish them could not rest on this point alone. It further suggests, as the Competition and Markets Authority has recently concluded[88] in the UK, that reform of business structures can only ever be one part of any drive to improve the functioning of the legal market and (as shown in figure 2 earlier), action also needs to be taken to improve the buyer side of the equation.

212. The Authority might therefore want to consider, in parallel with further activity to consult on MDPs, how it can develop a more in-depth understanding of the cost base of the legal market. This could perhaps best be done by unpicking in detail the elements of cost that go into certain types of frequently used legal services, such as conveyancing, personal injury and probate/succession, for example. This may point the way to additional courses of action that might help to reduce the cost of legal services.

213. Naturally, an important part of the cost equation in considering MDPs relates to regulation. As a general rule, the Authority should be looking to take regulation out of the market and find ways of reducing regulatory costs to legal market operators without significantly increasing the risk to consumers. But it should also be conscious of the trade-offs between protection and cost. There is no point in having a gold-standard of protection if no one can afford to benefit from it.

[88] See the final report of the UK Competition and Markets Authority, 2016 (Ibid.)

(ii) Provision of Legal Services to Consumers

214. Section 119 of the Act requires the Authority to consider how MDPs might impact on the provision of legal services to consumers. In order to do so, it is important for the Authority to understand how and why consumers choose and use legal services and how the market might work better from their perspective.

215. The available evidence suggests that Irish consumers use several sources to find legal services, most of which are proxies for reputation (e.g. recommendation, family solicitor etc.). This is not surprising, given that legal services are usually significant, 'lumpy' purchases which it is important for the consumer to get right. This was borne out by the Law Society of Ireland's 2016 consumer survey, see Box 13. This suggested that 'reasonable fees' were the determining factor for consumers seeking legal advice, in only 10% of cases.

Box 13: How Consumers Choose a Solicitor

Known personally	4%
Reasonable fees	10%
Location	19%
Good reputation	24%
Family solicitor	28%
Word of mouth	43%

Source: Law Society of Ireland, Annual Report 2016

216. The Legal Services Consumer Panel of England and Wales has produced a body of research which generally supports this contention but with some important nuances:

> *"Understanding what drives consumer decision making is critical for both providers and regulators. Consumers value staff competence and their ability to fulfil promises, as well as helpfulness. So it is not surprising to see that reputation has been and remains a key factor when deciding which legal services provider to choose. However, price is equally as important as reputation in some areas of law. For example, in conveyancing and immigration, price was as important (81% and 74% respectively) as reputation (82% and 74% respectively). But price is ultimately one of many crucial factors: specialism, local offices and speed of delivery are all near, or on par. It is unsurprising to see an increase in the use of fixed fees when price is so highly considered, as consumers need to be able to manage their budget."*[89]
>
> *(source: Legal Services Consumer Panel)*

217. The UK Lawyer Locator YouGov consumer poll commissioned by Lexis Nexis in 2010[90] also asked consumers to identify the qualities that were most important to them when choosing a lawyer. Specialised knowledge of the legal issues involved and the ability to explain the issues involved were the most important factors. Cost (49%), 'ease of getting in touch (e.g. weekend office hours, response to email, picks up the phone)' (29%), proximity (28%) and established relationship with the solicitor involved (23%) were amongst the next most important factors. The Authority therefore might wish to take into consideration when examining models for MDPs, how they might affect the availability of specialist services, local access, trust in, or knowledge of, the legal services provider, as well as any impact on costs.

[89] How Consumers and Choosing and Using Legal Services, UK Legal Services Consumer Panel
[90] Reported in http://www.lexisnexis.co.uk/pdf/insights/The-Future-of-Small-Law-Firms.pdf

218. Evidence from jurisdictions where there has been a reasonable take-up of MDPs suggests that there is no reason to believe that MDPs would have a negative impact in any of these areas and could quite possibly have a positive impact. For example, the most common outcome of introducing an MDP model is wider access to new specialist services. Research in the UK and Australia also suggests that MDPs could also improve service quality and access (see below for more details). Nonetheless it will be important for the Authority to establish early on through its own research, what are the priorities of the Irish consumer and how those might be supported.

(iii) Access to Legal Practitioners

219. The question of how the creation of MDPs might affect access to legal practitioners arises through:

- the possible impact on the "Cab Rank Rule"[91];
- the potential impact on competition and concentration in the sector;
- the introduction of new channels of access to legal services.

220. The impact on the Cab Rank Rule and competition and concentration in the market are considered in more detail below.

221. On access to legal services, there is evidence from other jurisdictions to suggest that MDPs could have the potential to create new channels for clients to access services, by bundling legal services together with those of other providers. This could be particularly useful for consumers who may not have identified that they have a legal need or right, which is brought to their attention through a one-stop shop MDP. In England and Wales, the introduction of alternative business structures has also encouraged a small number of law firms to become 'virtual'. This allows them to dispense with traditional offices premises and instead to network senior self-employed lawyers, based in different locations around the country and often working from home. The virtual firm supports them with internet-based practice management and case management systems, remote telephone answering and outsourced typing services to service their clients from outside a traditional office. This type of set-up has been beneficial to lawyers who wish to have more flexibility in the way in which they work and who can supplement face to face consultations with remote working for clients. And it has benefited clients who have access from any location. See, for example, Scott-Moncrieff and Associates[92]. Although there is nothing to prevent a traditional law firm from adopting this model, it requires investment in systems and benefits from incentivisation of the lawyers involved through some degree of ownership short of full partnership. These characteristics are more straightforward to achieve in an alternative business structure/MDP.

[91] The Cab Rank Rule is a rule which underpins access to justice by requiring barristers to accept instructions from a client if they are competent and available to do so. This gives the client a right of representation and offers the advocate protection against attack for defending unpopular individuals accused of criminal offences.

[92] https://www.scomo.com

The Likely Effect of the Operation of Multi-Disciplinary Practices in the State on the Regulatory Objectives (Section 119(2)(d))

222. The Act requires any consideration of how the provisions on MDPs might be implemented to take into account the impact such practices might have on the regulatory objectives and professional principles outlined in the Act. These objectives and principles are reprised in box 14 below. Before addressing the possible impact of MDPs on any of these considerations, it is important to remember that the model chosen by the Act is one in which legal services will be provided by qualified legal practitioners, under the supervision of senior legal practitioners and in accordance with existing professional rules and responsibilities.

(i) The Public Interest

223. The "public interest" is one of the most important justifications for regulating professional services markets, but what this means for the legal sector is not often clearly defined. Professor Stephen Mayson, Director of the Legal Services Institute, a UK think tank, produced a thoughtful paper on this topic in 2011 (revised in 2013), in which he opined that:

> *"[the public interest] must be connected to a 'society', transcend sectional interests, and be explicitly underpinned by an overarching value system. The value system….is not one that is driven by the sectional interests of consumers, and does not privilege a philosophy of economics, market competition or consumerism to the detriment of society as a whole. Rather, it is one which upholds those elements of collective endeavour that protect, preserve or promote the democratic fabric of society, and which seeks to protect or enhance, or remove or reduce impediments to, the ability of citizens to exercise their legitimate claims to civil, political or social freedoms and participation."*[93]

Box 14: Regulatory Objectives and Professional Principles (section 13(4))

Regulatory Objectives

(a) protecting and promoting the public interest,
(b) supporting the proper and effective administration of justice,
(c) protecting and promoting the interests of consumers relating to the provision of legal services,
(d) promoting competition in the provision of legal services in the State,
(e) encouraging an independent, strong and effective legal profession, and
(f) promoting and maintaining adherence to the professional principles specified in *subsection (5)*.

(5) The professional principles referred to in *subsection (4)(f)* are:

(a) that legal practitioners shall—
  (i) act with independence and integrity,
  (ii) act in the best interests of their clients, and
  (iii) maintain proper standards of work,

(b) that legal practitioners who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court by virtue of being legal practitioners, shall comply with such duties as are rightfully owed to the court; and

(c) that, subject to any professional obligation of a legal practitioner, including any obligation as an officer of the court, the affairs of clients shall be kept confidential.

[93] https://stephenmayson.files.wordpress.com/2013/08/mayson-2013-legal-services-regulation-and-the-public- interest.pdf

224. If the Authority is to target the protection and promotion of the public interest, then it must go beyond pure market functioning considerations in order to take account of wider considerations. These include, for example, how rights are protected, the access that citizens have to information, advice and recourse against the State.

225. The evidence from other jurisdictions that have adopted MDPs with far more radical models than that proposed for Ireland, suggest that this need not necessarily be a concern. Alternative models of legal practice have been used in other jurisdictions by charities, social organisations and legal aid providers as well as businesses.

226. The Authority should nonetheless develop its own interpretation of the public interest and how it intends to address this within its work.

(ii) Supporting the Administration of Justice

227. Perhaps the main way in which MDPs are expected in some quarters to impact on the administration of justice is through their possible effect on the Cab Rank Rule. This rule is contained in Rule 2.14 of the Code of Conduct for the Bar of Ireland. This states:

> *"Having regard to the anticipated length and complexity of a case and having regard to their other professional commitments and the provisions of this Code of Conduct, Barristers are bound to accept instructions in any ae in the field in which they profess to practice (having regard to their experience and seniority) subject to the Payment of a proper professional fee. A Barrister may be justified in refusing to accept instructions where a conflict of interest arises or is likely to arise or where they possess relevant or confidential information or where there are other special circumstances"*

Similar rules apply throughout the common law world where referral professions exist. The concept of the Cab Rank Rule has been the subject of some debate recently in England and Wales, with arguments advanced vociferously for and against its maintenance or abolition.[94]

228. It was suggested early in the discussions in the UK on changing business structures for legal practice that the rule prevented barristers from adopting any other business structure than independent sole practice[95]. But as the paper written for the Bar Standards Board in England and Wales in support of the Cab Rank Rule (CRR) points out, it would be:

> *"wrong to suggest that the CRR and partnerships were incompatible. If the CRR applied to barristers in partnerships then the other partners, by entering into partnership with a barrister subject to the CRR, could arguably be taken to have impliedly consented to the barrister accepting cases under the CRR when not in the partnership's best interests to do so. …the idea that there is an intimate (or necessary) link between the sole trader rule and the CRR is a myth"*[96].

[94] See the Flood/Hvid Report for the Legal Services Board proposing abolition of the Cab Rank Rule: Flood/Hvid Report for the Legal Services Board and the Bar Standard Board's counter research: BSB Report on the Cab Rank Rule, 2013 and the Bar Council's commissioned response Sir Sydney Kentridge QC Response to Flood/Hvid Report

[95] See "Restrictions on Competition in the Provision of Professional Services - A Report for the Office of Fair Trading" By LECG Ltd, December 2000

229. Other jurisdictions have attempted to deal with this issue in MDPs in other ways- whether through a structural requirement that lawyers must be the majority shareholders in the business, or by contractual and licensing requirements that require the non-lawyer partners to agree to abide by, or at the very least, not to interfere with their lawyer partners' compliance with their code of conduct. In both Australia and the UK, the approach has been taken to allow a self-employed barrister model to co-exist alongside non-lawyer partnership models. The latter usually then have some restrictions on scope of practice which reflect their different obligations.

(iii) Protecting and Promoting the interests of Consumers in the provision of legal services

230. The possible effect of MDPs on consumer interests, and in particular, on access to and choice of legal services, has already been touched on in this study but there are a couple of issues relating to how the interests of consumers are reflected in professional rules, which are worth flagging here.

231. The first relates to the information which an MDP should provide to prospective clients. At present, a solicitor is required by Section 68 of the Solicitors (Amendment) Act 1994[97] to provide a client with details in writing of: The amount they will charge for their services, or as a fallback, an estimate of their charges, or at the very least an explanation of the basis on which charges are to be made. In their most recent report covering 2014-15, the Lay Members of the Law Society Complaints and Client Relations Committee, were highly critical of the application of this section in practice:

> *"Unfortunately, there are continuing problems with the implementation of this provision with some solicitors observing it more in the breach than the observance. The requirement to issue a "Section 68" letter has been in force since 1995. While one could expect some "teething problems" with the implementation of the requirement initially, it really is ridiculous that it continues to be a problem at this remove."*

232. If the Authority does get to the stage of drawing up detailed regulations on MDPs, it might wish to reflect further on this point and consider how a "Section 68 letter" could be given more impact. As the Lay Members also observed in their report:

> *"The purpose of this provision is to ensure that a client has some reasonable idea of what his/her exposure is going to be when he/she is considering whether to proceed with engaging a solicitor (or a particular solicitor). As such, it is a very important measure designed to protect the interests of clients".*

As the experience of New South Wales has shown, it is possible to use regulation in part of the market, such as those legal practices adopting an MDP model and use it to improve practice over the whole market. If the Section 68 model is not working, the Authority could use an MDP model to pilot better approaches.

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[96] https://www.barstandardsboard.org.uk/media/1460590/bsb_-_cab_rank_rule_paper_28_2_13_v6 final_.pdf

[97] Will be replaced by Section 150 of the Act once Section 5 and Chapter 3 of Part 10 of the LSRA 2015 are commenced.

233. Secondly, the Lay Members report also suggested other ways of providing information to potential clients about the Solicitor they were proposing to engage. The committee recommended that that the complaints record of solicitors and barristers should be made available, and not just at the stage where there are findings of the Solicitors Disciplinary Tribunal and High Court. The committee suggested that the full record of complaints upheld at any stage in the complaints process should be published and information about any restrictions placed on a solicitor in the context of the renewal of practising certificates should also be made available. They also suggested that members of the public should be able to access a web-site which lists all solicitors and sets out their full disciplinary record. These are suggestions that the Authority might wish to take on board in examining how an MDP model could roll out in practice.

(iv) Competition

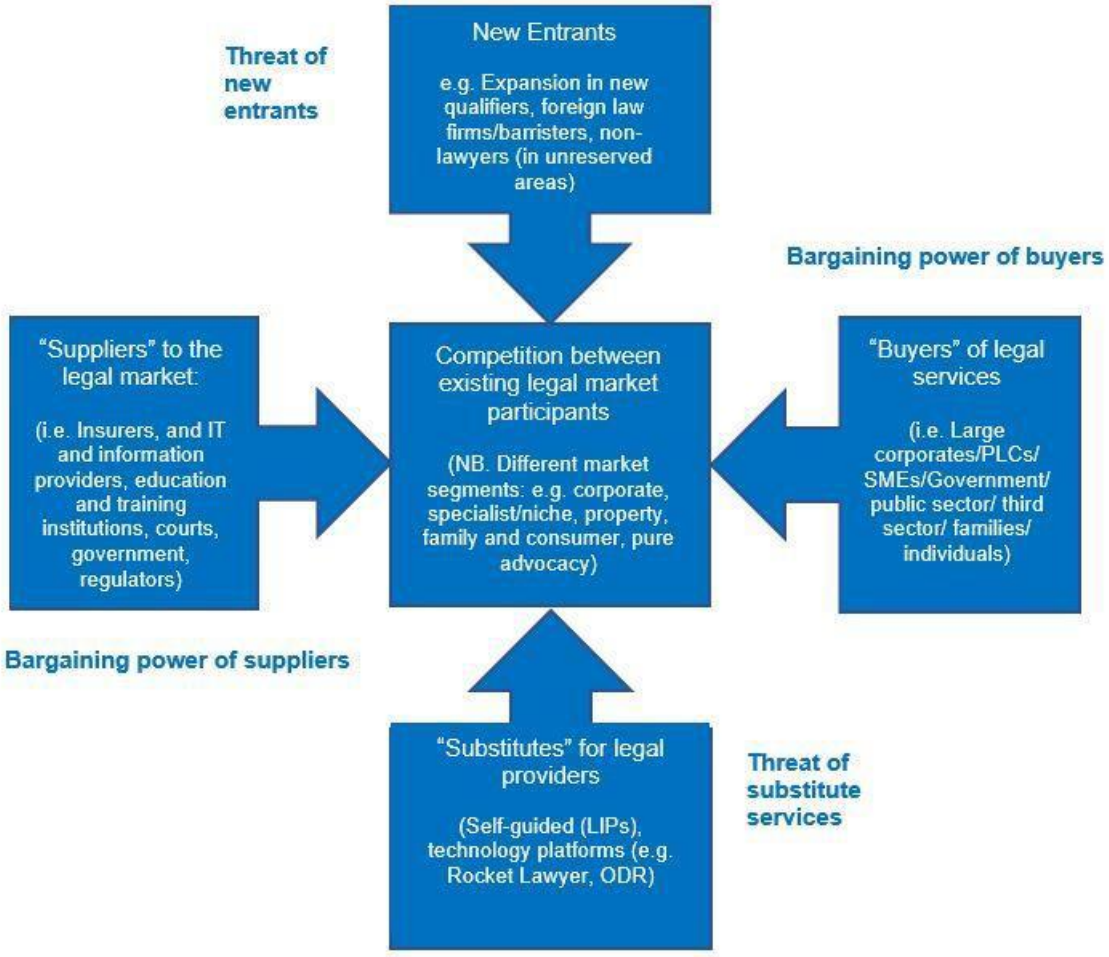
234. The possibility that MDPs could lead to further concentration in some parts of the legal market in Ireland and thus reduce competition was a contention advanced during the passage of the Act. Before discussing this argument in more detail, it is worth outlining a useful framework for analysing the effects of competition in any sector of the economy. This model, expounded originally by Professor Michael Porter of Harvard University, suggests that there are five different forces at work which ultimately determine the state of competition in any market: The extent of existing rivalry between players already in the market, the arrival of new entrants, and the power of buyers and suppliers to the market, as well as the availability of substitutes.

235. Translating this into a legal context, the competitive forces at work in the legal market can be generically characterised as shown in figure 2, below. Clearly, however, as previously expressed in this study, there is more than one 'market' for legal services in Ireland and a more detailed analysis would be able to explore this in more detail.

236. In terms of how MDPs might influence competition in the different segments of the market, the following are observations which are meant to serve as a starting point for the Authority's reflections:

- **Existing Rivalry**: There appears to be a perception in the market that there is excessive concentration in the market at the top end and that, given the chance, the top firms would make further inroads into the domestic market. There is, however, not really a strong basis for supposing this this might be the case. Firms at the top end of the market are competing against foreign law firms and accountancy firms for high end work. As long as there is potential for entry and exit of firms, the market will dictate the right level of concentration. As far as Ireland is concerned, the structure of the market is not very different from many other, particularly smaller, jurisdictions, which have a similar concentration of large firms and multiplicity of solo or small practices. In fact, changes to the business structure model could help to make the market work better. A survey of the legal market by the accountancy firm Smith &Williamson in 2015, for example, indicated that over the previous two years, 25% of firms and just under half of the top 20 firms had made a merger approach to another firm, but few if any of these, had produced an eventual successful marriage. MDPs would not by any means be the only, or even the best, solution to the problem of better structures in the market, but they might contribute to it.

Figure 2: Competition in the Legal Market



Source: Hook adapted from Porter (1980)

- **New entrants**: A healthy competitive market is one in which businesses are entering and exiting on a regular basis. The MDP model suggested in the Act could create the possibility of some new entrants to the market, as non-lawyer owners would then be able to participate in legal businesses through these structures. However, because there must always be at least one lawyer owner in any such structure, there would be a limit to the scale of new entry to the legal market.

- **The power of suppliers**: (i.e. the providers of finance, insurance, newly qualified lawyers, the courts, technologists and regulators). The impact of supplier power on the market would

perhaps be less directly affected by MDPs than some of the other forces at work. It is possible that more diversity of suppliers could be introduced into the market through the operation of MDPs but this is likely to be a secondary consideration. The importance of the banking sector as a supplier of working capital, and the insurance sector as a supplier of professional indemnity insurance would need to be watched carefully. Their attitudes to MDPs could also be a determining factor in whether they are taken up as a model. The Smith & Williamson Survey found that many firms had problems in managing working capital. Fifty-three per cent of the law firms surveyed indicated that cash flow management was one of their key risks and around a third reported that half their annual turnover was tied up either in debtors or work in progress. If MDPs help to provide better management of work in progress, for example through more, higher level resource devoted to firm management, then there could be a positive impact from the model. Finally, it is also worth noting that the Authority, the Law Society, the Bar Council and Kings Inns are all also suppliers to this market. Together these organisations control the entry, exit and standards applying to the market and can directly and indirectly influence competitive conditions within it.

- **The possibility of substitution:** Whilst substitutes are now posing a growing competitive threat to the legal market in the form of artificial intelligence, robotics, user driven web based legal forms and online mediation, these developments are not dependent on alternative business structures. Although research by the Legal Services Board of England and Wales in 2015 suggested that innovation rates were higher in alternative business structures, the difference between ABS and traditional law firms were not that significant[98]. The introduction of MDPs might see a marginally higher use of substitutes for legal practitioners but this is unlikely to be the driving force for the take-up of technology in the sector.

- **The power of customers:** The extent to which clients use the services provided by MDPs will be an important determiner of the success of this model. The buying power of individual customers varies across the sector, with the banks, government and large corporates at one end of the spectrum being better positioned to dictate terms; and the consumer market at the other end. The impact of MDPs at the corporate end of the market or in the market for government legal services may therefore be driven as much by buyer behaviour as it is by the wishes of the law firms themselves. However, there has been no obvious drive in this direction in England and Wales, and although alternative business structures have been disproportionately successful in winning legal aid tenders their share of the market in this area remains in single figures. Privately funded consumer demand in Ireland, as elsewhere, is very fragmented and the occasional nature of consumer purchases of legal services makes it very difficult for consumer buying power to have much impact at the retail end of the market. The introduction of MDPs would therefore on its own be unlikely to have much influence in this area.

[98] Innovation in Legal Services Report, Legal Services Board (2015)

(v) Independent, strong and effective legal profession

237. The Act also requires the Authority to consider the impact of MDPs on the legal profession itself and any factors that might influence its ability to be a strong, independent, and effective. In addition to the other issues considered in this section of the study which will have a bearing on this, the Authority should also address the possible impact of MDPs on the training of the profession and on the supply of practitioners.

238. The training process for both barristers and solicitors is a subject which the Authority is required by the Act to consider in its own right, but there are a number of ways in which MDPs might possibly influence this:

- The entry of MDPs, to any significant extent, will offer the potential for new, more diversified careers to legal practitioners.
- The extent to which MDPs, as well as Legal Partnerships, may impact on the Law Library could have implications for the Bar's training model and this should be kept under review. However, the number of barristers likely to enter such partnerships are expected to be relatively small and there are other ways of ensuring that an effective training model survives other than requiring all barristers to practise from the Library.
- MDPS should add to the possible sources of traineeships, although the extent to which such practices are more focused on particular specialisms may discourage them from doing so or make it difficult for them to do so without the cooperation of other law firms.

239. Overall, the Authority should seek to ensure that there are no impediments to the ability of MDPs to train new members of the legal profession, given that the legal services offered through such practices would be under the supervision of a Managing Legal Practitioner.

240. A strong and effective profession not only requires new entrants but also that the demographics of the legal market are sustainable. The accounting firm Smith & Williamson's 2015 report on the legal profession revealed that although nearly a third of all practising solicitors are over the age of 50, there is little formal succession planning in place. Two thirds of firms have no processes for entry to partner level. The introduction of MDPs may provide a stimulus to the profession to address this and other structural problems which would help to make the sector work better.

(vi) Adherence to the professional principles

241. It is worth noting that none of the other jurisdictions which have introduced MDPs or similar alternative business structures, have reported any concerns about professional standards, ethical behaviour or quality of service. In fact, the available evidence suggests that the ethical situation improves rather than deteriorates in MDPs and similar structures (especially those that are incorporated).

242. The reasons for this are hard to pinpoint from the available evidence but possibly arise from the following:

- The introduction of NLP structures (MDPs or incorporated practices) seems to have made legal practices more consciously business-like in their operations, better in their handling of

cashflow (hence reducing risk to client funds) and clearer and more disciplined in their communications with clients.

- NLP structures allow legal practitioners to bring non-lawyers in to undertake the running of their businesses and allow the lawyers to focus on delivering legal services.

- The requirement imposed in jurisdictions adopting MDPs for those organisations to adhere to the professional standards and principles of the legal profession in the delivery of their legal services, requires conscious thought about how these standards and principles are to be accommodated into the day-to-day working practices of the organisation. In contrast, within some law firms, especially smaller organisations, it is easy for the assumption to be made that adherence to the appropriate standards and principles will simply happen automatically.

243. There is no inherent reason why an approach cannot be designed which accommodates the conduct of business by both lawyer and non-lawyer partners, and which adheres to the legal professional principles. There are already examples in the Law Society Rules which provide a starting point but which might need some modification to be workable in practice, for example:

"Law Society Code: Rule 4.5, Confidentiality in the Solicitors Office
Solicitors who share accommodation or staff with non-solicitors or another solicitor's firm should ensure that arrangements are in place which restrict access to all information, including information stored on computer, to authorised staff. Failure to do so could lead to a breach of confidentiality in respect of the business and affairs of the clients".

This rule could work in an MDP with the removal of the word "all" in relation to access to information and some more detailed consideration of what client information is absolutely and necessarily confidential and what might be more general information that could be shared without prejudicing the client's interests or the good administration of justice.

244. The Authority should therefore give further consideration to any other issues contained in the Law Society and Bar Council Codes of Conduct which might need to be addressed directly or indirectly in any regulations on MDPs or any Code of Practice which it may issue per Section 22 of the Act.

245. The Authority would also need to review the following Statutory Instruments in order to ensure that there would be no issues arising for or caused by the introduction of MDPs:

- SI 178/1996 - Solicitors (Practice, Conduct and Discipline) Regulations 1996, Re. Professional names and notepaper.
- SI 343/1988 - Solicitors (Professional Practice) Regulations 1988, Re. Professional fees.
- SI 518/2002 - Solicitors Acts 1954-2002 (Solicitors Advertising) Regulations
- SI 344/1988 - Solicitors (Advertising) Regulations 1988
- SI 605/2010 - Solicitors Acts 1954-2008 (Fees) Regulations 2010
- SI 604/2010 - Solicitors Acts 1954-2008 (Sixth Schedule) Regulations 2010
- SI 752/2004 - European Communities (Lawyers' Establishment) (Amendment) Regulations 2004
- SI 732/2003 - European Communities (Lawyers' Establishment) Regulations 2003

- SI 132/1999 - European Communities (Freedom to Provide Services) (Lawyers) (Amendment) Regulations 1999
- S.I. No. 103/2006 - The Solicitors Acts, 1954 to 2002 (Independent Law Centres) Regulations, 2006

Conclusions

246. When considering how MDPs might impact on those issues highlighted in the Act as areas of particular concern, the Authority will need to bear the following issues in mind:

- Firstly, the objectives which it sets for the introduction of MDPs. This will no doubt draw its inspiration from the Act but an exposition of the key outcomes that the Authority would want to achieve through MDPs will help in regulatory design. As noted in the previous section, the model that is adopted for the potential introduction of MDPs could make an important difference. If the model is too prescriptive or restrictive, then the resulting take-up of new structures would be low. Any impact on costs, consumers or access will then be negligible or non-existent, as has proved to be the case in Canada.

- Secondly, the ability, and willingness, of non-legal practitioners to enter into joint business with legal practitioners, would most likely be influenced both by any obligations or restrictions on legal practitioners that might spill over onto them as well as any issues that might arise in relation to the obligations on them due to their own professional obligations. The Authority should gather more evidence from potential entrants to the legal market on issues that might act as barriers, or attractors for them when considering entering the legal market.

- Lastly, the experience of other jurisdictions suggests that MDPs are always likely to represent a small share of the total market for legal services. The question then arises of whether the introduction of an MDP scheme should seek to have a wider impact on the legal market beyond those businesses that are formally structured as MDPs. This is what has happened in Australia, for example, with the recent extension of the 'management systems' approach from incorporated practices and MDPs, to all legal practices in Victoria and New South Wales. The Authority might, for example, seek to influence wider behaviour in the market, for example, in the provision of information to consumers, through its regulation of MDPs.

247. The latter is a broader point relating to its philosophical approach to the regulation of the legal market, on which the Authority might also seek views.

Part 5: Issues for Consultation – The Establishment, regulation, monitoring, operation, and impact of MDPs (section 119(3))

The Nature of the MDP Consultation

248. The Authority is required by section 119(3) of the Act to engage in a public consultation process with a view to making a final report to the Minister for Justice and Equality setting out recommendations on how the State should proceed in relation to MDPs.

249. The Act explicitly refers to the 'establishment, regulation, monitoring, operation and impact of MDPs' and the Authority should consult on each of these aspects separately, even if it is difficult to make fine judgments on some of the latter issues unless the precise model is known. The broad approach to the regulation of MDPs which the Act proposes is a reasonable basis on which to make more detailed enquiries and this study draws on these provisions and the experience from other jurisdictions to make some suggestions to the Authority about how it might undertake the required consultation.

Potential Stakeholders to be Consulted

250. The stakeholders who could assist the Authority in its consideration of how to introduce MDPs are the following:

- The professional bodies, who will need to be closely involved in implementing the MDP model.
- The Lay Members of the Law Society's Complaints Committee and other similar bodies who may be involved in the detail of complaints handling for other professions.
- The Competition and Consumer Protection Commission.
- The Judiciary (perhaps via the Association of Judges in Ireland).
- Government departments.
- Consumer interest groups and others who could comment on how access to the market for legal services can be improved.
- Individual businesses and business representative organisations.
- Trades Unions, charities and other civil society organisations who might use the MDP model in new ways once they are aware of its potential.
- The regulators of other professions who may maintain their own barriers to the provision of joint services.
- Insurers, lenders and other advisers to the legal market whose activities and approaches may support or inhibit the take-up of MDPs.
- Potential users of the MDP model, whether legal practitioners or non-lawyers interested in entering the legal market and seeking a legal partner.
- Potential clients of MDPs whether consumer, corporate or public sector.

Approach to Consultation

251. The sort of information that the Authority could usefully glean from the different groups of consultees listed above, may be very specific to each source. It would therefore be useful for the Authority to adopt a number of parallel approaches to consulting on MDPs which would improve the quality and usefulness of the feedback it receives. These consultation approaches might include:

- Round table discussions, workshops or focus groups.
- Information sessions and presentations on what the options might be for MDPs, with examples drawn from other jurisdictions to illustrate the possibilities.
- A survey of potential users or consumers on key points to be addressed in drawing up the regulations.
- A traditional call for written submissions on particular points of detail.

Issues for Consultation

252. The following is an indication of some of the topics which might form part of the consultation, and which draw on the outline provided in the Act.

General Questions on the Establishment and Potential Impact of MDPs

(i) Should MDPs/non-lawyer ownership of legal practices be permitted in any form in Ireland?

(ii) If yes, what would be the key objectives of introducing MDPs? How should success in achieving the desired outcomes of introducing them be measured? (e.g. the Office of the Legal Services Commissioner in New South Wales targeted a reduction in consumer complaints).

(iii) What impact do you think non-lawyer ownership in general could have in Ireland on: (a) Legal Costs, (b) the provision of legal services to consumers, and (c) the access of persons to legal practitioners?

(iv) What impact do you think that the model for MDPs proposed in the Act could have in Ireland on: (a) Legal Costs, (b) the provision of legal services to consumers, and (c) the access of persons to legal practitioners?

(v) If you think that MDPs should be introduced in Ireland, are there any ways in which you would change the model suggested by the Act? (e.g. allow for limited liability MDPs? Limit or extend non-lawyer ownership? Carve out certain areas of work or types of practitioner (e.g. barristers)?

(vi) What sort of MDP model (if any?) would be of most interest to legal practitioners in Ireland?

(vii) What sort of MDP model (if any) would be of most interest to consumers?

(viii) What sort of MDP model (if any) would be of most interest to potential non-lawyer partners in MDPs?

(ix) Could an MDP model be successfully introduced without any limitation of liability option?

(x) Should the emphasis be placed on subjecting MDPs to the exact same requirements that are imposed on legal practitioners running traditional law firms, or should the Authority seek to develop a risk based approach which would apply a different standards regime to MDPs?

(xi) Should there be a single approach to all MDPs or would it be reasonable to differentiate between types of MDPs? Should any such distinctions be based on who services are being supplied to? Or on the nature of the suppliers (e.g. whether lawyers are the majority owners and managers or not?)

Specific Questions on the Regulation, Monitoring and Operation of MDPs

253. Section 116 of the Act and the discussion contained in this initial study also prompt several questions on the detail of the possible MDP scheme.

Regulation

i) How automatic should the procedure be for commencing practice as an MDP?

Section 106 of the Act requires an MDP to give notification of its intention to provide legal services, in whatever form prescribed by the Authority, accompanied by payment of a fee (if any). The assumption of the Act is that, in the case of a legal partnership, this is a straightforward process subject only to a check with the professional bodies (or with the Authority's own register of practising barristers) that the individuals concerned hold practising certificates. However, in the case of MDPs, the Act also sets out a wider range of persons who would be considered unsuitable for legal practice (section 107(4)) and not all of these individuals will necessarily be known to either the Law Society or the Bar Council. This then raises the question "what should be the process for ensuring that the unsuitable persons identified in the Act do not become partners in MDPs?".

Some other jurisdictions (e.g. England and Wales) conduct suitability checks on all owners, whether lawyers or non-lawyers. The Solicitors Regulation Authority requires approval of those individuals who are the owner/managers of the firm, before an application can be made for the entity to obtain its registration. The suitability test includes a check with the National Crime Agency and Companies House amongst others. Other jurisdictions, like Quebec, require the non-lawyer to make a declaration and heavy criminal penalties are imposed for misleading or false statements made to support an application to be a non-lawyer partner in an MDP. A balance needs to be struck, however, between the benefits (real or perceived) of protecting the integrity of the profession from undesirable elements, and the costs in terms of time and money that must be incurred before a new business can be set up. If Ireland were to permit MDPs, what would be the right balance for this jurisdiction?

ii) What level of information requirements on non-lawyer partners in MDPs would be proportionate?

Does it make a difference whether the non-lawyer role in an MDP is a passive or active participant in the partnership? Should suitability checks be actively carried out, or is an attestation declaration enough? The Law Society of Ireland's Qualified Lawyers Transfer Test Regulations Certificate of Admission, for example, requires a declaration on several issues like those outlined in section 107 (e.g. bankruptcy, criminal convictions etc.). It is also worth bearing in mind that the Act makes it clear that practising if not permitted by section 107 is a summary offence subject to a serious penalty. Could the onus for checking largely be left to self-declaration of the firm, given that partners in an MDP will have joint and several liability?

iii) Should the non-legal partners be registered in some way with the Authority?

This is a question which may be related to the sanctions that are imposed on MDPs committing misconduct. If there is no record of the non-legal partners in an MDP what would stop a non-legal practitioner committing serial misconduct in successive MDPs?

iv) Are there any particular issues that arise in relation to registered lawyers i.e. lawyers using the Establishment Directive?

Under European law, registered lawyers must receive national treatment and would therefore be entitled to go into partnership in an MDP. The assumption would be that if they were engaged in a type of MDP that was unacceptable to their home jurisdiction then they would temporarily suspend their practising certificate, which is what currently happens to European lawyers who go "in house". The only significant question arising for Ireland would be whether the experience obtained by a registered lawyer who was working in an MDP could count towards the 3-year assimilation requirement under Article 10 of the Establishment Directive?

v) Would advertising and naming requirements require any particular attention?

Section 116 (3) (e) and (f) allow the Authority to provide for additional regulation on the use of names by MDPs and advertising – Should there be any additional requirements
e.g. disclosure/transparency imposed in relation to the use of the word 'solicitor(s)' or 'barrister(s)' in the name of an MDP? Other than this, would there be any reason to go beyond statutory requirements?

vi) What might be the implications of MDPs for professional indemnity requirements? How does this relate to proposed section 47 of the Act?

vii) Fee sharing and Contingency Fees
Is there any need to make specific provisions to ensure that fee sharing through an MDP does not impact adversely on the administration of justice and is consistent with Irish law on contingency fees?

viii) Section 117 Authority's register for inspection

What format should this take (e.g. electronic searchable or pdf?) What information should it contain? (e.g. complaints data, information about other regulatory authorities involved in any individual MDP?)

Monitoring

i) How should MDPs be treated in relation to client protection?

Are there ways in which MDPs could offer more choice to the legal market without undermining the level playing field with traditional law firms? In other words, are there new and innovative possibilities for handling client money and providing more information to clients that would offer protection but do so at a lower cost than current regulatory arrangements? Should the compensation fund necessarily be extended to solicitors working in MDPs (nb. See the Consumer Survey in the 2015 Annual Report of the Law Society which found that most consumers did not know of the existence of the compensation fund).

ii) What detail should the Authority seek to lay out in relation to its powers to issue directions? What might be defined as a "case of concern"?

iii) How could sanctions be imposed on non-lawyers engaged in MDPs in cases of serious breach?

The Solicitors Regulation Authority in England and Wales and the Singaporean LSRA both require non-lawyer owners to register and have the power to impose sanctions both on the individual miscreants and the entity as a whole. What would having the right to impose sanctions on the non-lawyers require? (e.g. would the LSRA have sufficient vires under the Act? Could it maintain a register of non-lawyer partners?).

iv) Are there any particular concerns in relation to the cessation of an MDP?

What would happen in circumstances of disorderly closedown if the only/last lawyer partner had left the business? What might be the consequences if a partnership decided to split or wind up the legal side of the business but otherwise continue with the non-legal side of the MDP? What would this mean, for example, for run off cover?

Operation of MDPs

i) The Act suggests that regulation of an MDP should be conducted through the Managing Legal Practitioner.

ii) Is "Managing Legal Practitioner" the best terminology?

This may cause confusion in larger firms where there is a "managing partner" and whilst this role needs to be senior it is not necessarily best undertaken by the overall managing partner. In other jurisdictions with this model for operating MDPs, the role has become akin to the firm's internal general counsel. If there is more than one lawyer in the partnership does this term imply that the burden, and risk of compliance falls largely to one partner? See for example, the situation in Australia where the new Uniform Law now permits a 'practice committee' as an alternative.

iii) What should be the sanction if MDP fails to have managing legal practitioner?

Should the Authority have the right to impose an acting managing legal practitioner (e.g. as a more proportionate response than closure? (e.g. if married partners are operating an MDP with some employee lawyers and the lawyer spouse has an illness and is unable to manage and supervise temporarily). Should sanctions apply equally to all the lawyer owners in the partnership, with one designated as the compliance officer point of contact but all being jointly and severally liable under section 108?

iv) Would it be proportionate to require all partners and employees of the practice to comply with professional principles and other related regulations and Acts?

In some other jurisdictions, this has been dealt with by requiring non-lawyers in the partnership to give undertakings that they will not impede the ability of the legal practitioner to meet their professional obligations. Is this enough to enable the legal practitioner to uphold their professional duties?

v) Accounts rules

Section 110 suggests that an MDP would need to have separate accounting records in respect of legal services from other accounting records. Is this over burdensome? Should restrictions be limited only to money held on behalf of the client or would it be better to do a more radical rethink of solicitors' accounts rules in relation to MDPs. Are there cheaper, less risky ways to hold client money?

vi) Application of standards of ethical conduct, confidentiality, information

Section 102 - if a legal practitioner is an employee in an MDP should their work always necessarily be supervised by a legal practitioner? What if it is not legal work? How can the process of engaging with clients be improved through MDPs? How can confidentiality be put in place in ways that are proportionate? E.g. what client information is it reasonable to seek to protect e.g. the details of the clients' legal business, not the existence of the client at all.

vii) What other agencies might need to inspect the offices of an MDP? Does that suggest any need to information sharing/regulatory protocols? This is part of the proposed notification process for new MDPs, but would the Authority need to work out protocols before a new form of MDP could be approved?

viii) Public confidence in MDPs - Are there any other provisions that might be required?

ix) Enforcing obligations- How might obligations on non-lawyer partners be enforced? Is there a need for a written partnership deed which incorporates basic minimum requirements on the practice? Or should this be left more flexible? Would that make it harder for the legal practitioners?

254. The above topics merely give some guidance on the kind of issues that would need to be aired during the consultation process. In order to produce a useful consultation exercise that will help to inform the recommendations that are made in any final report to the Minister for Justice and Equality, as required by section 119, the Authority will need to consider how best to match different lines of enquiry to different stakeholder groups. It may also need to consider the question of scheduling of these enquiries, since there will be no point in engaging in an in-depth discussion of the potential regulations for MDPs, if the consultation reveals that there is no appetite for MDPs, or the demand is for an entirely different model of non-lawyer partnership.

255. Even if a consultation were to reveal that there is little interest in an MDP model in Ireland at present, the exercise may nonetheless reveal other ways in which the Authority can influence the market in order to produce better outcomes for consumers.

Part 6: Conclusions

256. This study has considered a wide range of evidence from other jurisdictions in an attempt to provide the basis for a broad consultation on the role that MDPs might play in the Irish legal market. What it has highlighted is that decisions on the business structures to be used in the legal sector cannot be taken in isolation. They need to take account of the legal system in which they might be used, the environment for regulation on the legal profession and the need to uphold the wider public interest.

257. Creating the right regulatory environment in which MDPs might be permitted, is however, only one side of the equation. For any new type of business structure to have the desired impact on the market there must also be a demand for their services, and, equally a demand from non- lawyers to join or form such businesses. A large part of the argument for MDPs is predicated on the fact that these entities represent new entrants to the profession and therefore change the competitive dynamics within the legal market. However, the competitive impact of such businesses can be severely reduced, or even eliminated, by excessive regulation. If an MDP model is going to work, the experience of other jurisdictions suggests that, above all, it needs creativity of regulatory approach. The one thing that clearly does not appear to succeed is a straightforward extension of existing law firm/lawyer regulation to MDPs. At best this means that MDPs have little or no impact on the market because they are simply more traditional law firms, operating on largely the same cost structures. At worst, it means that there is zero take-up and time and effort are wasted on creating a model that is not used.

258. It is also important to bear in mind that changes in the legal services market are being driven by wider forces and regulation will often lag the market. It therefore needs to be constantly kept under review to make sure that it does not become an impediment to market development.

259. Moreover, whatever approach the Authority does ultimately recommend, the issue of more choice around business structures should be recognised as only one tool for trying to improve the functioning of the legal market and to fulfil the ultimate purpose of the Legal Services Regulation Act 2015.

Hook Tangaza
March 2017

ANNEX 1: LITERATURE ON MDPS

The Case for MDPs

Sir David Clementi for the Legal Services Review – 'Review of the Regulatory Framework for Legal Services in England and Wales'
This report calls for an updated approach regarding legal business structures to match the changes in modern business practices. Sir David Clementi advocates that these changes are in the interests of the legal profession and the consumer.

http://www.avocatsparis.org/Presence_Internationale/Droit_homme/PDF/Rapport_Clementi.pdf

The Wisconsin Lawyer (April 2001)

This article makes the case for adoption of multidisciplinary partnerships in the US state of Wisconsin, arguing that preventing lawyers from practicing in an MDP structure will block the evolution that is necessary for the profession to survive and provide increased service to the public.

http://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=74&Issue=4&ArticleID=21684

Legal Services Board (UK) (July 2016) – 'Evaluation: Changes in the legal services market 2006/07 - 2014/15'

This analysis of market outcomes associated with the delivery of the regulatory objectives concludes that the since the introduction of ABS and MDP business models there have been signs of positive change and a lack of negative impacts of reform on quality. Ultimately, the report suggests that further legislative reform is necessary to complete the liberalisation of the legal services market.

https://research.legalservicesboard.org.uk/wp-content/media/2015-2016-FINAL-Market-Evaluation-Summary.pdf

Accountancy (October 2011) – This article details the pros and cons of MDPs for both small- medium and large accountancy firms, concluding that the adoption of MDP business structures provides greater access to opportunities for firms large and small.

http://www.icaew.com/-/media/corporate/archive/files/about-icaew/newsroom/accountancy/features/icaew-1011-mdps-final.ashx?la=en

Enterprise Research Centre (July 2015) – 'Innovation in Legal Services: A report for the Solicitors Regulatory Authority and the Legal Services Board'

This report found that the introduction of Alternative Business Structures (ABS) was successful in achieving its intended goal (amongst other things) to promote innovation and diversity in the provision of legal services. The adoption of ABS status has a positive effect on innovation, showing that ABS Solicitors are 13-15 per cent more likely to introduce new legal services. The implication is that the wider adoption of ABS status would be likely to increase the range of legal services on offer.

https://research.legalservicesboard.org.uk/wp-content/media/Innovation-Report.pdf

The Case Against MDPs

Council of Bars and Law Societies of Europe (June 20015) – 'CCBE Position on Multi- disciplinary Partnerships (MDPs)'

The CCBE has made clear in its position paper on MDPs that 'the problems inherent in integrated co-operation between lawyers and non-lawyers, with substantially differing professional duties and different rules of conduct, present obstacles which cannot be adequately overcome in such a manner that the essential conditions for lawyer independence and client confidentiality are sufficiently safeguarded.' CCBE Code of Conduct does however make provision for the association between lawyers and other persons when permitted by the laws of the Member State to which the lawyer belongs. Ultimately, the Council believes that prohibition of such partnerships protects both the public and good governance under the rule of law.

http://www.ccbe.eu/NTCdocument/ccbe_position_on_mdp1_1182254536.pdf

ABA Commission on Multidisciplinary Practices Report (2000)

This report argues that multidisciplinary practice in the form of permitting the sharing of legal fees with non-lawyers or permitting ownership and control of the practice of law by nonlawyers threatens the core values of the legal profession. Much of the insights regarding the harms of MDPs are drawn from an earlier ABA report – The MacCrate Report. This report concerned the need for safeguards regarding the provision of legal services by law firms in arrangements with separate nonlegal professional services firms ("side-by-side" arrangements).

http://www.americanbar.org/groups/professional_responsibility/commission_multidisciplinary_practice/mdpfinalrep2000.html
[MacCrate Report]
http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report).authcheckdam.pdf

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