Nothing ventured

With MDPs failing to gain traction, the relaxation of the profession's border controls may best lend itself to joint ventures between solicitors and accountants, says Stuart Bushell

When at the turn of the century the Council of the Law Society expressed support for the liberalisation of the profession, the assumption was that this would take the form of multi-disciplinary practice – professionals from different disciplines joining together to provide a combined service. The announcement recently of the first accountancy-led MDP by Spofforths Accountants in Suffolk may give the impression that this will be the first of many. However, it now seems that the reality of ABSs is that the relaxation of border controls is much more likely to take the form of commercial organisations, notable retailers and the providers of online services, muscling in on solicitors' preserve.

There are a number of reasons why MDP is not gaining traction – cultural differences, the wish to ring-fence compensation schemes against arbitrage and an unfair side effect of the Enron affair being three. And, ironically, the SRA has delivered a killer blow to the one example of an existing MDP model to which Sir David Clementi drew favourable attention in his report – namely the provision of financial services by solicitors. On the dubious pretext that it lacked jurisdiction to regulate ABSs that are also regulated by the Financial Services Authority, the SRA has retracted previous assurances and announced that dual-authorised ABS firms will no longer have the benefit of SRA consumer protections. One of the consequences is that solicitors in such firms would be denied the ability to conduct the exempt regulated activities that have always been considered as a necessary part of their legal work. This leaves no alternative but for firms to hive off their in-house financial services unit.

Unnatural bedfellows

Early surveys suggested that most solicitors regarded accountants as being natural bedfellows for MDPs, but little interest has been shown by possible suitors and the likelihood is that in due course accountants will instead be encroaching on legal territory via the LSB's pending approval of the ICAEW as a regulator probate services (and join the ACCA and ICAS, who already have such approval). The view has also been expressed that audit work and legal work are fundamentally incompatible.

An issue militating against MDPs in general is that of management control. Solicitors are not noted for their ability to manage their own firms, let alone any non-mainstream businesses, and other professionals are consequently wary of submitting to solicitors' management skills. Furthermore, there is a considerable risk involved in merging with any third party, and there are numerous examples of broken corporate marriages even within the solicitor community.

This may be part of the explanation for the considerable appetite currently being shown for joint ventures – particularly those between solicitors and financial advisers. There is a natural synergy between legal and financial work in areas involving trusts, family work, older clients and personal injury, and the ability to combine these services not only enables a more holistic client proposition, but, by reason of the regulatory requirement that financial advisers must record and maintain copious personal client data, the means for solicitors to maintain ongoing client relationships.

The downside for solicitors providing a combined service from within their own practices is the responsibility imposed on the partners for FSA compliance, but in a JV this can be delegated to the IFA partners. Furthermore, whereas arms-length client referrals to IFAs can no longer be remunerated, the SRA has no objection to solicitors retaining dividends from a JV (which for SRA purposes would be classed as a solicitor's separate business) subject to the important caveat that the JV must charge fees for its client services and account to clients for any commissions received.

Business choices

The vehicle for the JV could be an LLP or a limited company, depending mainly on tax considerations, and it would usually be recorded with the FSA as an appointed representative of the IFA member, which would typically charge 60 or 70 per cent of the client income received from clients of the JV for the provision of administrative, advisory and regulatory services, and PI cover. Subject to tax, the balance of the income would then be available for the payment of dividends pro rata to shareholdings, which typically would be 50/50.

Setting up a JV is not in itself a guarantee of success, and solicitors and IFAs need to sit down together to develop business plans to ensure a common understanding of who is going to do what, when, which areas of business are going to be targeted, what the financial parameters should be for business referred to the JV, what monthly volume and income figures are budgeted, and what the review process should be.

As far as the SRA is concerned, a disclosure of the solicitors' financial interest is required, as well as ensuring that clients of the JV do not enjoy the protections of the solicitors' handbook. This is relatively straightforward to operate successfully and it is beginning to look as though such strategic alliances may be as popular as MDP-type ABSs. They also do not require the patience of those firms waiting for a start date for ABSs.

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