

Could ABSs catch on outside England and Wales?

The continued recession could well make governments in other jurisdictions forget about their concerns about independence of the legal profession and abandon their opposition to alternative business structures, says **Stuart Bushell**

Nine months after the introduction of alternative business structures (ABS) in England and Wales, there are a mere nine examples in existence. The slow start must be due, at least in part, to the fact that of the ten regulators approved by the Legal Services Board, only the SRA and the CLC can actually license ABS. And questions have been raised about their capacity to handle with the variety of new business propositions being thrown at them.

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The conveyancers have managed to authorise only two of their ABS applicants since October 2011 and the SRA, which finally got itself into a position to commence licensing in March of this year, has allowed seven in the following four months. However, according to the SRA, some 30 or so applicants are very close to getting their licence and 200 more are forming an orderly queue behind them. The numbers will be boosted by the need for many of the 500 or so legal disciplinary practices to convert to ABS status or shed their non-lawyer owners or managers, although it is not clear exactly when that will be. In addition, it appears that the Bar Standards Board, CILEX and eventually the ICAEW accountants may join the two Licensing Authorities but this is not likely to be in 2012.

What does the rest of the legal world make of the English experiment? After protracted wrangling, the Legal Services (Scotland) Act became reality earlier this month. Scottish ABS is limited to 49 per cent external ownership, with majority ownership confined to solicitors and other regulated professionals,

notably accountants and surveyors. Potential ABS firms cannot yet apply but the Law Society of Scotland has reported some interest, with Edinburgh firm Turcan Connell aiming to be the first successful applicant.

Protecting smaller firms

It remains to be seen whether the decision to protect small Scottish provincial firms by confining ABS to professionals, and thereby preventing the incursion of multiples such as

the Co-op, will work to the disadvantage of larger Scottish firms, some of which have responded to the new legislation by cementing cross-border mergers - McGrigors with Pinsent Masons and Biggart Baillie with DWF.

Scottish politicians may also be noting ruefully that the Co-op intends to deliver 3,000 extra jobs via its legal services division in England and Wales over the next four years. The UK government has always maintained that the Legal Services Act is not so much about the reform of the legal professions as about the economic benefits of an expanded legal sector.

Other legal jurisdictions around the British Isles share the Scots' concern about the effects of ABSs. In Northern Ireland, where Sir George Bain produced a major report in 2006, there has been reluctance on the part of the government to support his recommendation that a form of ABS should be allowed. The main concern appears to be that the legal services market in the province is relatively small and that ABS might quickly lead to a quasi-monopoly situation, to the detriment of the sector as a whole. On the Isle of Man,

where international issues are important, there appears to be a divergence of view between the smaller, traditional firms and the larger firms focused on offshore business.

Lack of interest

The rest of the legal world is interested in the ABS experiment but, for the most part, not interested in participating just yet. Australia led with its approach to lawyers and non-lawyers operating together but not many firms made a success of it.

Lawyers in the USA have recently rejected the ABS concept, their argument being that external ownership of law firms dilutes the professionalism of lawyers, damages lawyer-client relationships and leads to non-lawyers persuading lawyers to ignore ethics in pursuit of profits - which of course never happens in the USA profession at present.

As for continental Europe, the opinion can be adequately represented by the French Bar, which two weeks ago stated that ABSs cannot be regarded as law firms and will not be allowed to operate in France. General de Gaulle would have been very proud of the clarity of that “Non!”

So the rest of the world is uncertain about ABSs and many lawyers are positively hostile. Foreigners are, nevertheless, watching the UK closely. If ABS and external ownership proves to be a success in expanding the size of the UK legal services sector by a significant amount, it seems unlikely that governments knee deep in economic strife will say “we won't have ABS because we are worried about the independence of our legal profession”. The worldwide recession may have the last word.



Stuart Bushell is director of SIFA Legal (www.sifalegal.co.uk)