

Setting Up in Practice and ABS Applications

Introduction

The motivation to set up a new firm, whether on a solo basis or with others, is a personal decision that might have been made for many different reasons. For many the challenge will be to be in control of one's own destiny, perhaps influenced by the frustrations of working for others in the past, whereas for others it might be the best way to continue in practice after the failure of a previous firm or an unplanned departure from it. Whatever the motivation, however, the decision will bring potential risks and rewards, along with numerous challenges to be addressed and overcome.

Dealing with the SRA

Most solicitors will look to go down the SRA route in order to become a newly authorised practice, but this is not the only option which is available. The structures in place under the Legal Services Act 2007 mean that the SRA is just one of the "frontline" regulators which is able to authorise and then regulate law firms, but it is not the only one, nor must solicitors go down that particular route. Other options will depend on which of the reserved legal activities the new firm will be providing, so that a conveyancing and probate practice might choose to be recognised by the Council for Licensed Conveyancers or a litigator might choose to operate under the regime in place at the Bar Council, but the great majority will, of course, opt for the SRA regime as being the one most obviously relevant to solicitors' practices.

The Need for a Business Plan

Recognising the financial risks of setting up any new business, law practice or other, your first very important step should be to develop a business plan. What are the services that you will be providing and how great is your experience of them? Just as importantly, of course, who will your clients be and how will they know about your new enterprise?

Much may depend on the restrictions in place from your previous firm – might you risk legal action if you seek to contact former clients from any previous firms as a result of restraint agreements still in place? Your business plan will need to set out your likely fee income and the financing arrangements while you wait for the work done from your starting date to be paid for and provide a budget for the expenses that will arise for you to start your practice.

Most importantly of all, don't allow your excitement and enthusiasm for your project mask the very real financial challenges that you will be bound to face: how secure is that new source of work and how soon will your bills be paid? How great a loan might you require from which source and on what terms?

If writing a business plan for the first time see Appendix 1 to our Practice Manual drafts (for Sole Practitioners working solo, Sole Principals with at least one staff member, or for Firms). These easy-to-follow drafts will assist you in any applications you make to the bank for start-up loans, and the SRA who will be concerned to know that you will not pose a risk to them in relation to clients with ongoing matters left high and dry if your plans end in failure.

Your SRA Application Process

Whether a traditional lawyer only practice, or an "alternative business structure" (ABS) involving non-lawyers in the ownership structure of your planned new entity, you will now need to prepare your application for authorisation. The regulator will check its records to see if there are any outstanding disciplinary concerns that will mean that your application may not proceed, and of course the personal profile of any non-lawyers who will be involved in the case of ABS applications. The authorisation process has been much simplified from the earliest days following the coming into force of the Legal Services Act but should still be compiled so as to survive the process successfully and with as little delay as possible.

From its responsibilities to the public and to the profession in general the authorisation team at the SRA will need to know that the services that you intend to provide will be well managed and competently delivered, and in line with all relevant legal and regulatory obligations. In this regard the SRA Application, Notice, Review and Appeal Rules set out some fairly extensive requirements on what will be expected for you to succeed in your plans.

Our expert factsheet explaining the SRA authorisation process will take you through the SRA's concerns, the requirements of the process and the extensive paperwork involved. We will help you with some of the more obscure regulatory requirements to arise. These will include whether you will need to be registered so as to provide advice on the incidental issues of financial advice for clients, or other issues relating to the need for insurance by way of "insurance distribution". These most complex issues of solicitor regulation do bring risks for the unwary, with potential criminal liability for non-registration in certain circumstances. We provide a detailed factsheet on this topic to enable you to ensure that your new firm is meeting its obligations in this regard and are responding to the SRA authorisation application form in an appropriate manner.

Quality Standards

If surviving the SRA authorisation process is your first major hurdle, then it may well be that applying for recognition under one of the quality management schemes follows on as your next most pressing priority. If you are providing a conveyancing service then to be instructed by the lenders to represent their interests in acting for purchasers you will need to comply with the requirements of the Law Society's Conveyancing Quality Scheme (CQS), and/or the Lexcel Standard or the Specialist Quality Mark (SQM) if you will need to be providing legal aid services. Schemes such as the Lexcel standard may also help in securing indemnity insurance at all or at an affordable price and might assist in convincing clients that you are a firm that is worth dealing with.

Our template practice manuals for firms, sole principals and sole practitioners are all designed to enable you to have the necessary policies and procedures in place to address the needs of all such quality management programmes. If further help is needed in this regard, we also provide consultancy support advice beyond our web access service if required.

For More Information

Our aim is to enable law firms of all shapes, sizes and profiles to succeed in their objectives, whatever their chosen markets or client types may be. Since Infolegal was first formed ten years ago we have helped numerous firms to set up in practice so that their proprietors can pursue their personal objectives and succeed in practice in their own name. An Infolegal subscription will enable you to do so in a highly cost-effective manner.

To find out more about how Infolegal can assist you and your firm with COLP/COFA related issues, please contact us on enquiries@infolegal.co.uk, phone us on 0203 371 1064 or complete the online enquiry form that you will find on our website.