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DUBLIN SOLICITORS' BAR ASSOCIATION

SUBMISSION TO LEGAL SERVICES REGULATORY AUTHORITY

March 2017

**INITIAL PUBLIC CONSULTATION BY THE LEGAL SERVICES
REGULATORY AUTHORITY UNDER SECTION 118 OF THE LEGAL
SERVICES REGULATION ACT 2015**

LEGAL PARTNERSHIPS

SUBMISSION BY DUBLIN SOLICITORS' BAR ASSOCIATION

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BACKGROUND

The Dublin Solicitors Bar Association ['DSBA'] which was established in 1935 is the largest independent association of solicitors in Ireland, with a membership of over 5,000 practitioners across the country. Our membership includes solicitors firms of all sizes from the sole practitioner to the largest firms in Ireland.

The DSBA is solely a representative and educational body for solicitors, and does not have any regulatory function.

The DSBA has worked extensively since late 2011 on the Legal Services Bill 2011 and then on the Legal Services Regulation Act 2015 (No.65 of 2015) ['Act']. Our focus in that regard has been on issues of interest and concern to our members in their practice of the law, so as to ensure that the "*better balance*" principle underlying this new legislation (as stated in the Explanatory Memorandum of the 2011 Bill) is respected and given proper effect to in the interests of all concerned.

The DSBA has long been a strong advocate for solicitors to become entitled to practice law, on an optional basis, through more modern based business structures (in addition to the traditional sole trader or partnership structure). Thus the DSBA has very much welcomed the provision in the Act for limited liability partnerships between solicitors, noting however that (for whatever reason) solicitors in Ireland still remain unable to practice law through a corporate entity.

The DSBA has also noted the provision in the Act for a "legal partnership" [LP] as being another form of business structure envisioned under the Act to be available to a "legal practitioner" for the practice of law in Ireland.

CONSULTATION

The DSBA welcomes the initial public consultation now being undertaken by the Legal Services Regulation Authority ['Authority'] pursuant to Section 118 of the Act in relation to the regulation, monitoring and operation of legal partnerships.

A 'legal partnership' is defined in Section 2 of the Act as "*a partnership formed under the law of the State by written agreement, by two or more legal practitioners, at least one of whom is a practising barrister, for the purpose of providing legal services.*"

A 'legal practitioner' is defined under Section 2 of the Act as "*a practising solicitor or a practising barrister and a reference to a solicitor includes a reference to a firm of solicitors*".

Thus a 'legal partnership' under the Act is a partnership and is thereby governed by the existing and long standing statutory and common law applicable in Ireland to

general partnerships; and may be a partnership comprised of barristers or of solicitor(s) & barrister(s).

We set out below, in outline terms, the initial views of the DSBA in response to the Authority's Consultation on legal partnerships.

Given that the legal partnership is a new type of legal services business structure (without any like comparison in other common law jurisdictions so far as we are aware) as well as the rather short time allowed for responses to the Consultation, this Submission is one made in the hope, whether through further public consultations or otherwise, that there will be further opportunities for the DSBA to contribute to consideration of this topic.

Issue 1	<i>The benefits and risks for consumers of legal services ("services") that can be reasonably expected from enabling them to access legal partnerships</i>
Response	<p>As the LP is a new type of business structure, albeit based on the established law of partnership, it is difficult to assess what benefits and risks for consumers may be applicable.</p> <p>This Issue would require detailed study and consideration, handicapped perhaps as it will be by the absence of available empirical evidence in that regard (at least so far as solicitor and barrister partnerships are concerned).</p> <p>By its nature the partners in an LP will presumably be jointly and severally liable for the errors and omissions of or attributable to the LP.</p>

Issue 2	<i>The measures that need to be included in any regulations adopted by the Authority in order to provide adequate protections to consumers procuring services from legal partnerships</i>
Response	<p>This Issue will require a detailed study of the existing regulatory framework applicable to solicitors and barristers, and consideration of how that framework can or should be made applicable to (or harmonised for) LPs.</p> <p>It will also presumably necessitate the undertaking by the Authority of the consultation required under Section 120 of the Act regarding certain issues relating to barristers (such as holding of client monies), and the evaluation of those issues.</p>

	<p>In that regard one will need to bear in mind Section 113 of the Act which affirms that the Compensation Fund of the Law Society is confined to loss sustained by the dishonesty of a practising solicitor.</p> <p>Given the long history of funding by solicitors of the Compensation Fund, it must remain the position that the Fund remains in its application so confined to solicitors notwithstanding whatever regulatory framework is adopted for LPs.</p>
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Issue 3	<i>The information that legal partnerships are required to provide to clients, given the obligations that arise from the codes of practice and professional codes that will apply to practising solicitors and practising barristers (e.g. on compensation fund coverage or professional indemnity cover or provision of information regarding the basis of professional fees)</i>
Response	The information requirements should be similar to those required under Chapter 3 of the Act, with the addition of any points of information as arise from the regulatory framework to which an LP is made subject.

Issue 4	<i>The manner in which the Authority deals with complaints from clients or other parties in relation to allegations of inadequate services, excessive costs and professional misconduct on the part of practising solicitors or barristers who work in legal partnerships</i>
Response	<p>This Issue will likely be much dependent in the first instance on the outcome of the review under Issue 1.</p> <p>As the Authority will be the party responsible for maintaining the register of LPs and dealing with any breach of obligations on the part of the LP, the Authority would presumably therefore have the primary role in dealing with any such complaints – and in performing such role would take due account of the regulatory framework applicable to the individual legal practitioners concerned of the LP.</p> <p>The Authority will need to address how solicitors who are members of an LP are to be regulated, noting the existing role of the Law Society, through its Regulation of Practice Committee, in the regulation of practice complaints concerning solicitors.</p>

Issue 5	<i>The relationship between complaints about legal partnerships and complaints about the individual legal practitioners who work in those partnerships</i>
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Response	<p>This Issue will likely be much dependent in the first instance on the outcome of the review under Issue 1.</p> <p>However it would likely be undesirable from a legal practitioner perspective to be exposed to dual investigations of the same complaint, as that could give rise to double jeopardy (and double costs etc.) for the same complaint.</p> <p>Thus a unified complaint regulatory mechanism might be considered for adoption.</p>
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Issue 6	<p><i>The form in which the Authority shall publish the register of legal partnership under section 117 of the Act, and in particular, the information that the public register should include</i></p>
Response	<p>The register requirements should be similar to those required under Chapter 3 of the Act, with the addition of any points of information as arise from the regulatory framework to which an LP is made subject.</p>

Issue 7	<p><i>The registration requirements for legal partnerships that may arise from sections 104, 105, and 116 of the Act</i></p>
Response	<p>The registration requirements should probably be similar to those required under Chapter 3 of the Act, with some variations (such as to PI cover) and/or some additional requirements as arise from the regulatory framework to which an LP is made subject.</p>

Issue 8	<p><i>The consequences for legal partnerships and practitioners of a breach of the Act and/or any regulations made under the Act</i></p>
Response	<p>This Issue will likely be much dependent in the first instance on the outcome of the review under Issue 1.</p> <p>No doubt that review will need to consider how best to regulate the LP and whether regulation is best conducted through the regulation of the individual legal practitioners in the LP or otherwise.</p> <p>It would however likely be undesirable from a legal practitioner perspective in an LP to be exposed to dual investigations of the same breach, as that could give rise to double jeopardy (and double costs etc.) for the same breach.</p>

Issue 9	<i>The events in respect of which the Authority should require notification from legal partnerships after registration apart from cessation of practice (e.g. should legal partnerships be required to provide periodic declarations to the Authority and if so, what information should be required in such declarations?)</i>
Response	<p>The register requirements should be similar to those required under Chapter 3 of the Act, with the addition of any points of information as arise from the regulatory framework to which an LP is made subject.</p> <p>However it would likely be undesirable from a legal practitioner perspective to have to engage in any onerous annual renewal of their existing LP registration, adding as that would to the administration and work required for all concerned.</p> <p>One might perhaps however consider a requirement for an annual renewal declaration from the managing or compliance partner of the LP that all its legal practitioners hold current practising certificates (to act as legal practitioners).</p>

Issue 10	<i>The relationship between on the one hand, the roll of solicitors and the roll of practising barristers and, on the other hand the register of legal partnerships</i>
Response	This Issue will likely be much dependent in the first instance on the outcome of the review under Issue 1.

Issue 11	<i>The manner in which the establishment of the register of legal partnerships is funded, and also the manner in which the ongoing regulation, monitoring and operation of legal partnerships is funded with reference to the levy to be paid by the Law Society, Bar Council and certain barristers as per Part 7 of the Act</i>
Response	<p>The following would appear to be an equitable form of funding structure to be put in place (as provided for in section 95 of the Act) for the establishment and maintenance of the register of legal partnerships, as well as the ongoing regulation, monitoring and operation of legal partnerships:</p> <ol style="list-style-type: none"> 1) 10% paid by the Law Society paid <i>pro rata</i> by the Bar of Ireland and non-Law Library barristers;

	<p>2) 10% paid <i>pro rata</i> by the Bar of Ireland and non-Law Library barristers;</p> <p>3) 80% apportioned <i>pro rata</i> between the Law Society, Bar of Ireland and non-Law Library barristers in accordance with the number of solicitor and barristers registered as partners in legal partnerships in that year; and</p> <p>4) any fees recovered by the Authority from legal partnerships to be offset against the levy sought for the regulation of legal partnerships from the professional bodies and non-Law Library barristers.</p>
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Issue 12	<i>The extent to which the creation of legal partnerships would have ethical implications for members of the professions and, if so, how those implications could be addressed in the professional codes</i>
Response	The analysis of this Issue will likely be much dependent in the first instance on the outcome of the review under Issue 1.

RECOMMENDATIONS

Arising from our responses to the Issues above, and noting that a legal partnership is an entirely new type of legal services business structure (without it appears any like comparison in other common law jurisdictions), the DSBA would submit that any conclusions in relation to the regulation, monitoring and operation of legal partnerships should be deferred by the Authority until such time as there has been undertaken the following:

- a detailed study of the existing regulatory framework in Ireland applicable to solicitors and barristers, and consideration of how that framework can or should be made applicable to, and/or harmonized for, legal partnerships between solicitors and barristers; and
- the consultation as to barristers required under Section 120 of the Act (noting that the issues to be considered pursuant to Section 120 very much go to the heart of the regulation and functioning of legal partnerships between solicitors and barristers);

and thereafter,

- a public consultation by the Authority (as allowed for under Section 118 of the Act) on its conclusions as to the regulation, operation and management of legal partnerships.

We would respectfully suggest that the foregoing be included by the Authority as a Recommendation in its Report to be issued under Section 118 of the Act arising from the within public consultation.

We thank you for your consideration of our Submission.

Finally, our contact details (should the Authority have any queries arising from this Submission) are as follows:

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