

Law Society Submission on Legal Partnerships Framework and Code of Practice for
Practising Barristers

Introduction

- 1.1 The purpose of this submission from the Law Society of Ireland (“the Law Society”) is to respond to the invitation from the Legal Services Regulatory Authority (“the Authority”) for submissions in relation to the introduction of the regulatory framework to support legal partnerships. In particular, the Authority has invited the Law Society’s submissions in relation to drafts of the following:
- (a) Legal Partnership Regulations, under section 116 (1)(a) of the Legal Services Regulation Act 2015 (“the 2015 Act”) in relation to the operation and management of legal partnerships;
 - (b) Limited Liability Partnership Regulations, under section 130 of the 2015 Act in relation to the operation of LLPs which include provisions in relation to legal partnerships that apply for authorisation to operate as an LLP;
 - (c) Professional Indemnity Insurance Regulations under section 47 of the 2015 Act which include minimum standards of professional indemnity insurance for practising barristers and for practising barristers in legal partnerships and limited liability partnerships; and
 - (d) An updated Code of Practice for Practising Barristers under section 22 of the 2015 Act.
- 1.2 In making these submissions, the Law Society recognises the Authority’s mandate to introduce new forms of business structure through which legal practitioners, both practising solicitors and barristers, may provide legal services to consumers in Ireland. The introduction of such structures is not only provided for in the 2015 Act, but also accords with the Authority’s regulatory objective of promoting competition in the provision of legal services in the State.
- 1.3 The Law Society’s objective in making these submissions is to assist the Authority in ensuring that the introduction of legal partnerships does not serve

to diminish client protection nor to dilute the professional principles and regulatory standards to which all legal practitioners are held: to act with independence and integrity; act in the best interests of their clients; and maintain proper standards of work.

1.4 The Law Society's own residual regulatory mandate has at its heart the following statutory powers:

- the investigative and protective powers necessary to monitor enforce compliance with the Solicitors Accounts Regulations;
- the power to monitor and enforce compliance by solicitors with their anti-money laundering obligations;
- the power to regulate professional indemnity insurance, including the power to specify minimum terms and conditions, for solicitors;
- the power to maintain and administrate the Compensation Fund;
- the power to ensure that each practising solicitor applies on an annual basis for a practising certificate and undertakes continuing professional development training.

Each of these powers is integral to the protection of clients and the maintenance of the highest professional standards upon which the reputation of the solicitors' profession is built. These also play a significant role in the regulatory framework underpinning legal partnerships, primarily legal partnerships in which solicitors are partners or employees. This is reflected in various statutory provisions of the 2015 Act, and the Law Society welcomes the fact that it is also reflected in the draft regulations that are the subject matter of this consultation.

Previous Consultations and Subsequent Developments

2.1 The Authority conducted a public consultations into legal partnerships in 2017, which led to two reports in 2018. The Law Society made a submission to the Authority on legal partnerships on 16 March 2017 and a further submission on 20 July 2017. The Authority circulated and invited submissions on draft Legal Partnership Regulations to which the Law Society responded on 14 December

2018, which submission was supplemented by a letter to the Authority on 15 February 2019.

- 2.2 The Authority conducted a number of further consultations that are of relevance to some wider regulatory issues concerning legal partnerships. In that context, the Law Society made a submission in relation to various issues concerning barristers on 1 June 2017. The issues related to the prohibition on barristers holding client funds and direct professional access in contentious matters. The Authority circulated a draft Code of Conduct for Practising Barristers, to which the Law Society made a submission on 26 October 2018. The Law Society also made a submission on 19 June 2020 in relation to the unification of the solicitors' profession and the barristers' profession that made reference to legal partnerships.
- 2.3 For ease of reference, each of the above submissions have been included in an appendix to this submission. The Law Society relies upon these earlier submissions, while at the same time acknowledging that certain concerns that were live at the time the submissions were made have been assuaged by subsequent developments. For example, the possibility that the Authority would recommend the removal of the prohibition on barristers holding client funds, that limitations on direct professional access to barristers in contentious matters would be relaxed or that the professions would be unified has abated, on foot of subsequent Authority reports.
- 2.4 It is also worth noting that over the past number of years the Authority has established its complaints function under Part 6 of the 2015 Act, has made Limited Liability Partnership Regulations (initially limited to solicitor firms) and Barristers' Professional Indemnity Regulations (limited to practising barristers) and the Law Society has updated the Solicitors Professional Indemnity Insurance Regulations and made the Solicitors Accounts Regulations 2023, all of which serve to enhance the regulatory framework into which legal partnerships are being introduced when compared with when the Law Society made its first submissions on this matter in 2017.
- 2.5 A number of the Law Society's submissions, both substantive and technical, have been incorporated into the latest draft Regulations. A number of other

provisions that were included in previous drafts of the regulations but which the Law Society highlighted as being unenforceable have been removed. This submission, while relying upon the Law Society's previous submissions, serves to highlight a number of key substantive issues that may require further consideration and also highlights a number of more technical proposed amendments.

Legal Partnership Regulations

- 3.1 The Law Society acknowledges the extent to which the draft Regulations have taken account of many of the key submissions previously made by the Law Society particularly with regard to the protection of clients. It notes that the draft Regulations do not serve to regulate legal partnerships in their entirety, but are a component part of a wider regulatory framework. That wider framework includes the Solicitors Acts 1954-2015 and regulations made thereunder, and the Law Society is committed to updating and keeping under review its own regulations to take account of the introduction and evolution of legal partnerships.
- 3.2 In draft Regulation 2(1), it is submitted that consideration be given to defining 'money of clients' and that this should align with the definition of 'clients' moneys' as provided for in the Solicitors Accounts Regulations 2023. Consideration should also be given to precluding a legal partnership from holding moneys of clients not associated with the provision of legal services and the money of non-clients, other than the money of partners reasonably required to facilitate the running of the business.
- 3.3 In draft Regulation 2(1), it is submitted that the term 'Compensation Fund' should be defined. The following definition, in accordance with a previous submission made by letter dated 15 February 2019, is proposed:
- "Compensation Fund" is as described and set out in Section 21 and 22 of the Solicitors (Amendment) Act 1960 as substituted by Section 29 and 30 of the Solicitors (Amendment Act) 1994 and amended by Section 16 of the Solicitors (Amendment) Act 2002'.*

- 3.4 In draft Regulation 4 (2)(a) and 4 (2)(b), the word '*commencement*' should be replaced by the word '*cessation*'. The reference to 'Regulation 4(1)(a)' in Regulation 4(3) should be amended to '*Regulation 4(2)(a)*'.
- 3.5 In draft Regulation 5 (2)(a) and 5 (2)(b), the word 'commencement' should be replaced by the word '*membership alteration*'.
- 3.5 The Law Society welcomes the manner in which draft Regulation 8 indicates that nothing in the Regulations affects the obligations of practising solicitors, whether as partners in or employees of a legal partnership to comply with provisions of the Solicitors Acts and any regulations made thereunder, but proposes removing the word '*applicable*' as this appears to be superfluous and may imply some form of unintentional qualification of obligations.
- 3.6 It is submitted that draft Regulation 11 which concerns the provision of information to clients at the point of taking instructions should include a specific reference to this process being conducted '*in accordance with section 150 of the Act of 2015*'. Consideration should also be given to including references to section 150(6) of the Act of 2015 in clause (2) of draft Regulation 11 and to section 150(10) in clause (3) of draft Regulation 11.
- 3.7 The Law Society has a general concern that a solicitor in a legal partnership may feel unduly fettered in their briefing policy in a manner that is not in the best interests of their clients. Whereas it is acknowledged that the premise behind the introduction of legal partnerships is that certain efficiencies may be generated through the partnership of barristers or barristers and solicitors, this should not serve to undermine the professional principles of any legal practitioner within that partnership. It is therefore paramount that the client protection concerns underpinning the legal costs information obligations set out in section 150 of the Act of 2015 are fully adhered to by legal partnerships.
- 3.8 The Law Society submits that the notification in draft Regulation 11 should also include specific reference to the prevailing limitations on direct access to barristers in contentious matters.
- 3.9 The purpose of clause (8) of draft Regulation 13 is unclear and consideration should be given to amending it or removing it.

Limited Liability Regulations

- 4.1 The purpose of the new draft Limited Liability Regulations is to extend to legal partnerships the opportunity currently afforded to law firms to apply for authorisation as a limited liability partnership. The Law Society notes that legal partnerships are a '*relevant business*' as defined by section 99 of the 2015 Act and are thereby entitled to apply for limited liability status.

Professional Indemnity Insurance Regulations

- 5.1 The purpose of the new draft Professional Indemnity Insurance Regulations is to extend the scope of the existing Professional Indemnity Insurance Regulations that apply to practising barristers to barristers who are partners or employees of legal partnerships.
- 5.2 The Law Society supports the broad principle that no competitive advantage should be afforded by enabling a legal partnership to maintain a lower level of client protection in terms of professional indemnity insurance cover. The Solicitors Professional Indemnity Insurance Regulations pursuant to section 26 of the Solicitors (Amendment) Act 1994 require all solicitors to have in place professional indemnity insurance that is in compliance with minimum terms and conditions provided for in those Regulations and these are updated from time to time. Although legal partnerships, the nature of whose business generates a lower level of risk to clients, may be in a position to procure lower insurance quotes than similar sized business, including law firms, that have a higher risk profile, this does not warrant a reduction in the minimum terms and conditions of cover. The achievement of this equivalent cover will require ongoing engagement between the Law Society and the Authority. The Law Society notes that the minimum level of indemnity cover provided at Regulation 13 of the draft Regulations mirrors that which currently applies under the Solicitors Professional Indemnity Insurance Regulations.

Code of Conduct for Practising Barristers

6.1 The Law Society relies upon its previous submissions made on 26 October 2018 in respect of the draft Code of Practice for Practising Barristers.

Other Steps

7.1 In its previous submissions the Law Society made a number of recommendations regarding other steps that need to be taken in addition to the making of the regulations the subject matter of this consultation to provide for the introduction of legal partnerships.

7.2 The Law Society submits that an amendment of section 62 of the Solicitors Act 1954 may be required to permit the sharing of fee income between solicitors and barristers in solicitor-barrister legal partnerships.

Conclusion

8.1 The Law Society accepts that the introduction of any new form of business structure to a regulated environment presents many challenges, some foreseeable, and some that will only become apparent with the passage of time. Only time will tell how many partnerships of legal practitioners apply for authorisation as legal partnerships, whether this increases competition within the legal services market and whether the legal partnerships that are authorised present an enhanced client protection concern. Much of this will depend on the integrity and adherence to professional standards of the legal practitioners concerned.

8.2 In both its representative and co-regulatory role, the Law Society will continue to assist the Authority in addressing any enhanced risk and in identifying and closing any regulatory gaps that threaten the protection of clients or that undermine the integrity and standards of the solicitors' profession. In that context, whilst noting the time parameters of this consultation process, the Law Society signals its intention to continue to make further and more detailed

submissions on specific points in the course of its ongoing engagement with the Authority.

Law Society of Ireland

19 April 2024