E-Briefing Detailed Version
(Covering the period from 1 May-4 June 2010[1])

Current consultations

The SRA's second consultation paper on Outcomes Focussed Regulation (OFR) ("The architecture of change: the SRA's new Handbook") was issued on 28 May, with comments due on 20 August 2010. The period for comment on the first, more general OFR paper ("Outcomes-focused regulation - transforming the SRA's regulation of legal services" referred to in the previous e-briefing) will close 27 July. The CLLS's Professional Rules and Regulation Committee (PR&RC) is taking the lead in drafting responses to both consultations. See http://www.sra.org.uk/sra/consultations.page for the text of the Handbook consultation. An SRA press release regarding the consultation is attached for your information and marked Annex "A".

As the Handbook consultation states:

> This paper represents the first major step in the practical implementation of OFR through the development of the SRA Handbook of regulations. At the same time it introduces the regulatory requirements for alternative business structures (ABSs), which we intend to license from October 2011. The new Handbook will be finalised and published in April 2011 and implemented on 6 October 2011.
>
> …2. ….. the foundation stones of our new approach are:
>
> - a new set of Principles that define the fundamental ethical and professional standards that we expect of all firms and individuals when providing legal services;
> - a new SRA Code of Conduct which illustrates the practical application of the Principles in particular contexts, by explaining what outcomes we expect firms and individuals to achieve;
> - a Handbook that for the first time brings together all of our regulatory requirements, enabling you to understand how the elements of our regulatory regime inter-link. This Handbook is designed to be accessible online.
>
> ..6. … The new Handbook is only one element in the implementation of our approach to OFR. Other key elements are
>
> - an approach to authorisation that is risk and evidence based, only allowing principled, competent firms and individuals to deliver legal services;
> - effective, risk-based supervision of firms based on information received from firms and other sources. The introduction of the new approach to the supervision of firms is intended to encourage firms to be open and honest in their dealings with us and to manage risks and address issues themselves. This will enable us to concentrate on those who can't, or won't, put things right;
> - credible deterrence of serious non-compliance through fair and proportionate enforcement actions.
>
> These other elements are dealt with in more detail in our April consultation and will underpin the way in which the Handbook will be applied.

[1] Except ehere indicated.

… OFR Timetable

- 157.

  This consultation forms part of a major transformation of the SRA's approach to regulating and supervising firms, set against the opening-up of the legal services market. The overall timetable is set out below:

Date	Action
27 July 2010	Closing date for written responses to "OFR: Transforming the SRA's Regulation of Legal Services"
20 August 2010	Closing date for written responses to this consultation
October 2010	Policy statement and second Handbook (and regulatory processes) consultation published
January 2011	Closing date for written responses on second Handbook (and regulatory processes) consultation
March / April 2011	Publication of final Handbook
June / July 2011	Anticipated designation of SRA as a Licensing Authority for ABSs
6 October 2011	First ABS licensed and implementation of new Handbook
April 2013	Special bodies able to apply to be licensed

Recent submissions and publications

1. Professional Representation Committees

1.1 EU Working Group

The CLLS press release regarding this matter (issued 1 July) is self explanatory:

CLLS INVESTIGATE THE LIBERALISATION OF LEGAL SERVICES IN EUROPE

With the assistance of the City of London Law Society, Professor Robert Lee of Cardiff Law School has written a paper on the Liberalisation of Legal Services in Europe: Progress and Prospects. This paper was discussed by the CLLS with

key contacts at the EU Commission in Brussels on the 14th and 15th December 2009.

The ambit of Professor Lee's paper is to improve the liberalisation of legal services in Europe through regulatory reform.

The paper begins by examining the historical development, the current state and future prospects for the liberalisation of legal services in Europe. These are successively the provision of legal services, mutual recognition and rights to establish law firms in host states. Professor Lee shows how far the liberalisation of legal services has come, extending multi-jurisdictional rights from a limited and distanced provision of legal services to the right to establish law firms in host states.

Whilst the paper commends the liberalisation of the EU legal services markets carried out to date, Professor Lee argues that the various European legal services markets' entry requirements still restrict international law firms from following corporate clients and providing cross border services.

The paper stresses that:

The need for regulation is generally a consequence of market failure: there is little evidence of market failure in the corporate legal sector.
Given the differences between legal services provided for corporate clients and those provided for private clients, it may be more effective and proportionate to adopt differentiated strategies of regulation.

Regulation of corporate firms should be "firm based" (i.e. focussed on law firms rather than individual practitioners).

Professor Lee concludes," Economic growth in the Single Market has been enhanced by the ability of law firms to follow and support the global activities of their clients. Against this background, it is imperative to search for mechanisms that will allow ease of access throughout Europe for both consumers and providers of commercial legal services."

A copy of Professor Lee's paper can be downloaded on the "BRASS" (The ESRC Centre for Business Relationships, Accountability, Sustainability and Society) website at http://www.brass.cf.ac.uk/uploads/Liberalisation.pdf A further modified version of the paper has been published in Legal Studies magazine (Legal Studies, Vol. 30 No. 2, June 2010 pp. 186-207).

David McIntosh, Chairman of the City of London Law Society says:

The CLLS's commissioning of Professor Lee's paper was in response to the European Commission having invited us to make proposals in line with a declared intention to dispense with unnecessary and destructive cross-border regulations where it is in the interests of consumers to do so.

Professor Lee's carefully researched proposal fits these aims and should be given priority over unsustainable protectionism on the part of bar associations in

some European countries who are reluctant to accept the improving influence of cross border competition from renowned international law firms.

ENDS
1 JULY 2010

For further information, please contact:
Darshna Patel,
Media Director,
Lehmann Communications
020 7266 3020
dp@lehmanncommunications.com
David McIntosh,
Chair,
CLLS
0207 329 2173
davidmcintosh@rodneywarren.co.uk
Stephen Denyer,
Partner,
Allen & Overy LLP
+49 69 2648 5765
Stephen.Denyer@germany.AllenOvery.com
Richard Fleck, CBE
Consultant
Herbert Smith LLP
020 7466 2185
richard.fleck@herbertsmith.com
Stephen Revell,
Partner,
Freshfields Bruckhaus Deringer LLP
020 7832 7217
stephen.revell@freshfields.com
Professor Bob Lee,
Co-Director,
The ESRC Research Centre on Business Relationships, Accountability, Sustainability and Society (BRASS)
07595 736703
LeeRG@cardiff.ac.uk

2. Specialist Committees

2.1 Company Law Committee

The Takeovers Joint Working Party of the City of London Law Society Company Law Sub-Committee and the Law Society of England and Wales' Standing Committee on Company Law recently responded to the Takeover Panel consultation paper issued by the Code Committee of the Panel regarding “Profit Forecasts, Asset Valuations and Merger Benefits Statements” (See http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/PCP201001.pdf for the consultation paper and http://www.citysolicitors.org.uk/FileServer.aspx?oID=795&lID=0 for the response.)

As the consultation paper stated:

> **1. Introduction and summary**
> 1.1 The purpose of this PCP is to consider a number of amendments which the Code Committee is proposing with a view to improving the coherence and consistency of the approach in the Code towards the requirements for certain financial information, when published in the form of a profit forecast, an asset valuation, a merger benefits statement or any other quantified statement of effects, either before or during the course of an offer, to be accompanied by a report from one or more third parties.
>
> …1.3 The PCP also contains, in Section 7, a number of proposals for technical and drafting changes to Rules 28 and 29 [of the Takeover Code] to improve consistency and clarity and to bring the Rules up to date and, in some cases, to codify existing practice.
>
> …1.9 In carrying out its review, the Code Committee has had regard to the need for any requirement for reports on financial information to be proportionate and, therefore, for the Rules to strike an appropriate balance between:
>
> (i) the need for offeree company shareholders and the market to be able to rely on relevant financial information, such as profit forecasts, asset valuations or other significant forward-looking financial statements, which are made available in the course of an offer, whether published during the offer period or before it begins; and
>
> (ii) the burden that the reporting requirements can sometimes impose on the companies concerned.
>
> 1.10 With these considerations in mind, the Code Committee is proposing a relaxation of the requirements for reports on profit forecasts and asset valuations in the circumstances described in sub-paragraphs 1.2(i) and (ii) above. However, the Code Committee has identified certain other situations, described in sub-paragraphs 1.2(iii) and (iv), which are not currently covered by the Code but in which it considers that reports on financial information should be required.
>
> ….1.15 The Code Committee's current intention is that any amendments made to the Code as a result of this consultation exercise should take effect later in 2010.

The Working Party generally agreed with the proposals put forward in the Takeover Panel document but also had a number of specific comments in relation to the proposals, namely in response to the following questions

> Q1 ("Do you agree with the Code Committee's proposals for the provision of exemptions from the obligation to report on a profit forecast published in the normal course of a company's business in the circumstances described above?")
>
> Q5 ("Do you agree that the Code should treat profit forecasts and estimates for part of a business in the same way as forecasts for the whole of the business?")
>
> Q6 ("Do you agree with the proposals to expand the application of the rules on merger benefits statements to cover other statements as described above and to introduce a new definition of a "quantified effects statement"?")
>
> Q10 ("Do you agree with the proposed new Rule 28.11 and Rule 29.7?")

2.2 Financial Law Committee

The Financial Law Committee recently responded to the BIS consultation "Registration of Charges Created by Companies and Limited Liability Partnerships" (see

http://interactive.bis.gov.uk/companycharges/uploads/company-charges.pdf for the consultation document and http://www.citysolicitors.org.uk/FileServer.aspx?oID=805&lID=0 for the Committee's response[2].) As the response stated:

SUMMARY

4. Before commenting on the specific questions raised in the Consultation Paper, it might be helpful to explain the principles which have guided us in answering those questions. Our answers are based on our experience of the way in which the registration of company charges works in practice.

5. There are four main principles which underlie our response to the Consultation Paper:

    - All charges created by English companies should be registrable unless registration is exempted by other legislation.
    - Charges should be able to be registered by sending the charge document to the Registrar of Companies electronically.
    - Failure to register within 21 days should render the security created by the charge void.
    - The registration of charges created by overseas companies should be regulated by the law of their place of incorporation.

Registrable charges

6. We consider that all charges created by English companies should be registrable unless registration is exempted by other legislation, such as that concerning financial collateral arrangements or charges given in favour of central banks (as provided by section 252 of the Banking Act 2009).

7. We say this because we believe that the registration requirement provides great practical benefits to creditors and other persons dealing with companies, and we can see no logical or practical reason to restrict this benefit to particular types of charge, as is the case under the current law.

8. If there are to be any other exceptions to the principle of registration, it should be on the basis that there is a real practical reason why registration of a particular type of charge should not be required.

9. As under the present law, we consider that the registration requirement should only apply to charges (which, for this purpose, includes mortgages), and not to pledges or contractual liens or to so-called "quasi-security" .

Method of registration

[2] Dated 4 June 2010

10. Our practical experience of registration of charges leads us to believe that the current system by which charges are registered is unnecessarily time-consuming, cumbersome and expensive.

11. If the chargee were able to send the charge document to the Registrar of Companies electronically, on the basis that it is then immediately loaded on to the company's file, we believe this would have the following significant benefits:
    - It would speed up the process of registration.
    - It would obviate the necessity to produce particulars of the charge which, in our experience, is a time-consuming and costly exercise.
    - The chargee would be certain that the charge could not be set aside on the basis that the particulars do not actually reflect the charge.
    - Those searching the register would be able to see the whole charge, rather than just edited (and potentially misleading) extracts from it.
    - The Registrar of Companies would no longer have to compare the particulars with the charge - he would simply have to register the charge document sent to him and confirm the time and date of receipt.

The effect of non-registration

12. We believe that failure to register within 21 days should render the security created by the charge void.

13. At present, the security is only void in insolvency proceedings and against secured creditors. It is not void against other persons (such as purchasers) who acquire a proprietary interest in the charged assets - a distinction which we find it impossible to justify. The current law also gives connected lenders the ability to take security without registration and enforce it before an insolvency to the detriment of other creditors.

14. We therefore consider that, if the charge is not registered within the 21 day period, the proprietary interest created by the charge should be void. The personal obligations of the chargor to the chargee under the charge should continue to be effective.

Overseas companies

15. The majority of our Committee consider that the time has come to abolish the requirement for the registration of charges created by overseas companies. The extent of any registration requirement should, in their opinion, be a matter for the law of the place of incorporation of the chargor. The rest of our Committee believes that such a change should only be effected following wider consultation.

16. The Committee is unanimously of the view that, if this requirement is to be retained, it should be limited to charges over assets which can clearly be established to be situated in the UK.

The submission also responded to questions 1.A through to 1I in the consultation paper, namely:

> 1.A Do you consider that the same rules should apply to all UK companies?
>
> 1.B Under Proposal B, are there charges that are not currently registrable that would be made registrable?
>
> 1.C Do you consider that the requirement to register at Companies House should not apply to floating charges over financial collateral?
>
> 1.D Do you consider there should be a requirement that the crystallisation of a floating charge be registered within 21 days of that event? If so, on whom should the requirement fall and what should be the sanction?
>
> 1.E Do you consider that the 21-day time limit for registration should be abolished? Why?
>
> 1.F If the 21-day time limit for registration were abolished, do you consider there would need to be any safeguards?
>
> 1.G In practice, do third parties suffer from charges being valid because a conclusive certificate has been issued in circumstances when in fact the requirements for registration were not met within 21 days of the creation of the charge?
>
> 1.H Is it necessary for the Act to provide for the situation where insolvency proceedings are begun 21 days or less after the creation of a charge?
>
> 1.I Should the buyer of property subject to an unregistered charge ever take free of the charge? Should there be any exceptions?

2.3 Insolvency Law Committee

The Insolvency Law Committee recently responded to the Insolvency Service consultation on the official receiver becoming trustee of the bankrupt's estate on the making of a bankruptcy order and removal of the requirement to file a 'no meeting' notice in certain company winding up cases [3] (See http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/ORTrusteemarch10/ORtrusteeConsultationDoc.pdf for the consultation paper and http://www.citysolicitors.org.uk/FileServer.aspx?oID=802&IID=0 for the response.)

As the Insolvency Service's letter stated:

> I am seeking your views on three proposals designed to simplify and streamline the bankruptcy and company case administration process.
>
> The proposals are as follows:
> 1. That the official receiver automatically becomes trustee of a bankrupt's estate upon the making of the bankruptcy order, and remains in office unless and until such time as an insolvency practitioner - as is the case now - is appointed trustee in his or her place. This

[3] Submitted 1 June 2010

change is suggested in order to bring bankruptcy into line with other insolvency procedures.

2. As a consequential change, the term ‘interim receiver’ should be changed to *‘receiver’*.

3. Remove the requirement to file a ‘no meeting’ notice in cases where a secretary of state appointment has been made shortly after the making of the company winding up order.

I set out below the background and details of the proposals, together with a summary Impact Assessment.

Overview

Bankruptcy is the only court initiated insolvency procedure that provides an initial period during which the official receiver’s duties are restricted just to protecting the estate. For example, when a winding up order is made against a company, if an insolvency practitioner is not named as the liquidator, the official receiver immediately becomes liquidator of the company. Similarly, the official receiver becomes liquidator when a winding up order is made against a partnership, and he or she is also appointed trustee by the court where bankruptcy orders are made against any of the members of a partnership.1 In making this proposal, our primary objective is to simplify the administration of bankruptcy. For example, this would not only make the bankruptcy process clearer, more transparent and consistent with other insolvency procedures, but would also help deliver savings to all those affected by a bankruptcy - whether as creditors, the official receiver or the bankrupt him/herself - by encouraging the most efficient use of time and operational resources.

… Providing for the official receiver to become trustee on the making of a bankruptcy order would offer consistency and certainty in the case administration process for the benefit of creditors, the bankrupt and insolvency practitioners. It would also remove the complication in the process of making applications to the secretary of state for the appointment of a trustee in cases where assets need to be dealt with urgently.

Currently, even if the appointment of an insolvency practitioner is desired urgently in order to deal with assets, the official receiver has to still first become trustee before an appointment could be made by the secretary of state. Under our proposal, there would no longer be a need to file the notice of ‘no meeting’ at court in order for the official receiver to become trustee, offering resource and administrative savings for official receivers (over £1.1 million) , the court services and creditors who receive the paperwork.

…Our proposals would also bring personal insolvency in England and Wales in line with current Scottish legislation.…

…**Change of term ‘interim receiver’ to ‘receiver’**
As a consequence of this first proposal there would also be a requirement to change the term ‘interim receiver’….This is intended to better describe the role of the official receiver or insolvency practitioner (this is the subject of a separate proposal to remove the current restriction of only allowing the official receiver to act in this office) appointed prior to the making of the bankruptcy order but after the presentation of the petition.

…**Removal of requirement to file ‘no meeting’ notices**
…I am proposing that in cases where secretary of state applications for company cases are made within the period in which a decision to call a meeting or not must be made, the official receiver will no longer be required to give formal notice of ‘no meeting’ to the court. This is designed to streamline the administration in such insolvency cases.

…The three questions this consultation letter poses, therefore, are:
1. Should the official receiver be appointed trustee of the bankrupt’s estate on the making of a bankruptcy order?
2. Should the term ‘interim receiver’ change to ‘receiver’ to better reflect his or her new function?

3. Should the need to file the 'no meeting' notice be removed for company cases where a liquidator is appointed by the secretary of state in the period between the making of the order and the time when the official receiver is required to inform creditors of his/her decision on whether, or not, to call a meeting ?

The Committee's response stated, *inter alia*, that:

> …there is a period of delay between the making of the bankruptcy order and the appointment of a trustee in bankruptcy, during which period the OR is appointed only as receiver and manager of the bankrupt's estate[4], and has limited powers to deal with and no power to dispose of the bankrupt's property. During this period, there is the possibility of the value of assets diminishing[5] or of the assets being dissipated. Further, this hiatus can cause confusion for debtors and creditors alike, where they are not familiar with the bankruptcy regime. The CLLS notes that the proposals put forward by the Insolvency Service, for the OR to be appointed as trustee in bankruptcy from the making of the bankruptcy order, would lessen these risks as control of all assets of the bankrupt would pass to the OR, and would also clarify the extent of the OR's powers prior to any meeting of creditors. In addition, it would facilitate the process for the OR to apply to the Secretary of State for the urgent appointment of an insolvency practitioner as trustee in bankruptcy in urgent cases.
>
> …The CLLS is therefore in favour of the proposal that the official receiver should be appointed trustee of the bankrupt's estate on the making of a bankruptcy order. …
>
> …The CLLS has no objection removing the need to file a 'no meeting' notice in relation to companies subject to compulsory winding up in circumstances where the OR has made a successful application to the Secretary of State for the appointment of an insolvency practitioner as liquidator in his place, pursuant to section 137(1) IA.

The Committee also commented on the UNCITRAL Legislative Guide on Insolvency Law Consultation: Part Three - Treatment of Enterprise Groups in Insolvency[4] (See http://www.citysolicitors.org.uk/FileServer.aspx?oID=801&lID=0 for the response.)

As the Committee's comments stated:

> **2. PURPOSE OF SUBMISSION**
>
> 2.1 In this submission, we comment on aspects of the draft commentary (***Commentary***) and recommendations of part three of the UNCITRAL Legislative Guide on Insolvency Law (the ***Model Rules***) which:
>
> (a) infringe generally recognised basic tenets of creditor protection; or
>
> (b) might be unworkable or inappropriately complex/open to abuse.
>
> 2.2 We recognise that there are wide divergences in the insolvency laws of the legal systems in various jurisdictions. Jurisdictions will tend to be described as either debtor-orientated or creditor-orientated and it is not possible to adopt a strict "one size fits all" approach in devising a model insolvency law.

[4] Submission lodged 1 June 2010

…3.3 … Whilst the Model Rules should not set out a definitive definition of 'enterprise group', we feel that it would be helpful to set out an exhaustive list of factors without which an 'enterprise group' could not be said to exist in order to contain the scope of application of the Model Rules.

….4. EFFECT OF INSOLVENCY PROCEEDINGS ON SOLVENT GROUP MEMBER

Recommendations 199-201- Joint application for commencement of insolvency proceedings (not procedural coordination)

4.1 Whilst we see the justification in allowing a group member whose insolvency is imminent to be included in an application for commencement of insolvency proceedings (pursuant to Recommendation 15, Part two of the Model Rules[1]), we are not supportive of an insolvency law which would permit an application for commencement of insolvency proceedings to include group members that do not satisfy the commencement standard in Recommendation 15 (paragraph 12 of the Commentary).

2.4 Revenue Law Committee

The Revenue Law Committee recently responded to the HMT consultation **"**Simplification review**:** capital gains rules for groups of companies"**.** (See http://www.hm-treasury.gov.uk/consult_simplification_capitalgains.htm for the consultation paper and http://www.citysolicitors.org.uk/FileServer.aspx?oID=808&IID=0 for the response.)

By way of background, in its 2007 Pre-Budget Report, the Government launched three reviews to evaluate how a range of tax legislation could be simplified. The simplification reviews cover VAT, anti-avoidance legislation and the corporation tax (CT) rules for related companies. The consultation in question dealt with the simplification of legislation on capital losses after a change in ownership, legislation on value shifting and depreciatory transactions, and legislation on degrouping. It developed the simplification options outlined in the discussion document published by HM Treasury and HM Revenue and Customs (HMRC) in June 2009. As the consultation document stated:

1.12 The July 2009 discussion document included options to simplify the capital gains rules for groups in the following areas:

• **Capital losses following a change in ownership.** In December 2005, the Government introduced three Targeted Anti-Avoidance Rules (TAARs). The second TAAR was aimed at preventing 'capital loss buying', i.e. the practice of acquiring a company primarily for the purpose of gaining access to its capital losses, whether these are realised or latent. The discussion document contained four options for simplifying some of the legislation pre-dating the TAARs that governs the use of capital losses after a change in company ownership.

• **Value shifting and depreciatory transactions.** The value-shifting rules have been identified as particularly complex, and therefore a priority for simplification. The discussion document identified two leading alternative possibilities for simplifying these rules, along with the separate option of introducing a time limit for the operation of the rule on depreciatory transactions.

3 Section 171, Taxation of Chargeable Gains Act 1992
Simplification review: capital gains rules for groups of companies – a consultation document **5**

> • **Degrouping charges.** The degrouping charge ensures that if a company leaves a group, holding an asset acquired through a tax-free transfer from a fellow group member within the last six years, then any gain or loss deferred at the time of the transfer is reinstated. However, the Government acknowledges that in some circumstances the current rules can sometimes lead to economic double taxation.
>
> The discussion document contained six options for simplifying the degrouping charge rules, along with a further option to simplify the interaction between the degrouping charge and the Substantial Shareholdings Exemption (SSE).
>
> 1.13 This consultation document puts forward detailed proposals – including draft legislation – in each of these three areas.

The Committee's response stated, *inter alia*

> **VALUE SHIFTING AND DEPRECIATORY TRANSACTIONS**
>
> **General**
>
> We welcome the emphasis on simplification of the very complex value shifting rules. However, we would question whether the inclusion of a TAAR will lead to the additional certainty for business which it is hoped the changes will deliver. In the past uncertainty was created by the difficulty of applying a complex, but essentially mechanical, set of provisions to actual factual situations. In the future, it may well be that uncertainty is instead created by the presence of the TAAR -no major group will undertake a restructuring of any significance without taking tax advice, and it will inevitably choose the route to the desired outcome that leads to the payment of the least tax. This may lead to real difficulty in determining whether the TAAR might apply.
>
> We assume from the third question in the consultation document that the intention is to clarify in guidance what sort of transactions will and will not be considered to be avoidance motivated. This would be helpful, but would ultimately be unsatisfactory due to the potential for HMRC to change its view of what does and does not constitute legitimate tax planning. In an area such as this, there may be a significant time gap between the transaction which may or may not be seen as having the purpose of securing a tax advantage, and the eventual crystallisation of that advantage. In the event of change, should one apply the guidance in place at the beginning or the end of the process?
>
> We believe that if the TAAR route is to be adopted it should be accompanied by a statutory clearance procedure which could be used prior to the implementation of the arrangements referred to in new s.31(1)(a). We appreciate that there is a cost associated with making clearance procedures available, but we do not see that the introduction of motive tests where previously they did not feature can be said to promote simplicity and certainty in the absence of such a procedure.
>
> If a clearance procedure is not to be available then we would recommend the production of extensive, detailed guidance notes which should

themselves be put out to consultation. Areas of obvious difficulty, where the question of whether there was a tax avoidance purpose might genuinely be nuanced and subject to differences of view, would include pre-sale dividends, group relief surrenders for less than full consideration, transfer pricing corresponding adjustments and intra-group debt waivers.

And that

11 Are there specific circumstances or examples that you would like HMRC to cover in guidance to show how the legislation applies? Again as discussed above, we think that guidance will need to be very extensive if the new legislation is to meet its objective of providing business with a simpler and more certain legal framework. It would be extremely helpful if the guidance were to contain a "white list" and a "black list" of transaction types which HMRC consider to be legitimate tax planning on the one hand, and avoidance on the other. These need not be exclusive (ie it would be possible for transactions not listed to fall into either category), but should be as lengthy as possible. In particular we think it is crucial that the guidance should give as many examples as possible of transactions which HMRC consider to be unacceptable (possibly by reference to hallmarks).

Robert Leeder
Policy & Committees Coordinator
CLLS

Annex "A": SRA press release re Handbook Consultation

28 May 2010

A Handbook for Better Outcomes

Solicitors Regulation Authority consults consumer organisations and the profession on Outcomes Focused Regulation

The Solicitors Regulation Authority (SRA) has released a consultation document asking practitioners and the public to comment on a new approach to regulating legal services. A new Handbook, out today, is designed to modernise the relationship between solicitors' firms, their clients, and the SRA. A series of consultation events, Freedom in Practice: better outcomes for consumers, with solicitors and consumer groups are already underway. The programme includes a series of 10 regional road shows, allowing solicitors from across England and Wales to discuss the changes with senior SRA staff. One of the road shows will be available to view online.

October 2011 will see a radical change in legal regulation with the introduction of Outcomes Focused Regulation (OFR) and Alternative Business Structures (ABSs). OFR is a regulatory regime that focuses on the principles and outcomes that should drive the provision of services for clients. It is backed by firm enforcement action where required. ABSs will allow new ways of providing legal services that enable lawyers and non-lawyers to share the management and control of the business providing those services.

OFR will be based around the simplified Handbook, explaining how solicitors and their firms, in serving their clients, must comply with broad principles, rather than detailed rules. This comes as part of moves to ensure that regulation focuses on providing good outcomes for clients. At the same time, the SRA will protect consumers by focusing on the greatest areas of risk. The Handbook will include examples and guidance to show how the outcomes can be achieved.

The proposed Handbook will allow solicitors' firms greater flexibility in the way that they work, letting them do new and better things for their clients. The new system will not reduce standards, and firms which flout the rules will face tough sanctions. Enforcement will be targeted, so that the SRA will spend less time dealing with low-level matters, allowing a focus on the things which matter most to consumers.

It is the SRA's view that most solicitors already follow the spirit of the new principles as part of good business practice.

The principles state that solicitors and their firms must:

- Uphold the rule of law and proper administration of justice
- Act with integrity
- Not allow their independence to be compromised
- Act in the best interests of each client
- Provide a proper standard of service to clients
- Behave in a way that maintains the trust the public places in them and in the provision of legal services
- Comply with their legal and regulatory obligations and deal with their regulators and ombudsmen in an open, timely and co-operative manner
- Run their businesses and carry out their role in the business effectively and in accordance with proper governance and sound financial and risk management principles
- Promote equality and diversity within their businesses and not discriminate unlawfully in connection with the provision of legal services
- Protect client money and assets

Detailed rules will still apply in areas such as accounts, where the potential risk to the public is greatest. This will ensure that consumers have the highest possible level of protection on the issues which are most important to them.

All those with an interest in the Handbook, including solicitors and clients' representatives, will be able to respond to the consultation. The SRA is keen to get the widest possible range of views.

SRA Chair Charles Plant said:

"We are transforming the way solicitors and their firms are regulated for the benefit of consumers. A simplified rule-book and freedom to practise innovatively will be good for clients and solicitors' firms alike as it will provide the flexibility needed to do new and better things.

"The SRA's enforcement of the new system will be targeted and risk-based. Firms which are willing to work with us to deliver good legal services to clients will benefit from greater flexibility. However, firms who are unwilling or unable to engage with us to deliver good outcomes will face tough sanctions.

"There will be no reduction in standards, as the risk-based approach will focus on the things which really matter to consumers and practitioners."

Notes to editors

1. The timeline towards implementation of OFR and ABSs is set out below.

Date	Action
May – June 2010	10 regional road shows take place to allow solicitors across the UK to discuss the changes with senior SRA staff.
May – June 2010	Consultation with consumer groups on the effects of the changes on clients
28 May 2010	Publication of the first consultation paper on the Handbook
27 July 2010	Closing date for written responses to 'Outcomes-focused regulation: Transforming the SRA's Regulation of Legal Services'
20 August 2010	First Handbook consultation closes
October 2010	Publish second consultation on the Handbook.
October 2010	Policy statement on 'Outcomes-focused regulation: Transforming the SRA's Regulation of Legal Services' with the timetable setting out the transition to OFR, the full cost-benefit analysis and equality impact assessment
January 2011	Second Handbook consultation closes
March/April 2011	Publication of final Handbook
June/July 2011	Expected designation of the SRA as a Licensing Authority for ABSs
6 October	First ABSs licensed and implementation of new Handbook

2011	