

Welcome to the last edition of 'The Firm' for 2007. Following the response to our highly successful seminar in September and feedback from a number of our readers, in this edition we decided to focus on an issue that we feel isn't always being given the attention it deserves, namely succession planning.



In an increasingly competitive legal market, those firms who want to remain independent, expand geographically or to grow their firm by increasing the range of services they are able to offer, need to give serious consideration to succession planning as a fundamental part of their business strategy.

We also focus on the Legal Services Bill, which has now received Royal Assent and now will begin the long implementation process.

I hope you find the newsletter helpful and informative, and should you wish to suggest any topics for future editions, please continue to contact Mark Brennan on 01772 821021.

**Karen Hain**  
Director of Professional Practices

## LEGAL SERVICES BILL RECEIVES ROYAL ASSENT

Following a lengthy consultation process and several amendments, the Legal Services Bill received Royal Assent on 30 October. Andrew Holroyd, Law Society president, commented:

*"Real progress has been made in the final stages of the Bill in meeting our concerns. The legislation now makes it clear that the primary responsibility for regulation rests with the approved regulators and that the Legal Services Board should only interfere when their actions are unreasonable. These are vital concessions – without them we would have been heading for regulatory paralysis."*

*"Securing protection for access to justice where licensing Alternative Business Structures is concerned, and allowing Legal Disciplinary Practices with non-lawyer partners to develop in advance of more complex new models, are also two key achievements. These will enable*

*real benefits for both the profession and the public alike"*

*"Overall, we are encouraged that the new Act offers a workable template for a modern and effective regulatory structure, one which secures the independence of the profession and preserves access to justice without adding to the cost or complexity of regulation."*

The new legislation, most of which is likely to come into effect in 2011 or 2012, will make wholesale changes to the industry, including giving law firms a green light to form practices with other professionals, such as barristers and accountants, as well as attracting external investment or listing on the stock exchange – which should make for interesting times to come.

**For more information on the Legal Services Bill, go to the Law Society website at [www.lawsociety.org.uk](http://www.lawsociety.org.uk).**

### THE LEGAL SERVICES BILL

The Legal Services Bill essentially implements the main recommendations from Sir David Clementi's 2004 report on the regulation of legal services, which recommended that:

- ◆ Existing professional bodies should continue to carry lead responsibility for regulation of legal services, rather than being replaced by a monolithic direct regulator along the lines of the Financial Services Authority.
- ◆ Professional bodies which held both regulatory and representative responsibilities should be required to separate the two roles.
- ◆ An over-arching Legal Services Board should be created to provide consistent oversight of the frontline regulators, in place of the incomplete patchwork of supervision arrangements which currently exist.
- ◆ All consumer complaints against lawyers should in future be dealt with by a new body, the Office for Legal Complaints, wholly separate from the professional bodies.
- ◆ New Alternative Business Structures (ABS's) - involving partnerships between lawyers and non-lawyers, and the possibility of external ownership of law firms - should be permitted to provide legal services to the public.

# IN THE SPOTLIGHT:

## FAIL TO PREPARE, PREPARE TO FAIL: SUCCESSION PLANNING FOR PROFESSIONAL PRACTICES

One issue that we are seeing more and more in the sector are those practices who lack a clear plan for the succession of their firm. This issue was one of the key features of our legal seminar earlier in the year, due to the potentially dire consequences of getting succession planning wrong, or not doing it at all.

A succession plan is a 3-5 year plan concerning the structure of your practice considering issues such as:

- ◆ How many partners do you need?
- ◆ Where will these partners come from?
- ◆ How will you handle impending partner retirements?
- ◆ Have you considered the financial aspects of equity partner retirements?
- ◆ Do you have senior staff who are ready now, or will be ready, to make the step up to partner?

This plan will clearly be intrinsically linked to the current structure of your firm and your current and future strategy. For example, if the bulk of your firm's work stems from Legal Aid or domestic conveyancing work then you might require fewer partners in future anyway bearing in mind forthcoming changes to Legal Aid, and increased competition following the implementation of the Legal Services Bill. On the other hand, if your firm is looking to attract commercial work, you may need to attract a new partner from outside the practice.

One of the key areas of the plan is driven by your partner age range, which will be a factor in determining when retirement may become an issue. Following changes to Age Discrimination legislation, you cannot simply ask a partner when they want to retire (however they may well be willing to provide this information voluntarily for the good of the firm). If you have an up-to-date partnership agreement in place, this may well specify a retirement age – which would be very helpful as part of the planning process.

### PARTNERSHIP PROTECTION: PARTNERSHIP AGREEMENTS

We would encourage all professional practices to have written partnership agreements that consider the following:

- ◆ Contributions to the partnership. Who is going to contribute cash, property or services to the firm and what ownership percentage will each partner have?
- ◆ Allocation of profits, losses and drawings. Will profits and losses be allocated in proportion to a partner's percentage interest in the practice? And will each partner be entitled to regular drawings (a withdrawal of allocated profits from the business) or will all profits be distributed at the end of each year?
- ◆ Partners' authority. Without an agreement to the contrary, any partner can bind the firm without the consent of the other partners.
- ◆ Partnership decision-making. Although there's no magic formula or language for divvying up decisions among partners, you'll head off a lot of trouble if you try to work it out beforehand.
- ◆ Admitting new partners. This is clearly linked to succession planning and setting the process in writing should make it run smoother when you need to admit new partners.
- ◆ Withdrawal or death of a partner. At least as important as the rules for admitting new partners to the business are the rules for handling the departure of an owner. For example, under the Partnership Act 1890, upon a partner's death or retirement, the partnership must be dissolved unless the partnership agreement advises to the contrary.
- ◆ Resolving disputes. If you and your partners become deadlocked on an issue, do you want to go straight to court? It might benefit everyone involved if your partnership agreement provides for alternative dispute resolution, such as mediation or arbitration.

The next stage after considering when retirements may be an issue is to quantify the financial impacts of these retirements, in terms of what you may need to pay out to the retiring partners.

Firstly you need to review any retirement clauses in your Partnership Agreement. You may have already set out the retirement and payout policy. If not, then aspects to consider are:

- ◆ Calculation of the payout.
- ◆ Whether there is goodwill involved.
- ◆ The methodology for goodwill computation.
- ◆ Timing of the payout and cash flow planning.
- ◆ Replacement of working capital into the business.
- ◆ Other sources of finance.

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- ◆ Final accounts of the partner to retirement, tidying up tax provisions and personal expenses.
- ◆ Retention of interest in property.

Unfortunately, retirement is not the only consideration here. Many firms have collapsed due to the sudden death of a partner, and while there is little you can do to prepare for such an event (which will clearly cause massive disruption to the firm and your clients), you can ensure that your firm remains financially secure. This can be achieved using life assurance policies.

### PARTNERSHIP PROTECTION: LIFE ASSURANCE

In the event of the death of an equity partner, adequate cash resources must be available to allow the remaining partners to purchase the deceased partner's share in the business. The most effective way of doing this is for each partner to take out a life assurance policy on their own life and to place the policy in a partnership trust arrangement that favours the remaining partners.

Upon the death of a partner, the policy proceeds would immediately be made available to the trust's beneficiaries, free of any inheritance tax liability. The trust deed must be drafted to allow the monies to pass to the partners in proportion to their interest at the time of the death, meaning that the trust will automatically adapt to any changes in the partnership structure.

You should also consider critical illness cover, as a critical illness could result in a partner becoming unable or unwilling to work, meaning that the rest of the partners would need to find the money to buy them out.

**Our Financial Planning Department can advise you on securing the most suitable product based on your individual circumstances. To find out more, contact Laurence Kelly on 01772 821021.**

Consideration of partners leaving the practice is only half of the plan. You then need to consider where and when new partners are required and where they will come from. A good place to start here is to consider the future strategy of the firm and use it to draw up a profile of the individual partner(s) you require. In an ideal world, this person may well be waiting in the wings, with the equity to invest, with the skills to run a business and with the desire to become a partner in the firm.

However, this is extremely unlikely, meaning that you have to consider other options and approaches, including:

- ◆ Headhunting likely candidates from other firms
- ◆ Merging with or taking over another firm to grow the partnership
- ◆ Development and internal promotion

Of those, the most commonly used solution is internal promotion, however it is worth adding a significant warning regarding promotion from within the firm. Just because an individual has shown promise in attracting work to the practice, or running a team or generally being very good at the 'day job', doesn't mean that they are necessarily ready to take on responsibility for taking on the running of a business.

Increasingly, we are seeing firms where prospective partners do not want to be equity partners, and instead want a limited say in the running of the practice and recognition and reward for their work on behalf of the firm. These people recognise that they are good at what they do but that running a business requires a different set of skills. In this situation, there are two solutions:

1. Introduce a training and coaching regime to develop your senior staff into 'partners of the future'. As part of this process, you can set goals (e.g. business development, or developing commercial skills) for these individuals that must be met before they can become a partner.

2. Recruiting individuals with business management and commercial experience who may not even be lawyers. Currently these individuals (who are free to run the practice full-time as their time is completely non-chargeable) would be effectively acting as a non-executive director, but following the implementation of the Legal Services Bill, they will actually be allowed to join the partnership.

Clearly, succession planning is a complex area, but with expert advice and a clear vision of where you want your firm to be in the future, you can overcome succession pitfalls that could have destroyed a less well-prepared firm.

**Moore and Smalley's specialist Professional Practices team can advise you on a range of industry-specific issues including succession planning. For more information, contact Karen Hain on 01772 821021 or [kh@mooreandsmalley.co.uk](mailto:kh@mooreandsmalley.co.uk).**

# RANGE AND IMPACT OF PRO BONO WORK CELEBRATED

A nationwide campaign to celebrate the range and impact of free services provided by lawyers, often in collaboration with other professionals also acting free of charge, will be launched on Monday 12 November at the start of the sixth National Pro Bono Week.

Solicitors, barristers, legal executives, law students and other professionals regularly give free advice to meet unmet need, at law centres and clinics across England and Wales. In the past twelve months, solicitors in private practice alone have given £338 million worth of free advice. This very significant figure does not include the contribution made by in-house solicitors and other legal professionals including barristers, legal executives and paralegals, and so the total value of the pro bono work undertaken by lawyers is much higher.

Andrew Holroyd, Law Society president, said:

*"This week celebrates the remarkable amount of pro bono work undertaken by all parts of the profession, from law students through to senior partners. The common feature in National Pro Bono Week is the willingness of lawyers put something back into the community."*

*"It also highlights the tremendous amount of support available for members of the legal profession who are interested in getting involved in pro bono work. The website, [www.probonouk.net](http://www.probonouk.net), is an excellent source of information on accessing free legal advice. It is important to remember that pro bono is not a replacement for a legal aid system adequately funded by government."*

## LAW SOCIETY FORMS 'GREEN ALLIANCE'

A groundbreaking alliance was formed last month in a bid to encourage the legal profession to commit to environmental sustainability.

The Law Society, UK/US firm DLA Piper and Business in the Community (BiTC) held the inaugural meeting of the Legal Sector Alliance (LSA), which is intended to provide leadership on green issues to law firms of all sizes as well as in-house legal departments.

The LSA is to establish a leaders group, made up of senior management from law firms and in-house lawyers, and a task force, drawn from sustainability experts from the legal sector. The two groups will work on establishing the alliance's strategy, priorities and objectives. The launch comes just days after the Law Society Council agreed a pledge that will see Chancery Lane become carbon neutral by 2011.

The Law Society's environmental management scheme, adopted by council last week, includes measures such as switching to recycled paper for business use and trialling the introduction of 'green' energy. Measures put in place since 2005 have seen Chancery Lane's energy consumption reduced by 30%.

Paul Stookes, member for environmental law and an associate at Cambridge-based niche firm Richard Buxton, told council:

*"The Law Society will not have all the answers – it is a challenge to be carbon neutral. It is important to identify the steps and what needs to be done. [The targets in the scheme] are sufficient to make a difference and do not just pay lip service."*

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