

Consultation on the separate business rule and on activities within recognised bodies and RSPs

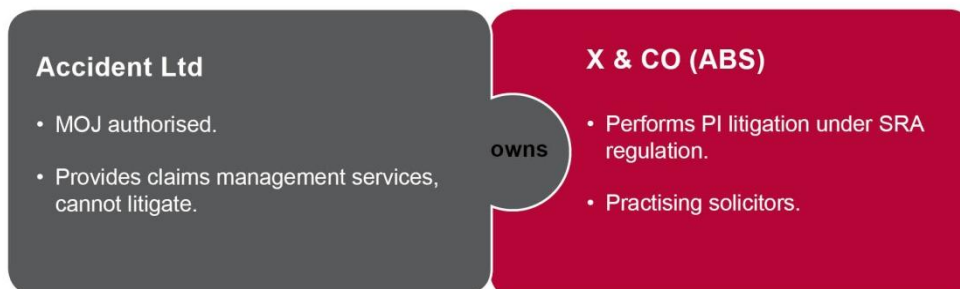
Annex 3 Case studies

Key



1 X & Co are an ABS owned by Accident Ltd – a claims management company

Scenario 1



Position under the current SBR

As X & Co are owned by a separate business (Accident Ltd) that will provide legal activity as more than a subsidiary but necessary part of its business, this arrangement would be a breach of the current rule and would require a waiver.

Position under the proposed SBR

This structure would be permitted. There would be restrictions on referrals. In the following scenarios Client A is injured in a road traffic accident caused by the negligence of a third party:

Scenario 1.1 A sees an advert from Accident Ltd and instructs it to manage her claim. After some negotiation, it is apparent that litigation will be needed. Accident Ltd refers A to X & Co who deals with the case from then on.

Regulatory position: This would be allowed, subject to X & Co informing A of its connection with Accident Ltd and of her right to instruct another solicitor.

Scenario 1.2 As in scenario 1.1, but Accident Ltd only refer aspects of the case to X & Co (who issue proceedings and provide advocacy) and continue dealing with A and handling her claim.

Regulatory position: This will be unlawful if it causes the client to lose regulatory protections for any aspect of the reserved service. In any event, it may be difficult to show compliance with Outcomes 12.1(a) and 12.1(b) in these circumstances, particularly if Accident Ltd are carrying out legal activity. It may not be at all clear to the client who is dealing with which aspects of the case and which protections will apply. X & Co will also need to consider: whether this arrangement is in the best interests of the client in accordance with SRA Principle 4; whether it can provide a proper standard of service to that client; and whether the arrangement compromises its independence or its duty to the court.

Scenario 1.3 A hears from a friend that X & Co have a good reputation and instructs them in relation to her claim. X & Co explain to A that whilst it will handle her litigation, its partner company Accident Ltd will be administering the matter and will deal with A on a daily basis.

Regulatory position: This will be a breach of Outcome 12.5 (b). It is also very unlikely to be in the client's best interests.

2 **'W&Y solicitors' is a recognised body. It sets up a subsidiary company known as 'Estates Law' which specialises in the administration of estates and will drafting.**

Scenario 2



Position under current SBR

Setting up 'Estates Law' as a separate business is prohibited under the current rule. Drafting wills, acting as an executor, or providing non-reserved legal activity (other than as a subsidiary but necessary part of the business) are all prohibited separate business activities.

Position under proposed SBR

It will be permissible for W&Y to set up the separate business. There will be restrictions on referrals. In the following scenarios, Client B is the main beneficiary and executor of the estate of his deceased father:

Scenario 2.1 B searches on line and after visiting the website of Estates Law instructs it to administer his estate. It explains to the client that it is not regulated by an approved regulator and that it refers the grant of probate to its partner company W&Y solicitors who will carry out that part of the work only under regulation.

Regulatory position: This would be allowed, subject to B being given proper information as to the connection between the businesses and of his right to instruct another solicitor. The estate administration may require other reserved legal activities such as conveyancing which may necessitate a further referral and care will need to be taken to ensure that Outcomes 12.1(a) and (b) are complied with.

Scenario 2.2 As in 2.1, but Estates Law website says: 'Our sister company W&Y solicitors will handle all legal aspects of the estate administration and give you the peace of mind of full professional protection'.

Regulatory position: This will be a breach of Outcomes 12.1 (a) and (b).

Scenario 2.3 B instructs W & Y who have acted for him in the past. W&Y explain that the day to day administration of the estate and collection and distribution of the assets will be handled by Estates Ltd, but that W&Y will obtain the grant of probate and 'keep an eye' on the case to ensure that it is correctly handled.

Regulatory position: This will be a breach of:

- Outcomes 12.1 (a) and (b) (and is likely also to be a breach of Outcome 12.3)
- Outcome 12.4

Scenario 2.4

Following completion of the probate and estate administration by W&Y, B asks it to draft wills for himself and his wife. W&Y explain that it does not draft wills, but say that it can refer him to Estates Ltd that does. W&Y explains its connection with Estates Ltd, and that the latter company is not regulated by the SRA. The work will not therefore be carried out by a solicitor and will not carry the right to

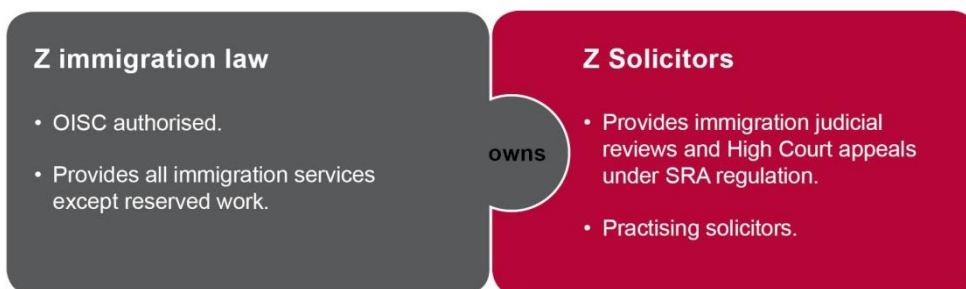
complain to the Ombudsman, access to the Compensation Fund or compulsory professional indemnity insurance arrangements.

Regulatory position

This would be allowed, unless there were some other circumstances which meant that it would not be in the client's best interests to be referred to Estates Ltd under O12.3.

3. **'Z Immigration Law' is an OISC regulated body providing immigration services. It employs a solicitor and applies to set up an ABS known as 'Z Solicitors'. The two entities will have offices next door to each other. It is apparent from the authorisation application that they will operate the same back office systems, and that the cases of both entities will effectively be handled by Z Immigration Law except where a judicial review is required.**

Scenario 3



Position under current SBR

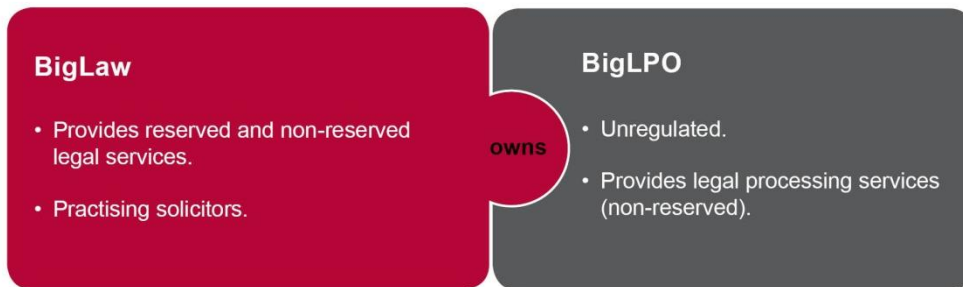
This structure would be prohibited under the current rule, as Z Solicitors would be owned by a separate business carrying out immigration work.

Position under proposed SBR

Although the ownership of Z Solicitors by the separate business (Z Immigration Law) would not be prohibited, the proposed arrangements will be a breach of Outcomes 12.1(a) and (b) and the ABS application is likely to be refused if unaltered. Z Immigration will need to show clear separation between the businesses and arrangements that will make sure that clients can distinguish the regulatory position between the two.

4. **'BigLaw' is a recognised body that splits of its legal advisory (non-reserved) work into a separate business 'BigLPO'. It seeks to market its services to clients as a group solution combining regulated lawyer work and legal backed outsourcing services.**

Scenario 4



Position under current SBR

BigLPO would be a prohibited separate business under the current rule.

Position under proposed SBR

This structure would be permitted.

Scenario 4.1

A large commercial client instructs BigLaw to act for it on a take-over. The client only has a retainer with BigLaw, which outsources some of the legal processing work to BigLPO.

Regulatory position

This does not raise separate business issues as such, since BigLaw retain responsibility and the client retains regulatory protection.

Scenario 4.2 as in scenario 4.1, but the commercial client will have retainers with both BigLaw and BigLPO who divide the services between them.

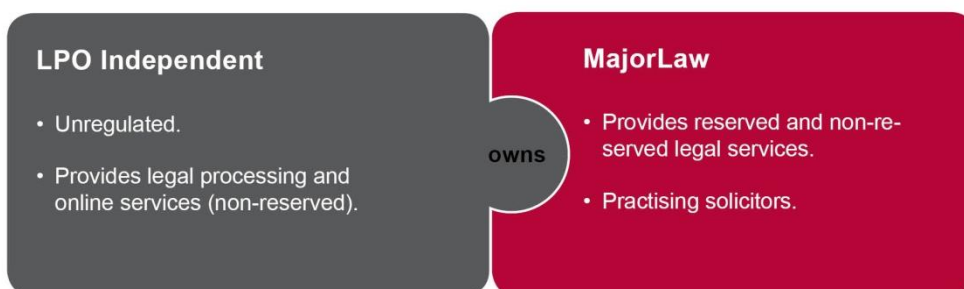
Regulatory position

Given that both businesses trade under the 'Big' label and operate to provide services together, then a detailed explanation of the regulatory position will need to be given to the client to ensure compliance with O12.1 (a) and (b). It should be made clear that: the regulatory protections available to solicitors will not be available in relation to any work carried out by BigLPO; that BigLPO is not regulated by any other legal regulator; and there will need to be an explanation of the insurance position. If the work is referred to BigLPO from BigLaw (as opposed to, for example, there being a joint bid where the activities that each would carry out is clearly laid out) then the provisions of Outcome 12.3 (and

where relevant 12.5) will apply. Solicitors will not be able to practice or hold themselves out as solicitors (practising or non-practising) within BigLPO except as in house lawyers not providing services to external clients.¹

- 5 LPO Independent is an unregulated legal processing outsourcing and online legal services company. It has an agreement with MajorLaw (a recognised body) that LPO clients can purchase packages of services including access to and advice from MajorLaw solicitors. LPO Independent now invests in MajorLaw and acquires a 20% stake, making MajorLaw an ABS.**

Scenario 5



Position under current SBR

The acquisition of a 20% stake makes LPO Independent an owner of MajorLaw. This connection would be prohibited under the current rule. (Note that SRA rules do not prohibit the operation of the previous agreement.)

Position under proposed SBR

This structure would be permitted. MajorLaw will now have a responsibility to ensure that O12.1 is complied with -even in relation to clients that instruct LPO Independent directly. Where clients instruct MajorLaw and are referred to LPO Independent, or when the two bodies bid for work together, then similar considerations will apply as in scenario 4. Solicitors will not be able to practice or hold themselves out as solicitors (practising or non-practising) within LPO Independent except as in-house lawyers not providing services to external clients.²

¹ See Rule 4 SRA Practice Framework Rules 2011

² See note 1.

