



The State Bar of California

CLOSING THE JUSTICE GAP WORKING GROUP

Date: October 12, 2021

To: Closing the Justice Gap Working Group

From: Bridget Gramme, Deputy Chief of Programs

Subject: Options for Attorney Involvement for Sandbox Entrants

As the Working Group considers whether each sandbox entrant should be required to designate a “responsible attorney,” this memo provides a brief summary of the models that other jurisdictions use in this regard when regulating entities delivering legal services or Alternative Business Structures (ABS).

MODELS

- **Utah:** Does not require providers within the sandbox to designate responsible attorney but does require applicants to disclose the following for purposes of risk assessment: Identification of individuals with controlling financial or managerial interest in the entity, including those who have managerial control over the direct provision of legal services to the public; whether any of those individuals are either disbarred/suspended lawyers or have a felony criminal history; whether the entity itself (or parent or affiliated companies) has a history of state or federal misdemeanor or felony convictions, consent decrees, or enforcement actions resulting in sanctions; whether the entity itself (or parent or affiliated companies) is under state or federal criminal investigation or enforcement action investigation; whether the entity’s business model includes the plan to share or sell consumer data.¹
- **Arizona:**² Each ABS must designate a “**compliance lawyer**” who must: 1) be authorized to practice law in Arizona per Supreme Court rule 31 (a) and (b); 2) be a manager or employee of the ABS; 3) consent to the designation; 4) not have been subject to discipline in any jurisdiction for the past 10 years; and 5) “possess credentials and experience in the legal field to ensure that ethical obligations, protection of the public,

¹ Office of Legal Services Innovation, Utah Supreme Court, [Frequently Asked Questions](#)

² See Arizona Code of Judicial Administration [§ 7-209](#) (G (3)) (“Role and Responsibilities of Licensed Alternative Business Structures and Compliance Lawyers”) (p.16)

and standards of professionalism are adhered to.” The compliance lawyer is responsible for ensuring that lawyers, authorized persons, employees, and anyone associated with the ABS are complying with ethical and professional obligations of lawyers and must promptly report any potential breaches to the state bar.

- **England/Wales (Solicitors Regulation Authority):** Requires an ABS to have 1) at least one manager who is regulated by an approved legal services regulator (solicitor, barrister, etc.); 2) a supervisory lawyer who has practiced as a lawyer for a minimum of three years, to supervise its regulated work (foreign lawyers can meet this criteria if registered); 3) designate an individual as the “**Compliance Officer for Legal Practice (COLP)**” who is responsible for ensuring that the firm complies with regulatory requirements and reports any serious breaches to the SRA; and 4) designate an individual as a “Compliance Officer for Finance and Administration (COFA).” Both COLPs and COFAs must be approved by the SRA, and must be a manager or senior level employee of the ABS, consent to the designation, not be disqualified, and for the COLP, must be authorized practice law by an approved legal services regulator.³ COLPs and COFAs are also be subject to the SRA’s Character and Suitability rules.⁴
- **Victoria, Australia (Victorian Legal Services Board + Commissioner):** Requires an ABS to designate at least one “**authorised principal**” who is licensed to practice law.⁵ An authorised principal must ensure compliance with the Uniform Law and Rules.⁶
- **Canada:** In surveying regulators, staff has learned that British Columbia recently established a sandbox but as of the date of this writing has not yet had an ABS applicant and therefore has not considered whether they would require a “responsible attorney” to be designated.⁷ Ontario anticipates rolling out its sandbox and rules very soon but so far has not yet publicly posted the requirements for sandbox entry.

ANALYSIS AND RECOMMENDATION FOR DISCUSSION

Notably, those jurisdictions that require a responsible attorney are not operating a sandbox, but rather operate an ABS model and authorize and regulate ABS entities outright. Utah does

³ [SRA Authorisation of Firms Rules, 1.1, 8, and 9](#)

⁴ [SRA Character and Suitability Rules](#)

⁵ See [Part 3.7 of the Uniform Law](#), s.105.

⁶ See [Part 3.2 of the Uniform Law](#)

⁷ BC does permit Multi-Disciplinary Practice (MDP) and has specific requirements for attorneys, including that they have “actual control” over the delivery of legal services in the MDP. See [Law Society Rules Rule 2-39](#)

not require the designation of responsible attorney and instead utilizes the level of lawyer involvement as part of its risk assessment.⁸

The benefit of requiring at least one senior-level employee to be designated as a responsible attorney is that it serves as a mechanism to ensure compliance with the rules of professional conduct, including competence. It is also a mechanism for ensuring individual accountability and preventing the same bad actors from starting up new entities after losing authorization to operate a prior organization. The downside to such a requirement, particularly in the sandbox environment, is that it may deter applicants from applying to the sandbox if they do not have an attorney on staff. For example, a non-profit utilizing domestic violence advocates could contract with an attorney to ensure they are trained and meeting the legal standards, but do not have a senior level employee who is an attorney. Under the Utah model, this would be handled by assessing a higher level of risk to applicants that do not have supervising attorneys, and increasing reporting, monitoring, and auditing requirements.

The Working Group should consider the following questions to guide its discussion:

- Should a sandbox applicant be required to identify a responsible attorney throughout its participation in the sandbox? If yes, must the attorney have an ownership interest in the entity and/or be an officer? Is it sufficient if the attorney is an employee or a contractor so long as they are willing to take on the obligation of ensuring compliance?
- Alternatively, should the level of attorney involvement be handled through the risk assessment and monitoring/reporting process?
- Is it sufficient to designate an “authorized person” whether or not that individual is an attorney?

⁸ Both the SRA and the Victorian Legal Services Board maintain “innovation” projects where applicants can apply to waive certain rules but do not have a formal sand box. But the requirements to designate responsible attorneys for an ABS are statutory in both jurisdictions and cannot be waived. See [Innovation in Legal Practice](#) (Victoria); [SRA Innovate Program](#) (England/Wales)