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Alternative Business Structures for Lawyers and Law Firms: A View from the Global Legal Services Market

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INTRODUCTION

From a global perspective, the delivery of legal services is undergoing a tumultuous change. The composition of legal practice components is being transformed in many countries as the legal profession responds or reacts to government mandates or consumer and competitive pressures. The forms of practice being adopted by some legal professions are changing the practice of law. Lawyers are partnering with nonlawyers, legal services are being offered along

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with nonlegal services, and nonlawyer outsiders are being permitted to invest in entities that engage in the practice of law.

The multidisciplinary practice, where lawyers may partner with nonlawyers and offer the public both legal and nonlegal services, is a departure from the traditional law firm. Multidisciplinary practices are embraced in many countries and are recognized by the International Bar Association and the Union Internationale des Avocats.¹ More recently, alternative business structures, which can take a myriad of forms, have been adopted in some countries. In alternative business structures, lawyers typically are permitted to partner with nonlawyers, and outsiders are permitted to invest in entities that offer legal services. Popular in some countries, but not embraced in others, these alternative business structures are a further departure from the traditional firm structure in which the “worldwide professional norm is allowing only lawyers to own law firms.”²

This Article begins by looking at formulations of law practice from a European perspective, focusing on European Union law and mandates that relate to lawyers and the delivery of legal services. The Article then examines the legal professions within specific countries, highlighting various practice configurations and the positions taken by their respective governments on law firm structures that vary from the traditionally recognized norm. Finally, I conclude in this Article

¹ See generally International Bar Association (IBA), *Resolution on Multi-Disciplinary Practices* (Sept. 13, 1998), <https://eshra375.files.wordpress.com/2014/01/resolution-on-multi-disciplinary-practices-1998.pdf> (setting forth IBA principles to be followed should a jurisdiction choose to permit multidisciplinary practice); Union Internationale Des Avocats, *Resolution on Multidisciplinary Practices* (Nov. 3, 1999), http://www.americanbar.org/content/dam/aba/migrated/cpr/gats/uia_ex_2.pdf (setting forth minimum standards to be followed for lawyers engaged in multidisciplinary practices in jurisdictions where such practices are permitted); cf. Institution for Corporate Law, Governance and Innovation Policies et al., *Restrictions on MPDs and Business Organization in the Legal Professions: A Literature Survey* 7 (2010) (summarizing the argument for bans on multidisciplinary practices as (1) guarding professional secrecy; (2) preventing conflicts of interest; (3) in relation to legal disciplinary practices (LDPs), barristers are more likely to give independent advice if they remain separate from solicitors; (4) in relation to LDPs: prevention of mergers, which would result in (further) market concentration and summarizing the argument against bans on multidisciplinary practices as (1) consumers cannot profit from “one-stop shopping”; (2) some economies of scope are not realized; (3) no internal risk spreading; (4) perhaps less innovation and more difficult access to capital which may be needed to invest in equipment and infrastructure to improve consumer services; (5) in relation to LPDs consumers will face a double mark-up on services they receive, if barristers and solicitors are prevented from working together).

² Martin Kovnats & Jeffrey Merk, *Alternative business structures—primer for future discussion*, IBA PROFESSIONAL ETHICS AND MULTIDISCIPLINARY PRACTICES JOINT COMMITTEE NEWSLETTER 15, 15 (Oct. 2015).

that the changes now being experienced will continue to evolve, both structurally and from a regulatory standpoint. As competition in the marketplace mounts, lawyers will continue to innovate in order to gain market presence and meet client needs. However, all these changes must be accompanied by the implementation of standards to protect the core values of the profession.

I THE EUROPEAN UNION

While the legal professions of various countries address the issue of reconfiguration, legal practitioners in European Union (EU)³ member countries have additional issues to consider in light of existing EU law and mandates. Since the inception of the EU, trade in services has been an essential component of the EU's function.⁴ Lawyers in EU countries are subject to laws, rules, and directives that facilitate matters such as free movement and mutual recognition, which has forced "the more traditional jurisdictions to open up their markets for legal services."⁵ However, despite the substantial shift this represents for certain jurisdictions, the legal professions of some EU Member States are more receptive to varying forms of cross-border practice than others, prompting the remark that "there have been many jurisdictions where the entrenched profession has been very successful in reregulating."⁶

A. Law Relating to Lawyers

The 1957 Treaty of Rome (EEC Treaty) created the European Economic Community (EEC) and called for the free movement of goods, persons, capital, and services.⁷ To further the rights of

³ See *infra* note 7.

⁴ See Louise L. Hill, *Services as Objects of International Trade: Bartering the Legal Profession*, 39 VAND. J. TRANSNAT'L L. 347, 358 (2006).

⁵ Nuno Garoupa, *Globalization and Deregulation of Legal Services*, 38 INT'L REV. L. & ECON. 77, 80 (2014).

⁶ *Id.* at 81.

⁷ Treaty Establishing the European Economic Community, art. 1, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter EEC Treaty] (stating Belgium, France, Germany, Italy, Luxembourg, and the Netherlands were the six founding members of the EEC); see Gregory Siskind, *Freedom of Movement for Lawyers in the New Europe*, 26 INT'L LAW. 899, 899 n.4 (1992) (explaining that the EEC was expanded to include Denmark, Greece, Ireland, Portugal, Spain, and the United Kingdom and that the EEC and the European Free Trade Association (EFTA), agreed to form the European Economic Area (EEA), a new

professionals to provide services freely, and to establish themselves throughout the Community,⁸ the EEC Treaty requires that restrictions based on nationality be abolished,⁹ and that directives be issued for “mutual recognition of diplomas, certificates and other qualifications.”¹⁰ In 1960, the Conseil des Barreaux de la Communauté Européenne (CCBE)¹¹ was formed to study, consult, and make recommendations as to the problems and opportunities created within the legal profession under the EEC Treaty.¹² Two decades after the EEC Treaty went into effect, the Lawyers’ Services Directive, a directive on the freedom of lawyers to provide services throughout the Member States,¹³ was adopted by the Council of

common market); TREVOR C. HARTLEY, *THE FOUNDATIONS OF EUROPEAN COMMUNITY LAW* 8 (1st ed. 1994) (stating the Treaty on European Union was signed in 1992 creating the EU which is made up of the European Community (EC) formally known as the EEC, The European Coal and Steel Community, and the European Atomic Energy Community); *Countries in the EU and EEA*, GOV.UK, <https://www.gov.uk/eu-eea> (last updated Mar. 29, 2017) (stating that additional member states to the EU are Australia, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Estonia, Finland, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia, and Sweden. The EEA includes the EU countries as well as Iceland, Liechtenstein and Norway while Switzerland is neither in the EU nor the EEA, but is part of the single market.); Steven Erlanger, *Britain Votes to Leave E.U.; Cameron Plans to Step Down*, N.Y. TIMES: EUROPE (June 23, 2016), <https://www.nytimes.com/2016/06/25/world/europe/britain-brexiteuropean-union-referendum.html> (as of 2015, there were twenty-eight countries in the EU, however, the United Kingdom voted to exit the EU in June 2016).

⁸ See Roger J. Goebel, *Lawyers in the European Community: Progress Towards Communitywide Rights of Practice*, 15 *FORDHAM INT’L L.J.* 556, 556 (1992) (stating that the freedom to provide services permits a professional to practice occasionally in other Member States and the right of establishment allows a professional to engage in practice while residing in another Member State).

⁹ EEC Treaty, *supra* note 3, at art. 53.

¹⁰ *Id.* at art. 57(1). See also LINDA S. SPEDDING, *TRANSNATIONAL LEGAL PRACTICE IN THE EEC AND THE UNITED STATES* 77 (1987) (stating that historically, for activities to be considered a “service” or “establishment,” the activity had to be both “independent” and “economic” and independence was typically evidenced by self-employment, a characteristic that distinguished establishment and services from the freedom of movement of workers).

¹¹ See *CROSS BORDER PRACTICE COMPENDIUM*, ch. 3, at 4 (Dorothy Little ed., 1996) (stating that as originally formed, the CCBE was named Commission Consultative des Barreaux de la Communauté Européenne).

¹² *Id.* at 3–4 (stating the CCBE is a representative body for the bar associations of the Member States in the EU). See also *infra* note 46.

¹³ Council Directive 77/249, 1977 O.J. (L 78) [hereinafter *Lawyers’ Services Directive*]; see Nicholas J. Skarlatos, *European Lawyers’ Right to Transnational Legal Practice in the European Community*, 18 *LEGAL ISSUES EUR. INTEGRATION* 49, 52 (1991) (stating that the Lawyers’ Services Directive was first proposed in 1969 but its adoption was delayed because of questions of interpretation of the EEC Treaty); see also Council Regulation 1612/68, 1968 O.J. (L 257) (illustrating that the Lawyers’ Services Directive

Ministers.¹⁴ Under the 1977 Lawyers' Services Directive, lawyers¹⁵ are subject to the rules of professional conduct in both the host and home Member States.¹⁶ Member States are permitted to reserve designated activities to domestic practitioners, however, outside of the specifically designated activities and qualification requirements, lawyers are permitted to perform any legal service for which they are hired.¹⁷ Lawyers exercising this opportunity to practice must use their home title in the language of their home state.¹⁸ Focusing on the provision of services, the Lawyers' Services Directive addresses only services provided on a temporary basis and excludes measures relating to establishment and the mutual recognition of diplomas.¹⁹

A directive calling for the mutual recognition of diplomas was adopted by the Council of Ministers in 1988 (Diploma Directive),²⁰ facilitating the ability of professionals to obtain the right to practice throughout the Member States.²¹ Recognizing that training and education requirements may vary among the Member States, the

was preceded by action to further the free movement of workers and to delineate a worker's right to move to any Member State to take up employment, along with the right to receive the same social benefits as nationals of that Member State, and to remain in that Member State after employment ceased). *See also* Louise L. Hill, *Lawyer Publicity in the European Union: Bans are Removed but Barriers Remain*, 29 GEO. WASH. J. INT'L L. & ECON. 381, 387–88 (1995).

¹⁴ *See* HARTLEY, *supra* note 3, at 17 (stating that the Council of Ministers is made up of delegates from each Member State and coordinates the Member State policies and approves legislation, budgets and international treaties).

¹⁵ Lawyers' Services Directive, *supra* note 13, at art. 1(2) (stating that a "lawyer" is defined as an individual entitled to practice under the following home titles: Belgium—Avocat—Advocaat; Denmark—Advokat; Germany—Rechtsanwalt; France—Avocat; Ireland—Barrister, Solicitor; Italy—Avvocato; Luxembourg—Avocat—avoué; Netherlands—Advocaat; United Kingdom—Advocate, Barrister, Solicitor).

¹⁶ *Id.* at art. 4 (providing in part as follows: "A lawyer pursuing these activities shall observe the rules of professional conduct of the host Member State, without prejudice to his obligations in the Member State from which he comes"); *see also* Council Directive 2000/31/EC, 2000 O.J. (L 178) at arts. (4)(1) & 5(1)(f) (noting that in the European E-Commerce Directive, promulgated in 2000, only the professional rules of the home state apply to "information society service providers" belonging to a regulated profession and, therefore, cross-border on-line services are regulated by the state in which the service provider is established).

¹⁷ Lawyers' Services Directive, *supra* note 13, at art. 1(1), 3, 5 & 7; *see* Jonathan Barsade, *The Effect of EC Regulations upon the Ability of U.S. Lawyers to Establish a Pan-European Practice*, 28 INT'L L. 313, 319 (1994).

¹⁸ Lawyers' Services Directive, *supra* note 13, at art. 3.

¹⁹ *See* Hill, *supra* note 4, at 388.

²⁰ Council Directive 89/48/EEC, 1989 O.J. (L 019) [hereinafter Diploma Directive].

²¹ *Id.* at art. 3.

Diploma Directive provides a list of instances in which Member States retain the right to require individuals to take an aptitude test, or complete an adaptation period, prior to entering a profession in the jurisdiction.²² With respect to the legal profession, most Member States chose to require an aptitude test, although the tests varied in complexity and length.²³ That same year, the CCBE adopted the Code of Conduct for Lawyers in the European Community (CCBE Code)²⁴ to serve as a code of conduct for EU lawyers who engage in cross-border practice.²⁵ The product of over six years of work,²⁶ the CCBE Code provides substantive rules regarding legal ethics, and sets out which law should govern should there be a “conflict of law.”²⁷

To facilitate admission to the practice of law and further the free movement of lawyers, the Lawyers’ Establishment Directive was adopted in 1998.²⁸ Considered to be a welcome alternative to the Diploma Directive and its aptitude tests,²⁹ the Lawyers’ Establishment Directive allows EU lawyers to acquire the same status as traditionally qualified lawyers through sufficient exposure to another jurisdiction’s local law for a three-year period.³⁰ The Lawyers’ Establishment Directive imposes affirmative verification obligations regarding the sufficient exposure requirement,³¹ reservation options,³²

²² *Id.* at art. 4(1)(b).

²³ See Hill, *supra* note 4, at 363 (stating the first Member State to implement the Diploma Directive was Germany, who was considered to have taken a “stringent approach” requiring two written examinations of five hours each, along with a one hour oral exam conducted in German); Goebel, *supra* note 8, at 599.

²⁴ COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE, CODE OF CONDUCT FOR EUROPEAN LAWYERS (CCBE eds., 2006); see Goebel, *supra* note 8, at 580 (illustrating that the CCBE Code was preceded by the Declaration of Perugia that set forth principles for all lawyers to observe and contained choice-of-law rules should conflict arise).

²⁵ See John Toulmin Q.C., *A Worldwide Common Code of Professional Ethics?*, 15 FORDHAM INT’L L.J. 673, 677–78 (1991) (stating that the original CCBE Code set forth the following seven general principles; “independence, trust and personal integrity, confidentiality, respect for the rules of other bars and law societies . . . , incompatible occupations, personal publicity; and the client’s interest”).

²⁶ *Id.* at 673.

²⁷ See Laurel S. Terry, *An Introduction to the European Community’s Legal Ethics Code Part I: An Analysis of the CCBE Code of Conduct*, 7 GEO. J. LEGAL ETHICS 1, 18–19 (1993).

²⁸ Council Directive 98/5/EC, 1998 O.J. (L 177) [hereinafter Lawyers’ Establishment Directive].

²⁹ Wayne J. Carroll, *Liberalization of National Legal Admissions Requirements in the European Union: Lessons and Implications*, 22 PENN STATE INT’L L. REV. 563, 575 (2004).

³⁰ Lawyers’ Establishment Directive, *supra* note 28, at art. 10.

³¹ *Id.* at art. 10(1).

and regulatory and disciplinary requirements.³³ It has been regarded as the “boldest step in the liberalization of legal admissions in the EU.”³⁴

In 2006, a Directive on Services in the Internal Market was adopted (2006 EU Services Directive),³⁵ establishing provisions to facilitate the exercise of freedom of establishment for service providers, as well as the free movement of services.³⁶ The freedom to provide services is addressed in Article 16, calling for Member States to ensure service providers in other Member States “free access to and free exercise of a service activity within its territory.”³⁷ Definitive principles related to compliance requirements are set forth,³⁸ making “it much more difficult to restrict the freedom to cross European borders to provide services.”³⁹ However, Article 17 makes Article 16 inapplicable to “matters covered by” the 1977 Lawyers’ Services Directive.⁴⁰ Whether “matters” means only “those matters specifically regulated by the 1977 Lawyers’ Services Directive,” or “a blanket exception in favor of lawyers” has been a point of debate.⁴¹ The “emerging consensus” is the former position, and since the Lawyers’ Services Directive was written four decades ago, understandably, it does not regulate nonlawyer ownership of legal practices.⁴²

The 2006 EU Services Directive addresses multidisciplinary activities, calling for Member States to “ensure that providers are not made subject to requirements which oblige them to exercise a given specific activity exclusively or which restrict the exercise jointly or in partnership with different activities.”⁴³ However, it provides that the regulated professions may be subject to restrictions in order to

³² *Id.* at art. 5.

³³ *Id.* at art. 7.

³⁴ Carroll, *supra* note 29, at 574.

³⁵ Directive 2006/123, O.J. (L 376) (EC) [hereinafter 2006 EU Services Directive].

³⁶ *Id.* at art. 1.

³⁷ *Id.* at art. 16(1).

³⁸ *Id.* at art. 16(1).

³⁹ Jakob Weberstaedt, *English Alternative Business Structures and the European Single Market*, 21 INT’L J. LEGAL PROF. 103, 118 (2014).

⁴⁰ 2006 EU Services Directive, *supra* note 35, at art. 17(4).

⁴¹ Weberstaedt, *supra* note 39, at 118.

⁴² *Id.* (explaining that because of this, “any attempts by protectionist bars to restrict the Freedom to Provide Services on the ground of nonlawyer ownership will have to get over the considerable obstacle of the 2006 Services Directive”).

⁴³ 2006 EU Services Directive, *supra* note 35, at art. 25.

guarantee compliance with the various rules of professional conduct—or ethics—that apply to the different professions.⁴⁴ When multidisciplinary activities are authorized, Member States must ensure the following:

- (a) that conflicts of interest and incompatibilities between certain activities are prevented;
- (b) that the independence and impartiality required for certain activities is secured;
- (c) that the rules governing professional ethics and conduct for different activities are compatible with one another, especially as regards matters of professional secrecy.⁴⁵

This underscores the importance of the fundamental values of the professions and their continued maintenance by providers of multidisciplinary services.

B. CCBE Perspective

As the legal professions of the Member States within the EU studied multidisciplinary practices and other forms of alternative business structures, the CCBE considered these formulations “from a European perspective.”⁴⁶ In 1999, the CCBE voiced opposition to multidisciplinary practices.⁴⁷ In doing so, the CCBE recognized the freedom of economic activity and the provision of services, as well as a lawyer’s duties to respect independence, avoid conflicts of interest and maintain client confidentiality.⁴⁸ Finding that interests arising from the concerns of nonlawyers may conflict with the duties of lawyers, the CCBE concluded that:

the problems inherent to integrated co-operation between lawyers and nonlawyers with substantially differing professional duties and correspondingly different rules of conduct, present obstacles which cannot be adequately overcome in such a manner that the essential

⁴⁴ *Id.*

⁴⁵ 2006 EU Services Directive, *supra* note 35, at art. 25(2).

⁴⁶ COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE, CCBE POSITION ON MULTIDISCIPLINARY PARTNERSHIPS (MDPS) 2 (CCBE eds., 2005) [hereinafter CCBE 2005 POSITION ON MDPS] (explaining the CCBE is a representative body for the law and bar societies of the Member States and represents more than 700,000 European lawyers).

⁴⁷ See COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE, POSITION OF CCBE ON INTEGRATED FORMS OF CO-OPERATION BETWEEN LAWYERS AND PERSONS OUTSIDE THE LEGAL PROFESSION 4 (CCBE eds., 1999) [hereinafter CCBE 1999 POSITION ON FORMS OF CO-OPERATION]; Mary C. Daly, *Choosing Wise Men Wisely: The Risks and Rewards of Purchasing Legal Services from Lawyers in a Multidisciplinary Partnership*, 13 GEO. J. LEGAL ETHICS 217, 238 (2000).

⁴⁸ See CCBE 1999 POSITION ON FORMS OF CO-OPERATION, *supra* note 47, at 2.

conditions for lawyer independence and client confidentiality are sufficiently safeguarded . . . In those countries where such forms of co-operation are permitted, lawyer independence, client confidentiality and disciplinary supervision of conflicts-of-interests rules must be safeguarded.⁴⁹

The CCBE reaffirmed this view in 2005 and noted a 2002 decision from the European Court of Justice (ECJ) in which the EJC determined that the rules of the Dutch Bar, which prohibited multidisciplinary practices between members of the Bar and accountants, were compatible with the EEC Treaty.⁵⁰

In addition to voicing opposition to multidisciplinary practices, the CCBE has voiced opposition to other forms of alternative business structures.⁵¹ In 2009, in response to a consultation paper issued by the Solicitors Regulation Authority (SRA) of England and Wales⁵² on “New Forms of Practice and Regulation for Alternative Business Structures,” the CCBE reasserted its “view that in the best interest of clients, including consumers, the introduction of such business structures should be avoided.”⁵³ The CCBE pointed out that through EU Directives, the “legal services markets have been extended enormously,”⁵⁴ and that “any further development that might be

⁴⁹ CCBE 1999 POSITION ON FORMS OF CO-OPERATION, *supra* note 47, at 3-4. *See* CCBE 2005 POSITION ON MDPS, *supra* note 46, at 4-5.

⁵⁰ CCBE 2005 POSITION ON MDPS, *supra* note 46, at 5; *see also* Case C-309/99, J.C.J. Wouters v. Algeme Road van de Nederlandse Orde van Avocaten, 2002 E.C.R. I-1577 (stating that the Court recognized the legal profession’s core values of independence, confidentiality and avoidance of conflicts of interest to “form part of the very essence of the legal profession and that the Dutch Bar could reasonably consider the regulation prohibiting multidisciplinary practice necessary for the proper practice of the legal profession, despite its restrictive effect on competition). The CCBE interpreted this to mean that “in a given regulation, the core values of the legal profession, as recognized by a Member State Bar, can take priority over competition considerations.” CCBE 2005 POSITION ON MDPS, *supra* note 46, at 3.

⁵¹ *See* COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE, CCBE RESPONSE TO THE SOLICITORS REGULATION AUTHORITY’S CONSULTATION ON NEW FORMS OF PRACTICE AND REGULATION FOR ALTERNATIVE BUSINESS STRUCTURES, 6 (CCBE eds., 2009) [hereinafter CCBE 2009 POSITION ON ABS].

⁵² *See infra* note 206 and accompanying text.

⁵³ CCBE 2009 POSITION ON ABS. *See* Weberstaedt, *supra* note 39, at 107 (showing the CCBE sent a “nearly identical response” to a consultation launched by the English Legal Services Board).

⁵⁴ CCBE 2009 POSITION ON ABS, *supra* note 51, at 3 (referencing the Lawyers’ Services Directive and the Lawyers’ Establishment Directive, the CCBE notes that lawyers and law firms from EU Member States can provide legal services in thirty European states and establish a practice in any Member State).

necessary to meet clients' needs will be achieved within the existing European legal services market provided by the respective legal professionals."⁵⁵ It saw no "advantage for clients if the market is opened for nonlawyers," which is something that "could compromise the integrity of the legal profession."⁵⁶

Although voicing opposition to alternative business structures in its response to the SRA's consultation paper, the CCBE acknowledged that the question raised by the SRA was not whether to go forward with alternative business structures, but regulation of these new forms of practice.⁵⁷ Recognizing the right of Member States to regulate the legal profession in their respective jurisdictions, and that rules of the legal profession may differ greatly among the Member States, the CCBE set forth the following position on the regulation of alternative business structures:

If ABSs are licensed, it should be made transparent to clients that these structures are not law firms, and it should be mandatory to make this obvious in the company's firm name. In addition, due to the fact that lawyers will practise within these structures under their professional titles, the regulation of ABSs should provide the following rules:

The possibility that different activities of the ABS could be incompatible should be regulated in the sense that instructions, that are incompatible with other instructions already accepted by a member of the business structure, must not be accepted by another member practising within the same firm;

The observation of lawyers' professional duties must be made mandatory by state regulation, not only by contract, for all natural persons holding shares or working within the structure.⁵⁸

However, perhaps most significant is that the CCBE interpreted the Lawyers' Services Directive in such a way that some Member States could block lawyers and firms practicing in alternative business structures from offering their services in the Member State.⁵⁹

In considering alternative business structures, the CCBE noted that rules applicable to the legal profession vary among the Member

⁵⁵ *Id.*

⁵⁶ *Id.* at 3–4.

⁵⁷ *See id.* at 2.

⁵⁸ CCBE 2009 POSITION ON ABS at 6. *See id.* at 5 (illustrating the CCBE looked to the 2006 ECJ case of *Commission v. Italy*, Case C-531/06 [2006] ERC I-4103, where rules addressing the ownership of pharmacies by non-pharmacists were considered and although Member State legislation restricted the freedom of establishment and the free movement of capital, it could be justified by overriding considerations of the public interest).

⁵⁹ *Id.* at 4.

States, as does the breadth of reserved activities designated by Member States under the Lawyers' Services Directive.⁶⁰ The CCBE posited that alternative business structures "will be able to be established abroad and provide legal services, where these services in the host state do not fall within the scope of reserved activities."⁶¹ But "whether legal services can be offered as lawyers' services is another question."⁶² Addressing this inquiry, the CCBE looked to Article 11 of the Lawyers' Establishment Directive which speaks to joint practice. Specifically, the CCBE focused on paragraph 1, point 5 of Article 11, which provides as follows:

Notwithstanding points 1 to 4, a host Member State, insofar as it prohibits lawyers practising under its own relevant professional title from practising the profession of lawyer within a grouping in which some persons are not members of the profession, may refuse to allow a lawyer registered under his home-country professional title to practice in its territory in his capacity as a member of his grouping. The grouping is deemed to include persons who are not members of the profession if

- the capital of the grouping is held entirely or partly, or
 - the name under which it practises is used, or
 - the decision-making power in that grouping is exercised, de facto or de jure,
- by persons who do not have the status of lawyer within the meaning of Article 1(2).

Where the fundamental rules governing a grouping of lawyers in the home Member State are incompatible with the rules in force in the host Member State or with the provisions of the first subparagraph, the host Member State may oppose the opening of a branch or agency within its territory without the restrictions laid down in point (1).⁶³

⁶⁰ *Id.*; see generally Lawyers' Services Directive, *supra* note 13.

⁶¹ CCBE 2009 POSITION ON ABS, *supra* note 51, at 5.

⁶² *Id.*

⁶³ Lawyers' Establishment Directive, *supra* note 28, at art. 11(5) (noting that Paragraphs 1-4 of Article 11 provide as follows: "(w)here joint practise is authorised in respect of lawyers carrying out their activities under the relevant professional title in the host Member State, the following provisions shall apply in respect of lawyers wishing to carry on activities under that title or registering with the competent authority: (1) One or more lawyers who belong to the same grouping in their home Member State and who practise under their home-country professional title in a host Member State may pursue their professional activities in a branch or agency of their grouping in the host Member State. However, where the fundamental rules governing that grouping in the home

Based on this provision, the CCBE indicates that Member States can refuse establishment to alternative business structures. The CCBE comments that “even advocates, barristers, and solicitors practicing within an ABS could not provide legal services under their professional title in a large number of European jurisdictions.”⁶⁴

II

THE GENERAL AGREEMENT ON TRADE IN SERVICES

One of the agreements annexed to the Agreement Establishing the World Trade Organization (WTO) is the General Agreement on Trade in Services (GATS), promulgated in 1994.⁶⁵ The first multilateral trade agreement that applies to services rather than goods,⁶⁶ the GATS has been referred to as “the most important single development in the

Member State are incompatible with the fundamental rules laid down by law, regulation or administrative action in the host Member State, the latter rules shall prevail insofar as compliance therewith is justified by the public interest in protecting clients and third parties. (2) Each Member State shall afford two or more lawyers from the same grouping of the same home Member State who practise in its territory under their home-country professional titles access to a form of joint practice. If the host Member State gives its lawyers a choice between several forms of joint practice, those same forms shall also be made available to the aforementioned lawyers. The manner in which such lawyers practise jointly in the host Member State shall be governed by the laws, regulations and administrative provisions of that State. (3) The host Member State shall take the measures necessary to permit joint practice also between: [a] several lawyers from different Member States practising under their home-country professional titles; [b] one or more lawyers covered by point (a) and one or more lawyers from the host Member State. The manner in which such lawyers practice jointly in the host Member State shall be governed by the laws, regulations and administrative provisions of that State. (4) A lawyer who wishes to practise under his home-country professional title shall inform the competent authority in the host Member State of the fact that he is a member of a grouping in his home Member State and furnish any relevant information on that grouping.”)

⁶⁴ CCBE 2009 POSITION ON ABS, *supra* note 51, at 5; *see also* Weberstaedt, *supra* note 39, at 123–25 (noting that “a close analysis of the provision leads to more questions than answers” because, for instance, the phrase “insofar as it prohibits” can have multiple meanings, and any national restrictions under Article 11(5) would have to meet the test set by the EJC in *Reinhard Gebhard v. Consiglio dell’Ordine degli Avvocati e Procuratori di Milano* [*Gebhard*], which requires four criteria; “(1) non discrimination; (2) justification by overriding general interest; (3) suitability and (4) necessity”).

⁶⁵ General Agreement on Tariffs and Trade, 1994, 1867 U.N.T.S. 187 [hereinafter GATS]; *see also* Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154 (explaining that the WTO was created as part of the 1994 Uruguay Round General Agreement on Tariffs and Trade Agreement (GATT) and the WTO is an international governmental organization with full legal capacity to establish legal relationships with governmental and non-governmental organizations).

⁶⁶ International Bar Association, *General Agreement on Trade in Services*, A HANDBOOK FOR INT’L B. ASS’N MEMBER BARS 3 (2002) [hereinafter *GATS HANDBOOK*], <http://www.ibanet.org/images/downloads/gats.pdf>.

multilateral trading system since the GATT itself came into effect in 1948.”⁶⁷ As far as generally applicable provisions are concerned, a country agrees to comply with the GATS by agreeing to become a WTO member.⁶⁸ However, the GATS obligations of each Member depends on the duties the Member has specifically undertaken. Under the agreement, a Member is bound only to the extent that it has made concessions through its specific commitments.⁶⁹

The GATS Agreement contains a most-favored-nation-clause (MFN) that is considered the cornerstone of the agreement.⁷⁰ Under the MFN, each GATS Member must treat service providers from other GATS Members similarly, calling for Members to “accord immediately and unconditionally to services and service suppliers of any other Member, treatment no less favorable than that it accords to like services and service suppliers of any other country.”⁷¹ There are provisions for exemptions, but only a handful of countries have invoked MFN exemptions for legal services.⁷² As far as market access and national treatment are concerned, they are not general obligations but apply only to commitments countries make in their national schedules.⁷³ Fifty-eight countries listed legal services on their schedules, but the degree to which these countries chose to comply with obligations such as market access and national treatment was varied.⁷⁴

⁶⁷ An Introduction to the GATS, WTO Secretariat, Trade in Services Division (Oct. 1999) [hereinafter GATS Introduction], www.wto.org/english/tratop_e/serv_e/serv_e.htm.

⁶⁸ See Hill, *supra* note 4, at 353–54.

⁶⁹ GATS Introduction, *supra* note 67.

⁷⁰ See Robert F. Taylor & Philippe Metzger, *GATT and Its Effect on the International Trade in Legal Services*, 10 N.Y. INT’L L. REV. 1, 7 (1997).

⁷¹ GATS, *supra* note 65, at art. II, § 1. *But see id.* at art. II, § 3 (stating WTO Members may favor regional trading arrangements or economically integrated areas, and grant “advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of service that are both locally produced and consumed,” meaning that being contiguous, France can have a special deal with Switzerland; or the EU Member States, being an economically integrated area, do not have to extend the favorable treatment they accord each others’ lawyers, to lawyers from countries that are not members of the EU). See Kenneth S. Kilimnik, *Lawyers Abroad: New Rules for Practice in a Global Economy*, 12 DICK. J. INT’L L. 269, 306–24 (1994).

⁷² See generally Taylor & Metzger, *supra* note 70, at 23 n.118 (noting that among the countries that have filed MFN exemptions in legal services are China, Singapore, and the Dominican Republic).

⁷³ GATS, *supra* note 65, at arts. XVI–XVIII (explaining that a country is bound only to the extent it has made concessions).

⁷⁴ See GATS HANDBOOK, *supra* note 66, at 17.

It is unclear how the GATS will affect the provision of legal services through alternative business structures. A look at countries' GATS Schedule of Specific Commitments relating to legal services reveals no prohibition of market access by firms that have nonlawyer owners or outside investors.⁷⁵ However, the applicability of the MFN clause may be uncertain since it references "like services," and the legal professions in the various countries differ considerably.⁷⁶ Additionally, the playing field isn't necessarily level, since WTO Members may grant advantages to adjacent countries, or favor those within an economically integrated area.⁷⁷ At this point, there have been no WTO cases addressing market access for legal services.⁷⁸

III INDIVIDUAL COUNTRIES

A. *Australia*

The Australian legal profession is made up of solicitors and barristers.⁷⁹ Each state or territory in Australia, of which there are eight, has its own regulatory structure for the legal profession, which varies from jurisdiction to jurisdiction.⁸⁰ Historically, Australian solicitors could be sole practitioners or form partnerships with each other, but they were not permitted to practice within other types of organizational structures.⁸¹ This was to preserve the independence of the legal profession and provide the client with optimal protection.⁸² There was also a sole practice rule for barristers. This was to ensure the independence of barristers and promote their primary duty to the

⁷⁵ *Id.* (illustrating that, as with the Lawyers' Services Directive in 1977, alternative business structures were not an issue when sector-specific commitments were negotiated under the GATS); *see also* Weberstaedt, *supra* note 39.

⁷⁶ *See* Taylor & Metzger, *supra* note 70, at 16; Hill, *supra* note 4, at 351–52.

⁷⁷ *See supra* note 71.

⁷⁸ Weberstaedt, *supra* note 39, at 130.

⁷⁹ *See Legal Profession Act 2004* (NSW) s 4 (Austl.), http://www.austlii.edu.au/au/legis/nsw/repealed_act/lpa2004179/ [hereinafter *Australia 2004 Act*].

⁸⁰ *See* Steve Mark, THE REGULATORY FRAMEWORK IN AUSTRALIA 2 (Mar. 2014), http://www.americanbar.org/content/aba/events/professional_responsibility/2014.

⁸¹ *See* Susan Fortney & Tahlia Gordon, *Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation*, 10 ST. THOMAS L.J. 152, 156 (2012).

⁸² *See* Mark, *supra* note 80, at 3 (explaining that a solicitor partnership has unlimited liability, with partners being jointly and severally liable for the partnership's actions and that there was fear that if nonlawyers were entitled to legal fees, they could influence the way the lawyers provided their services).

court.⁸³ The Australian legal profession functioned in this fashion through most of the twentieth century.

In the latter part of the twentieth century, a movement to lessen the limitations on the structural organization of law practices began.⁸⁴ Various jurisdictions passed legislation enabling solicitors to form corporations, and in 1990, the parliament in New South Wales (NSW) enacted legislation allowing them to incorporate their practices.⁸⁵ NSW is Australia's largest state, with over one-third of the country's population living there, and "has been described by the Attorney General for Australia as 'the dominant player in the Australian legal services market.'"⁸⁶

In 1994, legislation was passed in NSW which authorized multidisciplinary partnerships for law practices.⁸⁷ This started the movement toward alternative business structures for the country's legal profession. The 1994 legislation provided that legal practitioners were to retain at least 51% of the net partnership income, in order to ensure that there would be compliance with a law firm's ethical practices.⁸⁸ However, due to "pressure from national competition authorities to reform regulatory structures to create greater accountability and enhance consumer interest and protection," the 51% rule came under attack.⁸⁹ In 2001, the NSW Parliament enacted legislation that eliminated such ownership restrictions, and recognized incorporated legal practices (ILP) and nonlawyer investment in law firm entities, along with multidisciplinary practices.⁹⁰ This "coincided

⁸³ *Id.* (noting that a barrister's primary duty is to the court, followed by a duty to the client).

⁸⁴ See Fortney & Gordon, *supra* note 81, at 156.

⁸⁵ *Id.* at 156–57.

⁸⁶ Law Society of Upper Canada, THE FUTURE OF LEGAL SERVICES, PROFILE OF LEGAL SERVICES PROFESSIONALS IN NEW SOUTH WALES, AUSTRALIA 1 (2014), <https://www.lsuc.on.ca/uploadedFiles/abs-new-south-wales-final-Oct.7-2014.pdf> [hereinafter NSW PROFILE]. Because of its dominant position, emphasis will be given to the legal profession in NSW.

⁸⁷ See Fortney & Gordon, *supra* note 81, at 157 (noting that the creation of a more competitive market for legal services was the object of this reform).

⁸⁸ See Mark, *supra* note 80, at 5.

⁸⁹ ABA Commission on Ethic 20/20 Working Group On Alternative Business Structures, FOR COMMENT: ISSUES PAPER CONCERNING ALTERNATIVE BUSINESS STRUCTURES 8 (Apr. 2011) [hereinafter ISSUES PAPER], http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/abs_issues_paper.authcheckdam.pdf.

⁹⁰ See Mark, *supra* note 80, at 3–4; Fortney & Gordon, *supra* note 81, at 158–59. The legislation provided that an ILP must have a Legal Practice Director to oversee its

with the effective end of self-regulation by the legal profession, replaced by a co-regulatory system that separates regulatory from representative functions, and legislation that places increased responsibility in the hands of government or government agencies.”⁹¹ The 2001 legislation was amended in 2004 to broaden its regulatory scope.⁹² NSW “became the first jurisdiction in the world to completely deregulate the structure of legal practice.”⁹³

In NSW, an ILP may provide legal and other lawful services, with the exception of “a managed investment scheme.”⁹⁴ ILPs are permitted to be listed on the Australian Stock Exchange and to have external investors. Compliance with the Australian Federal Corporations Act is required, as is registration with the Australian Securities and Investment Commission. Each legal practitioner associated with an ILP must comply with all rules and regulations that govern the legal profession.⁹⁵ These requirements resulted in the emergence of issues relating to where one’s fealty lay, since a corporation’s primary duty is to its shareholders, while a lawyer’s primary duty is to the court and then to clients.⁹⁶ Australia’s, and in fact the world’s, first publicly-listed law firm is Slater & Gordon.⁹⁷ Because of the fealty issue, Slater & Gordon’s “prospectus, constituent documents and shareholder agreements provided that its

management and have appropriate management systems (AMS) so that legal services are provided in accordance with the lawyers’ professional obligations. However, the legislation did not define the meaning of AMS. See Mark, *supra* note 80, at 5–6; Fortney & Gordon, *supra* note 81, at 159–60. That task was taken up by the Office of the Legal Services Commissioner, in collaboration with the Law Society of NSW, The College of Law and Law Cover (a legal profession insurer), who defined ten key areas or objectives that AMS’s should address. Christine Parker, Tahlia Gordon & Steve Mark, *Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales*, 17 J.L. & SOC’Y 466, 471 (Sept. 2010). See also *infra* note 105.

⁹¹ Paul D. Paton, *Multidisciplinary Practice Redux: Globalization, Core Values, and Reviving the MDP Debate in America*, 78 FORDHAM L. REV. 2193, 2241 (2010).

⁹² See *Australia 2004 Act*, *supra* note 79, at 670; Fortney & Gordon, *supra* note 81, at 160.

⁹³ Parker, Gordon & Mark, *supra* note 90, at 467.

⁹⁴ See *Australia 2004 Act*, *supra* note 79, at 112; ISSUES PAPER, *supra* note 89, at 8 (stating that each state or territory in Australia has a Legal Profession Act which sets forth the rules that are applicable to ILPs).

⁹⁵ See *Australia 2004 Act*, *supra* note 79, at 144.

⁹⁶ See Louise Lark Hill, *The Preclusion of Non-lawyer Ownership of Law Firms: Protecting the Interest of Clients or Protecting the Interest of Lawyers?*, 42 CAP. U. L. REV. 907, 926 (2014); ISSUES PAPER, *supra* note 89, at 9.

⁹⁷ *Id.* at 2–3; NSW PROFILE, *supra* note 86, at 2.

duty to the court remained primary, that duties to its clients followed, and that the firm's obligations to shareholders were last."⁹⁸ As of 2014, NSW had over 1,200 approved ILPs, representing about 30% of the NSW's legal practices.⁹⁹

Multidisciplinary practices are not as prolific in Australia as are ILPs.¹⁰⁰ A multidisciplinary practice is "a partnership between one or more Australian legal practitioners and one or more other persons who are not Australian legal practitioners, where the business of the partnership includes the provision of legal services . . . as well as other services."¹⁰¹ In a multidisciplinary practice, each lawyer in the partnership is responsible for the legal services provided and to see that there is compliance with the rules and regulations that govern the legal profession.¹⁰² A legal practitioner can be prohibited from partnering with an individual who is not a "fit and proper person," or has engaged in conduct that would violate the applicable professional conduct rules if committed by an Australian legal professional.¹⁰³

The regulatory framework for ILPs departs from the traditional regulatory approach for lawyers, in favor of a "management-based regulatory framework."¹⁰⁴ As originally implemented, ILPs, under the direction of a Legal Practice Director (LPD), were to implement appropriate management systems (AMS) which would further qualitative professional principles.¹⁰⁵ The intention was to "encourage

⁹⁸ ISSUES PAPER, *supra* note 89, at 9; *see* Law Society of Upper Canada, *supra* note 86, at 2–3.

⁹⁹ *Id.* (explaining that most of these ILPs are sole practitioners or small firms, with less than ten partners).

¹⁰⁰ *Id.* (explaining that as of 2010, there were about 30 multidisciplinary practices in NSW, such as lawyers providing legal services along with financial advisors or real estate agents). *But see* Sophie Schroder, *Multidisciplinary Legal Services Launch Warning Shot*, AUSTRALASIAN LAWYER (Nov. 24, 2014), <http://www.australasianlawyer.com.au/news/multidisciplinary-legal-services-launch-warning-shot-194283.aspx> (noting that there are indications that Australia is experiencing a "resurgence of multidisciplinary professional services firms").

¹⁰¹ *Australia 2004 Act*, *supra* note 79, at 165(1).

¹⁰² *Id.* at 168.

¹⁰³ *Id.* at 179.

¹⁰⁴ *See* Mark, *supra* note 80, at 8–9; *see also* Parker, Gordon & Mark, *supra* note 90.

¹⁰⁵ *See* Parker, Gordon & Mark, *supra* note 90, at 470–71; Mark, *supra* note 80, at 8–9. The professional principles, cast as objectives of AMS's for ILPs, relate to the following areas: Negligence; Communication; Delay; Liens/File Transfers; Cost Disclosure/Billing Practices/Termination of Retainer; Conflict of Interest; Records Management; Undertakings; Supervision of Practice and Staff; and Trust Account Regulations. *See* Parker, Gordon & Mark, *supra* note 90, at 472.

ILP's to build up ethical behaviors and systems that suit their own practices rather than imposing complex management on structures."¹⁰⁶ With an AMS in place, an ILP was to self-assess whether its procedures evidenced compliance with the goals of ethical delivery of legal services, and report this to the Office of the Legal Services Commissioner (OLSC).¹⁰⁷ The OLSC's response would vary depending on the ILP's report.¹⁰⁸ The use of principles, in defining regulatory goals or objectives offered "flexibility for both the regulated and the regulator in determining how to interpret and comply with the principles."¹⁰⁹ It appears this approach has been successful from the community's perspective for "the rate of complaints for ILPs went down by two-thirds after the ILP completed its initial self-assessment."¹¹⁰

In the past decade, an integrated regulatory framework and uniform legislation have been sought in order to "move toward a more functional and efficient Australian legal services market."¹¹¹ To that end, the Legal Profession Uniform Law Application Act 2014 (Uniform Law) was passed by the NSW Parliament in May 2014, repealing the 2004 Act.¹¹² It created "a common legal services market across NSW and Victoria, encompassing almost three quarters of Australia's lawyers."¹¹³ The Uniform Law uses principles and includes regulatory objectives for the profession, extending the framework for regulating ILPs to all law firms, irrespective of their

¹⁰⁶ Parker, Gordon & Mark, *supra* note 90, at 473.

¹⁰⁷ *See id.* at 473–74.

¹⁰⁸ *Id.* at 473 (stating that if an ILP rates itself as less than fully compliant, a dialogue between the ILP and the OLSC ensues, either by letter, telephone or a face-to-face meeting. In rare cases, a practice review results. The OLSC can initiate complaints, which can eventually lead to professional discipline.)

¹⁰⁹ Mark, *supra* note 80, at 9.

¹¹⁰ Susan S. Fortney, *The Role of Ethics Audits in Improving Management Systems and Practices: An Empirical Examination of Management-Based Regulation of Law Firms*, 4 ST. MARY'S J. LEGAL MALPRACTICE & ETHICS 112, 119 (2014); Mark, *supra* note 80, at 10 (indicating that research also revealed that "the complaints rates for [ILPs] that self-assessed was one-third of the number of complaints registered against similar non-incorporated legal practices").

¹¹¹ John Corcoran, President, Law Council of Austl., *The State of the Profession* 3 (Sept. 19, 2009), <https://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/speeches/20090919TheStateoftheProfession.pdf>.

¹¹² *See* Law Society of NSW, *A NEW FRAMEWORK FOR PRACTICING LAW IN NSW*, <http://www.lawsociety.com.au/ForSolicitors/professionalstandards/Ruleslegislation/nationalreform/> [hereinafter FRAMEWORK].

¹¹³ FRAMEWORK, *supra* note 112.

type of practice.¹¹⁴ Each legal practice must appoint a “principal,” whose responsibilities are similar to the existing responsibilities of LPD’s, although law firms are not required to implement and maintain an AMS.¹¹⁵ An AMS is only required if a law firm receives a “management system directive,” which can occur if a regulator considers it reasonable to do so after an examination, investigation, or audit is conducted.¹¹⁶

The formal and ancillary provisions of the Uniform Law came into effect within NSW in July 2014.¹¹⁷ As for the remaining provisions, in 2015, legislation was passed “to amend the application Act to enable the commencement of the Uniform Law scheme.”¹¹⁸ Seeking a “seamless, unified national legal profession market,” this legislation cuts “red tape by simplifying and standardizing regulatory obligations while still providing a significant degree of local involvement in the performance of the regulatory functions of the Bar and the Law Society.”¹¹⁹ Preserving the system of “co-regulation where the profession is involved in critical areas of regulatory responsibility,” the Uniform Law reduces costs and enables lawyers to direct their attention primarily to the provision of legal services.¹²⁰

The focus of the Uniform Law is to better legal services for the community and its consumers, and “to deliver a cleaner, faster system and one with less red tape for those who purvey legal services” across the community.¹²¹ The other states and territories of Australia

¹¹⁴ See Mark, *supra* note 80, at 11.

¹¹⁵ *Id.* at 11–12.

¹¹⁶ *Id.* When a management system directive is made, the “regulator has the option of establishing the ten objectives of appropriate managements systems as being the standards that should be addressed.” Mark, *supra* note 80, at 12; *see supra* text accompanying note 105.

¹¹⁷ See Legal Profession Uniform Law Application Amendment Bill 2015, Explanatory Note 1 [hereinafter Explanatory Note], http://www.austlii.edu.au/au/legis/vic/bill_em/lpulaab2015496/lpulaab2015496.html.

¹¹⁸ Explanatory Note, *supra* note 117, at 1.

¹¹⁹ Gabrielle Upton, Vacluse-Attorney General, Legal Profession Uniform Law Application Legislation Amendment Bill 2015, second reading (May 27, 2015), [www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/28468a78d87fee09ca257e510019e9bd/\\$FILE/2RLegalProfession.pdf](http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/28468a78d87fee09ca257e510019e9bd/$FILE/2RLegalProfession.pdf).

¹²⁰ *Id.* The National Legal Profession Reform Taskforce, appointed to make recommendations and draft legislation for the Uniform Law, sought “to enhance the clarity and accessibility of consumer protection” as well as to achieve uniformity. Law Society of NSW, *supra* note 112.

¹²¹ Upton, *supra* note 119. The underlying regulatory scheme seems to be working well, given the drop in complaint rates for ILPs. *See supra* note 110.

continue to receive encouragement to adopt these reforms.¹²² Because “the legal profession is a key contributor to and enabler of the economy,”¹²³ it is hoped that the regulatory framework changes will help “ensure that Australian lawyers are poised to compete from both domestic bases and abroad.”¹²⁴

B. Canada

The provinces of Ontario, British Columbia, and Quebec permit multidisciplinary practices.¹²⁵ In 1997, the Canadian Bar Association (CBA), which is a lawyer advocacy group with no regulatory function,¹²⁶ established the International Practice of Law Committee (IPLC) “to monitor the ‘activities, negotiations and developments regarding the globalization of legal practice and the trend toward multi-disciplinary practices through NAFTA, the World Trade Organization, and the International Bar Association.’”¹²⁷ The following year, an ILPC report advanced the position that unless multidisciplinary practice organizations are controlled by lawyers, they should not be permitted to provide legal services.¹²⁸ In 1999, the Law Society of Upper Canada [LSUC], one of Canada’s fourteen law societies,¹²⁹ followed the ILPC’s lead by impos[ing] “a regime for the province of Ontario that regulated the [multidisciplinary practice] structure and restricted lawyer participation to those

¹²² See Upton, *supra* note 119. In addition to NSW and Victoria, the Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015 under the Uniform Law have been adopted in Queensland and South Australia. See Law Council of Australia, Australian Solicitors’ Conduct Rules, <http://www.lawcouncil.asn.au/lawcouncil/index.php/divisions/legal-practice-division/australian-solicitors-conduct-rules>.

¹²³ Upton, *supra* note 119. Legal services in Australia make “an enormous contribution to Australia’s economy” both nationally and internationally, “particularly in Asian markets, China and Hong Kong.” Paton, *supra* note 91, at 2242.

¹²⁴ *Id.* This “increasing global competition” is seen as a threat to the survival of the traditional law firm model. Federation of Defense & Corporate Counsel, *The 21st Century Practice of Law: A White Paper*, 64.3 FDCC Q. 210, 223 (Spring 2015).

¹²⁵ See ISSUES PAPER, *supra* note 89, at 11–12 (noting that multidisciplinary practices have been permitted in Ontario since 1999, and in British Columbia and Quebec since 2010).

¹²⁶ See Jordan Furlong, Watershed: The CBA Futures Report (Aug. 14, 2014), <http://www.law21.ca/2014/08/watershed-cba-futures-report/>.

¹²⁷ Paton, *supra* note 91, at 2212 (quoting Canadian Bar Ass’n, Special Comm. on the Int’l Practice of Law, Multi-Disciplinary Practices: An Interim Report, at i (1998)).

¹²⁸ Paton, *supra* note 91, at 2212 (citing Multi-Disciplinary Practices: An Interim Report, CANADIAN BAR ASS’N, SPECIAL COMM. ON THE INT’L PRACTICE OF LAW at 5 (1998)).

¹²⁹ See Furlong, *supra* note 126.

[multidisciplinary practices] in which legal services were the primary service offering.”¹³⁰ However, later that same year the ILPC reversed its view and recommended that lawyers be allowed to participate in multidisciplinary practices, even if such practices were not controlled by lawyers and were not limited to those of a legal nature.¹³¹ The IPLC’s reversal on this issue was considered “embarrassing” to the LSUC.¹³²

In 2000, the CBA passed a resolution recommending that provincial regulators adopt rules permitting lawyers to join multidisciplinary practices and share fees with nonlawyers.¹³³ The resolution called for lawyers to have control over the delivery of legal services in multidisciplinary practices, but did not require that lawyers have financial or voting control of the multidisciplinary practice itself.¹³⁴ This was something to which the Ontario delegates strenuously objected, whereupon they mounted a successful campaign to have the CBA position reversed, and a narrower regime, with a lawyer-control requirement, adopted.¹³⁵ The CBA subsequently adopted a resolution to require that lawyers have “effective control” over the multidisciplinary practice.¹³⁶ “Effective control” would ensure that the multidisciplinary practice be in “continuing compliance with the core values, ethical and statutory obligations, standards and rules of professional conduct of the legal profession.”¹³⁷

British Columbia considered allowing multidisciplinary practice in 2001, but the proposed changes, which were “radically different from the restrictive regulatory framework adopted in Ontario,”¹³⁸ failed to receive the two-thirds majority vote required for their

¹³⁰ Paton, *supra* note 91, at 2213; *see also* Hill, *supra* note 96, at 929.

¹³¹ *See* Paton, *supra* note 91, at 2213 (citing Canadian Bar Association, Striking a Balance: The Report of the International Practice of Law Committee on Multi-Disciplinary Practices and the Legal Profession, INT’L PRACTICE OF LAW COMM., at 11 (1999)), <http://www.cba.org/cba/pubs/pdf/mdps.pdf>.

¹³² Paton, *supra* note 91, at 2213.

¹³³ *Id.* at 2214.

¹³⁴ *Id.*

¹³⁵ *Id.* at 2211.

¹³⁶ Canadian Bar Association, CBA Code of Conduct Resolutions, Res. 01-01-M, at ¶ 1a (2000).

¹³⁷ *Id.*; *see* NOEL SEMPLE, LEGAL SERVICES REGULATION AT THE CROSSROADS 64 (2015).

¹³⁸ Paton, *supra* note 91, at 2223.

implementation.¹³⁹ At that time, the reasons offered for their rejection were the protection of “core values of the profession” and “lack of demand within the profession for such a regulatory scheme.”¹⁴⁰ However, in 2010, British Columbia passed rules permitting multidisciplinary practices similar to those implemented in Ontario.¹⁴¹ Lawyers involved in multidisciplinary partnerships must have effective control over the legal services provided, and nonlawyer partners may only provide services to the public if they support or supplement the practice of law.¹⁴²

Quebec also implemented rules permitting multidisciplinary practice in 2010, however, its rules are less restrictive than those found in Ontario and British Columbia.¹⁴³ In Quebec, members of the Barreau du Quebec must have majority ownership of the firm through which the professional services are provided and nonlawyer members of the multidisciplinary practice must be members of specifically identified professional bodies.¹⁴⁴ Additionally, all members of the firm must comply with the rules of law by which lawyers are bound to carry out their professional activities, such as those relating to professional secrecy, confidentiality of information, professional independence and conflicts of interest.¹⁴⁵ However, Quebec’s regulations do not require the nonlawyer activities to “support or supplement the practice of law,” as the Ontario and British Columbia rules require.¹⁴⁶

More recently, both the CBA and the LSUC have mounted campaigns to examine alternative business structures for law firms. In 2012, the CBA created the CBA Futures Initiative “to examine the fundamental changes facing the Canadian legal profession and to help

¹³⁹ *Id.* at 2225 (noting that the proposed changes received a majority vote, but not a two-thirds majority).

¹⁴⁰ Law Society of B.C., *Benchers Say No to Multi-Disciplinary Practice*, *Benchers’ Bulliten* (Nov.-Dec. 2001), <https://www.lawsociety.bc.ca/page.cfm?cid=1854&t=Benchers-say-no-to-multi-disciplinary-practice>.

¹⁴¹ See ISSUES PAPER, *supra* note 89, at 11.

¹⁴² Law Soc’y Rules R. 2-23.3(2)(a)(i) (2014), <http://www.lawsociety.bc.ca/page.cfm?cid=979>.

¹⁴³ See ISSUES PAPER, *supra* note 89, at 12.

¹⁴⁴ Quebec, *Reglement sur l’exercice de la profession d’avocat en societe et en multidisciplinarite, Loi sur le Barreau (L.R.Q., c. B-1, a.4), Code des professions (L.R.Q., c C-26, a. 93 et 94), §§ 1 & 5*, http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=%2F%2FC_26%2FC26R19_1_2.htm) [hereinafter *Quebec Regulation*].

¹⁴⁵ ISSUES PAPER, *supra* note 89, at 13.

¹⁴⁶ *Id.* at 12.

lawyers understand and respond to those changes.”¹⁴⁷ From that initiative, a report was released in August 2014 recommending that lawyers be allowed to practice in business structures that permit ownership, management, and investment by persons other than lawyers or members of other regulated professions.¹⁴⁸ It also recommended that multidisciplinary practices¹⁴⁹ and fee-sharing with nonlawyers be allowed,¹⁵⁰ that nonlawyers be effectively supervised,¹⁵¹ and that all proposed changes be carried out under the oversight of an enhanced regulatory framework.¹⁵²

In Ontario, both lawyers and paralegals¹⁵³ are “subject to restrictions on how to structure their practices.”¹⁵⁴ As with the CBA, the LCUS has been considering alternative business structure issues since 2012.¹⁵⁵ The LCUS formed an Alternative Business Structure Working Group (ABS Working Group) in 2012, after the Convocation for the 2011-2015 Benchers Term¹⁵⁶ identified alternative

¹⁴⁷ CBA Legal Futures Initiative- Futures: Transforming the Delivery of Legal Services in Canada, THE CANADIAN BAR ASSOCIATION, 10 (Aug. 2014) [hereinafter CBA Futures Report], <http://www.cbafutures.org/cba/media/mediafiles/PDF/Reports/Futures-Final-eng.pdf>. The specific purpose of the initiative was: (1) “to provide leadership and a strategic and systematic Canadian response in the face of unrelenting, dynamic and transformative change; (2) to canvass and reflect a wide range of views both from within and outside the profession; (3) to study the reasons for change and assess their likely impacts on the market for legal services in Canada; and (4) to provide a framework for ideas, approaches, and tools to help the legal profession adapt to change, so that it remains confident, viable, relevant, and competitive.” *Id.*

¹⁴⁸ *Id.* at 42.

¹⁴⁹ *Id.* at 44.

¹⁵⁰ *Id.* at 43.

¹⁵¹ *Id.* at 49.

¹⁵² *Id.* at 47.

¹⁵³ The Paralegal Standing Committee develops policy related to paralegal regulation for approval by the Convocation. “There are 13 members of the . . . Committee, . . . [composed of] . . . five paralegals, five lawyers and three lay . . . [individuals, who are Benchers].” Benchers, L. SOC’Y OF UPPER CANADA, <http://www.lsuc.on.ca/with.aspx?id=1136>.

¹⁵⁴ Malcom Mercer, *Alternative Business Structures and the Legal Profession in Ontario: A Discussion Paper*, L. SOC’Y OF UPPER CANADA, 4 (Sept. 2014) [hereinafter *ABS Discussion Paper*], www.lsuc.on.ca/uploadedFiles/abs-discussion-paper.pdf.

¹⁵⁵ See Alternative Business Structures Working Group Report, L. SOC’Y OF UPPER CANADA (Feb. 2015) [hereinafter Feb. 2015 ABS Working Group Report], <https://www.lsuc.on.ca/uploadedFiles/ABS-full-report.pdf>.

¹⁵⁶ See Benchers, *supra*, note 153. The LSUC is governed by a board of directors who meet most months in a meeting called the “Convocation.” Known as “Benchers,” this board of directors is composed of lawyers, paralegals and lay individuals. *Id.*

business structures as a priority.¹⁵⁷ In February 2014, the ABS Working Group presented a report which discussed four possible new models for the delivery of legal services in Ontario.¹⁵⁸ These models formed the basis for a Discussion Paper released by the LSUC later that year, seeking feedback on the four models, which are:

Model #1: Business entities providing legal services only in which individuals and entities which are not licensed by the Law Society can have up to 49% ownership,¹⁵⁹

Model #2: Business entities providing legal services only with no restrictions on ownership by individuals and entities who are not licensed by the Law Society,¹⁶⁰

Model #3: Business entities providing both legal and nonlegal services (except those identified as posing a regulatory risk) in which individuals and entities who are not licensed by the Law Society would be permitted up to 49% ownership,¹⁶¹ and

Model #4: Business entities providing both legal and nonlegal services (except those identified as posing a regulatory risk) in which individuals and entities who are not licensed by the Law Society would be permitted unlimited ownership.¹⁶²

In February 2015, the ABS Working Group issued a report addressing the responses it received to its Discussion Paper, which “revealed a range and nuance in positions with respect to ABSs.”¹⁶³

¹⁵⁷ See Alternative Business Structures Working Group Report—Next Steps, L. SOC’Y OF UPPER CANADA, 110 (Sept. 2015) [hereinafter Sept. 2015 ABS Working Group Report], https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-september-2015-prc.pdf.

¹⁵⁸ See *ABS Discussion Paper*, *supra* note 154, at 2.

¹⁵⁹ *Id.* at 22. “Under this model, the lawyer or paralegal would maintain majority ownership of the business entity, and would be responsible for its provision of legal services.” *Id.*

¹⁶⁰ *Id.* at 23. “Under this model, the business would be free to seek capital in any way it sees fit, but it would only provide legal services. Though the business owners need not be legal professionals, the provision of legal services would remain under the control and supervision of licensed lawyers or paralegals.” *Id.*

¹⁶¹ *Id.* at 24. “In this model, up to 49% non- licensee ownership in an entity is permitted, where the entity provides both legal services and nonlegal services. Any type of services may be provided by the entity, except for those identified by the Law Society as posing a risk.” *Id.*

¹⁶² *Id.* at 25. “In this model, the nonlegal services would not be subject to restriction, except where the Law Society has identified a sufficient regulatory risk.” *Id.*

¹⁶³ Feb. 2015 ABS Working Group Report, *supra* note 155, at 3. Over forty responses were received from individuals and legal and other organizations. *Id.* at 2. An overview of the responses is as follows:

The majority of responses advanced a specific view regarding whether ABSs should be permitted in Ontario in some form. Many responses passionately

The major themes disclosed in the responses were: innovation in the delivery of legal services; access to justice; regulation; ethics and professionalism; and legal sectors in Ontario.¹⁶⁴

In light of its work, and the responses received to the Discussion Paper, the ABS Working Group revised the criteria to be used in evaluating alternative business structures to the following:

- a. Access to justice
- b. Responsive to the public
- c. Professionalism
- d. Market consolidation, which could, among other impacts, limit the choice of the public to counsel in certain areas.¹⁶⁵

In September 2015, the ABS Working Group, through the Professional Regulation Committee, provided the Convocation with its initial conclusions and intended next steps in its continued study of alternative business structures.¹⁶⁶ With respect to the four models in the ABS Discussion Paper, the ABS Working Group concluded “that majority or controlling non-licensee ownership should not be considered further at this time for traditional law firms.”¹⁶⁷ When weighing the potential benefits of such external ownership against regulatory risks and proportionality, the ABS Working Group determined that such ownership levels are not warranted based on current information and a conclusion that the better approach would be to wait until further evidence from other jurisdictions is developed.¹⁶⁸

expressed opposition to any ABSs being introduced in Ontario. Most responses expressed major concerns with introducing certain types of ABSs in Ontario, such as publicly listed law firms and other types of law firms owned entirely by non-licensees, or such entities that may engage in certain areas of practice, such as real estate law or personal injury law. A number of submissions, including the submissions received from law students, expressed strong support for introducing some level of ABS in Ontario, with appropriate regulatory oversight. Many respondents expressed a need for greater information about ABSs generally, and requested that the Law Society engage in further study, discussion and consultation before any final decisions are made.

Id. at 2-3.

¹⁶⁴ *Id.* at 3-16.

¹⁶⁵ See Sept. 2015 ABS Working Group Report, *supra* note 157, at 5-6.

¹⁶⁶ *Id.* at 1.

¹⁶⁷ *Id.* at 17. This would eliminate Models #2 & #4 from the current discussion. See *supra* notes 159-62 and accompanying text.

¹⁶⁸ *Id.* at 17. It should be noted that the ABS Working Group “does not rule out the potential of majority non-licensee ownership or control of traditional law firms at some later date.” Sept. 2015 ABS Working Group Report, *supra* note 157, at 17.

While ruling out majority non-licensee ownership of law firms, the ABS Working Group concluded that it would be appropriate to explore and assess “a subset of ABS models which might be applicable in Ontario.”¹⁶⁹ This would include the following:

- a. nonlicensee minority ownership of law firms and entities;
- b. franchise models;
- c. ABS+: Civil Society ABS Owners to Facilitate Access to Justice; and
- d. ABS+: Promoting innovation where legal services are not generally being provided by lawyers and paralegals.¹⁷⁰

Regarding non-licensee minority ownership, the ABS Working Group determined that appropriate levels of minority ownership of law firms and entities, including expanded multidisciplinary services, should be examined along with issues relating to appropriate regulation.¹⁷¹ Expanding the multidisciplinary practice model, and providing more access to capital, “could facilitate innovation, the development of more comprehensive and client-tailored services, and new means of addressing access to justice.”¹⁷² However, attention must also be given to considerations of “attendant risks, which primarily relate to avoiding conflicts of interest, protecting confidentiality and privilege, and protecting the independence of the legal service provider.”¹⁷³

In a similar fashion to non-licensee minority ownership, the ABS Working Group determined that franchise models, which may offer opportunities for traditional practices to innovate, should be explored and assessed.¹⁷⁴ Although not currently allowed in Ontario, franchise arrangements utilizing fee payment rather than equity investment, may allow access to beneficial “legal, technological, business and marketing expertise, processes and brand.”¹⁷⁵ Also to be considered is

¹⁶⁹ *Id.*

¹⁷⁰ *See id.* at 17–21.

¹⁷¹ *Id.* at 17–18. The ABS Working Group believes that with respect to expanded multidisciplinary services, “criteria should be established that would assist in determining which multidisciplinary structures would present unacceptably high regulatory risk taking into account the inherent conflicts and other regulatory issues that arise in specific areas of law.” Sept. 2015 ABS Working Group Report, *supra* note 157, at 17.

¹⁷² *Id.* at 8.

¹⁷³ *Id.*

¹⁷⁴ *See id.* at 18. Additionally, a franchise model may be in the public interest, offering opportunities to “enhance competency, enable a more dedicated focus on the practice of law rather than the business of law and encourage licensees to develop new legal services.” Sept. 2015 ABS Working Group Report, *supra* note 157, at 18.

¹⁷⁵ *Id.* at 7.

the development of an access to justice focused alternative business structure framework, referred to as “ABS+.”¹⁷⁶ One ABS+ model would enable civil society organizations to become owners of entities to facilitate access to legal services,¹⁷⁷ providing access to justice to “those most in need of legal services.”¹⁷⁸ A second ABS+ model would target services being offered near the margins of Ontario’s “regulatory sphere”¹⁷⁹ that are not being sufficiently served by licensed practitioners.¹⁸⁰

At the present time, the ABS Working Group is continuing to monitor alternative business structure developments across Canada and internationally.¹⁸¹ Applying the established criteria,¹⁸² it is continuing “to determine a range of legal service delivery models and economic arrangements that should be explored in more depth,” including consideration of regulatory structures¹⁸³ and advancement

¹⁷⁶ *Id.* at 2.

¹⁷⁷ *Id.* Examples of civil society organizations would be “charities, not-for-profits, and trade unions.” *Id.*

¹⁷⁸ *Id.* at 18.

¹⁷⁹ *Id.* at 20. The ABS Working Group notes the following:

Certain innovations are occurring outside what may be described as the ‘regulatory sphere.’ The Law Society Act provides that, except as permitted by the Law Society, only licensees may provide ‘legal services’ which is a broadly defined term. Section 1(5) of the Act provides that ‘a person provides legal services if the person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person.’ Given the broad definition of legal services and the few exceptions to the licensing requirement, the regulatory sphere is very wide but is not fully served by licensees.

Id.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 22.

¹⁸² See *supra* note 165 and accompanying text.

¹⁸³ Feb. 2015 ABS Working Group Report, *supra* note 155, at 22. Particular considerations of the ABS Working Group will be:

Minority ownership by non-licensees in law practices with attention paid to implications for certain areas of law, possible franchise arrangements, and a potential expanded multi-discipline practice scheme to be considered and discussed with the professions. In addition, the Working Group will consider majority ownership by civil society organizations focused on facilitating access to justice and discussed with civil society sectors and with the professions. The Working Group will consider potential alternative business structures in unserved and underserved areas to be considered and discussed with the professions and other interested parties.

Id.

of the public interest.¹⁸⁴ The ABS Working Group will continue to provide informational updates on its study and consultations to the Convocation, and if appropriate, will continue to present proposals for consideration.¹⁸⁵

C. England and Wales

England and Wales is the largest of the three jurisdictions in the UK,¹⁸⁶ containing about 85% of its population, as well as 85% of its legal professionals.¹⁸⁷ During the twentieth century and before, the legal profession in England and Wales was regulated by the Law Society (representing solicitors)¹⁸⁸ and the Bar Council (representing barristers).¹⁸⁹ Historically opposed to multidisciplinary practice, in 1996 the Law Society began moving away from this opposition and in 1998, looked at ways multidisciplinary practice could be facilitated, while retaining appropriate regulatory supervision.¹⁹⁰ The Law Society voiced support for multidisciplinary practice in 1999 and two models were put forward as interim steps.¹⁹¹ One was the “linked partnership” model, and the other was the “legal practice-plus” model.¹⁹² Under the linked partnership model, which was approved in

¹⁸⁴ *Id.* at 3.

¹⁸⁵ *Id.*

¹⁸⁶ See Hamish Adamson, FREE MOVEMENT OF LAWYERS 23 (1992). The United Kingdom is composed of the three separate jurisdictions of England and Wales, Scotland, and Northern Ireland. Each jurisdiction has its own legal system and legal professions. *Id.*; Hill, *supra* note 13, at 408.

¹⁸⁷ See Hamish Adamson, *The English System*, in RIGHTS, LIABILITY AND ETHICS IN INTERNATIONAL LEGAL PRACTICE 43 (Mary C. Daly & Roger J. Gobel eds., 1995).

¹⁸⁸ The primary role of the solicitor was to draft documents, advise clients and negotiate. See Maimon Schwarzschild, *Class, National Character, and the Bar Reforms in Britain: Will there Always Be an England?*, 9 CONN. J. INT’L L. 185, 186 (1994).

¹⁸⁹ *Id.* at 195. The primary role of the barrister was to advocate. Before the Court and Legal Services Act of 1990 [hereinafter The 1990 Act], barristers had the sole right to practice before trial courts of general jurisdiction and the appellate courts in England and Wales. Under the 1990 Act, solicitors satisfying certain education and training requirements could gain advocacy rights in the higher courts. Barristers retained their advocacy rights under the 1990 Act and were permitted to contract with clients directly. *Id.* at 224.

¹⁹⁰ See Paton, *supra* note 91, at 2233.

¹⁹¹ *Id.* at 2234.

¹⁹² *Id.* The legal practice-plus model allowed a solicitor firm to have partners who were not solicitors, but the primary business of the firm had to be providing legal and ancillary services. *Id.* “[S]olicitors would be able to work with accountants, practice managers and other professionals so long as the majority of partners in their firm are solicitors. Non-solicitor partners would have to follow the solicitors’ rules of professional conduct and would be regulated by the Law Society.” *Law Society to Push MDPs Through Early*,

2000, fee-sharing agreements between a law firm and other businesses were permitted, provided control was retained by solicitors.¹⁹³ Persons who were not solicitors were permitted to become partners in the firm provided the firm's business remained "the provision of legal and ancillary services."¹⁹⁴

At the turn of the twenty-first century, as the Law Society was considering multidisciplinary practice, the Office of Fair Trading (OFT)¹⁹⁵ determined that the restrictions which prohibited multidisciplinary practice "were unreasonable market restraints that gave rise to inflationary pricing and resulted in an anticompetitive practice in the United Kingdom's main commercial professions."¹⁹⁶ In 2001, the OFT indicated that the government would impose rules to accommodate multidisciplinary practice if the legal regulators failed to implement change.¹⁹⁷ Although the legal regulators were working toward change, implementation of multidisciplinary practice rules were delayed because of divergent positions taken by solicitors and barristers.¹⁹⁸ "[C]hange did not come quickly enough" for the government.¹⁹⁹ The result was the Legal Services Act (LSA) in 2007,²⁰⁰ which ended the self-regulation of the legal profession in England and Wales.²⁰¹

LAWYER (Nov. 13, 2000), <http://www.thelawyer.com/law-society-to-push-mdps-through-early/102942.article>.

¹⁹³ See Paton, *supra* note 91, at 2233–35.

¹⁹⁴ *Id.* at 2234.

¹⁹⁵ *Id.* at 2235. The OFT is the UK's authority on competition and antitrust. *Id.* at 2233.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 2232.

¹⁹⁸ *Id.* at 2235. The Bar Council opposed partnerships between barristers and nonlawyers. Conflict of interest and a consumer's limited choice in advocacy, were among the concerns voiced. Aubrey M. Connatser, *Multidisciplinary Partnerships in the United States and the United Kingdom and Their Effect on International Business Litigation*, 36 TEX. INT'L L.J. 365, 384 (2001). Barristers attempted to thwart change, while solicitors sought "parliamentary time needed to implement a mixed-partnership model." Paton, *supra* note 91, at 2235.

¹⁹⁹ *Id.* at 2232.

²⁰⁰ In July 2003, Sir David Clementi was appointed to conduct an independent review of "the regulatory framework for legal services in England and Wales." *Legal Services Act Given Royal Assent*, MINISTRY OF JUST. n.2 (Oct. 30, 2007), <http://wired-gov.net/wg/wg-news-1.nsf/print/Legal+Services+Act+given+Royal+Assent+30102007140900>.

[hereinafter *Royal Assent*]. Pursuant to this review, a report was published in 2004 with the following recommendations:

- A Legal Services Board – a new legal services regulator to provide consistent oversight regulation of front line regulators.

Under the LSA, reforms in the legal sector were introduced in order to bring it “in line with other professional services in the 21st century.”²⁰² Touted as being “all about fairness to consumers,”²⁰³ the new LSA measures were summarized as follows:

- A single and fully independent **Office for Legal Complaints** [OLC] to remove complaints handling from the legal professions and restore consumer confidence.
- **Alternative Business Structures** (ABS) that will enable consumers to obtain services from one business entity that brings together lawyers and nonlawyers, increasing competitiveness and improving services. The Act will also allow legal services firms to have up to 25 per[cent] nonlawyer partners in the near future, before the full ABS regulatory structure is implemented, and will allow different kinds of lawyers to form firms in the near future.
- A new **Legal Services Board** (LSB) to act as a single, independent and publicly accountable regulator with the power to enforce high standards in the legal sector, replacing the maze of regulators with overlapping powers. The chair of the Board will be a lay person.
- A clear set of **regulatory objectives** for the regulation of legal services which all parts of the system will need to work together to deliver, including promoting and maintaining adherence to professional principles.²⁰⁴

-
- Statutory objectives for the Legal Services Board, including promotion of the public and consumer interest.
 - Front line regulators to be required to make governance arrangements to separate their regulatory and representative functions.
 - The Office for Legal Complaints – a single independent body to handle consumer complaints in respect to all members of front line regulators, subject to oversight by the Legal Services Board.
 - The facilitation of Alternative Business Structures that could see different types of lawyers and nonlawyers working together on an equal footing as well as providing for the possibility of external investment in the delivery of legal and other services.

Id. at n.3. “By the time of the Clementi reforms . . . there was no strong professional opposition able to . . . [stop] . . . them.” Garoupa, *supra* note 5, at 80. The recommendations were “broadly accepted” by the government and served as a foundation for the LSA. *Id.*

²⁰¹ Paton, *supra* note 91, at 2232.

²⁰² *Royal Assent*, *supra* note 200.

²⁰³ *Id.* (quoting Bridget Prentice, Legal Services Minister).

²⁰⁴ *Royal Assent*, *supra* note 200. Concern has been raised by some that unlike Australia, the securities regulator in England and Wales “has not explicitly stated yet that duties to investors could be subordinate to duties to clients.” Weberstaedt, *supra* note 39, at 105.

The movement toward consolidation targeted the seven types of lawyers in England and Wales, each of which has its day-to-day operations regulated by separate regulators.²⁰⁵ The SRA and the Council for Licensed Conveyancers (CLC) regulate firms within which different types of lawyers work.²⁰⁶ Lawyers may set up firms with other lawyers and nonlawyers. Individual lawyers are regulated by their own approved regulators,²⁰⁷ but the firm for which they work is regulated by either the SRA or CLC.²⁰⁸ Paralegals are not regulated, despite being permitted to give legal advice in areas that are not reserved legal activities.²⁰⁹

Pursuant to its authority under the LSA, the LSB, which is responsible for overseeing the regulation of all lawyers in England

²⁰⁵ See Solicitors Regulation Authority, Who We Are and What We Do [hereinafter SRA Who We Are], <http://www.sra.org.uk/consumers/what-sra-about.page#sra-and-approved-regulators>.

The types of lawyers, and their regulators, are:

Solicitors—regulated by the Solicitors Regulation Authority

Barristers—regulated by the Bar Standards Board

Legal executives—regulated by the Institute of Legal Executives Professional Standards Board

Licensed conveyancers—regulated by the Council for Licensed Conveyancers

Patent and Trade Mark attorneys—regulated by the Intellectual Property Regulation Board

Cost lawyers—regulated by the Cost Lawyers Standards Board

Notaries—regulated by the Master of the Faculties.

Id.

²⁰⁶ *Id.* The CLC regulates firms providing services relating to conveyancing and probate. The SRA regulates all types of legal work a firm delivers, which includes services relating to conveyancing and probate. *Id.*

²⁰⁷ See SRA Who We Are, *supra* note 205.

²⁰⁸ *Id.*

²⁰⁹ See Law Society of Upper Canada, Profile of Legal Services Professionals in England and Wales 2 (Oct. 2014), <https://www.lsuc.on.ca/uploadedFiles/abs-england-wales-background-final-oct.7-2014.pdf>. There are six activities in which only authorized lawyers can engage. They are the following:

Rights of Audience—appearing as an advocate before a court;

Probate—Estate activities;

Notarial—Certifying documents and transactions;

Oaths—The administration of oaths;

Reserved Instrument—Transferring the ownership of real property; and

Conduct of Litigation—Issuing proceedings before a court and commencing, prosecuting or defending those proceedings.

See Laura Snyder, *Flexing ABS*, 101.1 A.B.A. J. 62, 72 (Jan. 2015).

and Wales, first designated the SRA and CLC as approved regulators of alternative business structures.²¹⁰ In August 2014, the Institute of Chartered Accountants (ICA) became an approved regulator of alternative business structures for probate services.²¹¹ As a general premise, alternative business structures are permitted to have lawyer and nonlawyer owners and managers, and may provide only legal services, or legal services along with nonlegal services. These entities must be licensed and nonlawyer owners and managers are subject to what some refer to as a “fit to own” test.²¹²

The CLC approved its first alternative business structure in October 2011.²¹³ The first alternative business structure approved by the SRA was in March 2012.²¹⁴ As of April 2015, the SRA had licensed 375 alternative business structures.²¹⁵ Many of the alternative business structures are both varied and creative.²¹⁶ An early

²¹⁰ Legal Services Act 2007, c. 29, § 111 (U.K.), http://www.legislation.gov.uk/ukpga/2007/29/pdfs/ukpga_20070029_en.pdf; *see supra* note 205.

²¹¹ *See* Mari Sako, *An Overview of Alternative Business Structures in England and Wales* 4 (Apr. 24, 2015), <http://www.law.georgetown.edu/academica/centers-institutes/legal-profession/upload/2015-Georgetown-Law-ABS-Sako.pdf>.

²¹² *See* Solicitor Regulation Authority, SRA Recognized Bodies Regulations, 2009-Reg. 3, <http://www.sra.org.uk/solicitors/change-tracker/code-of-conduct/recognized-bodies-regulations.page#r3>.

²¹³ *See* Malcom Mercer et al., *The Emergence of Alternative Business Structures in Other Jurisdictions*, THE LAW SOCIETY OF UPPER CANADA (Oct. 7, 2014), <http://www.lsuc.on.ca/uploadedfiles/abs-england-wales-australia-final-oct.7-2014.pdf>; *see also* Snyder, *supra* note 209, at 68 (noting that as of December 2014, the CLC had approved 47 alternative business structures).

²¹⁴ *See* *Research on alternative business structures (ABSs)*, SOLICITORS REGULATION AUTHORITY 3 (May 2014), <http://www.sra.org.uk/sra/how-we-work/reports/research-abs-executive-report.page>.

²¹⁵ *See* Sako, *supra* note 211, at 3. As of April 2015, of the 10,316 solicitor firms in England and Wales, 375 were alternative business structures. Of the 3567 incorporated firms, 230 were alternative business structures. Of the 1560 LLPs, 114 were alternative business structures. And of the 5143 entities that are unlimited partnerships or sole practitioners, 31 were alternative business structures. *Id.* at 14.

²¹⁶ *See* Snyder, *supra* note 209, at 68–69. (Some examples of recent alternative business structures are the following:

Knights Solicitors—upon becoming an alternative business structure, it added town planning to its real estate offerings. It also received an investment from Hamilton Bradshaw [private equity firm] which was used for a new IT system and employee training.

Schillings—upon becoming an alternative business structure, it integrated a cyber security business into its privacy and defamation practice, hiring risk management professionals from the management consulting world. Its chief operating officer is the firm’s first nonlawyer partner.

alternative business structure license went to Co-operative Legal Services, a subsidiary of a consumer cooperative, The Co-operative Group, with over six million members.²¹⁷ This added legal services to the Co-operative Group's portfolio, which also includes financial, travel, pharmaceutical and funeral services, along with retail food.²¹⁸ Alternative business structures can take many forms, but not all of them are "remarkable."²¹⁹ For instance, another of the first firms to apply to be an alternative business structure was a solo solicitor, seeking to have his spouse, who was not a solicitor, become a shareholder.²²⁰

Although alternative business structures are available in England and Wales, the adoption of an alternative business structure is not necessarily required to facilitate change.²²¹ According to Alex Roy, former head of development and research for the SRA:

While the discussing of the U.K. regulations is often focused on nonlawyer ownership, MDPs and the creation of the ABS structure, the changes in our regulations are much more profound. Essentially, we've taken away the restrictions on competition in the legal services market, and in doing so we've fostered a general climate of innovation and creativity in the provision of legal services. As a result, whether they do it as an ABS or not, all lawyers need to re-engineer what they do and how they do it in order to compete in a very different environment.²²²

Omnia Strategy—upon becoming an alternative business structure, it began advising governments, multinational companies and high-profile individuals on matters relating to international counsel, negotiation and dispute resolution, and strategic communications, along with international public law. Its management team includes lawyers along with experts in economics, diplomacy and communications.

Triton Global—upon becoming an alternative business structure, it integrated insurance claims administration, legal defense and representation, claim investigation, and adjusting for professional indemnity insurers and policyholders. It was the first legal service provider to offer employee share ownership.)

²¹⁷ See Weberstaedt, *supra* note 39, at 109.

²¹⁸ *Id.*

²¹⁹ See Snyder, *supra* note 209, at 68.

²²⁰ *Id.*; Weberstaedt, *supra* note 39, at 109 (stating that another early alternative business structure licensee was John Welch & Strammers, a firm with two partners that wanted to make its practice manager, a nonlawyer, a partner).

²²¹ Snyder, *supra* note 209, at 69.

²²² *Id.* (quoting Alex Roy, former head of development and research, Law Services Board of England and Wales).

The reforms in England and Wales are touted as being “all about fairness to consumers,”²²³ and that alternative business structures were created “[b]ased on a rationale of increasing competition and diversifying the supply of legal services to better meet the needs of consumers.”²²⁴ It is the belief of British legislators that:

reducing the restrictions on legal business structures will lead to a more consumer-friendly, flexible environment. The legislature also posits that the structures will lead to more comprehensive services and reduce transaction costs through ‘one-stop shopping.’ Furthermore, the availability of nonlawyers holding stock options and other types of nonlawyer capital investment will theoretically allow firms to attract the best talent and conduct better long-term capital structuring of the firm.²²⁵

Attention also must be given to the fact that “[t]he U.K. benefits economically from being more open.”²²⁶ The government of the UK sees “law and legal services” as an export opportunity which can be developed “as an area for competitive advantage.”²²⁷

When looking at the number of alternative business structures that have been approved in England and Wales, and comparing them to the number of traditional legal practices,²²⁸ alternative business structures can be described as a “drop in the ocean” in terms of numbers.²²⁹ However, it is now “possible for legal entrepreneurs to try out innovative business models. Some of them may not work but others will change the way we view legal services.”²³⁰ Although their number is small, alternative business structures have “transform[ed]

²²³ *Royal Assent*, *supra* note 200.

²²⁴ Solicitors Regulation Authority, *Research on alternative business structures (ABSs), Findings from surveys with ABSs and applicants that withdrew from the licensing process* (May 2014), www.sra.org.uk/sra/how-we-wk/reports/research-abs-executive-report.page.

²²⁵ Candace M. Groth, *Protecting the Profession Through the Pen: A Proposal for Liberalizing ABA Model Rule of Professional Conduct 5.4 to Allow Multidisciplinary Firms*, 37 *HAMLIN L. REV.* 565, 585 (2014) (citations omitted).

²²⁶ Snyder, *supra* note 209, at 69 (quoting Alex Roy, former head of Development and Research, Law Services Board of England and Wales).

²²⁷ *Id.* at 70; see Jane Croft & Catherine Belton, *CMS Nabarro and Olswang to Merge to Make UK’s Sixth Biggest Firm*, *FIN. TIMES* (Oct. 10, 2016), <https://www.ft.com/content/8c01d8fc-8f07-11e6-8df8-d3778b55a923> (stating that in October 2016, CMS UK, Nabarro, and Olswang announced a three-way merger expected to be complete in May 2017; the firm, to be known as CMS UK, will employ 4500 lawyers in 36 countries, seeking to broaden its business in fast growing Asian and Latin American markets).

²²⁸ See *supra* note 215.

²²⁹ Sako, *supra* note 211, at 14, 20.

²³⁰ Weberstardt, *supra* note 39, at 109.

the legal services market” in England and Wales and have “enabled some irreversible changes in legal practice.”²³¹

D. Scotland

Although both Scotland and England and Wales are parts of the UK,²³² the legal system in Scotland primarily is based on Roman law rather than English common law.²³³ Scotland recognizes the branches of “advocate” and “solicitor,” whereas England and Wales recognizes the branches of “barrister” and “solicitor.”²³⁴ Historically, in Scotland only solicitors could own law firms and only solicitors could form partnerships with other solicitors for the practice of law.²³⁵ Advocates could only practice as self-employed solo practitioners, and clients could typically only access advocates through a solicitor.²³⁶

In light of the 2007 LSA in England and Wales and the position of the OFT,²³⁷ the Council of the Law Society of Scotland (CLSS) “recognized the need to engage the profession further in the alternative business structure debate.”²³⁸ The CLSS formed a working party to consider the issue, whereupon a Consultation Paper was

²³¹ Sako, *supra* note 211, at 20.

²³² See ADAMSON, *supra* note 187, at 23. See also *supra* note 186.

²³³ See M.J. Quinn, *Reform of the Legal Profession in England and Wales*, 12 N.Y.L. SCH. J. INT’L & COMP. L. 237, 237 n.1 (1991) (citing F. Maitland, *The Constitutional History of England*, 331–32 (1908, reprinted 1931)); see also Michael Zander, *The Thatcher Government’s Onslaught on the Lawyers: Who Won?*, 24 INT’L LAW. 753, 753 n.1 (Fall 1990) (indicating that this civil law influence goes back to the days when Scotland and England were separate countries and Scotland looked to France and other European countries when developing its laws, which were influenced by Roman law; while fundamentally different, when England and Wales reformed their respective legal systems during the 1980s, Scotland followed on a “closely parallel but not quite identical course”).

²³⁴ See ADAMSON, *supra* note 186, at 23.

²³⁵ See Law Society of Scotland, *The Public Interest: Delivering Scottish Legal Services—Policy Paper on Alternative Business Structures*, THE LAW OF SOCIETY OF SCOTLAND (Apr. 2008) [hereinafter *Scottish ABS Policy Paper*], https://lawscot.org.uk/media/226267/abs_policy.pdf. Solicitors regulated by the Council of the Law Society of Scotland, also were permitted to partner with registered foreign lawyers in multinational practices. *Id.* at 3, 9.

²³⁶ *Id.* at 3, 9 (stating that advocates are regulated by the Faculty of Advocates).

²³⁷ See *supra* notes 195–201 and accompanying text.

²³⁸ *Scottish ABS Policy Paper*, *supra* note 235, at 4; see Gerry Braiden, *Milestone for Scottish Legal Profession as More Solicitors are Now Female Than Male*, *The Herald* (Dec. 23, 2015), http://www.heraldsotland.com/news/14164025.Milestone_for_Scottish_legal_profession_as_more_solicitors_are_now_female_than_male/ (noting that there are approximately 11,000 practicing solicitors in Scotland).

published and comments solicited.²³⁹ In a manner similar to the approach taken by England and Wales, the Consultation Paper recited the following models:

- the traditional business model;²⁴⁰
- the legal disciplinary practice;²⁴¹
- the multi-disciplinary practice;²⁴² and
- models involving external capital.²⁴³

Based on the responses received from the Consultation Paper, it was determined that “[p]ractitioners should be free to retain the traditional business model but that should not be their only choice.”²⁴⁴ The legal profession should “be able to offer its services through structures that best meet the demands of modern society and a global economy.”²⁴⁵

While advocating that the legal profession should undergo change, the Law Society of Scotland (LSS) also took the position that change must be accompanied by regulation. To this end, it was posited that the core values of the legal profession must be protected, and that a fair and level playing field for all legal professionals must be ensured.²⁴⁶ Fourteen “key elements” were then put forward, as a

²³⁹ See *Scottish ABS Policy Paper*, *supra* note 235, at 4.

²⁴⁰ *Id.* at 7. Under the traditional business model, solicitors may operate as sole practitioners, or form a partnership, or an incorporated practice, with other solicitors or with registered foreign lawyers in multi-national practices. *Id.*

²⁴¹ *Id.* at 9. A Legal Disciplinary Practice would permit solicitors, advocates and registered foreign lawyers to be members of the same incorporated practice or to practice as partners in the same firm. A variation of this model is one that would permit nonlawyers, who have a significant influence on the practice, to be owners. Examples of these nonlawyer equity owners would be directors of finance, information technology or human resources. *Id.*

²⁴² *Id.* at 10. Multidisciplinary practices “would allow solicitors and other regulated professionals, . . . or persons who . . . may not be members of professions, to form a partnership or incorporated practice, [and offer multiple services,] including legal services.” *Id.*

²⁴³ *Id.* at 11. Models involving external ownership of legal practices could take the following forms: (1) “share holding by any person who is not a director of the practice, including holding of sufficient shares to give an investor an influencing or controlling interest in the practice;” or (2) “ownership by nonlawyers of a legal practice, including allowing organizations to employ solicitors or advocates to provide legal services to the public.” *Id.*

²⁴⁴ *Id.* at 13.

²⁴⁵ *Id.*

²⁴⁶ *Id.* The CCLS stated that the focus should not be on the construct of business models, but on how to devise a regulatory system that allows the profession in Scotland to continue to flourish. The aim must be to establish a regulatory framework within which

framework of regulation for alternative business structures.²⁴⁷ Among the key elements were matters relating to licensing, components of “Firm Principles,” and subjection to a “fit and proper test.”²⁴⁸ A referendum on the alternative business structure policy was conducted early in 2010, in which 43% of the members of the Law Society of Scotland voted. The policy received a favorable vote, but by a very narrow majority of 50.3%.²⁴⁹ However, a substantial majority of 81% voted in favor of the Law Society of Scotland applying to be a regulator of alternative business structures, should such business structures be introduced.²⁵⁰

Later in 2010, the Legal Services (Scotland) Act Bill (Scottish Legal Services Act) was passed by Parliament and subsequently received Royal Assent.²⁵¹ The Scottish Legal Services Bill removes restrictions on solicitors entering into business relationships with non-solicitors, allows investment by non-solicitors and external ownership, and creates a regulatory framework in which new types of business structures will operate.²⁵² The Bill originally provided no limit on the portion of a law firm that could be owned by outside investors.²⁵³ This part of the [Act] “attracted the greatest degree of controversy and concern,” and a compromise resulted.²⁵⁴ The Bill was subsequently amended so that external investors can have no more than 49% ownership or control over a licensed legal services provider.²⁵⁵

Scottish legal practices have freedom to design the business model which best suits them and which allows them to respond to new demands overtime. *Id.*

²⁴⁷ *Id.* at 15.

²⁴⁸ *Id.*

²⁴⁹ See Law Society of Scotland, ABS Referendum 2010 (Apr. 7, 2010), http://www.laws Scot.org.uk/media/226270/abs_referendum_2010.pdf. There were 2245 solicitors in favor of the introduction of alternative business structures, as long as there were appropriate safeguards. There were 2221 solicitors that voted against it. *Id.*

²⁵⁰ *Id.* There were 3622 solicitors in favor of the Law Society applying to be a regulator of alternative business structures should they be introduced, and 844 voted against it. *Id.*

²⁵¹ Legal Services (Scotland) Act 2010 (asp 16) [hereinafter Scottish Legal Services Bill], <http://www.legislation.gov.uk/asp/2010/contents>.

²⁵² *Id.* at Explanatory Notes, The Act § 3. “It is enabling rather than prescriptive legislation, as the traditional models will remain an option for those solicitors who choose to carry on practicing within those structures.” *Id.*

²⁵³ See SPICe, Legal Services (Scotland) Bill, [http://www.scottish.parliament.uk/53_Bills/LegalServices\(Scotland\)Bill/LegalServicesBillssummary.pdf](http://www.scottish.parliament.uk/53_Bills/LegalServices(Scotland)Bill/LegalServicesBillssummary.pdf).

²⁵⁴ *Id.*

²⁵⁵ See Scottish Legal Services Bill, *supra* note 251, at pt. 2, ch. 2. § 49.

The regulatory framework, which is three-tiered, makes the Scottish Government responsible for approving and licensing “approved regulators,” the approved regulators responsible for licensing and regulating “licensed providers,” and the licensed providers responsible for managing and overseeing the individuals in the entity.²⁵⁶ Licensed providers, as regulated bodies, must see that the people they oversee conduct themselves in a way that is compatible with the regulatory regime imposed by the approved regulator.²⁵⁷ The regulatory objectives and professional principles that apply to licensed providers are applicable to all legal professionals, including those who follow the traditional business model.²⁵⁸

The LSS has applied to the Scottish Government to be an approved regulator of legal service providers, but the process is “moving frustratingly slowly.”²⁵⁹ Its original application to the Scottish Government was submitted in December 2012, whereupon numerous meetings ensued.²⁶⁰ As a result, the LSS submitted a further draft regulatory scheme for discussion in March 2014, to which comments were received from the Government and other stakeholders. Responding to this feedback, further amendments were made to the LSS plan and a revised draft of its regulatory scheme was submitted to the Scottish Government in December 2015.²⁶¹

The delay in implementing a regulatory scheme, described as “frustrating,” is felt to have caused Scotland to be “now behind the pace.”²⁶² Anxious to “get going with provision of services in a new and modern way,” solicitors in Scotland are forced to sit back and wait, while their “friends in England & Wales have thoroughly embraced ABS.”²⁶³ It is felt that the “caution and inertia” being experienced by the LSS is giving England and Wales the opportunity to “drive innovation in the traditional solicitor services,” something

²⁵⁶ Scottish Legal Services Bill, *supra* note 251, at Explanatory Notes, The Act § 4.

²⁵⁷ *Id.*

²⁵⁸ *Id.* § 5.

²⁵⁹ Austin Lafferty, *President’s Column*, THE JOURNAL: THE MEMBER MAGAZINE FOR THE LAW SOCIETY OF SCOTLAND (Apr. 15, 2013), <http://www.journalonline.co.uk/Magazine/58-4/1012447.aspx>.

²⁶⁰ See Law Society of Scotland, *ABS Licensed Provider Update* (Dec. 2015), <http://www.lawscot.org.uk/members/lrgal-reform-and-policy/abslicensed-provider-updates/> [hereinafter *Scotland ABS Update*] 1 § 6(5).

²⁶¹ *Id.*

²⁶² Lafferty, *supra* note 259.

²⁶³ *Id.*

seen as being “good for lawyers and clients alike.”²⁶⁴ Arguably, this works to the detriment of Scottish solicitors and those that they serve, as they are made to wait to enter this new arena.

E. Germany

The legal system of the Federal Republic of Germany was influenced by Roman Law and operates in a manner that is similar to a civil-law system.²⁶⁵ Germany’s *rechtsanwälte* are general legal practitioners who give legal advice and represent clients in court.²⁶⁶ *Rechtsanwälte* are members of their respective regional bars, known as *Rechtsanwaltskammer*, which, in turn, are members of the national bar association, known as *Bundesrechtsanwaltskammer* (BRAK).²⁶⁷ Germany also recognizes the legal professions of *rechtsbeiständ* and *notar*.²⁶⁸ Restricted to specific areas of the law, *rechtsbeistände* may act as legal advisors and appear before lower courts to represent clients. *Notare* may handle limited legal work, such as setting up documents and deeds.²⁶⁹

Germany has permitted *rechtsanwälte* to participate in multidisciplinary practices since 1968.²⁷⁰ Initially, these were small partnerships between *rechtsanwälte* and professionals, such as auditors and tax advisors.²⁷¹ Up until 1989, German lawyers and law firms were limited by law to practicing in one city.²⁷² This kept all types of legal practices small and resulted in a decentralized legal market.²⁷³ When the law changed in 1989, so did the size of firms.

²⁶⁴ *Id.*

²⁶⁵ See Hill, *supra* note 13, at 431.

²⁶⁶ See CCBE Compendium, *supra* note 11, at Germany 9.

²⁶⁷ See Hill, *supra* note 13, at 431.

²⁶⁸ See CCBE Compendium, *supra* note 11, at Germany 10–13 (Supp. Aug. 1998).

²⁶⁹ *Id.*

²⁷⁰ See Eric L. Martin, *Liberalization and Cravathism: How Liberalization Triggered the Reorganization of the Legal Profession in Germany and Japan*, 43 STAN. J. INT’L L. 169, 185 n.141 (2007). Ethics rules formally permitted multidisciplinary practices in 1973. *Id.*

²⁷¹ *Id.* at 185.

²⁷² See Christoph Luschin, *Large Law Firms in Germany*, 14 TOURO INT’L L. REV. 26, 30 (2010).

²⁷³ *Id.*

German lawyers began to connect offices in major cities through a merger process, and to associate with foreign firms.²⁷⁴

The German Federal Lawyer's Act, *Bundesrechtsanwaltsordnung* (BRAO), addresses "Professional collaboration" at Section 59a and provides that "Rechtsanwälte may associate with members of the Bar and members of the Chamber of Patent Attorneys, with tax consultants (*Steuerberater*), tax agents (*Steuerbevollmächtigte*), auditors and certified accountants in order to jointly practise their professions within the framework of their own professional rights."²⁷⁵ *Rechtsanwälte* and members of these noted professions may partner and practice together in *Rechtsanwaltsgesellschaften*, which are limited liability companies.²⁷⁶ Section 59e of the BRAO provides that "[t]he majority of the shares and voting rights must be held by *Rechtsanwälte*,"²⁷⁷ and "[s]hares in the *Rechtsanwaltsgesellschaft* may not be held on the account of third parties and third parties may have no share in the profits of a *Rechtsanwaltsgesellschaft*."²⁷⁸ Section 59f of the BRAO provides that "[a] *Rechtsanwaltsgesellschaft* must be responsibly managed by *Rechtsanwälte*. The majority of the managing directors must be *Rechtsanwälte*."²⁷⁹

While Germany is receptive to multidisciplinary practice for lawyers, the same is not true for other forms of alternative business structures, specifically those encompassing outside investment in firms. It is Germany that is credited with launching "[t]he wave of Continental resistance to ABS."²⁸⁰ In a June 2006 letter from the then president of BRAK, Bernhard Dombek, it was conveyed that BRAK was against the English "proposed reforms and that English ABS would not be allowed to operate in Germany."²⁸¹ Mr. Dombek's letter

²⁷⁴ *Id.* at 31–32. "As a consequence of this merger wave the majority of the largest law firms in the German legal services market were Anglo-American law firms or legal arms of international accounting firms." FRANK H. STEPHEN, *LAWYERS, MARKETS AND REGULATION* 17 (2013).

²⁷⁵ *Bundesrechtsanwaltsordnung* [Federal Lawyers' Act], Dec. 6, 2011, at § 59a(1) [hereinafter *Federal Lawyers' Act*], http://www.brak.de/w/files/02_fuer_anwaelte/berufsrecht/brao_stand_1.6.2011_englisch.pdf. The provision further provides that "Rechtsanwälte who are also notaries may only enter into such an association in relation to their profession as Rechtsanwälte." *Id.*

²⁷⁶ *Id.* §§ 59c(1), e(1).

²⁷⁷ *Id.* § 59e(2). This provision further provides that if partners do not have the right to practice under one of the specified professions, "they shall have no voting rights." *Id.*

²⁷⁸ *Id.* § 59e(4).

²⁷⁹ *Id.* § 59f(1).

²⁸⁰ Weberstaedt, *supra* note 39, at 106.

²⁸¹ *Id.*

stated that “German *Rechtsanwälte* as well as solicitors and barristers established in Germany would infringe German professional rules if they became a member of such type of an ABS.”²⁸²

The interpretation of the situation in Germany attributed to BRAK has been described as “technically rather sloppy and misleading.”²⁸³ As far as nonlawyer ownership is concerned, it has been stated that Germany:

relied on §§59e, 59f BRAO (German Federal Lawyers’ Act) to assert that Germany only allows Multidisciplinary Partnerships (MDPs) provided lawyers hold a majority in these firms. This is not true. The provisions cited by BRAK do not apply to all law firms, only to those incorporated with limited liability (as a *GmbH*, so called *Rechtsanwaltsgesellschaft*). There are many MDPs in Germany where lawyers are in the minority, they are just not *Rechtsanwaltsgesellschaften*.²⁸⁴

This assertion notwithstanding, following Germany’s opposition to alternative business structures, the argument moved from a “bilateral Anglo-German one” to the “European level.”²⁸⁵ As noted above, following Germany’s lead, the CCBE voiced its opposition to both multidisciplinary practice and alternative business structures.²⁸⁶ In 2011, when the American Bar Association (ABA) invited comments on alternative business structures,²⁸⁷ “the BRAK used the opportunity

²⁸² *Id.* (quoting Letter from Bernhard Dombek, President, German Federal Bar, to the UK parliamentary Joint Committee on the Draft Legal Services Bill (June 22, 2006)).

²⁸³ Weberstaedt, *supra* note 39, at 106.

²⁸⁴ *Id.* (footnote omitted).

²⁸⁵ *Id.* at 107.

²⁸⁶ See *supra* notes 47–53 and accompanying text.

²⁸⁷ ABA COMM’N ON ETHICS 20/20 INTRODUCTION AND OVERVIEW 1 (Aug. 2012), http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20120508_ethics_20_20_final_hod_introduction_and_overview_report.authcheckdam.pdf (stating that in 2009, the ABA created the Commission on Ethics. 20/20 “to tackle the ethical and regulatory challenges and opportunities arising from [twenty-first] century” social change and evolution of law practice). To this end, a working group was formed that considered “whether lawyers and law firms, in order to better serve their clients, should be able to structure themselves differently” than what was currently permitted. Issues Paper, *supra* note 89, at 1. Specifically, the Commission on Ethics 20/20 undertook “to study whether U.S. lawyers and law firms should also be permitted to employ alternative law practice structures in which nonlawyers have an ownership interest.” JAMES S. GORELICK & MICHAEL TRAYNOR, FOR COMMENT: DISCUSSION PAPER ON ALTERNATIVE LAW PRACTICE STRUCTURES 1 (Dec. 2, 2011), http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20111202-ethics2020-discussion_draft-alps.authcheckdam.pdf. After receiving feedback and careful study and evaluation, Ethics 20/20 decided not to recommend that the ABA support a change to the ABA policy on nonlawyer ownership

to again make clear that it viewed ABS as a serious threat to the independence of the legal profession and went along with the CCBE protectionist interpretation of the Establishment Directive.”²⁸⁸

Despite the position taken by BRAK, it has been suggested that it would be very difficult to “enforce a ban on investments in English ABS by German lawyers.”²⁸⁹ It also has been suggested that if an alternative business structure wants to operate in Germany, it might have three options by which to do so.²⁹⁰ First, it could offer services in non-reserved activities, which are activities where lawyers do not enjoy a professional monopoly.²⁹¹ With respect to the European market, the CCBE has stated that “ABSs will be able to be established abroad and provide legal services, where these services in the host state do not fall within the scope of reserved activities.”²⁹² Second, offered services could be characterized as temporary rather than

of law firms. *See* Hill, *supra* note 96, at 941. (Most recently, the ABA Commission on the Future of Legal Services [Futures Commission] again raised the matter of alternative business structures. In April 2016, an Issues Paper was sent to law related entities as well as the public, requesting input on alternative business structures as well as comments on related issues.); KATY ENGLEHART, FOR COMMENT: ISSUES PAPER REGARDING ALTERNATIVE BUSINESS STRUCTURES (Apr. 8, 2016), http://www.americanbar.org/content/dam/aba/images/office_president/alternative_business_issues_paper.pdf. The responses elicited from this inquiry generated little consensus about alternative business structures. Victor Li, *Talk to me: Issues papers seeking feedback on how legal services are regulated prompt lots of comments but little consensus*, Sept. 2016 A.B.A. J. 65, http://www.abajournal.com/magazine/article/future_legal_services_regulation/. Something on which there was consensus, however, is the inadequacy of a common understanding of what constitutes the “practice of law.” *Id.* at 66. As a result of the responses received, which lacked consensus but were “overwhelmingly negative,” the Futures Commission did not submit resolutions on this matter for consideration to the ABA House of Delegates at its August 2016 meeting. Mark Behrens & Christopher Appel, *Controversial ABA Alternative Business Structures Proposal Stalls . . . Again*, INT’L ASS’N DEF. COUNS. COMM. NEWSL. 2 (June 2016), http://www.iadclaw.org/assets/1/19/Civil_Justice_Response_June_2016.pdf. Instead, the Futures Commission’s final 2016 report takes the position that “continued exploration of alternative business structures (ABS) will be useful, and where ABS is allowed, evidence regarding the risks and benefits associated with these entities should be developed and assessed.” 2016 Report on the Future of Legal Services in the United States, ABA Commission on Future of Legal Services 42, http://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf. [hereinafter 2016 Futures Report].

²⁸⁸ Weberstaedt, *supra* note 39, at 107.

²⁸⁹ *Id.* at 111–12.

²⁹⁰ *See id.* at 112–13.

²⁹¹ *Id.* at 113.

²⁹² CCBE 2009 POSITION ON ABS, *supra* note 52, at 5. “The scope of reserved activities differs from one jurisdiction to another.” *Id.* The European Commission “is currently taking a renewed look at reserves in activities in professional services across the Union.” Weberstaedt, *supra* note 39, at 114 (footnote omitted).

permanent, and take advantage of the Freedom to Provide Services provisions in the 1977 Lawyers' Services Directive.²⁹³ Under the Lawyers' Services Directive, lawyers are required to adhere to both home state and host state rules, but only to host state rules "to the extent to which their observance is objectively justified to ensure, in that State, the proper exercise of a lawyer's activities, the standing of the profession and respect for the rules concerning incompatibility."²⁹⁴ Third, an alternative business structure could try to operate under the 1998 Lawyers' Establishment Directive, by interpreting the Directive's language in such a way to preclude a Member State's disallowance of a lawyer.²⁹⁵ Specifically targeted is the "insofar as it prohibits"²⁹⁶ language of Article 11, paragraph 5, which lacks clarity and could be interpreted multiple ways.²⁹⁷

While Germany adheres to its position against alternative business structures, many commentators "have identified the German legal profession as gradually moving in the direction of greater liberalization."²⁹⁸ There are others who refute this, reporting that "the sentiment toward further liberalization [is] running into opposition."²⁹⁹ This may be explained by the notion that "in Germany, the BRAK tends to be much fonder of the status quo than at least the younger generation of German lawyers."³⁰⁰ All of this notwithstanding, German legal services are experiencing "a more liberal situation in the present day," as compared to the regulation that was previously experienced.³⁰¹

²⁹³ See Weberstaedt, *supra* note 39, at 113. "[I]t is not entirely clear where exactly European law draws the line between temporary provision of services and permanent establishment." *Id.*

²⁹⁴ Lawyers' Services Directive, *supra* note 13, art. 4(4).

²⁹⁵ See Weberstaedt, *supra* note 39, at 113, 123–25.

²⁹⁶ Lawyers' Establishment Directive, *supra* note 28, art. 11(5).

²⁹⁷ See Weberstaedt, *supra* note 39, at 123. It has been posited that "insofar as it prohibits" is open to multiple meanings. For instance, it can be read to mean "as soon as the host state allows some sort of MDPs or external ownership it can no longer justify protectionist measures under paragraph (5)." Weberstaedt, *supra* note 39, at 123.

²⁹⁸ STEPHEN, *supra* note 274, at 74.

²⁹⁹ *Id.* at 75.

³⁰⁰ Weberstaedt, *supra* note 39, at 108.

³⁰¹ STEPHEN, *supra* note 274, at 74.

F. France

Prior to 1990, the French legal profession was divided into three main groups: *avocat*,³⁰² *notaire*,³⁰³ and *conseil juridique*.³⁰⁴ In 1990, the French National Assembly passed a law reforming the legal profession, and merging the *avocat* group with the *conseil juridique* group to form a revised category of *avocat*.³⁰⁵ The 1990 law required that new *avocats* be either French, from an EC Member State, or from a *unité territoriale* that grants French lawyers reciprocity.³⁰⁶ It also established a French National Bar Council (*Conseil National des Barreaux*—CNB), intending it to be representative of the various bar associations in France.³⁰⁷ France has almost 180 local bars, of which the Paris bar is the largest.³⁰⁸ The CNB was authorized to set standards for the profession as a whole, to oversee the implementation of the Diploma Directive and to oversee requirements for the admission of the revised category of *avocats*.³⁰⁹

³⁰² In 1971, French law merged the profession of *avocat*, with that of *avoué* and *agrégé*. This gave the new classification of *advocat* the right to give legal advice, legal assistance and to represent clients in court. See CHRISTIAN DADOMO & SUSAN FARRAN, THE FRENCH LEGAL SYSTEM 114 (1993). *Avoués* were similar to solicitors, and *agrégés* were nonlawyers who represented clients in commercial courts before lay judges. See STEPHEN, *supra* note 274, at 75. Under the 1971 law, only French nationals could be *avocats*. See ANDREW WEST ET AL., THE FRENCH LEGAL SYSTEM: AN INTRODUCTION 117 (1992).

³⁰³ See DADOMO & FARRAN, *supra* note 302, at 123. The *notaire* serves as legal advisor, with the primary function of drafting legal documents. *Notaires* have a monopoly of practice in the areas of conveyances, marriage settlements and successions. *Id.*

³⁰⁴ *Id.* at 111–12. Prior to 1972, individuals who gave legal advice, who were not *avocats* or *notaries*, were unregulated and usually referred to themselves as *conseil juridique*. WEST, *supra* note 302, at 114. The 1972 law set down criteria for the profession of *conseil juridique*, including education, training, registration and character requirements. DADOMO & FARRAN, *supra* note 302, at 113. Subsequently, many foreign lawyers registered as *conseil juridique*. WEST, *supra* note 302 at 117.

³⁰⁵ *Id.* at 113, 117. This action was in response to the Lawyers' Services Directive, the Diploma Directive, decisions of the European Court of Justice, as well as the need to prepare France for a single European market. See John M. Grimes, "Une et Indivisible"—The Reform of the Legal Profession in France: The Effect on U.S. Attorneys, 24 N.Y.U. J. INT'L L. & POL. 1757, 1765, 1773–74 (1992).

³⁰⁶ *Id.* at 1767.

³⁰⁷ See WEST, *supra* note 302, at 121.

³⁰⁸ See STEPHEN, *supra* note 274, at 76. Of the *avocats* in France, over 40% belong to the Paris Bar. *Id.*

³⁰⁹ See WEST, *supra* note 302, at 121. For new *avocats*, the law requires a French *maîtrise en droit* or an equivalent diploma, along with the successful completion of an examination on French law. See Grimes, *supra* note 305, at 1767.

France is “another country that has long experimented with multidisciplinary practice.”³¹⁰ In France, early on, larger law firms began to associate themselves with accounting firms.³¹¹ In 1990, a law was passed allowing “professionals with qualifications recognized by the state to give legal consultations accessory or related to their principal activity and to draft documents which are necessary for and accessory to the exercise of their profession.”³¹² For instance, accountants were permitted to render legal services on tax matters, to companies for which they were providing accounting services. Following the 1990 merger of the legal professions which created the revised category of *avocat*,³¹³ France saw “an increasing amount of legal work done by accountants who numbered themselves amongst the former *conseil juridique*.”³¹⁴ Protecting the integrity of “both the practice of law and the state of the law itself,”³¹⁵ a law was passed “stating that all international networks of which lawyers, accountants and management consultants were members had to discontinue any mention of a law firm being a member of such networks.”³¹⁶

In 1999 the CNBF issued a regulation in favor of “inter-professionalism” which permitted the accounting and legal professions to work together, but prohibited any form of association between lawyers and non-liberal professions, such as auditors and

³¹⁰ Erica Blaschke Zolner, *Jack of All Trades: Integrated Multidisciplinary Practice, or Formal Referral System—Emerging Global Trends in the Legal and Accounting Professions and the Need for Accommodation of the MDP*, 22 NW. J. INT’L L. & BUS. 235, 242 (2002). In 1971, a provision was made for the incorporation of an “interprofessional civil company.” See Ramón Mullerat, *The Multidisciplinary Practice of Law in Europe*, in MULTIDISCIPLINARY PRACTICES AND PARTNERSHIPS: LAWYERS, CONSULTANTS AND CLIENTS 4-28 (Stephen J. McGarry ed., 2002).

³¹¹ See Mullerat, *supra* note 310, at 4-28. “Paris has been referred to as the ‘laboratory’ from which the accountants learned that a wider implantation in the legal markets of Europe was feasible.” Mullerat, *supra* note 310, at 4-28.

³¹² *Id.* (citing *Loi de la fusion*, Dec. 31, 1990, arts. 59 & 69).

³¹³ See *supra* notes 305 & 306 and accompanying text.

³¹⁴ Mullerat, *supra* note 310, at 4-29. *Conseil juridique* could “provide a range of services that in other countries would be considered legal services,” such as drafting documents and advising on transactions. *Id.*

³¹⁵ *Id.* at 4-30. The Dean of the Paris Bar stated that “if the exercise of the legal profession does not continue to be done with the guarantees of independence and responsibility, and with competence and ethics, both the practice of law and the state of the law itself will suffer.” *Id.*

³¹⁶ *Id.* at 4-30.

financial advisors.³¹⁷ Cooperation was permitted with members of regulated professions for sharing office space and personnel, but the same name and the benefits of costs, could not be shared.³¹⁸ Additionally, there were limitations put in place “[i]n order to preserve the specific obligations of each profession,” such as guards against conflicts of interest.³¹⁹ In 2011, certain professions were permitted to form multi-discipline equity structures (SPFPL), where equities from two or more firms could create a capital structure.³²⁰

While France has embraced multidisciplinary practice, it has not embraced the concept of alternative business structures. In a resolution passed in June 2012, the CNBF took the following position:

- ABS cannot be viewed as law firms;
- ABS conflict with “the essential principles of the legal profession in France that guarantee the independence and the competence of the members within a democratic society”;
- No ABS can benefit the freedom of establishment and consequently register in one of the 179 French law societies.³²¹

A reason for this position is said to be the “French legal culture.”³²² As compared to the UK, the French legal market is much less concentrated, with most *avocats* practicing alone or in very small firms.³²³ Independence is a fundamental professional value, even in-house counsel working for a company must suspend their *avocat* status under the “principle of independence vis-à-vis the

³¹⁷ *Id.* at 4-31. The following are prohibited: “rendering of legal services by a lawyer employed by another liberal profession, employing members of other liberal professions by a lawyer, rendering of legal services by firms controlled by members of other liberal professions.” *Id.*

³¹⁸ *See id.* “This situation has slightly changed as the Act of 28 March 2011 allows a form of multi-discipline equity structure. Certain professions can create a capital structure (SPFPL) which can take equities in two or more firms belonging to certain professions: avocat, chartered accountant, notary, bailiff, auctioneer.” Alain-Christian Monkam, *France says “Non” to ABS*, THE J.L. SOC’Y SCOTLAND (July 11, 2012), http://www.journalonline.co.uk/Referendum/1011438.aspx#.Vv_m0zH9270.

³¹⁹ Mullerat, *supra* note 310, at 4-31. Following the collapse of Enron in 2001, France passed “the *Loi de Securite Financiere* which prohibits any organization from obtaining legal and accountancy service from the same firm.” Martin, *supra* note 270, at 187. This “quelled the pressure the accounting firms exerted on the legal profession.” *Id.*

³²⁰ *See* Monkam, *supra* note 318.

³²¹ Monkam, *supra* note 318.

³²² *Id.*

³²³ *See id.* Roughly half of the *avocats* practice at the Law Society of Paris. *Id.*

employer.”³²⁴ While multidisciplinary practice is possible, it is “limited” and “[e]xternal investments in law firms are very restricted.”³²⁵ It has been suggested that “[t]he current antipathy to the ABS structure outside of the UK is, one suspects, based principally on the fear of change and ‘distress’ in each local jurisdiction.”³²⁶

Although France is against alternative business structures, it should be noted that some external investments in law firms are permitted. If a law firm is created in the form of a *société d’exercice libéral* (SEL), there may be some external investment.³²⁷ Those who can invest are:

- either a natural or legal person practicing the same discipline as that of the SEL; or
- people who have ceased to practice the discipline of the SEL, but for a period no longer than 10 years; or
- legatees or heirs of the persons mentioned above; or
- of SPFPL structure.³²⁸

It is asserted that the fact that French rules allow relatives of a deceased lawyer to inherit the lawyer’s ownership interest in a law firm demonstrates “the principle of nonlawyers with a purely financial interest in law firms is already an accepted practice.”³²⁹

Although France has rejected alternative business structures, there are “a wide range of business forms” under which *avocats* can practice.³³⁰ There are those that feel, however, that there are two primary “threats to the nature of the French legal profession: the encroachment of multidisciplinary practice [. . .] and the growing presence of Anglo-Saxon law firms.”³³¹ While this may be the case,

³²⁴ Monkam, *supra* note 318. The CNBF finds alternative business structures dangerous to both the essential principles of the profession and the public interest. See Conseil National des Barreaux, *Les Alternatives Business Structures (ABS) mettent en danger les principes essentiels de la profession d’avocat et les intérêts du public* (June 22, 2012), <http://cnb.avocat.fr/Les-Alternatives-Business-Structures-ABS-mettent-en-danger-les-a1290.html> [hereinafter *ABS Principles*].

³²⁵ *ABS Principles*, *supra* note 324.

³²⁶ Robert Russell & Tony Potts, *Opportunities and challenges in the UK legal sector: alternative business structures*, DLA PIPER (Dec. 12, 2013), <https://www.dlapiper.com/en/uk/insights/publications/2013/12/opportunities-and-challenges-in-the-UK-legal-sec>.

³²⁷ See Monkam, *supra* note 318.

³²⁸ Monkam, *supra* note 318.

³²⁹ Weberstaedt, *supra* note 39, at 124.

³³⁰ *Id.*

³³¹ STEPHEN, *supra* note 274, at 76.

these phenomena may also work to the advantage of the French bar. As a general premise, “*avocats* have moved very much in the direction of a liberalized market as a result of court decisions and the increased penetration by multidisciplinary practices and Anglo-Saxon firms as a consequence of EU law.”³³² This same phenomena, along with increasing competition, may eventually prove to be a gateway by which lawyers in France will embrace alternative business structures.

IV NOW AND GOING FORWARD

From a global perspective, the past two decades have seen unprecedented changes in the formulation of law practice. Law societies and bar associations are examining alternative business structures and their implementation, with many being receptive to change. For instance, in Europe, while the CCBE is opposed to both multidisciplinary practice and alternative business structures, the former has been widely embraced in a number of countries. More controversial are alternative business structures with external investors, where members of the legal profession, government entities and the public fear the lawyers’ professional values will be compromised.

Australia has been receptive to multidisciplinary practice as well as alternative business structures with outside investors, particularly in NSW. Leading the way in this regard, NSW embraced a successful co-regulatory scheme, separating regulatory from representative functions and using principles to define regulatory goals and objectives.

Multidisciplinary practice and alternative business structures also have been embraced in England and Wales, along with an independent nongovernmental regulatory structure. Although still small in number in England and Wales, these legal practice formulations have transformed the market for legal services, and Scotland is following in their wake. It is interesting to note that initial feedback indicates the core values of the legal profession have not been compromised by these formulations in England and Wales, for no problems of a disciplinary nature related to nonlawyer investors have been reported with LDPs.³³³ In fact, regarding “emerging

³³² *Id.* at 76–77.

³³³ See Groth, *supra* note 225, at 584; Hill, *supra* note 96, at 945.

empirical studies in ABS,” there is “no evidence that the introduction of ABS has resulted in a deterioration of lawyers’ ethics or professional independence or caused harm to clients and consumers.”³³⁴ And perhaps more interesting is the impact of the outcome based regulatory scheme in Australia, where complaints for ILPs have decreased substantially, rather than increased.³³⁵ While studies indicate that these new practice formulations have done no harm to the legal professions’ core values, it is troubling to note that there is little indication that the public has benefited. There is “little reported evidence that ABS has had any material impact on improving access to legal services.”³³⁶

Australia and England and Wales are not alone in embracing alternative business structures with external investors. For instance Spain allows nonlawyers to have 25% external ownership in legal entities, while Denmark allows up to 10%.³³⁷ However, significant opposition to this route exists. The CCBE, Canada, Germany and France are not alone in their resistance to outside investors. Austria has voiced opposition to external investing,³³⁸ and “New Zealand and Northern Ireland continue to insulate solicitors and barristers from non-licensure firm ownership.”³³⁹

While some view external investment in legal services as a threat, or even as evil,³⁴⁰ this perception is likely to change. With regulation in place, if these formulations prove to be profitable and give some lawyers a competitive advantage, others will get on board. Legal services have become an export, they are big business and make a significant contribution to the economy. The door has been opened for innovation and the development of new paradigms. Economics are likely to fuel change in the legal professions, causing skeptics to embrace and continue to expand alternative business structures.

³³⁴ 2016 Futures Report, *supra* note 287, at 42.

³³⁵ See Fortney, *supra* note 110, at 119.

³³⁶ 2016 Futures Report, *supra* note 287, at 42.

³³⁷ See Weberstaedt, *supra* note 39, at 123.

³³⁸ *Id.* at 124. However, as in France, Austria has “rules allowing close relatives of a deceased lawyer to inherit his or her ownership interest in a law firm . . .”; Weberstaedt, *supra* note 39, at 124.

³³⁹ SEMPLE, *supra* note 137, at 65.

³⁴⁰ See *supra* note 124.

CONCLUSION

The legal profession is changing and continuing to evolve. Whether or not a jurisdiction has embraced the notion of multidisciplinary practices or alternative business structures, these issues are being, or have been, addressed. Although legal professions vary from country to country, a global primary concern is protecting the core values of the legal profession. To this end, the need for effective regulation seems to be universally accepted. While multidisciplinary practice is more prevalent than alternative business structures in which there are external investors, this will probably change as we move forward. While significant opposition exists to the latter, such a stance is likely to be altered if that formulation proves to be economically beneficial. While traditionalists have a strong following, the global legal services market is evolving and is poised for continued innovation. It is likely that lawyers and the various legal professions will seek competitive advantages while continuing to be mindful of their professional and ethical mandates.