

Professional Indemnity – Law Firm Additional Services

A guide identifying some of the risks arising when law firms provide services beyond traditional legal services – and how they might be managed.

Law Firm Additional Services

Introduction

Many law firms, encouraged by the Legal Services Act 2007 and the liberalisation of the legal services market which followed, provide or consider providing non-legal offerings or services in addition to the legal services typically associated with lawyers.

In this guide, we refer to such services as Additional Business (“AB”) services.

AB services are typically offered as part of a complementary or holistic package of services. For example, a firm retained by a construction company for traditional legal services such as handling litigation arising out of its operations could also provide AB services such as audit, valuation and adjusting services to assist with tendering as well as outsourced company secretarial and HR services. However, AB services can also be offered on a standalone basis for clients who do not purchase traditional legal services.

This guide discusses how AB services can be beneficial to firms and clients. It then highlights some of the specific risks which arise from offering AB services, before suggesting ways in which those risks could be managed.

What are AB services?

Across the market there are a vast range of AB services law firms offer. Examples include:

- Other professional services, such as accountancy services;
- Outsourced operations, such as company secretarial services, HR services and IT services;
- Software and products, such as document review or management software (and, more recently, Artificial Intelligence solutions);
- Cyber incident response services;
- Claims handling and claims management services;
- Training provision;
- Regulatory and compliance services;
- Business consultancy;
- Audit; and
- Investment and financial planning.

There is a third category of services sometimes offered by firms which are more closely aligned to traditional legal services than true AB services but are often not serviced by solicitors. Examples include services such as specialist advocacy and / or costs services serviced by barristers or costs specialists.



A final category which should not be confused with AB services is added value services such as the provision (often free of charge) of legal updates, free client training or secondments, which are not covered by this guide.

Why do law firms offer AB services and why do clients purchase them?

The advantages to law firms of providing AB services include:

- New client 'wins'. AB services can represent a unique selling point, a point of differentiation or generate a competitive advantage – attracting new clients or assisting with processes such as tendering;
- Improvement of existing client relationships and increased client retention. AB services can help firms meet more than just their clients' legal requirements and lead to an increased understanding of the client through dealings in more areas. Done properly, AB services can lead to greater integration of the firm with their clients, resulting in the firm becoming an extension of that client's teams;
- Increased turnover. This is an inevitable consequence of attracting new clients or retaining more clients. AB services can further increase turnover by retaining revenue from work that would otherwise have been carried out by a third party or by generating new revenue from newly provided services;
- Enhancement of reputation. Properly provided AB services can also enhance a firm's reputation generally or in a particular industry. They can demonstrate commitment to, or genuine expertise in, that industry helping to position a firm as a market leader; and
- Diversification of income streams and increased resilience against market fluctuations.

Clients can also benefit from using AB services with an existing provider. It can:

- Reduce the time required for the client to be onboarded and for the client to provide effective instructions;
- Improve collaboration and information sharing, avoiding repetition and duplication;
- Remove the need to search for another provider or re-tender; and
- Reduce the risk of instructing a firm which ultimately proves to be inadequate or unsuitable. This is particularly relevant in the market for services, where there is often asymmetry of knowledge between service providers and service users, and it can often be difficult to assess quality pre-purchase.

What are the specific risks associated with AB services?

Just as the types of AB services firms may offer is diverse, so too are the risks associated with them, which vary greatly depending on the type or types of AB services being provided or considered.

Higher risk AB services are typically characterised by (a) being distant from the firm's core offering in terms of the expertise required, operational requirements, regulatory framework, statutory framework, market exposures and / or cultural norms (b) potential exposure to new high value matters or transactions (c) a vulnerability to new potential claims (d) being expensive to set up or establish and / or (e) often provided within already competitive markets. Examples include investment and accountancy services.

Lower risk AB services are typically more closely connected to the firm's core offering, involve relatively low-value transactions and are less vulnerable to claims. They include services such as providing company secretarial services or costs services.

Some key additional risks we have identified in relation to the provision of AB services include:

- **Potential exposure to different standards, practices, legislation and / or different regulatory requirements.** Offering some AB services may present fundamental corporate structure challenges and expose firms to different standards or practices. Those risks and challenges may be multiplied if the firm has a multi-jurisdictional reach and wishes to provide AB services in the jurisdictions in which it operates;
- **Inadequate or irrelevant central functions, procedures and systems.** Functions, procedures and systems designed for the provision of legal services may be inadequate for, or irrelevant to, the provision of AB services. For example, a legal case management system might be incapable of generating workflows for audit or adjusting matters or producing documents for those matters. Onboarding requirements (for both staff and clients / matters) may be significantly different for an AB service when compared to a traditional legal service;
- **Mission creep and gaps in provision.** Mission creep is the expansion, usually incremental, of an instruction or client relationship beyond its original scope. Mission creep is a risk for law firms when providing legal services and the risks are increased when providing AB services. Firms with a reputation for, or ambition to be, 'multi-service' or 'cradle to grave' (or who market their services as such) may go beyond their expertise in seeking to service client needs that go beyond the firms' actual offering. Other increased risks include the risk of multiple departments thinking the completion of a critical task or the provision of critical advice would be down to another department leading to omissions or gaps, the duplication of effort or tasks, reduced quality and a potential lack of clarity in or applicability of contract terms / limitations of liability to the expanded instruction / AB service. Misunderstandings (whether internal or external) or a lack of clarity in

precisely what any given AB service can or does do could lead to client dissatisfaction or even regulatory breaches;

- **Recruiting and retaining the necessary expertise.** AB services can sometimes be perceived as secondary or peripheral to core or traditional services. In addition, law firms may not have the necessary reputation in the market in which the AB service is to be provided to attract high-level staff. These factors can lead to difficulties recruiting and retaining the right staff;
- **Financing and resourcing.** Providing AB services can lead to direct and indirect resourcing issues. An example of a direct resourcing issue might include lack of access to appropriate software or precedent / training materials. Indirect resourcing issues can arise when central resources (HR, for example) are stretched beyond capacity by the additional pressure of the AB service offering. Properly resourcing AB services will take investment, which might create financial pressures on the firm in making that investment leading to a potential failure. In addition, investment can lead to pressure on the AB service to deliver a return on that investment, which in turn could lead to risks including overworking staff, taking on matters outside of expertise and issues such as ‘siloing’ (where those providing the AB service seek to retain income from ‘its’ work and / or clients);
- **Distraction of management from core activities.** This is a particular issue at the commencement of an AB service, as setting up a new offering can be particularly time intensive. However, the issue can remain even with an established AB service, given that lawyers are often responsible for the management of law firms and running an offering with which managers are less familiar can be more time-consuming;
- **Supervisory and accountability gaps.** What might work well in a firm in terms of supervision of legal services (whether at the individual or department level) may not work for AB services;
- **Conflicts.** AB services increase the risk of both client and own-interest conflicts. If AB services attract additional clients, care should be taken to ensure there is no conflict of interest with existing clients or with related matters. Equally, firms should ensure there is no conflict of interest in providing AB services to clients. A firm acting in litigation will have a duty to ensure costs incurred are proportionate to the value of the claim. That firm may use an adjusting or audit AB service to value the client’s claim. That may present an own interest conflict as the firm stands to potentially make more money in fees the higher the value of the claim;
- **Training and development.** Whilst lawyers have clear continuing competence requirements and most have a mature training and development programme to assist staff in meeting those requirements, those providing AB services may have differing training and development needs to be met;

- **Quality control and assurance.** If AB services are not provided to the same quality standards and levels as specialists in the field can attain, that can lead to claims, reputational issues and loss of clients;
- **Dilution of culture.** This is linked to the above risk. Growing a firm via the provision of AB services can lead to a diluted culture. Introducing staff from different professional backgrounds or markets can also lead to dilution;
- **Scaling.** AB services are sometimes relatively small departments. This can lead to key individual dependency and increase the risks associated with a lack of proper supervision, auditing, peer review and collaboration; and
- **Insurance arrangements.** The provision of AB services may present different and additional insurance requirements.

How should the risks be managed?

The first step in seeking to manage the risks arising out of AB services is to accurately define which AB services the firm provides / will provide. Just as the risks associated with each AB service vary so should the approach to managing them.

Next, the firm should carry out a risk assessment. Law firms are already heavily regulated and may therefore already have well-developed risk management procedures. At this stage, thought should be given to whether the firm's existing risk assessment remains adequate for the expanded scope of an AB service offering. If so, the risk assessment could be carried out by first applying the existing firm-wide risk assessment to the AB service(s) and then carrying out a further risk assessment tailored to the AB service / considering each AB service individually. This assessment could be carried out with input from external consultants with expertise or experience in the AB service area.

If the firm has good risk management practices and a good risk culture already in place, the best strategy might be to adopt those practices and culture and apply them to the AB service(s) with equal rigour (provided, of course, that they are tailored to ensure suitability for the AB service).

In addition to any strategies adopted to manage the risks identified by the risk assessment, the following risk management options should be considered:

- **Put in place the appropriate corporate structures.** Relevant considerations may include:
 - Regulatory requirements – both in terms of new requirements and the interplay with the existing requirements on law firms. A key consideration at the outset will be whether the firm wishes to provide AB services on a full basis or on a more limited, non-regulated basis. The former may require authorisation from,

and submission to, other regulatory bodies (such as the Institute of Chartered Accountants in England & Wales (ICAEW));

- Supervision and accountability. Appropriate corporate structures will allow for proper supervision and accountability of each entity within the group by those ultimately responsible for the group. This is particularly important where, as here, the services being provided by one part of the group may be significantly different to those provided by other parts / the group generally, or where the scale of the AB service may leave it vulnerable to key individual dependency and not allow for peer review or collaboration;
 - Representation. An appropriate corporate structure should allow for AB services to ideally be represented (or at least heard and considered) at board level either individually or collectively where collective representation would be sufficient;
 - Protection against the failure of the AB service. Having separate subsidiary entities may provide protection to the rest of the corporate group in the event the venture incurs significant liabilities or fails. It may also help guard against mission creep and assist with the division of responsibilities; and
 - Insurance (see below).
- **Carry out a gap analysis and customer journey analysis.** These exercises help identify where gaps in service provision arise. They should also examine how AB service clients should be onboarded (including a careful review of how conflict checking procedures respond to AB service-specific issues) and be dealt with contractually (for example, drafting changes to engagement letters or additional engagement letters are likely to be necessary together with processes for ensuring they are sent). They should also test how different teams (or even companies within the corporate group) interact and how they respond to new circumstances. Finally, they can also assess how the firm's procedures respond and adapt to those clients who purchase legal services only, those who purchase AB services only and those who purchase both;
 - **Have defined pathways and clear divisions of responsibilities between all services.** This should be informed by, and built upon, the conclusions of the gap and customer journey analysis. There should be clear policies and processes for referrals, which include reviewing conflicts, competence, the potential for mission creep and how to deal with the instruction contractually (including during the retainer, if there are changes). The importance of being clear with clients about what are legal services and what are not, and the services being provided should also be reflected;
 - **Arrange regular internal AB services awareness training.** Again, this should be informed by, and built upon, the conclusions of the gap and customer journey analysis. Building awareness within the firm of what AB services can be offered and when, what

they do (and cannot do) and the correct communication channels involved is both sensible from a business point of view and can also mitigate a number of the risks identified above;

- **Assess and identify the resources required by the AB service.** Investment can be into:
 - Improved or new central functions / systems, appropriately integrated;
 - Appropriately skilled staff; and
 - Marketing and reputation.

If the benefits of providing the AB service do not justify making the investment necessary to adequately manage the risks arising, the rationale for providing the AB service should be questioned;

- **Develop a positive culture and adapt that culture to embrace AB services.** The culture within the AB service team(s) should either be the same as, or consistent with, the firm's culture – one of the main reasons clients wish to purchase AB services from the firm might well be that they like the firm's culture / ethos. The culture should include an acceptance that work is done by the appropriate people and is 'credited' accordingly. Developing a culture and ethos, which can be done via incentivisation, where AB services are perceived as being of equal importance as traditional services, can mitigate many risks – including the recruitment and retention of staff, the discouragement of silos, sharing of resource and quality control. The cultural fit of an AB service should also be considered from the outset;
- **Recruit the appropriate expertise and retain that expertise.** Recruitment should, ideally, be made at the earliest possible stage so that AB services are set up with the benefit of that expertise;
- **Assess AB services and staff against the same (or equivalent) standards as the legal services and staff and to external companies providing the same AB service;**
- **Assign AB service matters the appropriate risk rating from the outset.** It may be that, when the AB service is in its infancy, all AB services matters are categorised as "high-risk" to which enhanced due diligence, allocation, audit and supervision requirements apply. Thereafter, AB service matters should be assigned in accordance with a risk assessment;
- **Monitor and track usage and analyse client feedback.** Monitoring usage can ensure all areas of the firm are adequately resourced. Given the different fee models available (and given that some AB services are sometimes offered free of charge), it may be necessary to consider the appropriate measures beyond income against which to monitor usage. Important risk management and client care lessons can be learned from analysing and acting upon client feedback;

- **Consider alternative means of provision.** It may be that alternatives to the direct provision of AB services are less risky. Examples include outsourcing, an association arrangement / partnership with another firm or ‘white label’ arrangements. Those external providers can then bring their own expertise (and insurance) and contractual arrangements should deal with liability if anything goes wrong. If it is important to the firm to have closer control of the AB service, acquiring an existing company or firm might be less risky than building an AB service offering from the ground up as it may result in a ‘ready-made’ solution with existing expertise and procedures – provided integration can be managed adequately;
- **Assess the firm’s financial ability to establish and thereafter develop and resource AB services.** The firm should have a clear picture of the costs of entry / provision of the AB service and how those costs will be met, avoiding the creation of internal pressures;
- **Provide AB services staff with the equivalent access to training, databases, professional associations and memberships as the lawyers in the firm (and ensure they are registered with any regulatory bodies as required);** and
- **Put in place appropriate insurances.** Whilst good risk management can reduce the prospect of your firm needing to seek an indemnity from its insurer(s), ensuring that your firm’s insurance arrangements are comprehensive will maximise the prospects of being indemnified by insurers when claims do arise.

Checklist

A generic and non-exhaustive checklist of things to consider if your firm already provides, or is considering providing, AB services is provided in Appendix 1. This checklist can be tailored to your own organisation.

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Additional Information

Relevant Loss Prevention Standards include:

- Professional Indemnity – External Accreditations for Law Firms
- Solicitors and the Register of Overseas Entities
- Solicitors Professional Indemnity – Analysing Claims Trends
- AI Governance
- Failure to Prevent Fraud

To find out more, please visit [Aviva Risk Management Solutions](#) or speak to one of our advisors.

Email us at riskadvice@aviva.com or call 0345 366 6666.*

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Appendix 1 – AB Checklist

Location	
Date	
Completed by (name and signature)	

	Title	Y/N	Comments
1.	Have you clearly identified which AB service(s) your firm provides / intends to provide?		
2.	Have potentially lower risk alternatives to establishing and offering a direct AB service (such as an outsourcing or association arrangement with separate contract terms dealing with liability) been considered?		
3.	Do you have, or will you need to establish, an appropriate corporate structure? This should be considered from both a regulatory perspective and a management / supervision perspective.		
4.	Will your AB service(s) need to be separately regulated and, if so, are those requirements satisfied?		
5.	Can the AB service/s be provided using existing functions, procedures or systems? If not, where is investment needed and what are the costs?		
6.	Does the firm have adequate financial resources to fund the setting up of the AB service / s and thereafter fund it adequately? How will it be funded?		
7.	Have you carried out a risk assessment? Is there a plan for implementing the measures identified within that assessment? Does the firm's existing firm-wide risk assessment adequately deal with the expanded scope of providing AB service(s)?		
8.	Have you carried out gap and customer journey analyses identifying appropriate onboarding, how gaps		

	in the service will be dealt with and how different teams interact?		
9.	Is the AB service(s) a cultural fit? Does the firm's culture allow AB services to be provided well?		
10.	Can what the firm already does well be applied to the AB service(s) and, if so, how?		
11.	Have you recruited people of sufficient quality to provide the AB service(s)?		
12.	Are your AB services and staff assessed against equivalent standards as the legal services and legal staff? Have you identified how external providers of the same service as the AB service assess service and staff and brought those standards and principles into the firm?		
13.	Are all matters risk assessed at the outset and given an appropriate risk rating affecting how they are subsequently dealt with by the firm?		
14.	Do you monitor usage of AB services against relevant parameters and analyse client feedback?		
15.	Do you have a programme of internal training raising awareness of what AB services are offered, when they should be discussed with clients and the correct communication channels?		
16.	What training, databases, professional memberships and registrations do AB services staff require?		
17.	Are AB services staff given equivalent access to those resources as those providing traditional legal services?		
18.	Are you confident that your insurance programme is adequate to respond to circumstances that may arise?		
19.	Have you made your broker and insurer aware that you provide / are considering providing AB service(s) and provided details?		
20.	Additional comments:		

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