



**Consultation on the cost of licensing of a Bar Standards Board regulated Alternative Business Structure (“ABS”)
December 2015**

Introduction

1. The Bar Standards Board (“BSB”) submitted an application to the Legal Services Board (“LSB”) in April 2015 to permit the BSB to license ABS. It was made with a view to extending our entity regulation regime launched in April 2015.
2. The application is made in accordance with Part 1 of Schedule 10 of the Legal Services Act 2007 (“LSA”) which enables the Lord Chancellor, on the recommendation of the LSB, to make orders designating bodies as licensing authorities. It is available on the LSB’s website through the following link http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/current_designation_applications.htm
3. If the application is approved, the BSB will be able to license, or authorise, bodies where there is non-lawyer management or ownership-type interest as provided for in the LSA. The types of ABS we envisage licensing are described in the policy statement attached at Annex A.
4. This consultation invites comments on the proposed fee structure for the licensing of ABS by the BSB.

The approach to licensing of ABS

5. The BSB’s proposal to become a licensor of ABS is part of a wider programme of reform. The first step was a major revision of the Handbook, shifting focus to outcomes and removing unnecessary restrictions whilst retaining the rules necessary to maintain appropriate standards. The next step was the introduction of non-ABS entities in April 2015 which liberalised the business models and structures through which barristers and other lawyers could provide legal services. The application to become a licensing authority for ABS completes this programme of reform to further facilitate innovation in service delivery.

The approach to fees

6. The infrastructure established to authorise and supervise ABS builds upon the BSB's existing systems and resources, most particularly those already in place for entities. However, the extension of the scope of entity regulation to include ABS licensing has increased our overall operating costs.
7. The BSB intends to operate ABS regulation on a full cost recovery basis. This is to ensure that the entire practising Bar does not subsidise, through the payment of the practising certificate fee, those barristers, other lawyers and lay individuals who wish to provide legal services through an ABS.
8. Based on recent quantitative and qualitative research, we estimate the number of applications to total 60 over the next 3 years, ie 20 ABS applications per annum x 3 years. The level of fees has been based on these estimates. As with entity regulation, we have divided the fees into categories to operate a tiered fee structure. The larger the ABS the higher the fee. This reflects the resource required to assess an application and, if authorised, supervise an ABS.

What the fees will cover

9. The BSB has undertaken detailed financial and resource planning to establish what additional costs will be incurred to license ABS. We have also considered our experience with entity regulation. Below is a high level break down of the anticipated annual operational costs.

Category	Cost (£)
Direct Costs	26,000
Investment Costs	9,000
Executive Support	9,500
Central Services	13,000
TOTAL	57,500

10. A more detailed description of each of the above cost categories is set out below.

Direct Costs

11. The BSB's Supervision Department currently manages the authorisation and subsequent supervision of entities and will similarly manage ABS licensing activities. Whilst all staff have experience of entity regulation, there will be specific resources dedicated to ABS related activities. The figure above reflects the amount of staff time (across a range of levels of seniority) involved in considering applications, taking authorisation decisions and supervising ABS. It also includes an amount covering

the cost of an appeal to the First Tier Tribunal based on an estimated one appeal per 20 applications.

Investment Costs

12. The total costs of IT development and legal advice relating to the licensing of ABS have been allocated over a 3 year period in line with the full operational cost recovery approach. The figure above reflects the annual allocated amount.

The amount also reflects the set-up costs of the First Tier Tribunal, allocated over the same period.

Executive support

13. When considering full operational cost recovery, in addition to the cost of resourcing our licensing and supervision functions, a proportion of the total cost of executive support (including Board and Director General input) attributable to ABS regulation needs to be taken into account.

Central services

14. This category of costs relates to the corporate services provided to the BSB in relation to HR, IT and Finance and includes a percentage of the costs of the premises.

The fee structure

15. The BSB proposes that the fee structure will be separated into three elements reflecting the approach to entity regulation:

- An application fee – payable by all applicants;
- An authorisation fee – payable by those who have been successful in their application and wish to be authorised by the BSB. The fee will cover the cost of regulating the ABS in its first year of authorisation;
- An annual fee – payable by those authorised ABS who wish to retain their authorisation. This fee covers a review of the ABS and the on-going cost of supervision.

16. The table below sets out the proposed fee structure using the estimated number of applicants in the table at paragraph 8.

ABS Category	Application Fee	Authorisation Fee	Total Costs of Authorisation	Annual Fee (£)
2-5 person ABS	1,485	1,215	2,700	1,755
6-15 person ABS	2,530	2,070	4,600	2,990
15+ person ABS	3,575	2,925	6,500	4,225

17. For the purposes of determining the category, a “*person*” is an authorised person / individual as defined within the BSB Handbook.
18. The fees are based on the ABS size to ensure that the operational costs of authorisation and supervision are borne proportionately by those who require the greatest level of BSB resources.

Other costs

19. In addition to the fees listed above, we are likely to carry out additional checks to establish certain things about the owners or managers of a proposed ABS. Such checks will include confirmation of identity and whether there are any criminal or adverse findings on record for them. The costs of these checks will be passed to the applicant.
20. Should an ABS wish to conduct litigation it will need to be authorised to do so. An ABS wishing to be authorised to conduct litigation will need to pay an additional fee of £90 (which is the same fee as for individual barristers seeking authorisation to conduct litigation).
21. The BSB has put in place staff with a wide range of skills and experience to consider applications for authorisation. However there may be instances, if an ABS application is particularly complex or unusual, that external advice will be required. The applicant will bear the cost of this external expertise. In all cases, before commissioning any external assistance, we will discuss doing so with the applicant.
22. Should an applicant decide that they wish to take an appeal to the First Tier Tribunal against our decision to refuse to authorise, an administration charge of £500 will be payable by them towards the cost of the hearing.
23. As with entity regulation fees, all ABS fees will be reviewed annually as part of the BSB’s budgeting process. As the fees are based on the estimated numbers in the table at paragraph 8, it will be important to consider the actual level of take up.

Annual fee process

24. In order to aid administration, it is proposed that the annual fee will be charged in April of every year, irrespective of the point in the preceding period that the ABS is authorised. This reflects the approach to entity regulation and the first annual is scheduled for March / April 2016.

Practising Certificate fees

25. Lawyers and other regulated persons will be required to pay practising certificate fees in addition to any fees associated with licensing as an ABS.

Questions

Do you have any comments on the BSB's proposed approach to ABS fees?

In particular, do you have any views on the apportioning of fees between application, authorisation and annual fees?

Response to consultation

26. Responses to the consultation should be sent to EntityRegulation@BarStandardsBoard.org.uk.
27. The deadline to respond is midnight Sunday, 10 January 2016.