Queensland Law Society

Information kit

Incorporated Legal Practices (ILPs)

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1. Essentials

Chapter 2, part 2.7, divisions 1-7 and 9 of the *Legal Profession Act 2007* (Qld) (LPA) commenced on 1 July 2007 allowing corporations to engage in legal practice in Queensland.

1.1. Incorporated Legal Practice (s 111)

A corporation is an incorporated legal practice (ILP) if it engages in legal practice in Queensland (regardless of whether it also provides non-legal services).

However, a corporation is not an ILP if:

- the only legal services it provides are in-house; and/or services that are not legally required to be provided by an Australian legal practitioner (ALP), and are provided by an officer/employee who is not an ALP;
- a regulation has prescribed the corporation not to be an ILP;
- the Court has disqualified the corporation from providing legal services in Queensland; or
- the corporation is prohibited from providing legal services under an Act or law of the jurisdiction in which it is incorporated or in which its affairs are regulated.

An ILP is not required to hold a practising certificate but may become a member of the Society (QLS Form 8). See the commentary below in clause 3.1 in relation to the Professional Standards Scheme.

1.2. Legal Practitioner Director (s 110)

A legal practitioner director is:

- a director of an incorporated legal practice (ILP);
- an Australian legal practitioner (ALP); and
- the holder of a principal practising certificate.

1.3. Relationship of LPA to ILP's constitution (s 140)

It is important to become familiar with the provisions of the LPA applying to an ILP prior to drafting the ILP's constitution or other constituent documents. If there is an inconsistency between the LPA and the ILP's constitution or other constituent documents, the LPA will prevail to the extent of any inconsistency.

You may wish to include in the constitution a clause noting that it is operating as an ILP and requiring the company and its directors ensure:

- appropriate management systems are implemented and maintained; and
- that the duty to the court and to clients will prevail over all other duties (including those of shareholders).

1.4. Appropriate designation of staff (s 7)

The LPA sets out appropriate terms relating to associates and principals of law practices.

ALPs who are directors of the ILP and who hold principal practising certificates may be known as either the Principal of the practice or the Legal Practitioner Director.

An ALP who is a director of the ILP but who does not hold a principal practising certificate should be careful using the designation of Director in correspondence or advertising to avoid misleading clients and other members of the public or profession of their position within the legal practice. That individual is a legal practitioner of the practice and a director of the company.

1.5. Prohibited services/businesses (ss 112 & 132)

An ILP may provide any lawful service or conduct any lawful business, except a managed investment scheme, or any service or business that may be prohibited by regulation. Should an ILP do so, it may be disqualified from providing legal services.

All practitioners should note that s 25 of the *Legal Profession Regulation* 2017 (LPR) prohibits a law practice from providing legal services to a person related to a transaction if the practice has provided services, as an auctioneer, real estate agent or residential letting agent, to the person for the transaction.

Example: If a local legal practitioner holds a real estate license and is the real estate agent for the sale of the property, neither the practitioner, nor a law practice of which the practitioner is an associate, may provide legal services to the seller or purchaser of the property, or to an entity providing finance.

1.6. Notice of intention to engage in legal practice (ss 114 & 115)

A notice of intention to engage in legal practice in Queensland must be provided to the Society before engaging in legal practice in Queensland [QLS Form 23 (LPA)]. QLS recommends you provide *at least* 20 days' notice of your intention to engage in legal practice (please note that during the peak period such as renewals in May-June, processing may take longer). Interstate ILPs must also give this notice to the Society before engaging in legal practice in Queensland.

It is an offence to engage in legal practice, or to represent, or advertise that the corporation is an ILP without giving this notice,[1] and a corporation is not entitled to recover any amount for legal services provided before the notice was given.

A corporation that starts to engage in legal practice in Queensland without first giving the Form 23 notice to the Society is in default of s114 of the LPA until it gives notice to the Society of its failure to comply and the fact that it has started to engage in legal practice [QLS Form 24 (LPA)].

1.7. Incorporated legal practice without a legal practitioner director (ss 113 & 119)

An ILP must have *at least one* LPD.

If an ILP does not have at least one LPD, it must notify the Society [QLS Form 26 (LPA)] as soon as possible. Failure to do so is an offence.

If an ILP does not have an LPD for more than 7 days, it *must not provide legal services* in Queensland until either:

- it has an LPD; or
- the Society appoints someone under s 119(5) LPA to perform/discharge the functions/duties conferred/imposed on an LPD under part 2.7 of the LPA.[2]

1.8. Notice of ceasing to provide legal services (s 116)

Within 14 days after a corporation stops engaging in legal practice in Queensland, it must give notice to the Society [QLS Form 25 (LPA)].[3] Failure to do so is an offence.

Law practices converting from a partnership structure to an ILP should note the obligations in s 18A of the *Queensland Law Society Administration Rule 2005* (Qld). This rule requires a holder of a practising certificate who intends to dissolve an existing partnership to notify the Society before this occurs. It also requires the holder of a Queensland practising certificate to notify the Society of any changes to the information shown on the practising certificate application/renewal form, or any amended details subsequently notified, within seven days of the changes occurring.

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[1] A director, officer, employee or agent of a corporation must also not represent or advertise that the corporation is an ILP until the notice has been given: *Legal Profession Act 2007* (Qld) ss 114(2), (3) & s115(1).

[2] (Or someone is appointed under a corresponding law): *Legal Profession Act 2007* (Qld) s 119(4).

[3] See also *Legal Profession Regulation 2017* (Qld) s 12.

These changes may be communicated to the Society by email at records@qls.com.au.

2. Legal practitioner obligations (s 160)

Except as provided by part 2.7, none of the provisions of the LPA affect any statutory obligation imposed on an LPD, or an ALP employed by an ILP, in their capacity as an ALP.

Some legislation imposes personal and criminal liability on executive officers of corporations for offences committed by their corporation. LPDs should make an assessment of which Acts apply to the activities of their corporation and understand the obligations imposed on their company and themselves [e.g. *Criminal Proceeds Confiscation Act* 2002 (Qld)]. Practitioners should also consider the impact of *Director's Liability Reform Amendment Act* 2013 (Qld).

2.1. LPD obligations (ss 117, 118 and 119)

The LPD (or each of them) is responsible for the implementation and maintenance of management systems for the legal services provided by the ILP in Queensland (s 117(2)).

The management systems implemented must be:

a) in accordance with the *professional obligations* of ALPs and other obligations under the LPA; and

b) such that the professional obligations of the ALPs of the ILP are not affected by those officers/employees who are not ALPs (s 117(3)).

The 'professional obligations' of an ALP are defined as including:

- duties to the Supreme Court;
- obligations in connection with conflicts of interest;
- duties to clients (including disclosure); and
- ethical rules the ALP must observe (s 110).

The term 'appropriate management systems' is not defined in the LPA. Practitioners should refer to the QLS companion publication Guide to Appropriate Management Systems.

2.2. Employee ALP obligations (s 120)

An ALP who provides legal services for an ILP in the capacity of officer/employee is not excused from complying with the professional and legal obligations of ALPs, and does not lose the professional privileges of an ALP.

The *Australian Solicitors Conduct Rules 2012* (ASCR) applies to an ALP who is an officer/employee of an ILP in the same way it applies to any other ALP (unless the rule provides otherwise).

These obligations and privileges apply as if:

- for an ILP with two or more LPDs – the practice were a partnership of the LPDs and the employees of the practice were employees of the LPDs; and
- for an ILP with only one LPD – the practice were a sole practitioner and the employees of the practice were employees of the LPD.

The law relating to 'client legal privilege, or other legal professional privilege' is not excluded or affected by the fact that an ALP is acting in the capacity of officer/employee of an ILP.

The directors of an ILP do not breach their duties as directors merely because legal services are provided pro bono by the ALPs employed by the practice.

2.3. Breaches of practitioner obligations (s 117 & 118)

An LPD must take all reasonable action available to ensure breaches of the professional or other obligations of an ALP do not occur. If it becomes apparent that the ILP's provision of legal services may result in a breach, then they must take all reasonable action to ensure the breach does not occur.

If a breach does occur then the LPD must ensure appropriate remedial action is taken.

If an employed ALP engages in unsatisfactory professional conduct or professional misconduct then the LPD must ensure that all reasonable action is taken to address that conduct.

An ALP who provides legal services on behalf of a corporation in the capacity of officer/employee may commit unsatisfactory professional conduct or professional misconduct, if they ought reasonably to have known that the corporation is disqualified [s 132(8)].

What may constitute unsatisfactory professional conduct or professional misconduct by an LPD:

- unsatisfactory professional conduct or professional misconduct of an employee who is an ALP, unless the LPD establishes that they took all reasonable steps to ensure ALP employees did not engage in the conduct;
- conduct of a non-ALP director that adversely affects the provision of legal services by the ILP, unless the LPD establishes that they took all reasonable steps to ensure non-ALP directors did not engage in the conduct;
- the unsuitability of a non-LPD director to be a director of a corporation that provides legal services, unless the LPD establishes that they took all reasonable steps to ensure unsuitable non-ALP directors were not appointed or holding office;
- failure to ensure the ILP complies with s129(1) regarding disqualified persons;
- failure to ensure the ILP or any officer/employee complies with any requirement made by an ILP investigator (or someone authorised by an ILP investigator) in the exercise of their powers under chapter 6, part 6.7 (provisions about investigations relating to ILPs) [s 574(c)(i)]; and
- failure to ensure the ILP or any officer/employee complies with any condition imposed by an ILP investigator in the exercise of their powers under chapter 6, part 6.7 [s 574(c)(ii)].

2.4. Undue influence (s 143)

It is an offence to cause or induce (or attempt to cause or induce) an LPD, or an ALP who provides legal services for an ILP, to contravene the LPA or the practitioner's professional obligations as an ALP.

It appears that this section is aimed at ensuring directors who are not ALPs do not attempt to interfere in the discharge of an ALP's professional obligations.

3. Insurance

3.1. Professional standard scheme

From 1 July 2022 ILPs are able to take up membership with the Society and participate in the professional standards scheme (previously only individual legal practitioners within the ILP were able to participate in the scheme). Membership must be renewed annually, and all legal practitioners who are officers or employees of the ILP must hold practising certificates and full or honorary membership of the Society.

Practitioners should refer to the Guidance for Members – The QLS Professional Standards Scheme on the QLS website for the appropriate form of disclosure.

3.2. Professional indemnity insurance (PII) (s 121)

ILPs are required to have professional indemnity insurance (PII) and it is an offence to engage in legal practice without compliant PII. Section 73 LPR contains the PII requirements for law practices generally.

Failure to comply with the requirement to hold professional indemnity insurance, or to comply with its obligations under the indemnity rules, may amount to professional misconduct.

3.3. Professional Indemnity Insurance implications of restructuring or purchasing a practice

"The Lexon Insurance levy model caters for changes which occur to practices over time through the concepts of the prior law practice and the successor law practice. The primary purpose of these concepts is to ensure continuity of coverage for practices for past legal services performed regardless of developments at the practice and also to encourage appropriate risk management as part of succession planning." See Lexon Information Sheet – Buying, Selling, Dissolving or Otherwise Modifying Law Practices for ascertaining whether you are considered to be a successor law practice.

Practitioners should also consider the applicability of the acquisition endorsement. More information is available on the Lexon Insurance website. For those who are not insured with Lexon, you should review your own particular policy on these issues.

4. Practice considerations

4.1. Conflicts of interest (s 122)

For the purposes of the application of any rule or law concerning conflicts of interest, the interests of the ILP (or any related body corporate) are also taken to be those of the LPD or an ALP of the ILP.

This is in addition to any conflicts of interest of the individual legal practitioner.

LPDs need to be vigilant in implementing and maintaining appropriate conflict management procedures and policies.

4.2. Disclosure obligations (ss 123 and 124)

If the ILP provides both legal and non-legal services, written disclosure notice is required to be given to the client. The notice must:

- set out the services to be provided;
- state whether all the legal services will be provided by an ALP (and if not, identifying which will not be provided by an ALP, and stating the status/qualifications of the person who will provide the legal services); and
- state that the LPA applies to the provision of legal services, but not non-legal services.

There is no prescribed form for this notice but it must comply with s 123 of the LPA. See page 98 of the QLS Costs Guide for a suggestion. A failure to comply with this section is an offence.

If such disclosure is not made, and the services provided might reasonably be assumed to be legal services then the standard of care owed by the ILP in relation to the service is the standard that would apply if it had been provided by an ALP.

4.3. Advertising (s 126)

Any restriction imposed on ALPs in advertising legal services also apply to ILPs, unless ILPs are expressly excluded.

An advertisement that contravenes a restriction is taken to have been authorised by each LPD for the purposes of disciplinary proceedings.

Practitioners should refer to:

- the appropriate sections in the LPA;
- the guidelines on the LSC website in relation to restrictions on Personal Injury advertising;

- Rule 36 of the ASCR in relation to advertising that is false, misleading or deceptive or likely to mislead or deceive, including the use of the words “accredited specialist” or a derivative of those words, unless the practitioner is an accredited specialist.
- QLS Accredited Specialist Marketing Guidelines.

4.4. Vicarious liability for failure to account and dishonesty (s 127)

If in a civil proceeding relating to a:

- failure to account for, pay or deliver money or other property received by, or entrusted to, the ILP or an officer/employee in the course of the provision of legal services; or
- debt owed, or damages payable to a client because of dishonest acts/omissions by an ALP employee in the course of the provision of legal services,

the ILP would not normally be vicariously liable for acts/omissions of its officers/employees, but would be liable if it were carrying on business in partnership, then the ILP is taken to be vicariously liable for those acts/omissions.

4.5. Sharing of receipts (s 128)

Nothing in the LPA prevents an ILP from sharing receipts, revenue or other income with an ALP employee arising from the provision of legal services (except that they must not be shared with a disqualified person).

5. Restrictions or disqualifications

5.1. Disqualified person (s129)

‘Disqualified person’ is defined in schedule 2 of the LPA to include:

a) a person whose name has been removed from and not restored to an Australian roll;

b) a person whose practising certificate is cancelled/suspended;

c) a person who has been refused a renewal of a practising certificate and has not since been granted one;

d) a person who is the subject of an order prohibiting a law practice from employing them; and/or

e) a person who has been disqualified from managing a legal practice under s 133.

An ILP commits an offence if a disqualified person:

- is an officer/employee of the ILP or a related body corporate (regardless of whether the person provides legal services);
- is a partner of the ILP in a business that includes the provision of legal services;
- shares the receipts, revenue or other income arising from the provision of legal services by the ILP; or
- is engaged or paid for the provision of legal services by the ILP.

Failure by an LPD to ensure the ILP complies with the above is capable of constituting unsatisfactory professional conduct or professional misconduct.

LPDs may wish to review *Evans & Anor v Queensland Law Society* [2022] QCAT 284 concerning the appropriateness of employing a disqualified solicitor as a lay associate.

5.2. Audits (ss 130, 131 and chapter 6)

The Legal Services Commissioner (LSC) or the Society may conduct an audit of an ILP about the compliance of the ILP, its officers and employees, with the requirements of implementing and maintaining appropriate management systems (chapter 2, part 2.7 of the LPA), including the provision of legal services and the supervision of officers and employees.

The LSC will invite all newly established ILPs to undertake a self-assessment audit within 6 months of establishment. If the ILP fails to respond to the self-assessment process, then the LSC will likely conduct an external audit of the ILP's management systems. This may also occur if the LSC considers it necessary, such as when an ILP is the subject of a number of complaints, or if a matter of concern is raised by a Society trust account auditor.

An audit may be conducted regardless of whether a complaint has been made. An audit report may be taken into account for a discipline application or the grant, renewal, amendment, suspension or cancellation of a practising certificate (s 130(3)).

Information about ILP audits can be found on the LSC's website at: https://www.lsc.qld.gov.au/for-the-profession/compliance/compliance-audits.

Information about trust account audits conducted by the Society may be found here: https://www.qls.com.au/Practising-law-in-Qld/Trust-accounts/Part-3-3-Investigations

5.3. Banning of ILPs (ss 132, 133 and 158)

On the application of an ILP authority, the Supreme Court may disqualify a corporation from providing legal services in Queensland if:

- an LPD, or an ALP who is an officer/employee, is found guilty of professional misconduct;
- the ILP has failed to implement satisfactory management and supervision of its provision of legal services;
- the ILP or a related body corporate has contravened s 112 by conducting a managed investment scheme or an unlawful business, or by providing an unlawful service;
- the ILP has contravened s 129 by engaging, employing or sharing receipts with a disqualified person; or
- an officer of the ILP acting in the management of the practice is the subject to a disqualification order, or a prohibition on partnership with a particular partner who is not an ALP partner. Such order may be made under a corresponding law.

5.4. Disqualification from managing an ILP (s 133)

On the application of an ILP authority, the Supreme Court may disqualify a person from managing an ILP. A disqualification order has effect only for the purposes of the LPA and does not affect the application/operation of the *Corporations Act 2001* (Cth) ('*Corporations Act')*.

A person who is disqualified from managing a corporation under a corresponding law is taken to be disqualified from managing a corporation under this section.

An ILP authority may publish an order advising of the disqualification of a person from managing an ILP (s 14 LPR).

6. Other legislation

6.1. Disclosure of information to ASIC (s 134)

An ILP authority may disclose to ASIC information concerning a corporation that is/was an ILP if, during the course of performing its functions or exercising its powers, the ILP authority acquires information relevant to ASIC's functions.

6.2. External administration proceedings under other legislation (ss 135 and 136)

An ILP authority is entitled to intervene in external administration proceedings relating to a corporation that is/was an ILP, unless the court decides that the proceeding does not concern or affect the provision of legal services by the ILP. The court may have regard to the interests of the clients of the ILP. These provisions prevail over the *Corporations Act*, to the extent of any inconsistency.

6.3. Receivership under LPA and external administration under other legislation (ss 137 and 138)

If an ILP is the subject of both the appointment of a receiver by the Society (under chapter 5, part 5.5 of the LPA) and an external administrator (under other legislation), then:

- the receiver must notify the administrator of their appointment;
- the receiver and/or administrator may apply to the Supreme Court to resolve issues relating to the dual appointments and their respective powers (unless an external administration proceeding under the *Corporations Act* has been started);
- the Supreme Court may make any orders it considers appropriate, and no liability attaches to the receiver or administrator for any act/omission done in good faith for the purposes of carrying out or acting under the orders; and
- each ILP authority is entitled to intervene in the proceeding, unless the court decides that it does not concern or affect the ILP's provision of legal services.

6.4. Relationship of LPA to legislation establishing ILP (s 141 & 142)

If an ILP is not a company under the *Corporations Act*, the provisions of the LPA applying to an ILP prevail over the legislation under which the corporation is established/regulated.

Although no such regulations have been made, a regulation may:

- declare a provision of the LPA relating to an ILP to be a Corporations legislation displacement provision for the purposes of s 5G of the *Corporations Act*.
- declare a matter relating to an ILP that is prohibited, required, authorised or permitted under the LPA to be an excluded matter for the purposes of s 5F of the *Corporations Act*.

7. Forms (ss 114, 116 and 119)

Forms available on the Society's website are:

Approved forms for ILPs under chapter 2, part 2.7 of the LPA:

QLS Form 23 (LPA) – Notice of a Corporation's Intention to Engage in Legal Practice in Queensland;

QLS Form 24 (LPA) – Notice of a Corporation's Failure to Comply with Subsection 114(1);

QLS Form 25 (LPA) – Notice of Cessation of Legal Practice by a Former Incorporated Legal Practice; and

QLS Form 26 (LPA) – Notice that an Incorporated Legal Practice No Longer has a Legal Practitioner Director.

For ILP membership of the Queensland Law Society:

QLS Form 8 (SR) – Application for Incorporated Legal Practice Membership of the Queensland Law Society

8. Letterhead requirements

Sections 153 and 88A of the *Corporations Act* ('CA') require a company to set out its name and ACN on all public documents – this includes business letters, statements of account, invoices, receipts, orders for goods/services and official notices, including websites.

If the company's ACN is not used in its name, the company must also set out with its name, or with one of the references to its name, either the expression "Australian Company Number' or 'ACN' followed by the company's ACN. If the company's name appears on two or more pages of the document or instrument, this must be done on the first of those pages.

NOTE:

1. If a company has a common seal, its name and ACN or ABN must be set out on the seal (s 123 CA).
2. A public company must display its name at its registered office. Every company must display its name at places at which the company carries on business and that are open to the public (s 144 CA).
3. In any case where the company's ACN would be used, the company's ABN may be used instead if the last 9 digits of the ABN are the same, and in the same order, as the last 9 digits of the ACN.

Exception to requirement to have ACN on receipts

A company does not have to set out the expression 'Australian Company Number' followed by its ACN on a receipt (for example, a cash register receipt) that sets out information recorded in the machine that produced the receipt (s 154 CA).

The Regulations may exempt a specified company, or a class of companies, from the requirement in s 153(2) of the *Corporations Act* to set out information on its public documents and negotiable instruments. The exemption may relate to specified documents or instruments, or a class of documents or instruments.

9. Frequently asked questions

Q What are some of the advantages of engaging in legal practice as an ILP?

A Some of the advantages include:

- almost unrestricted ownership opportunities;
- ability to provide non-legal services;
- company tax rate (subject to personal services income rules);
- business continuity and business succession;
- potential limitation of liability (subject to any guarantees or indemnities given by directors).

Q What are some of the disadvantages of engaging in legal practice as an ILP?

A Some disadvantages include:

- additional obligations for LPDs and other company officers under the *Corporations Act* (see ss 179-197 and 588G), and the LPA;
- potential conflict between the duties owed to the court, client and profession on one hand and to the company and its shareholders on the other hand;
- obligation to comply with other provisions of the *Corporations Act* (eg chapter 2G Meetings);
- costs of incorporation and ongoing audit requirements;
- potential stamp duty on transfer/merger unless a duty exemption applies.

Q Does the LPA impose any restrictions on who may be a director of an ILP?

A A disqualified person cannot be an LPD. The LPD must hold a principal practising certificate.

Q Does the LPA impose any restrictions on shareholders or shareholdings?

A The LPA makes no mention of who may own shares, what types of shares may be issued, or how many shares may be held by a shareholder. As disqualified are prohibited from sharing the receipts, revenue and other income arising from the provision of legal services by an ILP, it is arguable they cannot be shareholders (ss 129(1)(c) LPA).

Q Are all directors of ILPs required to hold principal level practising certificates?

A No. An ILP must have at least one Legal Practitioner Director. (s117) A Legal Practitioner Director is a corporate director who is an Australian legal practitioner and holds a practising certificate entitling them to practise as a principal. (s110) Other corporate directors are not required to hold principal practising certificates.

A solicitor-director who does not hold a principal practising certificate is not a principal or Legal Practitioner Director and, when using the title "Director", must clearly identify that status.

A non-lawyer director must clearly identify that they are not a legal practitioner or Legal Practitioner Director and do not manage the provision of legal services.

Q Are there any restrictions on how I may structure my law practice?

A It is not a function of the Society to approve the structure of a law practice. The Society's role under the LPA is limited to receiving notifications, and it is the responsibility of each law practice to ensure that its structure complies with the law.

Schedule 2 of the LPA defines:

law practice –

a) for part 3.3, division 6 (Prescribed accounts and Legal Practitioner Interest on Trust Accounts Fund) – see s 284; or
b) otherwise means –
    (i) an Australian legal practitioner who is a sole practitioner; or
    (ii) a law firm [see below]; or
    (iii) an ILP; or
    (iv) an MDP.

law firm means a partnership consisting only of –

a) Australian legal practitioners; or
b) 1 or more Australian legal practitioners and 1 or more Australian-registered foreign lawyers.

The Society's view is that engaging in legal practice in a structure falling outside this definition of 'law practice' is not permissible, and may involve a breach of s 24 of the LPA (prohibition on engaging in legal practice when not entitled).

A common query is whether solicitors may practise as a partnership of discretionary trusts with corporate trustees. The Society's view is that, having regard to the above definitions of 'law practice' and 'law firm', the LPA appears to preclude this because the only partnerships included in the LPA are those between individual Australian legal practitioners and/or Australian-registered foreign lawyers. Provided a structure falls within the above definition of 'law practice', the Society is unaware of any other specific restrictions to structures featuring trusts and trustees.

Converting to Incorporated Legal Practice (ILP) Checklist

This list may apply to practitioners considering converting to an ILP from a sole practice or partnership, merging practices or purchasing a practice. This list is not exhaustive and some steps may not be applicable to your situation.

Preliminary matters

1. Transferring your legal practice as a going concern from one entity to another may involve a written contract or agreement which may be a dutiable transaction. Take legal, accounting and financial advice as to whether a company is the right structure for your legal practice, the purpose of the re-structure, its likely impacts, and the documents required to effect the transaction. N.B. There may be a full or partial stamp duty exemption on the transfer of assets from a partnership or sole trader to an ILP if certain criteria are met. Refer Qld Revenue Office.
2. Consider whether a valuation of your existing business and/or the business that you are purchasing or merging with is necessary.
3. Consider shareholder and directorship roles (including Non-LPD). If currently operating as a partnership ensure you carefully review the partnership deed and any ancillary documents for terms concerning the winding up of the partnership and transfer of assets before proceeding.
4. Understand the additional reporting and compliance requirements and costs in running a company.
5. Take legal advice on the proposed structure and the terms of the constitution for the ILP. The ILP **must** have at least one legal practitioner director (principal practising certificate holder). Director Identification Numbers are now compulsory. Consider whether you will install a Board of Governance.
6. Consider Lexon's successor practice rule and the impact it may have if your new structure is a merger of practices, includes the purchase or amalgamation of another practice, or the appointment of additional legal practitioners (other than those who were in the original partnership arrangement) as directors. An amalgamation or merger may also impact on your ability to access a full or partial stamp duty exemption on the transfer of assets from a partnership or sole trader to an ILP.
7. Register for a new ABN and consider whether your entity needs to be registered for GST.

Sole LPD ILP

8. An ILP is required to have a LPD within 7 days of a vacancy otherwise it must cease providing legal services. If you are proposing a sole LPD ILP, ensure you have a contingency /succession plan in place. If you are the sole Director, it is recommended you appoint an attorney under a general power of attorney.

Registered Name

9. Consider the name for your incorporated entity. Some practitioners choose to trade under the name of their Pty Ltd (eg. QLS Solicitor Support Pty Ltd) and others prefer a registered trading name (eg. QLS Solicitor Support Pty Ltd trading as QLS Ethics and Practice Centre). The name of your Pty Ltd and its ACN or ABN must appear on public documents including your letterhead, website, invoices etc.
10. Register your company. The ASIC Company Extract will need to be submitted with your notification to QLS (see below 18).
11. If you propose to use an existing registered trading name you will need to arrange for that name to be transferred to the ILP at the date of the transition.

Insurance

12. Ensure you arrange new business interruption insurance, business asset insurance and public liability. Consider whether you also require key person insurance, directors and officer's liability insurance (management liability insurance).
13. Consider the applicability of the acquisition endorsement.
14. Practices insured by Lexon should also consider risk issues set out in the Taking over Safe Custody Packets – Checklist and Off-Risk Letter resource available on the Lexon Insurance website.

Start date

15. Consider the date you propose to commence trading as the ILP. You may prefer the transition to occur simultaneously with a new financial year, new calendar year or another significant date that will be easy to remember. How busy is your practice at this time of year, do you have sufficient resources to attend to your client work and the additional duties that the transition will require?
16. Will you transfer WIP and debtors to the new practice (potential tax issues) or run the old entity concurrently until reduced (additional administration).
17. Consider the financial reports to be run for the changeover date.

Regulatory obligations

18. Give appropriate notice to QLS by way of a Form 23 of the intention to provide legal services through an ILP AND of your intention to cease providing legal services by way of sole practitioner or partnership. QLS will notify Lexon Insurance. Lexon Insurance will contact you in relation to the transfer of your professional indemnity insurance policy to consider whether the new ILP will be a successor practice. You will need to provide details of the officeholders of the ILP and confirmation of the transfer or registration of the registered business/trading name (if any).

Limitation of liability scheme

19. Consider whether your ILP should apply for QLS Membership in order to benefit from the Limitation of Liability Scheme. Consider whether all employed solicitors are full or honorary QLS Members and members of the Limitation of Liability Scheme. Does the limitation of liability disclaimer on your letters, invoices and marketing material need to be updated?

Transitional issues

20. Set up a new office/general bank account and, for any direct debit arrangements, prepare a list of payments that need to be transferred from the old office/general account to the new account.
21. Set up new general ledger accounts in accounting program.
22. Review fixed assets to be transferred. Seek advice from your accountant.
23. Update credit card merchant facilities, BPAY and any e-commerce facilities offered.
24. Service agreements – legal practice software, computer technology, phone lines, mobiles, internet, office lease and any other external service supplier agreements will need to be transferred to the new entity.
25. Employee accrued benefits – consider the impact the transition may have on employee benefits, employment contracts and employer responsibilities. Seek advice from an employment lawyer.
26. Ensure you inform all employees of the proposed changes and keep them informed of the progress of the transition.
27. Do you have a third-party payroll office?
28. Does your ILP need to be registered for payroll tax?
29. Consider whether your present office systems satisfy the obligation to implement and maintain "appropriate management systems" see s117(3) LPA.

Solicitors' Trust Accounts

30. Consider whether the ILP needs to open a new trust account or can operate without one. Appoint an External Examiner to the new trust account, notify the QLS Trust Accounts Team of both.
31. Order new cheques, amend templates for bills, authorities, cost agreements, receipts and trust account statements.
32. Consider whether you will require EFT, PEXA, Titles Queensland or Qld Revenue Office approval for the new trust account and apply to the QLS Trust Accounts Team for same.
33. On and from the changeover date the ILP is a new law practice; no further funds can be received into the former practice's trust account.
34. If you have an existing trust account for the sole practice or partnership, liaise with the QLS Trust Accounts Team as to:

a. the process and requirements for the transfer of funds from the existing trust account to the new trust account.

b. the closure of the old trust account; and

c. the requirements for External Examination and final lodgment.

35. Consider the use of an e-signing platform to expedite the process of obtaining trust transfer authorities and client agreements.

External third party engagement

36. Notify your e-settlement platform (PEXA or Simplii) to close your existing subscriber account and open a new transacting account.
37. Cancel your existing QRO self-assessor and reapply on behalf of the new entity.
38. Cancel your existing Qld Titles lodger registration and reapply on behalf of the new entity.

Clients

39. For all existing client matters, to secure payment of fees, consider whether you will issue (a) new client agreements; (b) tripartite agreements between the new entity, existing practice and client.
40. Consider any settlement agreements or Court Orders that might require payment of settlement amounts into your existing trust account. Do these agreements or Court Orders need to be varied to allow transfer of funds to the new practice's trust account?
41. For litigation matters, either file a notice of change of solicitors name (and address if moving) or contact the Court Registry for a Notice of Change of Name (and address, if necessary) Practice Direction.
42. Notify clients and referrers of the change. Consider Lexon's Cyber policy in how you notify clients or other parties of the change to your banking details.

Legal Team Issues

43. Consider appropriate designations of all officers and employees of the ILP.
44. Provide an explanation that employees may use to explain to clients the changes occurring.
45. Review all marketing material, precedents and templates to ensure references to sole practitioner, partner or partnership are updated to legal practitioner director, director or legal practitioner, as appropriate. Public documents, including letterhead and website should be in accordance with ASIC requirements.

Close/cancel

46. Close your old general account.
47. Cancel the ABN for your sole trader/partnership (in consultation with your accountant).

Ongoing ILP requirements

48. Ensure you have documented dates for the annual registration fee for your company, preparation of financial records and scheduled regular Directors meetings.