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INDEPENDENT REVIEW OF LEGAL SERVICES REGULATION

WORKING PAPER LSR-0 | March 2020

ASSESSMENT OF THE CURRENT REGULATORY FRAMEWORK

Stephen Mayson¹

1. Introduction

H*#! "#\$%&#' (&!) %*+, -! ./01!:\$!*#!20,34%5! (!/01 -!0%17\$+8#&-+%5! " (4#9#! / (\$: (\$!*0-! 3\$: #&%OF#\$!0!3\$: 0<#\$%04!+#1! (!!*#!, 3&&#\$!⑼% (&5!'&0<#1 (&F! (&14#904!-#&8+, #-!+;\$!) \$940\$: !. ! B04#-E!!23&%*#&! :#%04-!0\$: !%*#!'344!%#&<-! (!&#'#&#\$, #!0и+004#10%!
%J-PGG 1 1 1 E3, 4E0, E3FG#%+, -?40 1G\$#1 -GLDC@G034G3, 4?, #S%&#?#%*+, -?40 1?3\$: #&%OF#?⑼% (&5? '&0<#1 (&F?+#1E!

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SCT! B *5!- * (34: !1#!⑼%#14#904!-#&8+, #- [!!SVO+(\$04#T!
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H*#!1 (&F! (!!*#!V#8+#1!*0-!0##\$!*#4J#: !05!+\$J3%!'& (<!*#!<#<0#&-! ('!0\$!R: 8+- (&5!^0\$#4 E!! M (<#! (!!*#!J304- *#:#: !1 (&F!0\$: !, (<#&#-! ('!^0\$#4!<#<0#&-!0&#!&#'#&#:#: !% (!0\$: ! &#'#&#\$, #: !+\$!%*#!1 (&F+\$9!J0J#&-E!! = (1#8#&6!%*#!, (\$%\$% (!!*+!1 (&F+\$9!J0J#&+-!%*#!1 (&F! ('!

CE! H*#!03% (&!*0-!#:#!%#Y\$: #J#\$:#\$%V#8+#16!0\$: !-!0\$!\$ (&0&5!J&('#-- (&!\$!%*#!20,34%5! (!/01 -!0\$: !%*#!

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^0\$#46!+\$: +8+: 30445! (&! , (44# , %8#45E!

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3. Assessment of the current framework

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< (\$ (J (45! 1 + % * + \$!% * #!) 3& (J#0\$! 7\$+ (\$!O&#+, 340%# : !05! " 40#- - # \$- 6!% * #! 7 d!+ -!, 40 - - +!# : !0 -!
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Z3+, F45! (&!O - !' 345!O - !% * #+&!+ \$%+O% (&- ! 1 (34: ! * 08#! 1+ - * # : E!!

H*#! " NR6!0 - !JO&! ('!+ - ! < O&F#% - %3 : 5!+\$!LDCU⁸6! < OF# - !O!\$3 < O#&! ('! (O - #&80%+ (\$ - !00 (3!4#904!
- #&8+, #-!% * 0!O&#! 1 (&*!&#, (& : +\$9! * #&#!O - !, (\$%#! 304!+\$' (& < O%+ (\$P!

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0\$: !# !J#&+ \$, #E!!H*# - #!+\$, 43 : #P!4#904!+ - - 3# - ! \$ (%!04 1 05 - !O#+\$9!, 4#O&45!+ : # \$%+ + O04#! (&!
: #'+ \$# : X!+\$' &#Z3\$#!J3&, * 0 - #X!\$## : - !O&+ - +\$9!0% < (< # \$% - ! ('! : + - %&# - - ! (&!% < #!J#& - - 3&#X!
0\$: !0 - 5 < < # %&5! ('!+\$' (& < O%+ (\$6! < OF+\$9!0 - - - - < # \$% - ! ('!J& (8+ : #& - !0\$: !Z304+5! ('!
- #&8+, #! : +!'+, 34%!! (%!O - - - - !SJO&O9&OJ * !LE] TE!!!

! " (\$ - #Z3\$%\$456! < O\$5!+\$: +8 : 304 - !0\$: !- < O4!O3 - +\$# - - - - !: (\$ (%!, * O&O, %&#&+ - #!% * #&#!
J& (O# < - !0 - !O#904!!O\$: !% * #&# ' (&#! : (\$ (%! : #O4! 1 + % * !% * # < !O - ! - 3, * !SJO&O9&OJ * - ! \ ELa?
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!) 8#\$! 1 * # \$!O!J& (O4# < !+ - !&#, (9\$+ - # : !0 - !O#+\$9!4#9046!O0 3%! 1 (?% * & : - ('!+\$: +8 : 304 - !
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0 : 8+, #!SJO&O9&OJ * - ! \ ECUU? \ ECaLTE !!H*+ - !0\$: !% * #!J+ (3 - !O344##!J (+ \$!+ : # \$%+ + 5!% * #!
(3%, (< #!% * 0!+ - ! ('%# \$: # - , &+O# : !0 - !c3\$ < #%!4#904!\$## : !!O\$: 6! (& < O\$56!+ - !
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4#904!O : 8+, #P! * +9 * !0\$: !3\$, #&#O+\$!, (- % - 6!, (< J (3\$: # : !0\$!% * #&#! (J#\$?# \$: # : ! \$0%3&#X!
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: +!'+, 34%5!+\$!\$: +\$9!% * #!&+9 * !J& (8+ : #&X!0\$: !% * #!J#&, #+8# : !40, F! ('!J&O, %+, O4+5!0\$: !
O3 - +\$# - - !3\$: #& - %0\$: +\$9! ('!4O 15#&- !SJO&O9&OJ * ! \ EC@CTE!

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&# - + : # \$%+ O4!, (\$8#50\$, +\$9!0\$: !'O < +5!4O 1!SJO&O9&OJ * !LE]UTE!!M3, *!'&O9 < # \$%O%+ (\$!
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OJJ& (J&+O%#!J& (8+ : #&E

JE! M##! " (< J##%+ (\$!O\$: !NO&F#-!R3%* (&%5!SLDCUP!RJJ#\$: +!YTE!! " (< JO&O+8#10JJ&(O, *#-1% (14#904! - #&8+, #-!
⑼%+ (\$!O% (3, *# : ! (\$!\$! / MV?LISLDLDP!JO&O9&OJ * !LECTE!!

UE!!! M##! " # < # \$%+ !SLDD > TE!

aE!!! M##! f # JO& < # \$%! (& " (\$ - % % 3%+ (\$0!R''O+&- !SLDD]TE!

@E!!! M##! " (< J##%+ (\$!O\$: !NO&F#-!R3%* (&%5!SLDCUTE!

gE! N (&#!&#, # \$%!O\$: !# 1 % \$ - +8#1&# - #O&, *!O5!h (3A (8!SLDLDT6! (\$!O# * O4! ('!% * #! / #904!M#&8+, #-! ; (O& : !O\$: !H*#! / O! !
M(, #5! ('!) \$940\$: !. ! B O#- !6!J& (8+ : # - !O! < (&#!\$30\$, # : !J+, %3&#E!!

! Y\$%#&<#: +0&+#-!S-3, *!0-!#-%0#%!09#\$%-6! < (&%909#!0&(F#&-!0\$: !%&0: #!3\$+(\$-T!, 0\$!0#!
8#&5!+\$'43#\$%+0!+\$!+\$F+\$9!, (\$-3<#&-!%(!J&(8+: #&-6!%*3-!'+4+\$9!0!J(%#\$%+0!40,F('!
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+\$%#&#-!-!0\$: !+\$, #!\$+8#-!('!%*#-#!+\$%#&<#: +0&+#-!i<05!\$(%!0!105-!0#!0!49\$#: j!1+!*!
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S-##!*%#J-PGG 1 1 1E9(8E-, (%GRO(3%GV#8+#1GV#9340%+(\$?/#904?M#&8+, #-T!O\$:%*0!%*#!'+\$O!&#J (&#!
'(&!%*0!+#1!10-!J304+-*#:#!\$!_, % (O#&!LDC@E !!Y%-!0--#--<#%\$!('!'*#!M, (%%+ - *!'&O<#1 (&F!
O\$:%!+%-!, (\$,43-+(\$-!O\$:#&#, (< <#%\$:O%+(\$-!*08#!O##\$!, (\$-+:#&#:#!1+%*19�!+\$##&#-%!+\$!*#!
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SLDC@P!J09#!\aT6!O\$:%*#!OJJ&(O, *!(!#%+5!⑼%+(\$!SLDC@P!J09#-!\@?\gT!O\$:%!(!O, %+8+%5?
OO-#:#⑼%+(\$!SLDC@P!J09#-!>C?>LT!O&#!JO&#+, 34O&45!J#&+\$\$%\$E!

CCE! M##!V(O#&(\$!SLDC@TE!!

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⑼%+ (\$61%*#!J&(04#<!+-!%*0%!*#!-+!&#-#&8#: !0, %8%+#+#- !0&#!+#!'0, %!40&9#45!0\$!0, ,+: #\$('!
+-% (&5!(&1%#!&#-34!(!'J(4+%, 04!00&90+\$+\$9 E!!H*#&#!+-!\$(!< (: #&\$6!&+ -F?00-#:' (3\$: 0%+(\$' (&
1 *0%!+-!&#-#&8#: !(&!\$(%!&#-#&8#: E!!!

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J&(00%#!&#-#&80%+(\$-!e!0&#!+#!'0, %!+\$, &#: +045!\$0&&(16!0\$: !0JJ45!(\$45%(!%*#!*preparation of the
instrument!* ('!&0\$- '#&!(&!, *0&9#!('!J&(J#&5

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90J6!(&!+\$,�-#!%*#!&0\$-J0&#\$,5!(!, (\$-3<#&-!(!'%+#!+-%#\$,#!S'(&#!10<J4#6!05!&#Z3+&+\$9!044!
J&(8:#&-!e!1*##*#&!03%*(&+:#:(!&!\$(%e!%(!:#,40&#!%*+&!⑼%(&5!-%0%3-!0\$:%!*#!080+00+4+5!
(!0\$5!J&(%#,%+(\$!0\$:%!&#:#&#--!080+004#TE

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4.6 The independence of regulation and regulators

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03%!+%!(#-!\$(%!&#Z3+&#!%*#!-%&3,%3&046!'+\$0\$,+04!(&!<0%#&+04!-#J0&O%+(\$!'!%*#!&#-J#,%+8#10(:+#-!
,0&&5+\$9!%*#<!(3%E!!H*#!-#J0&O%+(\$!0\$:%!+\$:#J#\$:#\$,#!0#%1##\$!⑼%(&5!0\$:%!
&#J&#-#%O%+8#10,%+8+##-!+!'0&!&(<!,(<J4##6!0\$:%!*0-19+8#1&+#!%(!-(<#!%#\$-+(\$!0#%1##\$!
%*#<!S!J0&+,340&5!\$!(%+(\$!%*#!MVR!0\$:%!;M;6!0-\$(\$:#:%!05!%*#!"NR!SLDCUP!J0&09&0J* -!
]EC>U!0\$:%!]EC>aTE!!!

Y%!*0-!04-(!#:%!(!J#&,#J%+(\$-!'&(<!%*(-#!(3%-+:#!%*#!-5-#<!%*O%!*##&#!+!-!0%4#0-!0!J&(-J#,%!
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B*###!0!⑼%(&5!(O0#,%+8#!&#Z3+&#-!0\$!+\$:#J#\$:#\$!4#904!J&('#--+(\$!S(&6!0-!Y!<+9*#!J&#'#&6!
+\$:#J#\$:#\$!4#904!0:8+,#!0\$:%!&#J&#-#%O%+(\$T6!+\$:#J#\$:#\$,#!'&(<!9(8#&\$<#%\$!0\$:%!(%*#&!
&#J&#-#%O%+8#1+\$!&#&#-!+!-!#--#%+0!+!J304+,!,(\$'+:#\$,#!!%*#!0:<+%-&0%+(\$!'!03-+,#!0\$:%!+\$!
4#904!-#&8+,#-!+!%(!0#10,*#8#:#E!!!

H*+!-,0\$!0#!:(\$#!+!'!⑼%(&-!0&#!'&###!'&(<!J(4+%,04!+\$'43#\$,#6!0\$:%!'&(<!%*#!+\$'43#\$,##!('!
4015#&-6!4#904!-#&8+,#-!J&(8+:#&-!0\$:%!,(\$-3<#&-!S0\$:%!(!'!%*(-#!1*(!&#J&#-#%\$!%*(-#!
+\$##&#-#-T6!0\$:%!*#5!:(!\$(%c-#4!'!⑼%#!!+\$!%*#!-#-\$-#!%*O!044!(!'!%*(-#!1*(!-#&8#!(\$!%*#!
⑼%(&5!0(:+#-!0&#!<#<0#&-!(!'!%*#!⑼%#:#!,(<3\$%5E!

7\$:#&!%*#!,3&&#\$!⑼%(&5!'&O(!)&-4.6(0)12.5(\$0)-9.2(!)&-4.6(0)12.5(\$0)-9.2(!)&(*)-9.(\$

-300#,%!%(!\$#9(%+O%+(\$ 6!,*0\$9#!0\$:%!*#!J(--+O+4+5!(!(O-(4#-,#\$,#!0\$:%!,(\$%#-%004#!
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(%+(\$-*+J!0#%1##\$!%*#!!/O1!M(+,#%5!0\$:%!*#!MVR!!V%!,(\$,43:#:#!%*0%1%*#!/O1!M(+,#%5!-!
0&&0\$9#<#\$%-!'(&!(8#&-+9*%#!0\$:%!<(\$+%(&+\$9!(!'!%*#!MVR!:3&+\$9!%*#!J#&+(:!3\$:#&!+\$8#-%+90%+(\$!
1#&#!\$(!%J&(J(&%+(\$0%#!(&!%&0\$-JO&#%6!0\$:%!*0%!*#!MVR!10-!\$(%!&#-J(\$-+04#!SO-!+#!-* (34:!
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+\$:#J#\$:#\$,#E!!Y'!0!-<044##!0JJ&(8#:#!⑼%(&!<3-%!J05!'(&!+%-!(1\$!J&#<+-#-!0\$:%!
-3JJ(&%+\$9!&#-(3&,#-!S1+%*(3%!*#!0#\$\$'+%!(!'-(<#!(!'!%*#!#,(\$<+#!('!-,04#!(&('!-*0&+\$9!

23&#*#&6!%*#*#*#&#&\$!*+-%(&#-6!-+b#10\$:-, (J#('!'*#*#1,3&&#&\$!OJJ&(8#:#⑼%(&-!4#0:-!%(!(%+8#!:+-J0&+%5!('!OJJ&(0,*10\$:#&- (3&,+&96!0-!1#4!0-!'&09<#&\$%O%+(\$!0\$:#:3J4+,0%+(\$!('!'⑼%(&5!&#- (3&,#!0,&(-!%*#*#1(%O4+%5!('!'⑼%#:#!4#904!-#&8+,#-E!!H*+-!J(%#&\$%+0445!,�%#-!,(\$'3-+(\$!(&!,4+#&\$!10\$:#,(\$-3<#&-6!,(-%?+\$#*#*#1+,#\$,+#!-\$!*#*#1J&(8+-\$(\$!('!'⑼%+(\$!S1+*#*#1,(-!-!O(&\$#*#*#1+!'&#&\$%45!05!%*#*#1⑼%#:#,(<3\$+%5!0\$:#!34%+<0%#456!%*#*#1##?J05+\$9!,4+#&\$-TE!!!

H*#(%+(\$-*+J-('!'*#*#1OJJ&(8#:#⑼%(&-!0<(\$9!%*#*#1-#48#-6!0\$:#!1+*#*#1/M;6!*08#!04-(!-(<#%+<#-!O##\$!3\$,(<'(&%004#E!

H*#&#&#:#!'(&!0<34%+J4+,+%5!('!'&(\$%74+\$#⑼%(&-6!0\$:#!'(&!0\$!(8#&-+9*#⑼%(&6!1(34:!*#&#&'(&#!0#0&!+-%+&9!9+8#&\$!*#*#1J(%#&\$%+04!+\$,(\$-+-%#&\$,+#!-6!,\$'3-+(\$6!+\$#*#*#1+,#\$,+#!-!0\$:#,(-!-!&8(48#:#10\$:#!O!J#&,#J%+(\$!*0%!*#*#1,3&&#&\$!'&O<#1(&F!<+9*#&#O#!c(J!*#085!E!!!

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k(%!-3&J&+-\$9456!%*#&#&'(&#!SLDCUP!J0&09&0J*!]EC]LT6!iB#!,(\$-+:#&!%*0%!*⑼%(&5!+\$:#J#:\$:#\$,#!+!-!O!\$3\$:#0<#&\$%O4!J&+\$,+J4#!('!'*#*#1⑼%(&5!'&O<#1(&F!O\$:#,(\$-#Z3#&\$%45!%*0%!*O!+#!('!'⑼%(&5!+\$:#J#:\$:#\$,#!+!-!O!J&+(&+%5Ej!

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4.7 The perceived 'mission' of regulators

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,3-% (<#&-E!!Y%&#Z3&#-!O, #- -!% (!J (1#&'34! : #, +-(\$? <OF#&-6! (&!09#\$\$-!+\$!O!J (-+%(\$!) (!+'43#\$, #!
%*#<E!!

B+%* (3%!*+6!%&3-%!+\$!c%*#!-!-%#<W!0\$: !+%-!09#\$\$-!1+4!0#!Q# (J0&: +-# :E!!R, , (&: +\$9!% (!&#-#0&, *!
'& (<!*%#! /#904!M#&8+, #-!" \$-3<#&!^0\$#46!J304+, !%&3-%!+\$!4015#&-! : #, 4+\$#: !'& (<!>an!\$!LDC!
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%*0\$!%*#!@Dn!' (&! : (, % (&-T !03%1+\$%&+93+\$945!* (-#!, (\$-3<#&-!1* (!*0 :!3-# :!0!4#904!-#&8+, #-!
J& (8+ : #&1+\$!%*#!JO-%!1 (15#D&-!1#&#!<0&9+\$0445!4#--!+\$, 4+\$#: !% (!%&3-%!4015#&-!%*0\$!%* (-#!1* (!
*0 :!\$ (%E !!!

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-4+9*%45! (8#&1%*#!5#0&-6!03%!-%+44!-+%-!Q3-%!0#4 (1!]Dn!S0\$: !+!*+9*#&! (&!%* (-#!1* (!*08#10#%#&!
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03-+\$#-#-!SMN) -TE!!Y\$!-3!8#5-!' (&!%*#! /M ; ! (!'- (<#!CD6DDD!MN) - 6!00(3%!*04! (!'!*#<!
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H*+!1 (34:!'3&%*#&13\$: #&<+#!J304+, !0\$:!, 4+#\$!, (\$'+: #\$, #!:\$!*#!⑼% (&5!'&O<#1 (&F!' (&!
4#904!-#&8+, #-6!*#!&34#('!4016!*#!+5!('!O, ,#-!%(!03-%+, #6!0\$:!*#!0: <+%-&0%+(\$('!
03-%+, #E!

Y%!+-!090+\$-%!*+!-100, F9&(3\$:!*%0!*%#! " NR!, (\$, 43:#!-!SLDCUP!J09#-!>!0\$:!@6!0\$:!J0&09&0J* -!
\EL\@!0\$:!aECT!*%0!*%#!-#,% (&+!-!-%+44!\$(%!1 (&F+\$9!1#44!' (&!, (\$-3<#&- 0\$:!-<044!03-!\$#--#-6!
0\$:!*%0!*%#!, 3&&#\$\$!⑼% (&5!'&O<#1 (&F!+-!\$(%!-3-%0+\$004#1+!\$!*#!4 (\$9!&3\$!SLDCUP!J09#!C>6!
0\$:!J0&09&0J*!UE]TE!!!

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⑼%+(\$!J&+\$, +J4#-('!O, , (3\$%00+4+56!, (\$-+-#%\$, 56!J&(J (&#+ (\$04+56!%&0\$-J0&#\$, 56!0\$:!
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H*#!'0+43&#('!'*#!-#,% (&!(!1 (&F!1#44!' (&!<#<0#&-('!- (, +#%5!9(#-!%(!%*#!8#&5!*#0&%(!'*#!
J304+, !9((: (!!'*#!&34#('!401!0\$:!%(!1*#%*#&!, +#b#\$\$-!0&#!004#!%('!34'+4!*#+&#!#IJ#, %0%+(\$-('!
4#9+%+<0#!J0&#+, +J0%+(\$!+\$!- (, +#%5E!!H*+!+-!< (&#!%*0\$!0!c\$, #!%(!*08# P!O-!#IJ4 (&#:!

References

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[*%J-PGG 1 1 1E0<#&+, 0\\$00&E \(&9G, \(\\$%\\$%G : 0 < G000G+ < 09#-G \('!+, #mJ&#-+: #S%G!+\\$04m3\\$⑼%# : m4- Jm#\\$%+% +#-m+--3#-mJ0J#&EJ: '!!](#)

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[*%J-PGG&#-#0&, *E4#904-#&8+, #-0\(0&: E\(&9E3FG1J?, \(\\$%\\$%G<#: +062YkR/?M<04?; 3-+\\$#-?V#J \(&?2\); ? LDC@EJ: '!!](#)

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