**GUARDIAN TAX CONSULTANTS®**

MSO PLATFORM™ PRACTITIONER REFERENCE

# The Durable Law-Firm MSO

Operating substance, annual substantiation, and the architecture that holds up — whether the firm is held, financed, or eventually sold

> *The structure is designed in weeks or months. The economics are read for years.*

LAW-FIRM MSO OPERATING & ECONOMIC ARCHITECTURE — BUILT FOR DURABILITY, READ BY THREE REVIEWERS

**REFERENCE EDITION** · **AUGUST 2026 · VERSION 1.0** · FOUNDED 2011 · PROFESSIONAL-SERVICES OPERATING ARCHITECTURE

## THE GOVERNING THESIS

> A durable law-firm MSO is not built solely for a transaction; it is built to operate as a real business: performing identifiable nonlegal functions, using personnel and assets, bearing appropriate risks, maintaining defensible intercompany economics, and producing a contemporaneous record over time. That discipline serves the founder who never sells, the group using an MSO to raise capital and build infrastructure, and the owner who eventually enters a transaction. Guardian Tax Consultants® — founded in 2011, MSO-focused since 2018 — builds that operating and economic architecture and administers it before, during, and after any transaction.

That a transaction may never occur is not a caveat to this thesis; it is part of it. A law firm may establish and operate this platform indefinitely — held by its founders, grown, or used to fund an internal succession — without ever admitting outside capital or selling an interest in it. Where a transaction later occurs, it is one outcome the operating record can support; it is not the premise the platform depends on. Nor is that a hypothetical. Guardian has built and administered law-firm MSO platforms since 2022 — roughly ten as of this writing — formed by their attorney-owners without an investor in the structure or a transaction in view, and carried through the annual substantiation cycle this paper describes, most recently in 2026. The prevailing view that a law-firm MSO exists to serve a sale generalizes from the instances that transact. The operating base does not make the news; it makes the record.

This paper does not compete with transaction counsel on the legal work of forming a law-firm MSO. It addresses the layer that decides value over time: the operating substance and the contemporaneous economic record. Guardian builds that layer — sequencing the professional work, holding each sign-off gate, standing up the entity, and executing the nonlegal transition of people, benefits, contracts, systems, insurance, and intercompany agreements — and then administers it, while counsel owns the legal conclusions and drafts every instrument that carries one, independent economists own the fee study, and the client's CPA owns the returns. Section 31 states the work in full.

**Operating doctrine: one structure, one contemporaneous record, three later readers.**

This paper is written to explain the principles governing a durable law-firm MSO: the positions a structure takes that can be reviewed later, and the problems it may be able to help a firm address today. Those principles are grounded in experience: research and the building and administration of MSO structures across more than a dozen industries, including healthcare, professional services, engineering, financial services, construction, and specialty commerce, with the focus here on law firms, given the structure's relative newness to that industry. What follows is guidance at the level of principle. For detailed information on implementation processes, methods, control items, and procedures, contact Guardian directly.

This paper uses the later review as its lens, because scrutiny is what reveals whether a structure was properly built and administered, and it gives equal weight to the critical problems an MSO may be able to help a law firm address today, transaction or no transaction. The discipline itself begins before formation, continues through any transaction, and compounds afterward — a closing, if one ever comes, is a vantage point rather than the boundary of the work.

 

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PART ONE

# The Practice and the Business

SECTION 01

## Executive Summary

A law-firm MSO is, first and foremost, an operating structure. Most writing about it treats the structure as a transaction device: separating the licensed practice from the services company, satisfying Rule 5.4, papering the management services agreement, admitting a sponsor. That work is essential, and state laws and professional-responsibility rules have evolved and will continue to evolve over time.

Standing up the structure and the agreements is half the problem, and often the smaller half. Many firms standing up these structures are not in the process of a transaction and may never be. What moves them is the form itself: a traditional practice creates real wealth every year and few ways to carry it out at the end — and where built value cannot be captured, the incentive to build it goes with it. Section 02 states the diagnosis in full. They are building a firm for value and durability: genuine operating substance, a defensible tax posture, regulatory reviewability, and credibility with the lenders, investors, and counterparties who later read the record. What any platform can actually raise, borrow, build, or grant depends on its own facts and its own advisers. For these owners a transaction is a contingency, not a plan, and the structure still has to hold up.

It has to hold up because the structure may be designed in weeks to months, but it will be reviewed for years. The management fee is not a one-time structuring choice; it is an annual, examinable position under §482. And one property of that position answers, up front, the suspicion any reader should bring to a paper like this one: the fee discipline described here ordinarily confines the platform to an arm's-length return for the nonlegal functions, assets, and risks it actually owns and performs — a nonroutine return requires nonroutine substance of the platform's own — and the licensed practice's legal-services residual stays with the practice. That constraint materially reduces, though it does not by itself eliminate, the concern that the fee is a disguised participation in legal economics; the professional-responsibility analysis remains jurisdiction-specific, and Section 18 holds the fee to this standard method by method. The professional-independence architecture that satisfies a bar regulator at formation must still satisfy one after a legislature amends the rules. The §1202 posture that may support a future gain exclusion, if the statutory requirements are met, depends on facts that have to remain true across the holding period. None is a closing item. Each is a standing position, tested not by a counterparty at the table but by the three reviewers Section 05 identifies.

 

There is a commercial edge to this that owners tend to meet late. Durability is usually discussed as a compliance virtue, and it is one, but in a transaction it is a price. A structure assembled at the letter of intent has to argue that it is real, and an argument is what a buyer's counsel converts into disclosure obligations, a special indemnity, an escrow holdback, or some form of regulatory put — each of which is priced, and priced against the seller. A structure with years of executed agreements, invoices actually issued, and minutes written in the years they describe may not have to make these arguments at all: it is simply a fact of the financials and the operating history, sitting in the data room rather than argued into it. The same record that answers a regulator is the record that reduces what must be reconstructed, separately explained, or priced as uncertainty at closing.

The structure is decided by how it is formed and run, not by its diagram — one build, one record, and three reviews that will eventually open it. What follows maps those reviews, locates the management fee as the position most likely to be tested, and sets out the annual discipline that keeps the deduction, the tax posture, and platform value supported by a contemporaneous record when each is later examined. Both the build and the record are Guardian's work — the build executed with each professional's sign-off in hand before a function moves, the record kept every year after — and Section 31 states each as work rather than principle.

SECTION 02

## What the Traditional Practice Structure Cannot Do

Most substantial law firms are real businesses organized under rules written for something else. Those rules exist to protect clients and preserve professional independence, not to build, finance, or transfer a business. The revenue is durable, the margins are real, the client relationships persist for decades. The traditional form — a partnership or professional entity owned entirely by its licensed practitioners, distributing substantially all of its income each year — was designed to preserve professional independence, and it does that well. What it was never designed to do is what every comparable operating business does as a matter of course: admit outside capital, build transferable enterprise value, grant ownership to the operators who build it, and invest across more than one budget cycle. Four constraints account for most of the difference. Their severity varies with jurisdiction, entity form, governing documents, and the firm's own facts. Their direction does not.

Outside capital is structurally constrained. One of these constraints is absolute, and it is the one everything else follows from: under Rule 5.4 and its state analogues — everywhere but the handful of carve-out jurisdictions Section 12 describes — a nonlawyer cannot own an interest in the practice. That is a rule, not a market condition, and it closes the instruments every other mid-sized operating company uses routinely, including outside equity and most of the hybrid structures built on it, because there is no entity for the investment to attach to. What remains is narrower than it first appears. Bank debt is available, ordinarily against the partners' personal guarantees, on terms that tend to tighten in exactly the years the firm most needs them. A partner's interest in the practice makes poor collateral: transfer restrictions, professional rules, and the personal character of the underlying goodwill leave a secured lender with limited practical remedies, and lenders price what they cannot reach. The consequence is a fragility disproportionate to the underlying economics — a firm with recoverable fundamentals can be broken by a liquidity event that a comparably profitable business in any other industry would have financed its way through.

The ownership is hard to realize outside the firm. A partnership interest can hold substantial value to its holder — a share of strong current earnings is not nothing. What it lacks is value that travels. Professional rules, client choice, personal goodwill, and the governing documents together constrain what an interest can be sold for, borrowed against, or passed on, and a typical buy-in is more accurately described as a claim on future draws than as the purchase of an appreciating asset. This is why succession at substantial firms fails as often as it does: the founders hold something the next generation will not rationally pay much for, and a practice built over thirty years too often resolves into an income that simply stops. The traditional form creates real wealth on an annual basis. That wealth is not easily transferred when a partner is ready to leave. That absence shapes behavior as much as outcome: with no way to later convert built-up value into something transferable, taking it out annually is the rational response, and investing in value the interest can never capture is not. The traditional form does not merely fail to produce a transferable asset — it removes much of the incentive to build one in the first place.

The retention tools other industries rely on are generally unavailable. Two more of the absolutes live here. The professionals who make an operating business excellent — the chief financial officer, the operator, the technologist — cannot hold equity in a law practice outside those same carve-outs, so a firm competes for that talent against companies that can offer ownership, without being able to. And covenants restricting a departing lawyer's right to practice are barred by Model Rule 5.6(a) and its state analogues, outside the rule's retirement-benefit exception and state variations, so the firm cannot bind its producers the way any other business would, and a departing partner leaves with whichever clients choose to follow. Firms respond with the tools that remain: bonuses, deferred compensation, non-equity tiers, phantom arrangements. These are real, but they are narrower than ownership, and the most common of them retains people chiefly by making departure forfeit compensation already earned. A form that cannot offer its operators equity, cannot bind its producers, and holds its people mainly through deferred forfeiture can leak value at every transition, and the leak is structural rather than managerial.

Multi-year investment competes with current distribution, and the tax treatment sharpens the conflict. A partnership can retain cash, borrow, and invest; nothing prohibits it. But partners are taxed on their distributive shares whether or not the cash is distributed, so every dollar retained for a multi-year commitment such as technology, acquisitions, or infrastructure is a dollar the partners have paid tax on and not received, and the decision to keep retaining it is re-argued every year among owners on different timelines. Deferral of a partner's distributive share is not among the available tools. The tax point belongs last in this list because it is a consequence of the form rather than the reason to leave it, but its effect is real: the traditional structure makes patient capital expensive at exactly the moment the profession's economics increasingly reward it.

 

**A DIAGNOSIS TO TEST, NOT A CONCLUSION TO ASSUME**

Each constraint above is stated at the strength the authority supports and no further: the ownership restriction is a rule and, outside the carve-outs of Section 12, absolute, and the covenant restriction a rule with only the narrow exception noted; the capital, valuation, and investment consequences are severe but fact-dependent, and a given firm may have engineered partial answers to any of them. A management services organization may address each structurally — capital admitted to an entity that is not the practice, equity in a genuine operating company, ownership for the operators who want it, a balance sheet for multi-year commitments — while the practice itself remains owned and controlled by licensed professionals. Whether it does, in any actual case, depends on the professional rules of Part Two and the operating substance of Part Three being satisfied in fact.

These constraints are hypotheses to test, not conclusions presumed for every firm. Feasibility begins with the non-tax operating objective the firm is actually trying to solve, and with the functions, personnel, assets, contracts, and risks that would genuinely move to a separate company. Only after that operating case is supportable should the tax, ownership, financing, estate, and transaction consequences be modeled. A structure sized to a desired tax result rather than to the business actually conducted is outside the durability framework described here. Section 09 sets out the conditions under which the correct answer is no.

Everything that follows takes these constraints as given and asks the harder question: what makes the structure that answers them hold up — under the profession's rules, under the tax law, and under the eventual scrutiny of whoever reads the record years from now. Section 03 begins with who builds one, and Section 04 with the problems they are solving, before any reviewer enters the room.

SECTION 03

## Three Owner Pathways, One Operating Discipline

A law-firm MSO's value is decided not by the diagram but by correct formation carried into an extensive, contemporaneous operating history: services actually rendered and invoiced, a management fee set and supported under a defensible §482 method, coordinated financial reporting across the entities, entity filings kept current, and a live economic file that grows month over month.

That discipline serves three different owners. These are not three service models. They are three applications of the same operating discipline, and what changes between them is timing, and whether a buyer's diligence ever joins the list of readers.

### Pathway One — durability without a transaction

The founder wants a legitimate, well-governed operating platform that will function over the long term. The value is operating separation that holds, a management fee that reflects real work and can be supported, governance discipline a lender or regulator reads without alarm, tax substantiation that still holds when it is re-examined years after it was written, support for accumulating capital inside the platform, and reduced dependence on a future sale as the thing that finally justifies the structure. Nothing here depends on a transaction, and nothing here asks this owner to contemplate one. In Guardian's experience this is the largest group, and it is the least written-for.

 

### Pathway Two — capital and growth without an immediate transaction

The group wants to use the platform for what it makes possible: outside capital, debt financing, investment in technology and artificial intelligence at a scale a partnership is poorly built to fund out of current earnings, acquisitions, infrastructure, expansion, and talent retention through equity-like participation in the services entity. The value is institutional operating capacity, a platform an investor or lender can actually read, defensible intercompany economics, and optionality that does not force an exit to realize. Also in view is the tax treatment that follows from the entity form the operating facts select for a properly documented services company, as against a pass-through professional practice. The form matters because a law practice's owners are typically specified-service-limited under §199A. Above the thresholds, that deduction is already gone for many of them, so the question a corporate services entity opens is one the practice itself cannot reach: a fact-specific question turning on the §1202(e)(3) excluded-business test, its enumerated fields and the "reputation or skill" limit, together with the separate §1202(e)(1) 80% active-asset requirement, and not the §199A SSTB definition. Section 04 introduces the entity variants that keep that analysis grounded. The question belongs to the client's CPA and counsel, and it is a question rather than a promised result.

### Pathway Three — transaction execution and post-transaction durability

The group is approaching a process, in one, or operating after one. The value is operating-history presentation, quality-of-earnings readiness, the contemporaneous transfer-pricing file a buyer's team will open, diligence consistency across advisors, rollover and recapitalization readiness, and continued administration after closing, because the platform still has to run once the deal is done. Section 07 takes up the mechanics of reaching the table without repricing at the letter of intent.

Guardian can enter at any of the three, though the strongest record is the one built from the beginning. The through-line matters more than the segmentation: a structure kept reviewable while the founder owns it is better positioned for financing, investment, recapitalization, or a sale if any of those later arise, subject always to deal-specific factors outside this discipline. No transaction thesis is required to begin. The work builds the operating record that preserves the owner's options.

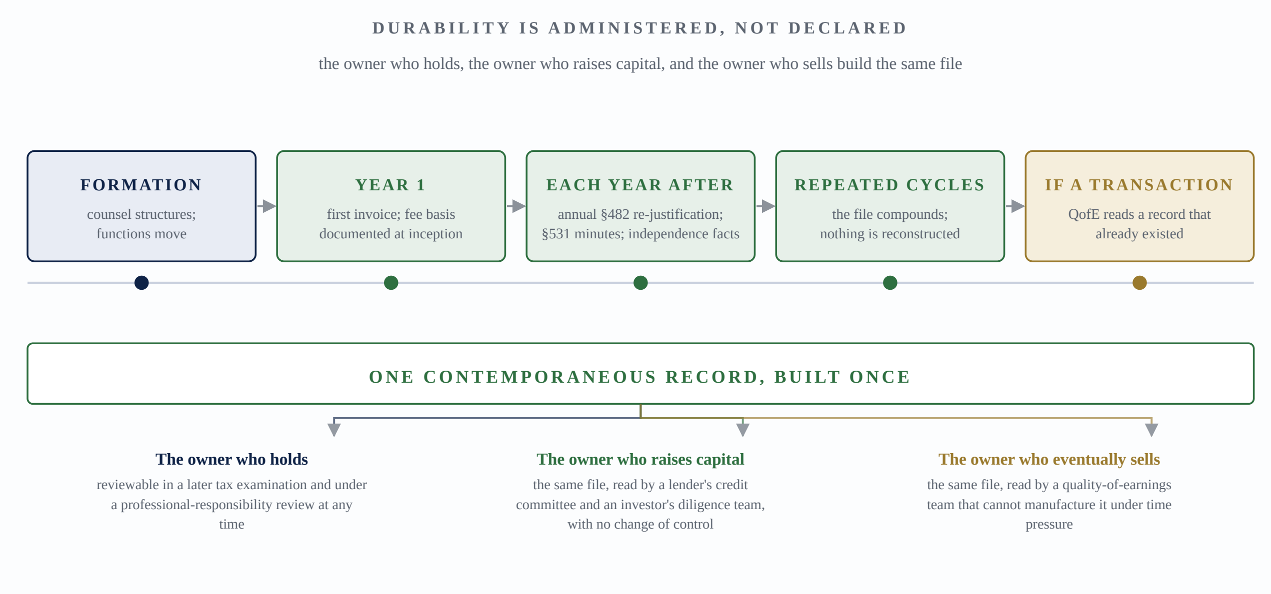


**Figure 1.** The durability lifecycle. The record is built once, on a cadence, and read differently depending on which owner is holding it.

SECTION 04

# The Problems This Structure Exists to Solve

Section 02 stated the constraints as structure. Here is how they present in actual firms, in business terms, in one place, because the technical sections that follow scatter them across §482, §531, Rule 5.4, and a dozen other authorities. These problems do not require a transaction to matter, and most of them are already costing something this year.

## The debt is personal

Credit reaches the firm mostly through the partners' own guarantees: being a "true partner" too often means personally underwriting the line of credit. A practice interest is difficult to pledge, so a stake in the firm cannot do the ordinary work ownership does everywhere else, which is to secure capital. An interest in a genuine operating company is different in kind: an asset a lender or investor can underwrite, reachable by capital the practice itself is not permitted to accept — equity, mezzanine, convertible, family-office — and by conventional credit underwritten against the platform's own balance sheet rather than the partners' guarantees.

## The income stops

Section 02 ended at the diagnosis: wealth created annually, but not easily transferred when a partner leaves. A platform changes that arithmetic in both directions: it is the part of the enterprise that can hold transferable value, and where it retains capital deliberately, that capital can fund the transition itself, an internal succession purchased over time from the platform's own balance sheet rather than waiting on an outside buyer who may never come. The deeper change is to the incentive: once part of the enterprise can hold value an owner may someday capture, building that value stops being irrational, and the platform restores the reason to build alongside the means — an option for the owners who want it, not an obligation for the ones who do not. Each year the question goes unaddressed, the set of workable successors and the time left to fund a transition both shrink.

### The contingency practice runs hot and cold

For contingency and personal-injury practices every problem above arrives amplified. Settlements land in lumps while case costs, staffing, and client acquisition run continuously, and in the strong years the income lands at the owners' top pass-through rate just as the next docket has to be funded. The gap is often bridged with litigation finance at a cost no ordinary operating business would accept for working capital. A genuinely capitalized platform steadies that cycle: the nonlegal operating functions are funded from the platform's balance sheet on the platform's cadence rather than the settlement calendar. What narrows is the need to finance overhead at litigation-finance pricing — a claim read no more broadly than that, because case costs and client advances are a different category of spending, one the platform's capital does not touch. The fee itself is unchanged by any of this: it follows the services, at what they are worth, and the smoothing is a consequence of a real platform rather than a purpose that sizes anything. Where the fee falls due on the platform's cadence and the practice's receipts arrive on the settlement calendar, the difference is intercompany credit — documented, interest-bearing at an arm's-length rate under Treas. Reg. §1.482-2(a), and serviced as debt — and once a nonlawyer investor holds platform interests, a platform receivable from the practice is an economic link counsel tests under Rule 5.4(c) and (d) like any other. The platform's capital is built from its own earned service revenue, funds its own operations, and stops there: it is not a case-cost fund, does not advance litigation expenses or client costs, and does not stand in for a litigation funder. A lawyer's advancing of litigation expenses remains governed by Rule 1.8(e), and third-party litigation funding by the state disclosure and funding statutes that regulate it — a body of law this structure neither engages nor alters.

### The operators cannot own, and the producers can leave

The retention constraints of Section 02 read differently when the firm is actually trying to hire a chief operating officer away from a company that can offer real ownership. The practice cannot; the covenants that would hold producers are generally barred, Rule 5.6's retirement-benefit exception aside; and a form that holds its people mainly by making departure expensive can leak value at every transition. What the platform adds is the missing instrument: genuine equity in the services company for the people who build it, rather than one more forfeiture schedule.

### Retained dollars are taxed, then re-argued

Partners pay tax on their shares whether or not the cash moves, so a multi-year technology or acquisition budget is re-voted every year by owners on different timelines. The larger the investment the profession's economics now demand — technology, laterals, infrastructure — the less likely that budget is to survive an annual vote among owners who bear its cost personally.

### Retained capital and funded compensation are hard to institutionalize

Traditional firms do use bonuses, nonqualified deferral, and phantom arrangements; the tools exist. What the form cannot change is that partners are taxed currently on their distributive shares whether or not cash moves, and a partnership that distributes substantially everything offers no corporate-level asset, liability, and funding architecture to stand behind a long-term obligation. Institutionalizing either — accumulated operating capital, or executive compensation with real assets behind it — takes an entity actually built to hold them, and any corporation funding compensation can do so only for people genuinely providing services to it, under arrangements that stand on their own legal footing. Where the platform includes a C-corporation, earnings from services actually rendered are taxed at the corporate rate, and capital retained for documented business needs accumulates at that rate rather than at the owners' top pass-through rate, a consequence of entity form that Section 20's discipline governs, and never the principle by which any fee is set. A professional corporation can retain earnings at the corporate rate on its own, but it accumulates them inside the one entity a nonlawyer can never own, against the reduced §535(c)(2)(B) credit for a corporation whose principal function is legal services, and with every other constraint in Section 02 untouched; retention alone was never the reason to build a platform.

## Three owners, one reason to build

These problems land differently on the three owners Section 03 named, and each has a reason to build that owes nothing to capitalization. The founder who never intends to transact is solving succession, capital accumulation, and governance, building a platform that outlives the practice's dependence on any one person. The group that intends to grow, and may one day transact, is solving investment capacity, operator equity, and retention, while building the operating history that keeps every later option open. The group transacting now is solving diligence: converting what would otherwise be argued at the table into what is simply read there. Only one of the three involves a transaction. That is why this chapter sits before the reviewers rather than after them: the reviews test whether the structure held, but the problems above are why it exists.

Nor does any of it depend on where the capital comes from. The same structural separation is now being reached for by venture-funded legal-technology companies standing up licensed practices alongside their platforms, by AI-native firms pairing a technology company with a law firm, by traditional private-equity roll-ups, and by firms raising no outside capital at all. An MSO is a structural tool, not a deal type, and every version of it faces the same test on the same timeline, regardless of why it was built.

## Different problems select different shapes

Because the problems differ, there is not one supportable structure for a business enterprise, and a paper that showed only one diagram would be quietly making a recommendation it has no basis to make. Three illustrative shapes recur, shown in Figure 2.

In the first, the management company is a single pass-through LLC, the simplest platform, where the §199A analysis of Section 23 does its work and capital accumulates only after tax at the owners.

In the second, the pass-through platform is joined by a companion C-corporation engaged under its own services agreement for defined functions — executive management, finance and treasury, and, where an actual guarantee is given and priced as one, credit support — each compensable only on the benefit test Section 18 applies, with shareholder-level stewardship and the owners' own investment management excluded from the fee by that same test, and with no cross-ownership between the two. The corporation retains capital at the corporate rate and finances deferred compensation; its charge is a separate controlled transaction with its own benefit-test discipline (Section 18). In the pattern illustrated here it sits outside any later transaction perimeter, wholly owner-held, while the pass-through side is what an investor acquires into: a consequence Section 08 walks through and Sections 22 and 29 inherit.

In the third, the management company is itself a C-corporation, holding the operations, systems, and company-owned intellectual property inside it, the shape where the §1202 analysis of Section 21 attaches, alongside the accumulated-capital discipline of Section 20.

The paper recommends none of the three, and treats none as exclusive: the operating facts, and the client's counsel and CPA, select the entity. The entity is never selected to manufacture a result. From this point forward, wherever an analysis depends on the entity's shape, the paper names the variant it attaches to.

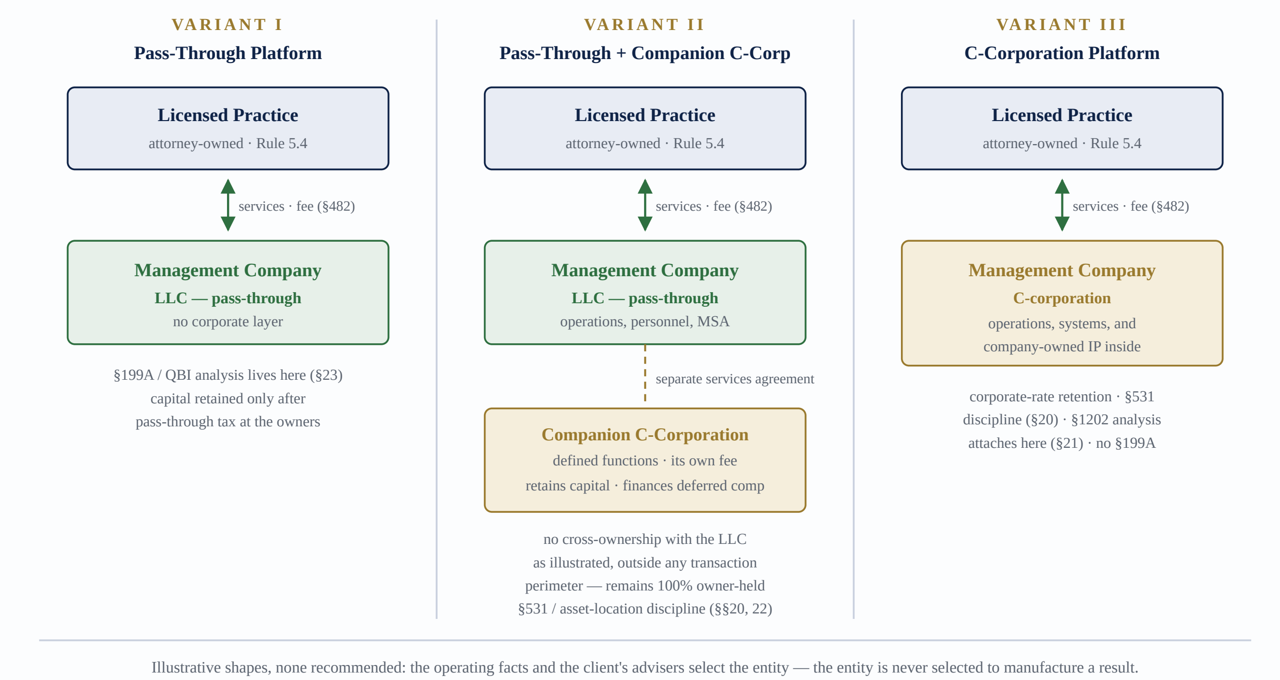


**Figure 2.** The three illustrative platform shapes of Section 04. The §199A analysis runs to Variant I; accumulated-capital and asset-location discipline to Variant II's companion corporation, which sits outside any later transaction perimeter; the §1202 analysis to Variant III, where the operating business and company-owned IP sit inside the corporation. The operating facts, with counsel and the CPA, select the entity.

 

**CASE ILLUSTRATION — A SETTLEMENT-DRIVEN PRACTICE AND A CORPORATE PLATFORM (ILLUSTRATIVE COMPOSITE; NOT A NAMED CLIENT OR A COMPLETED TRANSACTION)**

A litigation and consulting practice with net income swinging between roughly $2 million and $5 million on settlement timing was living four of this section's problems at once: liquidity pressure in the lean years against costs that ran continuously, with the strong years landing at top personal rates just as the next docket had to be funded; the principal's building leased to the firm with property and practice interests commingled; no succession or estate framework in a practice dependent on one principal; and no retention structure for the attorneys most likely to leave. What was built was a corporate management platform in Variant III's shape — performing nonlegal management functions, owning none of the practice, sharing in no legal fees, directing no legal judgment — with the management fee set on a method and benchmarked under §482 on contemporaneous functional analysis in every year, high-settlement and lean alike, the file maintained for the CPA of record. The retained capital — built from the platform's own earned service revenue — then did the work the partnership form could not: vesting retirement benefits for the attorneys at highest attrition risk who also held documented management roles at the platform — each covered person's service relationship to the funding entity established in fact, and documented, before any benefit accrued, per the constraint stated above — key-person coverage on the principal, a documented settlement-cycle liquidity reserve in place of exposed retained earnings, intercompany credit documented and serviced as genuine debt — working-capital credit between the entities, never case-cost or client-advance funding, per the boundary stated above — and a funded buy-sell prepared with counsel.

The illustration belongs in this section because every element the capital funded answers a problem stated above, in the sequence a real engagement would document it — the business purposes came first, on the record, in the year they were adopted. The rate arithmetic followed from the form rather than driving it: roughly twenty points of spread between top personal rates — the top bracket plus the uncapped Medicare layer on active pass-through earnings — and the 21% corporate rate produced a meaningful federal deferral in the illustrated year on earnings retained after reasonable compensation to those performing the services, and deferral is not elimination. Distributions bear shareholder-level tax, state taxes widen or narrow the spread, and any real engagement's results would be specific to its own facts, documentation, and implementation. The result shown is neither typical nor promised; it is illustrative of a pattern, not a report of an actual case.

### The rarest thing in the structure

Every problem above ultimately requires several professionals at once. Counsel sees the formation and the rules; the economist sees the fee; the CPA sees the return; the wealth advisor sees the balance sheet; the lender sees the covenants. Each is right about the piece in view, but none of them is engaged to keep the pieces consistent as the facts change — and the facts change every year. The rare thing is not any one of these professionals. It is all of them working from the same facts, aligned on the client's risks and the client's outcomes, year after year. That alignment is a function someone has to perform, not a courtesy that happens on its own, and Section 10 describes where the work sits. First, the readers: the three reviewers of Section 05, who will eventually open whatever record this discipline did, or did not, produce.

 

SECTION 05

## The Three Continuing Reviews

Durability asks whether a structure will still read correctly when someone reopens it. Three reviewers do that reopening, none of them rendering a verdict on the day the structure is formed: a professional-responsibility regulator, asking whether the arrangement still honors the profession's limits on nonlawyer ownership and fee-splitting; a taxing authority, asking whether the management fee, the accumulation of capital, and any claimed gain exclusion reflect economic substance; and a future buyer, lender, or recapitalization committee, asking whether the platform owns real value and whether the intercompany economics have been administered consistently enough to underwrite.

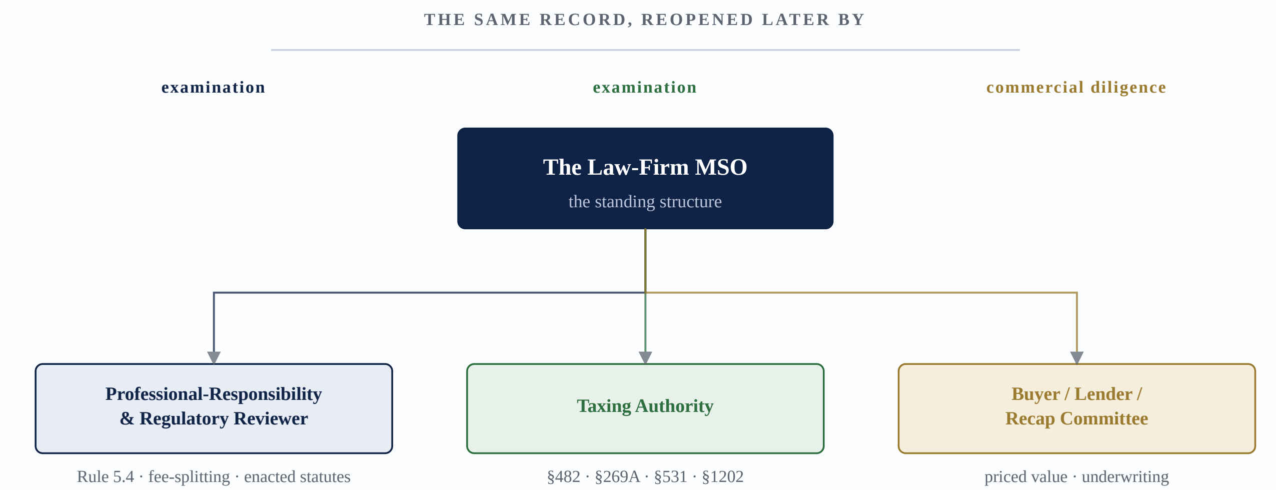


**Figure 3.** Three reviewers reopen the same record — two examinations and one commercial diligence. The third arrives only if the owner chooses a transaction; the first two can arrive whether or not the owner chooses anything.

 

**THE REVIEWER WHOSE VERDICT IS PRICED**

The first two reviews are examinations: they test whether a position holds. The third is commercial, and it does something different — it prices what it finds. Weak intercompany economics do not merely create tax exposure. They are read as a quality-of-earnings problem, and they are settled in the currency of the transaction: a lower multiple, a larger escrow, an indemnity holdback, a delayed close.

That is the part owners most often miss, and it is why durability is an enterprise-value discipline rather than a compliance one. A structure kept reviewable for a regulator and a taxing authority is, in the ordinary case, one whose economics a buyer is better positioned to underwrite. The owner who never sells is protected by the same record. The owner who eventually does is better positioned to defend the economics already reflected in it.

The converse carries the real cost: a record assembled in the weeks before a process cannot be made contemporaneous after the fact, and whatever uncertainty its absence creates is priced at the least convenient moment, on the buyer's calendar. For any given year, the evidence either was created as that year ran or it was not; Section 30 sets out what can be repaired afterward and what cannot.

There is a fourth reader, in a different category from the three above. The regulator, the taxing authority, and the buyer each open the record once and decide something: permissibility, a deduction, a price. The owner's continuing adviser team, including counsel, the CPA, the economist, and the benefits and estate advisers, renders no external verdict on the structure. Each of those professionals decides real questions within a separate lane; what none of them is engaged to do is read the whole. The fourth function is administrative: reading the record across the lanes every year, noticing while the facts are still fresh that the documents, the economics, the books, the governance, the filings, and the estate plan still describe the same business, and routing each discrepancy to the professional responsible for resolving it. That is administration of alignment — never custody of privileged communications, client files, or professional judgment, which stay where the rules put them. Three verdicts, one administrator. The three reviewers test whether the record held; the administrator is why it does. A structure whose advisers each see their own slice annually, with no one reading the whole, has three verdicts coming and no administrator at all.

SECTION 06

## What This Means for Counsel, for Owners, and for Buyers

The same record reads differently depending on who holds it.

### For counsel

Nothing here opines on how a law-firm MSO is formed or whether a structure satisfies Rule 5.4; those conclusions are yours. What it offers is the economic and evidentiary layer that holds after you sign off: a management fee supported under §482 rather than asserted, an independence record that stays true after a legislature amends the rules, and a contemporaneous file that answers a regulator's later questions without reopening your formation work.

### For owners

The structure is only as durable as the record behind it, transaction or not. A fee that cannot be supported, minutes that contradict the fee study, a §1202 posture that no longer matches the facts: each is a position tested at a moment the owner does not choose. That record keeps the structure reviewable year after year, on the owner's timeline rather than a buyer's. You need not decide which owner you are in order to build it correctly.

### For buyers and lenders

The difference between a platform whose intercompany economics were administered consistently from its first year and one assembled in the weeks before a sale is visible in the data room. Section 05 already showed how that difference gets priced. What follows describes what a well-built law-firm MSO should be able to show — and what its absence should tell you.

SECTION 07

## Before the Process: Operating History and Transfer Pricing

The record built for durability is the record that performs in diligence. Nothing here asks an owner to plan a sale.

The economics do not begin at closing; they begin long before the letter of intent. A services company created in the weeks around a transaction has no operating history, no contemporaneous transfer-pricing record, and no demonstrated substance. A quality-of-earnings team reads the absence immediately. A management fee that first appears on the eve of a sale can contribute to a record resembling the concerns the Eighth Circuit described in Aspro — especially where actual services, documentation, and economic rationale are also thin — and a platform assembled at the table may invite repricing, additional escrow or indemnity protection, a delayed closing, or, in the bluntest terms deal teams use, simply die at the letter of intent.

The durable alternative is what owners one and two run: stand the platform up as a real operating business, move the nonlegal functions, staff the services company, run its systems, document the management fee under a defensible §482 method. How much history is enough has no legal answer, and none is invented here: no authority establishes a safe harbor at four months, a year, or any other line, and a number asserted here would be the least defensible sentence in the document. What exists instead is an evidentiary continuum, and each point on it is read differently. A structure formed at or after the letter of intent offers documents and forecasts, and is read as a new diligence item carrying its own purpose questions. Several operating cycles produce actual invoices, payroll, books, and early governance: commencement of real operations, with limited history. One full year produces evidence of a different kind rather than more of the same kind: annual statements, a filed return, a fee refresh, a board record, and reconciliations — a complete cycle that can be compared against the formation thesis. Multiple years produce what nothing shorter can: trend evidence, a method selected and re-selected as facts changed, and a capital plan with a track record, a record that visibly was not manufactured under transaction pressure. The weight any reviewer gives each point remains fact-specific: an adverse or inconsistent history can weigh worse than a short clean one. What holds is narrower and sufficient: assuming consistent and supportable operation, each completed cycle gives a reviewer more probative historical evidence than formation documents alone.

By the time a process arrives, the platform built this way has an operating history, an invoiced and benchmarked fee, and a contemporaneous file. The economics arrive as an existing, documented operating history rather than as a position first assembled for diligence. Diligence does not begin when the buyer opens the data room. It begins when the seller creates the first fact the buyer will later test.

 

The owner who builds for durability and never transacts does not depend on a sale to justify the structure's operating value; the owner who later transacts arrives with something that cannot be manufactured under time pressure. The reverse does not hold: a platform assembled for a process has no durability to fall back on if the process stalls.

The discipline that keeps a structure reviewable under examination is what lets it read cleanly in diligence at the LOI. Before, during, and after, the economics are the work Guardian does.

SECTION 08

## What a Transaction Actually Transfers — and What It Does Not

Everything to this point has described reaching the table with a record that reads. This section describes the table itself. Owners contemplating a first transaction generally know the licensed practice is not what is sold; what is less familiar, because few owners have been through one of these, is what the transaction actually looks like — what is bought, what is rolled, what stays outside the perimeter, and what ends at closing. In the nonlawyer-capital architecture illustrated here, the investor acquires permitted interests in the nonlegal services platform, while ownership and control of the practice remain where the professional rules require. (A sale of a practice to another lawyer or firm under Model Rule 1.17, or a transaction inside a permissive ABS regime, is a different animal governed by its own rules.) Rule 5.4 does not merely constrain this transaction; it draws its perimeter, and a structure built correctly makes that boundary legible in the documents rather than asserted in a side letter.

### The anatomy, in the illustrated pattern

Figure 4 shows the shape illustrated throughout this paper for a transaction in this framework: the Variant II pattern of Section 04. The investor purchases interests in a holding entity, commonly a partnership, that owns one hundred percent of the management company. The founding owners do not simply cash out: they roll a portion of their equity into the same holding entity, taking a retained stake on the same capitalization table as the investor, with the rollover ordinarily structured under whichever nonrecognition provision counsel selects on the facts. What the investor's capital actually buys is interests in the services business: its executed agreements, systems, workforce, company-owned intellectual property, and above all its operating history. What that capital prices is the record.

### What stays outside the perimeter, and what ends there

In this pattern the companion C-corporation is not part of the purchase. It remains wholly owner-held, and whatever capital it has accumulated stays exactly where it is, because nobody bought it. But one thing a third-party purchase tends not to leave intact: the corporation's services agreement with the platform. The reason is the buyer's own arithmetic, not any defect in the structure. The investor is underwriting the management company's earnings, and a related-party fee flowing out of those earnings to the sellers' retained corporation is leakage from the very stream being priced, so that agreement is commonly terminated, or re-scoped to whatever the buyer actually wants to keep, in connection with the closing. Deal terms vary; the leakage question does not — what survives is whatever portion of the agreement the buyer concludes it is actually paying for. What the owners keep is a capitalized corporation, not a fee stream, and the consequence arrives immediately: the day its service-fee income stops, the personal-holding-company analysis of Section 22 stops being theoretical. The corporation may take on genuine new engagements outside the transaction perimeter — real services, to the owners' other interests or to the buyer itself, under a new agreement — which may restore income that is not personal holding company income and materially change the income ratio, subject to §543(a)(7)'s personal-service-contract rule and annual testing; otherwise the capital is governed by the annual discipline Sections 22 and 29 describe, starting the day after closing rather than eventually. The pressure to terminate is a feature of the third-party purchase specifically: in an internal transition, with no outside investor underwriting the earnings, the agreement can continue on its own facts.

And the licensed practice does not change hands at all: attorney-owned before closing and attorney-owned after, holding the clients, the engagement letters, the legal fees, and the trust accounts throughout. The day after closing, the practice's ownership page reads as it did the day before. What changed is the capitalization table of the holding entity, not the ownership of the practice.

### The same anatomy, by variant

In Variant I the transaction runs in the management LLC's own interests, or in a holding entity formed above them, and the analysis is otherwise unchanged. In Variant III the transaction is a purchase of the corporation's stock, and that is the moment the §1202 analysis of Section 21 is finally tested, on the facts as they accumulated across the holding period rather than as they are described at signing. Variant II divides the field the way this section has described: the pass-through side transacts; the corporation does not.

 

**CASE ILLUSTRATION: SEVEN PARTNERS, A SERVICES PLATFORM, AND A MINORITY INVESTOR (ILLUSTRATIVE COMPOSITE; NOT A NAMED CLIENT OR A COMPLETED TRANSACTION)**

A single-state plaintiffs-side practice, roughly forty-five lawyers, ninety nonlegal staff, and seven equity partners on three different clocks: two near retirement, two originating substantial new matters, three mid-career. No funded retirement obligation, no market for a departing partner's interest, and marketing, intake, technology, finance, HR, and facilities all running inside the firm. The partners built the platform first: formed the services company themselves, moved substantially all nonlegal assets and personnel into it, and set a fixed monthly fee reviewed annually on independent economic analysis — never a percentage of legal revenue. It operated for a full year before an investor was in the room. The investor then took thirty percent of the platform; the partners kept seventy; the firm stayed entirely lawyer-owned. Consideration matched the clocks — the retiring partners took mostly cash with a rollover slice, the originators roughly half and half, the mid-career partners mostly rollover — and governance was a platform board of five: three partner seats, one investor seat, one independent director agreed by both, with the investor holding no seat and no information right at the law firm.

The operating history that preceded the investor is the point. The platform ran on its own before a buyer existed. Documentation deferred until after buyer involvement, or history established retroactively, is the failure mode Section 07 describes. The governance shown is a sketch, not a term sheet, and a live term sheet for a thirty-percent minority check carries considerably more than a board seat, every element of it operating at the platform level and none of it reaching the law firm: a negotiated information-rights schedule (recurring, non-privileged financial reporting on the metrics that drive the platform's fee base); protective consent rights over major platform decisions — new debt, new equity, related-party agreements, annual budgets, executive hires; transfer mechanics on the partners' interests (rights of first refusal, tag-along, and often drag-along); and some defined path to liquidity. Each of those rights runs to the platform's own contracts, capital, and budget; none reaches the practice's freedom to terminate or renegotiate the services agreement, and each is tested by counsel against the control line before it is granted. The professional-responsibility line constrains what those rights may reach, not whether an investor is informed or protected, and an illustration that omitted them would be underselling what a real minority investor negotiates. Illustrative and anonymized: the figures are proportions and structural quantities, not prices, and no valuation, multiple, or fee level should be inferred from them.

### What closing does not change

The master services agreement between the practice and the management company continues — commonly amended and restated in the buyer's form at closing, so that what survives is the arrangement and its economics rather than necessarily the original paper: the buyer underwrote the nonlegal services business itself, its agreements, workforce, systems, IP, operating history, and supportable economics, and that agreement is the spine of what was underwritten. The management fee remains an annual, examinable §482 position; closing is not a discharge. The governance cadence, the invoicing, the substantiation file all continue, because the reviewers of Section 05 do not retire when the capitalization table changes. And the same anatomy serves a transition as well as a transaction: the holding entity's capitalization table is equally the mechanism by which a next generation is admitted, or an internal succession is funded from the platform's own balance sheet, with no outside investor in the structure at all. Section 15 describes what buy-side diligence reads on the way in; Section 29 describes what the structure does after the money moves. Neither works without the years of record that came first — which is the argument of the entire paper.

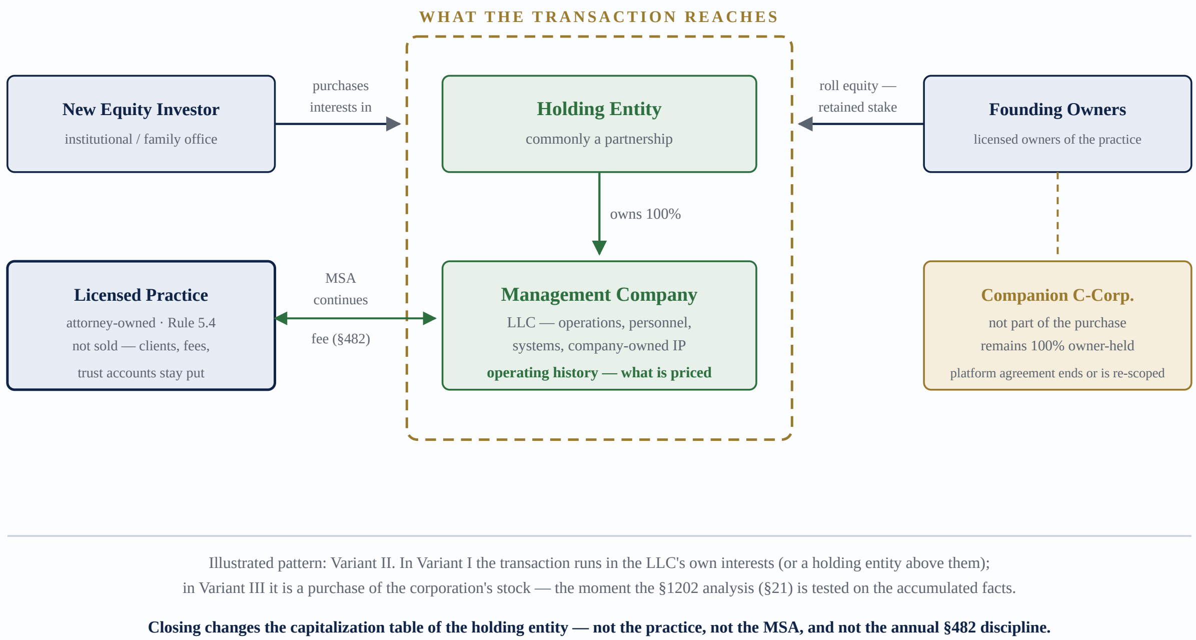


**Figure 4.** What a transaction actually transfers. The investor buys interests in the holding entity over the management company; the owners roll equity and keep a stake; the companion corporation and the licensed practice sit outside the purchase entirely. The practice is not part of the sale. The companion corporation's platform agreement commonly terminates, or is re-scoped, in connection with closing — Sections 22 and 29 take over from there.

SECTION 09

## When the Answer Is No

A framework that cannot describe its own boundary is a sales document. Not every law firm should build a management services organization. A properly run feasibility analysis is therefore written so that it can return a decline, and the conditions that produce one belong here, before the affirmative case resumes.

Six patterns account for most declines.

**The economics do not survive the fee.** Where the firm's nonlegal operations are genuinely small — thin administrative, financial, technology, and marketing functions, or functions largely performed by the lawyers themselves — the supportable fee is correspondingly small, and a small fee against real formation, economic-study, accounting, and governance costs does not clear its own expense. The structure costs more than it produces, and it does not become correct at a larger multiple of the same thin facts.

**The fee cannot be decoupled from firm results.** Common ownership of the practice and the platform is not itself the obstacle; it is the ordinary case, which is why the fee's measurement basis has to do the work. The professional-responsibility architecture depends on the services fee being measured by the nonlegal services rendered rather than by the practice's fees, revenue, profit, or matter outcomes, and the tax architecture depends on the same thing. Where the firm's facts leave every candidate arrangement with a fee moving in step with partner shares or firm results, the arrangement carries the Rule 5.4 problem and the §482 problem at once, and no amount of documentation resolves either.

**The intended benefit is the wrong benefit.** The platform exists to hold and deploy capital inside an operating company: funding technology, acquisitions, infrastructure, and workforce at a scale a partnership is poorly built to fund out of current earnings. It does not make tax disappear: earnings retained and later distributed bear a shareholder-level layer whenever they come out. An owner who intends to withdraw substantially all of the platform's earnings each year as they arise has no use for what the structure does and is buying complexity that does not serve the objective. Section 20 states the constraint directly: capital retained in the platform must have a documented business purpose. Whether the platform's own stock may separately support a §1202 position is a distinct question, and Section 21 takes it up.

**There is no appetite for the operating change.** A durable platform requires that the genuinely non-legal workforce (administration, finance, technology, marketing, facilities, human resources) actually be employed by it, that intercompany invoices actually be issued and paid, that a board calendar actually be kept, and that a general ledger actually be maintained on the platform's own books. Firms that want the structure without the operating change are describing the thin file of Section 27. The right answer to an owner who does not want to run a second company is that this is a second company.

**The time horizon is too short.** The record is what does the work, and a record accumulates. A firm already in a process — or close enough to one that no meaningful operating cycle can complete before diligence begins — is generally too late for this discipline to produce more historical evidence than additional questions; a structure created against a known transaction invites the very step-transaction and business-purpose questions Section 19 sets out. Building it anyway, at that point, may add a diligence item rather than remove one. The better counsel is often to complete the transaction on the current structure and consider the platform afterward.

**The jurisdictional exposure is not tolerable.** Where a firm's practice concentrates in a state whose rules, enacted or pending, would reach the arrangement, and where counsel cannot get comfortable, the answer is no — not a differently drafted agreement. Section 12 takes up the multi-jurisdiction version of this problem.

> **A DECLINE IS A DELIVERABLE**
>
> An analysis that reaches "no" has produced something of value: a documented, dated answer on the client's own facts. It forecloses the costlier mistake of building a structure that must later be unwound, when unwinding is read as evidence about the original purpose.
>
> A framework that only ever produces a yes has not been tested; it has been sold. The decline conditions are stated here, in a document intended for readers who are not clients, for that reason.

The six conditions above are not permanent judgments. Facts change: a firm builds out its administrative operations, a partnership restructures, a transaction horizon lengthens, a legislature acts or declines to act. What each of them means is that the question has been answered on the facts as they stand, and that the answer should be revisited when the facts move rather than assumed.

 

SECTION 10

## Where Guardian Fits: The Work Between the Engagements

A lawyer can form the structure. An economist can support the fee. A CPA can report the tax position. Not one of those engagements, by itself, produces the longitudinal operating record that a regulator, a taxing authority, a lender, or a buyer will later examine.

That record is the subject of this paper, and it has no natural owner.

Each of the surrounding deliverables is point-in-time: an opinion at formation, a fee study for a year, a return for a year. Each reflects its professional's scope, facts, assumptions, and governing law as of its date. None is engaged to keep the others true as the facts move, and the facts always move. That is where otherwise-sound structures decay, and the decay is undramatic. The fee study concludes one thing; board minutes written months later describe the fee differently, and a later reviewer reads the contradiction rather than the intent. The annual §482 re-justification, confirming that the selected method is still the best method, falls between the CPA's return work and counsel's formation file and, unless someone is expressly responsible for it, goes uncalendared, leaving a year-three fee with no current support. A control fact changes, a service line is added, staffing shifts, capital is reallocated, and no one updates the transfer-pricing file or the independence record, because updating them was nobody's engagement.

Calling the answer coordination understates it. Coordination is scheduling. What the problem requires is administration: a recurring operating and economic control system that holds the ten records Section 26 enumerates (the agreement, the scope, the study, the invoices, the allocations, the governance decisions, the documented purpose for retained capital, the reporting, the tax positions, and the diligence materials) in alignment with one another, year after year, as each of them changes.

That is what Guardian administers: a defined discipline with its own cadence and its own judgment calls, not a project-management function laid over other people's work, exercised in one domain — professional-services MSOs — across the verticals where the same economic positions recur.

The reasonable question is why the surrounding firms do not simply do this themselves. The answer is structural rather than a matter of capability, and it is the whole basis of the position. The discipline requires three things at once: an independent economic analysis kept current — refreshed annually as a program standard, the legal requirement being that the method and its support remain justified on present facts — recurring presence in the platform's general ledger rather than an annual visit, and administration of the platform's corporate record — the minutes, the intercompany agreements, the related-party notes — as a maintained file rather than a shelf. Both the ledger and the record are the platform's, never the practice's: control of legal judgment, custody of client files, and matter decisions stay where the rules of professional conduct put them. Where the work nonetheless requires visibility into financial data maintained by or for the licensed practice, the access is scoped, contracted, and supervised: limited to the platform's own books wherever possible, and otherwise provided in a form excluding client identity and matter detail, under written confidentiality undertakings, and subject to the lawyer's own obligations under Rule 1.6(c) and Rule 5.3. Whether particular data may be shared at all, and on what client consent, is counsel's determination before access is granted rather than an operating assumption. Counsel does not sit in the ledger. An economist produces an analysis and does not administer anything. A CPA owns the return and not the corporate record behind it. And for the largest accounting firms, creating or maintaining records for a client they also audit raises an independence question under the applicable professional standards that is difficult to resolve in their favor. Each of those firms has the skill. Each has a structural reason not to occupy the position, which is why the position is so rarely occupied.

The lanes do not move. The legal conclusions are counsel's. The economic study and fee analysis belong to independent economists. The tax returns and reporting positions are filed by the client's CPA. Guardian administers the operating and economic framework that keeps the underlying facts, governance, financial records, and advisor work aligned over time.

In a durable structure that separation is contractual rather than asserted. Each professional is engaged directly by the client under a scope of its own: counsel under an engagement letter with the client, the economist under a separate one, so that the opinion, the work product, and any privilege that attaches run to the taxpayer who will later have to rely on them. A single coordinating party may fund that work and coordinate it without becoming the engaging party, and the distinction matters: an analysis commissioned by the client for the client's own use is independent in the sense a reviewer cares about, while an analysis commissioned by an intermediary invites a question about whose conclusion it was. Funding alone does not settle it, and a reviewer will ask the questions separately: who selected the professional, who scoped the engagement, who paid, and to whom the opinion runs. The client's own selection and engagement of counsel and the economist is therefore not a formality: reliance on advice from an adviser who promoted or has a stake in the arrangement is discounted under the reasonable-cause standard (Neonatology Associates, P.A. v. Commissioner, 115 T.C. 43 (2000), aff'd, 299 F.3d 221 (3d Cir. 2002)), and reasonable cause is the defense a client is most likely to need. Where a coordinating party funds work performed by the client's counsel, the arrangement is disclosed and the client's informed consent obtained under Rule 1.8(f), and the payor exercises no direction over counsel's judgment, consistent with Rule 5.4(c). Privileged material stays with counsel and the client; the file a coordinating party administers is the substantiation file, which is built to be produced. The commercial simplicity of one point of contact and the evidentiary value of separate engagements are not in tension. They are achieved by different instruments.

That is not a subordinate role, and it should not be read as one; it is a separate recurring function that point-in-time engagements do not provide, and it is the one Guardian is answerable for.

The defensibility sits somewhere specific, and the obvious answer is the wrong one: not secrecy, and not a document. Guardian's advantage is not a single report, template, or transaction technique; it is the accumulated operating judgment required to build and administer professional-services MSOs — the durability spine that is vertical-agnostic, the enforcement pattern regulators follow after formation rather than at it, and the control-in-substance analysis Section 16 sets out, together with the overlays law adds that the other verticals do not have. The public framework can be understood. The operating discipline is not reducible to it.

 

PART TWO

# The Rules and the Reviewers

SECTION 11

## Professional-Responsibility and Regulatory Review After Formation

This section and Section 12 describe rules and published authorities. They are not legal advice and not a professional-responsibility opinion. Guardian Tax Consultants® is not a law firm, does not practice law, and expresses no view on whether any arrangement satisfies any jurisdiction's rule. Every conclusion in this area belongs to the firm's own counsel.

The threshold constraint on any law-firm MSO is ABA Model Rule 5.4 and its state analogues, and it is broader than the shorthand usually given for it. The rule has four operative parts. Subsection (a) bars a lawyer from sharing legal fees with a nonlawyer, subject to enumerated exceptions that include compensation and retirement plans for nonlawyer employees based in whole or in part on a profit-sharing arrangement. Subsection (b) bars a partnership with a nonlawyer where any of the activities consists of the practice of law. Subsection (c) — the one that reaches a services arrangement most directly and is most often omitted — bars a lawyer from permitting a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment. Subsection (d) bars a lawyer from practicing with or in a for-profit entity authorized to practice law if a nonlawyer owns an interest in it — excepting only a fiduciary representative of a lawyer's estate, for a reasonable time during administration — serves as its director or officer or occupies a position of similar responsibility, or holds the right to direct or control a lawyer's professional judgment. Subsections (c) and (d) reach a services entity's payor role and its personnel placements, and a design that satisfies only (a) and (b) has answered half the rule. A platform designed to all four subsections answers them structurally: the services company is paid for the nonlegal services it renders (administration, finance, technology, marketing, facilities), never for a share of the fees the licensed practice earns.

How the fee is set is load-bearing: a percentage-of-revenue or percentage-of-profit fee reads as fee-sharing, making the nonlawyer a participant in the economic result of practicing law. Texas Ethics Opinion 706 (2025), construing Texas Disciplinary Rule 5.04(a), concludes that a lawyer may not pay a nonlawyer-owned support-services company a fee measured as a percentage of the lawyer's or the firm's revenues.

What the opinion does not do matters as much as what it does, because it is routinely overstated. It does not approve any alternative fee structure. It does not address flat fees or cost-plus fees at all; the inference that a fee untied to firm revenue therefore falls outside the prohibition is a commentator's inference rather than the committee's holding, and it has not been tested. Separately, the opinion concludes that a lawyer may hold an equity interest in a company owned in part by nonlawyers so long as that company does not itself engage in the practice of law. It also notes that where such a company provides law-related services to the lawyer's own clients, Texas Rules 1.06 and 1.08 may require full written disclosure of the terms, a reasonable opportunity for the client to seek independent counsel, and the client's informed written consent. "Permitted with disclosure" is not an accurate summary of that condition. The corresponding Model Rules are 1.7 and 1.8(a), and state analogues vary.

Opinion 706 is persuasive, not binding; it binds no one, including in Texas, and other states construing their own analogues may differ. A fixed, flat, or cost-based design unconnected to firm revenue, profit, or matter outcome is outside what the opinion condemned rather than inside anything it blessed, which is a weaker claim than the one usually made for it and the only one the authority supports.

The rule set is narrower than it is often described, and it is useful to state each constraint against the design answer to it, because the answers are structural rather than contractual. Fee-sharing with a non-professional is addressed by a fixed-schedule fee that is never a percentage of legal fees, revenue, or profits, with its pricing method established prospectively — any later true-up applying that pre-existing method to actual costs or operating data, never resizing the charge retroactively to a target margin, profit allocation, or tax result — a form that lies outside what Texas Opinion 706 expressly condemned, without being a safe harbor: no fee form is universally approved, and jurisdiction-specific counsel evaluates the amount, methodology, scope, and control rights of the whole arrangement. Non-professional ownership of the practice is addressed by confining any investor's interest to the entity above the management company, leaving the practice owned by licensed professionals. Interference with professional judgment is addressed by governance carve-outs under which no investor vote, consent, or veto reaches client acceptance, case strategy, settlement authority, or the hiring and termination of lawyers — termination included deliberately, because Illinois Public Act 104-0801 reaches control over both, and a carve-out drafted narrower than the strictest enacted statute is a carve-out that will have to be redrafted. Client confidentiality is the constraint most often described too loosely. Rule 1.6 protects all information relating to the representation of a client, which is far broader than privileged communication and does not turn on privilege at all; aggregation narrows the disclosure but does not by itself cure it, since aggregate financial reporting still discloses matter mix, practice-area revenue, settlement timing, and client concentration. The operative obligations are the lawyer's: Rule 1.6(c) requires reasonable efforts to prevent unauthorized disclosure, and Rule 5.3, including its commentary on nonlawyers outside the firm, requires the lawyer to make reasonable efforts by contract and supervision to ensure a service provider's conduct is compatible with the lawyer's own duties. What data may be shared, in what form, and on what client consent is counsel's determination. And client funds are held by the licensed practice under Rule 1.15 and the applicable state trust-accounting rules, including any IOLTA program requirement for funds nominal in amount or held briefly, with other client funds in separate interest-bearing accounts. The lawyer's obligations to segregate, to maintain complete records, to reconcile, and to render accountings are non-delegable and remain the lawyer's whoever performs the bookkeeping. A services entity should not receive, hold, or disburse client or trust funds; whether it may have any role in the practice's operating receipts — how billing, collection, and remittance are structured — is a question counsel answers against the state's trust-accounting rules before the arrangement operates. Each of those is a design decision made once and then evidenced continuously; none of them is a representation in an agreement.

 

One conflict the structure itself creates runs through the partner rather than the investor, and no governance carve-out reaches it. A partner holding rollover equity in the platform, or a deferred-compensation promise backed by its balance sheet, has a personal financial interest in the platform's health — and Section 13 states candidly that the platform's health tracks the practice's. Under Model Rule 1.7(a)(2), a concurrent conflict exists where a significant risk arises that the representation of a client will be materially limited by a personal interest of the lawyer, and the sharpest version here is settlement authority in a contingency practice: a partner whose platform economics benefit from the firm's cash-flow profile has a personal interest adjacent to decisions about when and on what terms client matters resolve. The carve-outs above answer investor interference; they do not answer the partner's own stake, because the rule's concern is the lawyer's interest, whoever else holds one. Whether a given arrangement creates the significant risk the rule describes, and whether informed client consent is required and available, is a determination for counsel jurisdiction by jurisdiction — what belongs in the design is that the question is asked at formation, documented like every other independence fact, and revisited when the platform economics a partner holds change shape.

A drafting discipline follows from writing for three reviewers at once. Each document in the structure will eventually be read by an audience it was not drafted for — and the professional-responsibility reviewer is the audience least fluent in the economics and most attentive to what the paper appears to admit. A recital or covenant inserted into a services agreement to support a tax characterization can be read aloud, years later, in a forum where its tax logic counts for nothing and its plain words count for everything. The discipline is that each document carries only what its own purpose requires: the tax analysis lives in the tax file, the services agreement describes services, and no instrument volunteers a characterization that a different reviewer could mistake for a concession.

One operating function deserves explicit mention because it is among the most common things a services platform actually does and among the least discussed: marketing and client development. Advertising, intake, lead handling, and referral arrangements remain governed by Rules 7.1 through 7.3 and their state analogues: communications must not be false or misleading, solicitation is restricted, and paying for a recommendation is generally prohibited outside the rules' narrow exceptions, regardless of which entity runs the campaigns, owns the domains, or employs the intake staff. A platform that centralizes marketing centralizes the compliance obligation's operational side while leaving the professional obligation with the lawyers, and the scripts, compensation arrangements, and data flows behind an intake function are properly reviewed by counsel against those rules before the function moves. One adjacent arrangement stays wholly outside the platform: the division of fees between lawyers not in the same firm — the referring-counsel and co-counsel splits common in contingency practice — is governed by Rule 1.5(e) and runs lawyer to lawyer; the platform is not a party to it, does not administer it, and its fee is unaffected by it. Colorado's 2026 legislation, discussed in Section 12, is a reminder that lead generation and fee design are now statutory subjects in some states, not merely ethical ones.

Where a lawyer is associated with the delivery of law-related services — services related to and reasonably performed in conjunction with legal services — Model Rule 5.7 may, in jurisdictions that have adopted it, subject the lawyer to the Rules of Professional Conduct as to those services unless reasonable measures are taken to ensure recipients understand that the protections of the client-lawyer relationship do not apply. Texas and a number of other states have adopted no Rule 5.7 analogue. Whether the rule reaches a given arrangement is a question for counsel in each jurisdiction.

Formation asks whether the documents establish independence at signing; post-formation review asks whether independent legal judgment has actually been preserved: whether lawyers, not the platform, control professional judgment; who hires and fires attorneys; where custody of client records and communications sits; who makes matter-level decisions; and whether delegated nonlegal functions remain supervised. A regulator reads operating reality across years, not a formation deck frozen at closing.

The regulatory surface keeps moving, and Illinois has now moved. HB 5487 was approved by the Governor on 7 August 2026 and became Public Act 104-0801, effective on approval as live law, not a pending measure. It amends the Illinois Attorney Act to reach covered nonlawyer-owned entities, barring fees charged directly or indirectly on the basis of an attorney's or firm's fees, revenues, or profits; interference with professional judgment; control over the hiring and termination of attorneys and allied legal staff; post-termination restrictive covenants imposed on attorneys and allied legal staff; and revealing, owning, or determining the content of client records and attorney-client communications. It also carries a client-facing component: disclosure in covered client contracts of the arrangement with the covered entity, which pulls the statute's compliance surface into the firm's engagement documents rather than leaving it a matter of internal governance and fee design. It creates a private right of action with statutory damages, fee-shifting, and injunctive relief.

Its coverage is broad, and the common reading of it as a large-firm statute is backwards. The operative text of Senate Floor Amendment No. 2 is disjunctive: the Act reaches an Illinois attorney or firm with annual global legal-services revenue of less than $300 million, or an attorney or firm that regularly represents clients on a contingent-fee basis and derived more than half its revenue from those arrangements in each of the previous three calendar years. The first prong alone reaches all but the largest global practices; the revenue figure operates as a carve-out for firms above it rather than as a threshold narrowing the statute. The word "indirectly" in the fee provision is undefined and untested, and it is the term that matters most to a services fee. Illinois counsel owns the construction and its application to any particular arrangement; Guardian states no conclusion under it. Any Illinois-exposed structure, existing or contemplated, requires that review now rather than at the next renewal.

Permissive jurisdictions are carve-outs, not the national rule: Arizona's ABS regime under ACJA §7-209, Utah's closing sandbox, Washington's applicant-specific pilot, the District of Columbia's narrow Rule 5.4(b) exception, and now Puerto Rico's conditioned 49% allowance. Section 12 sets out their current state — some tightening or sunsetting, one expanding, none portable. This platform is built for the large majority of jurisdictions retaining traditional Rule 5.4 restrictions, not for a permissive-regime authorization.

Cross-industry enforcement is analogy, never authority: corporate-practice-of-medicine decisions and management-company settlements show regulators pursuing such companies after formation, and the pattern transfers: a profit-sharing fee reads as control, a totality-of-the-facts test governs, and an arm's-length fee whose measurement is decoupled from legal revenue, profit, and matter outcomes is generally the more portable posture — subject always to jurisdiction-specific counsel and the operating facts — while the holdings do not, because CPOM rests on health-licensing statutes rather than Rule 5.4. Section 16 develops the limits of the analogy; counsel owns the conclusion.

Research through September 2, 2026 identified no adjudicated holding approving or invalidating the modern law-firm MSO structure as a whole. Regulatory durability is therefore reasoned from Rule 5.4, enacted state law such as Illinois Public Act 104-0801 and Colorado HB26-1421, persuasive authority such as Op. 706, and carefully identified cross-industry precedent — not read off a case on point. A later reviewer examines the contemporaneous record: services genuinely rendered, a fee rationale documented and decoupled from legal revenue, professional judgment preserved and supervised in fact. Compliance is never a closing item; it is a standing position. Guardian Tax Consultants® administers the record that keeps the arrangement reviewable; counsel owns every legal conclusion within it.

SECTION 12

## The Jurisdictional Patchwork

Section 11 states the professional-responsibility constraint as though a firm practices in one place. Most firms worth structuring do not. A practice admitted in five states, with offices in three and matters in more, faces five sets of rules of professional conduct, five disciplinary authorities, and, separately and often overlooked, five tax regimes with their own view of an intercompany management fee. The structure has to satisfy all of them simultaneously, and they are not converging.

Three features of that landscape matter to how a durable platform is designed.

Most jurisdictions have said nothing. The authorities available on law-firm MSOs — ethics opinions, supervised pilots, permissive regimes, enacted statutes now in Illinois and Colorado — are a thin layer over a large silence. Silence is not permission and it is not prohibition; it is the absence of an authority to rely on, which means the analysis in an unaddressed state runs from the text of that state's Rule 5.4 analogue and its general principles rather than from anything on point. A structure designed against the two or three states that have spoken, and assumed to be fine in the rest, has mistaken the map for the territory.

Which state's rules apply is itself a question. Model Rule 8.5(a) and its state analogues subject a lawyer to the disciplinary authority of every jurisdiction in which the lawyer is admitted, regardless of where the conduct occurs, and also to that of a jurisdiction in which the lawyer provides or offers to provide legal services. Rule 8.5(b)(2) then supplies the choice of law for conduct not before a tribunal: the rules of the jurisdiction in which the conduct occurred apply, unless the predominant effect of the conduct is in a different jurisdiction, in which case that jurisdiction's rules apply. Conduct location is the default and predominant effect the displacing exception, not the other way round. The same provision carries a safe harbor: a lawyer is not subject to discipline where the conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur. The choice-of-law exposure is not hypothetical: South Carolina Bar Ethics Advisory Opinion 25-02 — advisory only, with disciplinary authority resting in that state's supreme court — concluded that a South Carolina lawyer may neither serve as local co-counsel with an Arizona alternative business structure whose nonlawyer owners share in fees nor hold an interest in one, invoking Rule 8.5(a)'s rule that the lawyer's conduct remains subject to the home rules regardless of where it occurs. Authorization in a permissive jurisdiction does not cure exposure under a restrictive one. For a management arrangement touching every matter the firm handles, neither the conduct locus nor the predominant effect is self-answering, and whether the safe harbor is available is itself a judgment for counsel. What follows practically is that a firm should not assume it can select the most permissive of its jurisdictions and structure to that. The durable posture is to design to the most restrictive regime the firm is meaningfully exposed to, which in practice means designing to traditional Rule 5.4: the fixed, flat, or cost-plus fee decoupled from firm revenue, profit, and matter outcome that Section 11 describes. A structure designed to the strictest applicable rule generally travels; one designed to the most permissive does not — though what the design buys is reduced redesign risk, not a compliance conclusion in any particular jurisdiction.

The tax patchwork is separate and is frequently discovered late. An intercompany management fee is a deduction in one entity and income in another, and states do not uniformly respect that. A number of states require related-member expense add-backs — most aimed at intangible expenses and interest, some reaching management fees — disallowing the deduction for amounts paid to an affiliate unless a statutory exception is met, commonly that the recipient was subject to tax on the income in a state, that the payment was at arm's length, or that the arrangement had a principal purpose other than tax avoidance. The exceptions are fact-tested and their availability turns on the same evidence the federal §482 file contains, which is one of the reasons that file is built the way it is. Separately, a services company performing functions for a practice operating in multiple states may itself create filing obligations, apportionment questions, and payroll registrations in jurisdictions where it has employees or property. The operational triggers are mundane, which is why they are missed: a remote employee in a new state; a new office or an acquisition; centralized technology, marketing, or intake serving matters everywhere; a related-party fee or royalty crossing a state line; a financing or recapitalization that changes who holds what. These triggers are rarely fatal on their own, but all of them are expensive to discover in a later year, and each of these determinations belongs to the client's state and local tax advisers rather than here.

What follows for design is unglamorous and consistent with everything else here. The fee method should be one that can be explained identically in every jurisdiction the firm touches, because it will be. The governance carve-outs preserving professional judgment should be drafted to the most restrictive applicable standard rather than to an average. The entity footprint should be mapped against admissions, offices, employees, and matter volume before formation rather than after, so that the states in which the platform will have to answer for itself are known while the structure is still being designed. And the record should be built so that the same file answers a professional-responsibility inquiry in one state and a related-party expense examination in another, since the underlying facts a reviewer tests are largely the same in both: services genuinely performed, a fee set on a method, decisions made by the people the rules require. One more item belongs on that standard checklist now rather than in an Illinois-only appendix: client-facing disclosure. Illinois Public Act 104-0801 requires disclosure of the covered arrangement in covered client contracts, which moves the compliance surface into the firm's engagement documents — and a structure designed to the strictest regime discloses as the strictest regime requires, treating the disclosure as a design default counsel can relax where no applicable law compels it, rather than a retrofit performed after a statute lands.

The permissive regimes remain narrow and nonportable, and recent changes show they can tighten, close, sunset, expand, or evolve independently. Arizona, by Administrative Order 2026-31 (March 18, 2026), amended its ABS code to add an in-state nexus to its five existing regulatory objectives — licensure must at least in part further those objectives for persons located in Arizona, and ABS-affiliated lawyers must actually provide legal services — curbing the use of an Arizona license as a purely out-of-state platform. Utah's sandbox, under Standing Order No. 15 as amended, is in its final phase, closed to new applications, with its ABS-only portion closed at the end of 2024 and the program on track to sunset by its seventh anniversary, August 14, 2027, per the Office of Legal Services Innovation's published program timeline. Washington's Supreme Court, by Order No. 25700-B-721 (December 5, 2024), adopted an entity-regulation pilot that grants applicant-specific, supervised authorization, with each participant advancing a defined regulatory-reform hypothesis under a compliance officer and continuing reporting, and effects no general repeal of the state's nonlawyer-ownership restrictions. The District of Columbia's Rule 5.4(b) exception — the oldest of the carve-outs — is unchanged: it admits individual nonlawyers who work in the firm assisting its delivery of legal services, and it has never traveled beyond the District. Puerto Rico moved the other way, and further than any state's generally applicable rule: by resolution approved June 17, 2025, effective January 1, 2026, its Supreme Court amended its Rule 5.4 to permit nonlawyer ownership of up to 49% of a law office, conditioned on lawyer operation and control, non-interference with professional judgment, client disclosure, and notification and annual sworn-statement requirements, with effectiveness to be reviewed within three years — adopted over a dissent, and against the recommendation of the court's own rules committee. The carve-out is narrower than an MSO reader might assume: the nonlawyer owner's contribution must be money, and neither the owner nor the owner's agents may provide services to the law office — marketing expressly included — which makes Puerto Rico an ownership exception, not a services-model authorization. And Tennessee's Supreme Court has opened a formal public-comment process on regulatory reform reaching the nonlawyer-ownership restrictions themselves; comments closed April 30, 2026, drawing organized opposition, and the outcome is pending as of this writing. A structure premised on the permissive regimes expanding is premised on the least predictable variable this section describes — and even a genuine expansion, where one arrives, is a jurisdiction-specific carve-out the choice-of-law analysis above keeps from traveling.

Two thousand twenty-six has demonstrated how fast that surface can move, twice. Illinois enacted Public Act 104-0801 on 7 August, as Section 11 sets out. Five days later, on 12 August, Colorado's House Bill 26-1421 took effect — the Colorado Legal Practice Integrity and Fee-Sharing Prohibition Act, signed 4 June 2026 with a built-in sunset: absent further legislative action, it repeals on September 1, 2029, a three-year trial run rather than a settled enactment. Its reach differs from the Illinois act in ways that matter to design: it bars sharing legal fees or revenues with nonlawyers or with organizations controlled by nonlawyers that participate in providing legal services, bars financial arrangements with alternative business structures, and, in the provision that reaches furthest into a services arrangement, prohibits compensating administrative staff through arrangements contingent on a percentage of legal fees or revenues or on case outcomes. Enforcement is private as well as regulatory: the act creates rights of action for clients and for competing law firms, with disgorgement among the remedies. A compensation design that would be conventional in any other industry can now be actionable in Colorado at the instance of a competitor. In the same session Colorado also enacted SB26-174, signed June 3 and sharing the August 12 effective date, which prohibits lead-generation marketing for legal services, defined as a lawyer, firm, or licensed paraprofessional paying a third party for information about a potential client, by designating it a deceptive trade practice under the state's consumer-protection act. For a platform whose functions include marketing and intake, that is an operating constraint, not a footnote. As with Illinois, Colorado counsel owns the construction, and existing arrangements with Colorado exposure require review now rather than at renewal.

**THE JURISDICTIONAL PATCHWORK**

category-level status, not a legal conclusion for any state — see Appendix D

| | |
|---|---|
| **MOST JURISDICTIONS**<br>No MSO-specific authority; the analysis runs from the state's own Rule 5.4 text and general principles | SILENT |
| **ILLINOIS**<br>Public Act 104-0801, effective Aug. 7, 2026 — disjunctive revenue / contingent-fee test; client-contract disclosure required | ENACTED |
| **COLORADO**<br>HB26-1421 + SB26-174, effective Aug. 12, 2026 — private rights of action; HB26-1421 repeals Sept. 1, 2029 absent further action | ENACTED |
| **ARIZONA**<br>ABS regime under ACJA §7-209; in-state nexus added to its regulatory objectives, March 2026 | PERMISSIVE |
| **UTAH**<br>Innovation sandbox, final phase — closed to new ABS applicants; sunset expected Aug. 14, 2027 | PERMISSIVE |
| **WASHINGTON**<br>Applicant-specific entity-regulation pilot under Order No. 25700-B-721; no general repeal of nonlawyer-ownership restrictions | PERMISSIVE |
| **DISTRICT OF COLUMBIA**<br>Rule 5.4(b) exception for nonlawyer professionals active in the firm | PERMISSIVE |
| **PUERTO RICO**<br>Rule 5.4 amended June 17, 2025 (effective Jan. 1, 2026) — up to 49% nonlawyer ownership; owner contributes money only and provides no services to the office; three-year review | PERMISSIVE |
| **TENNESSEE**<br>Supreme Court comment period on broad regulatory reform closed Apr. 30, 2026 — outcome pending | PENDING |

Silence is not permission. A structure designed to the strictest regime it is exposed to absorbs a change in any one state as an administrative matter.

**Figure 5.** Regulatory status by category across the jurisdictions this paper discusses in detail. Most jurisdictions remain silent; two have recently enacted restrictive statutes; a handful maintain narrow permissive regimes or carve-outs; one reform docket is pending. Full citations and dates in Appendix D.

The regulatory surface will keep moving, unevenly, state by state. A platform whose compliance rests on the current posture of one jurisdiction is a platform with a single point of failure. One designed to the strictest rule it is exposed to absorbs a change in any single state as an administrative matter rather than a structural one.

SECTION 13

## Professional Independence and Economic Separation

The licensed practice remains owned and controlled as required by applicable professional rules, while the nonlegal platform owns or provides the permitted business functions, resources, and assets. The exact ownership and entity architecture depends on jurisdiction, transaction terms, and independent counsel's analysis. Independence and substance reinforce each other. Because only the licensed practice may earn legal fees, an outside investor's economic participation is confined to the platform's own enterprise value and earnings, a function of the nonlegal services the platform performs, the assets it owns, and the risks it bears, determined by a fee set independently of the practice's revenue, profit, and matter outcomes. That distinction is what the §482 method discipline exists to evidence, and it is why that method is the position most likely to be tested.

The tension in it should be named rather than assumed away. The services fee is the platform's only revenue and it is funded out of the practice's receipts. Decoupling the fee's measurement from firm results does not decouple its source: the platform's economics remain derivative of the practice's health, and the discipline described here claims only that the fee is set independently of legal revenue, profit, and outcomes — not that the platform's fortunes are independent of the firm's. That narrower claim is the honest one, and it is the one the record has to support. What a buyer prices on that claim is a contracted, renewing stream of arm's-length service revenue whose durability rests on the operating substance behind it — not a share of legal economics, and not a margin. A fee set high enough to capture the practice's entrepreneurial residual invites being read as fee-sharing in substance however it is denominated, and Illinois Public Act 104-0801 now reaches fees keyed to firm revenue indirectly as well as directly. The constraint runs into method selection: professional-responsibility rules do not delete any method from the Treasury Regulations, but they can make certain methods, profit-level indicators, or resulting fee arrangements inappropriate or unusable on the facts. A method that assigns the practice's legal-services residual to a nonlawyer platform, or that produces a fee keyed directly or indirectly to legal revenue, profits, or matter outcomes, may be unavailable on the applicable legal facts even though it remains among the methods §1.482-9 identifies; a limitation that narrows the best-method field before the economic analysis begins. That limitation belongs in the method-selection record as a governing constraint, and its boundary is counsel's to set rather than the economist's.

The fee flow is what a buyer underwrites and diligence tests, and its defensibility is inseparable from the platform's operating substance. Transaction and tax counsel evaluate intermediate entities and ownership arrangements against investor, jurisdiction, financing, and intended exit; Guardian does not prescribe the architecture; it administers the economic and documentary layer that must hold whichever one counsel selects.

Economic separation is tested the same way. Where the fee rests on an outside economic analysis, a reviewer will ask not only what the analysis concluded but who it was prepared for. An engagement running from the client to the economist, with the resulting opinion addressed to the client, answers that question on the face of the document. Who funded the work is a commercial fact and a familiar one — valuations are routinely paid for by a party with an interest in the subject — but it is not the same fact as whose conclusion it is, and a structure meant to be read years later is better served by having both answers plain in the file than by having to explain them.

 

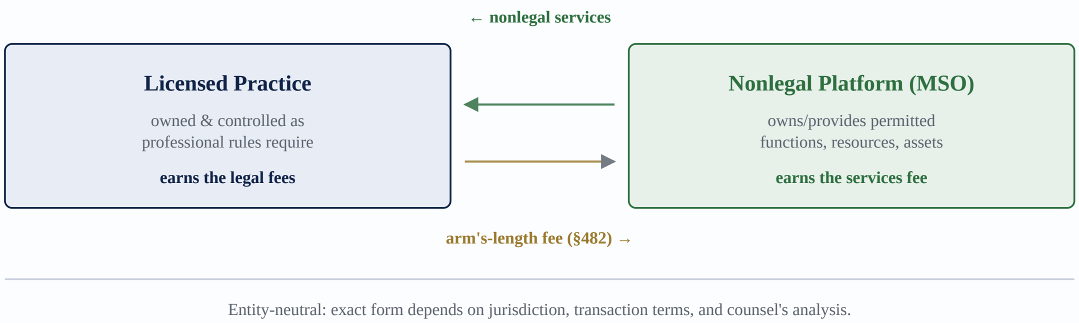


**Figure 6.** Independence and substance reinforce each other — the investor's return is defined by the services fee, which is why the §482 method selection is the position a later reviewer is most likely to test.

SECTION 14

## Tax Examination

The tax reviewer arrives under several principal headings, the four evergreen ones being: §482 (the arm's-length character of the management fee), §269A (whether a services company serving essentially one practice invites reallocation between the company and its employee-owners), §531 (the accumulated-earnings posture where the platform includes a C-corporation — the companion corporation of Variant II or the corporate platform of Variant III in Section 04), and §1202 (whether stock of a C-corporation services entity — Variant III's shape — supports a gain exclusion). Section 482 potentially reaches each variant involving a controlled services charge. Section 269A is narrower: it applies only where the entity is a personal service corporation and its employee-owner, service-concentration, and principal-purpose elements are each satisfied, and a pass-through platform does not meet it merely by being a services company. Sections 531 and 1202 arise only in the corporate variants, and only on their respective facts — which is why Section 04 introduced the variants before any reviewer appeared. None is resolved at closing; each is re-tested against the facts as they actually developed — invoices issued or not, minutes kept or not, the method re-justified or not. Part Three takes up the substance. The point here is temporal: these positions are examined on the record built while the platform operated, not the deck presented at the outset.

SECTION 15

## Buyer, Lender, and Recapitalization Diligence

The commercial reviewer is the one whose verdict is priced. When the platform is refinanced or sold, counsel and the quality-of-earnings team revisit the taxing authority's questions: is the management fee sustainable and supported; does the nonlegal platform own or operate meaningful business value; have the intercompany economics been administered consistently; does any claimed tax posture still rest on the historical facts. A file that reads cleanly through R&W diligence and in the data room is worth more than one inviting a QofE adjustment or indemnity holdback. Post-closing durability is an enterprise-value discipline as much as a tax one. Coverage architecture is a diligence surface of its own: which policy responds when a nonlegal function performed at the platform fails — a wire, a filing, a payroll run — is the coverage question Section 17 puts to design, asked here with a closing date attached, and a gap still open in diligence is a closing delay discovered late.

Retention is a diligence surface of the same kind, and the underlying risk is specific to a services business: unlike an asset-heavy target, the earnings stream a buyer is underwriting is concentrated in the attorneys, teams, and client relationships that can simply leave. The acquisition thesis rests on three things a closing does not itself lock down — that key attorneys stay through the hold period, that clients remain with the firm, and that management keeps executing — and a bid that competes only on price or multiple has said nothing about any of them. Rollover equity addresses part of that risk; vesting, clawbacks, and contribution schedules address the part equity alone does not, which is why retention design belongs in the diligence file rather than as an assumption behind the model. The second item has no instrument at all: clients choose counsel, and nothing in a retention design reaches that choice — continuity there is a fact diligence prices, not a gap design closes. Section 16 takes up the instrument; what belongs here is the closing-date question — a retention architecture assembled after signing is a weaker one than the buyer's diligence assumed.

A platform recapitalization is a category of its own: the platform borrows from a third-party lender against its own balance sheet and operating history, and distributes some or all of the proceeds to its owners — liquidity with no equity sold and no investor admitted. Where the platform is a pass-through, the tax treatment of such a distribution turns on basis and liability-allocation mechanics that belong to the client's tax advisers; a corporate platform answers under the corporate distribution rules, on its own facts. What belongs to the design is the boundary: the lender underwrites the platform, and the platform services the debt from its own fee revenue — earned on the same method as before the borrowing, because a financing need is not a pricing method, and the fee is never resized to meet debt service. A lender's request that the licensed practice guarantee the platform's debt — a request that does arise — reverses the direction of credit support the structure exists to maintain, placing the practice's balance sheet behind the platform's obligations, and it is evaluated by counsel with the same rigor as an investor's request for control, because the two requests raise the same question in different clothes.

A live process layers instruments onto this record that this paper deliberately does not reach: valuation and multiple construction; purchase-price allocation and, where the form allows one, a §338(h)(10) or §336(e) election; the treatment of identified tax positions in representations-and-warranties insurance, which typically excludes known exposures and pushes the §482, §531, and §1202 positions this paper describes toward specific indemnity, escrow, or a separate tax policy; transition-services and earnout negotiation; and the investor's own exit, transfer, and liquidity terms. Those belong to the deal team a process assembles — banker, transaction counsel, QofE accountants, and the parties' tax advisers — and no reader should mistake this paper for a substitute for any of them. What the paper builds is the record every one of those instruments is priced against.

 

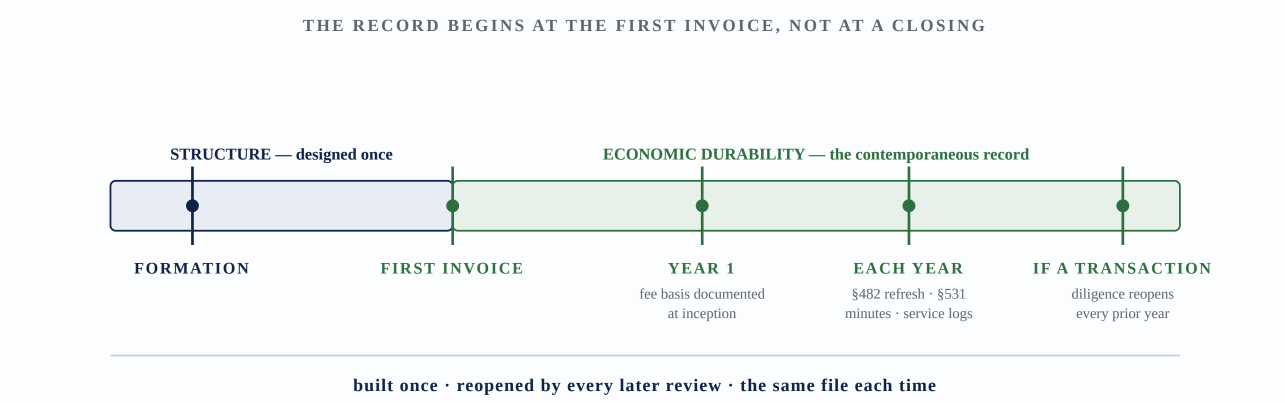


**Figure 7.** The structure is designed once; durability is the record built across every year after the first intercompany invoice — whether or not a closing ever comes.

 

PART THREE

# The Economics That Survive Review

SECTION 16

## What Transfers From Guardian's MSO Practice — and What Does Not

Durability administration is not a law-firm novelty, and for Guardian it is no longer new to law firms either. Guardian Tax Consultants® was founded in 2011, has been MSO-focused since 2018, and has built and administered MSO Platform™ structures across more than a dozen industries — healthcare, professional services, engineering, financial services, construction, and specialty commerce among them. Its law-firm MSO practice began in 2022, and the platforms it administers there share one feature the prevailing commentary would not predict: they were formed to operate, not to sell. None was assembled for a pending transaction; each runs the annual cycle Part Four describes. In Guardian's own practice, the non-transactional law-firm MSO is not the edge case. It is the base case. The discipline is being carried into the legal industry, not invented for it; what carries is institutional judgment, not a promise of any particular result. Some of the discipline transfers cleanly. The durability spine is vertical-agnostic: a platform needs real functions, assets, and risks; a management fee that is independently benchmarked rather than internally asserted; and a contemporaneous record built from the start of operations. So does the enforcement pattern: across every vertical, regulators and taxing authorities pursue management companies after formation, not merely at it, which is why a structure engineered only to satisfy the first-closing counterparty is exposed. And so does the control-in-substance analysis: a fee that shares in the professional entity's profit tends to heighten control and independence concerns across the regulated professions — with the legal effect depending on the profession and jurisdiction — while an arm's-length fee decoupled in its measurement from the professional entity's revenue, profit, and outcomes is generally the more portable posture, on facts counsel evaluates. These lessons carry because they are economic and evidentiary, not doctrinal. What does not transfer is the doctrine. Corporate-practice-of-medicine rules rest on health-licensing and insurance statutes: an entirely different body of law from the legal profession's Rule 5.4 ethics regime. A CPOM enforcement outcome is analogy for a law-firm platform; it is never authority.

One architecture from those verticals deserves naming, so that its absence from this paper is read as a choice rather than an oversight. In healthcare and other licensed professions, a family of structures locates federal tax ownership of the professional entity by contract: support-services agreements covering substantially all nonprofessional operations, transfer restrictions holding the licensed owner's shares at nominal value, and consent rights over the entity's corporate actions — which together place the economic benefits and burdens of ownership, and with them tax ownership, with the platform or its parent, while legal ownership and licensed control remain where professional regulation requires. The architecture has recent administrative illustration: in PLR 202607011 (released February 2026; non-precedential, binding only its taxpayer, and redacting the profession involved), the Service ruled that two professional corporations bound by just such a contractual web were members of their corporate parent's affiliated group under §1504(a), required to join its consolidated return — a ruling on affiliation, and on nothing else. What transfers from that line is the demonstration that federal tax ownership can follow the economic benefits and burdens past legal title. What does not transfer is the control inventory the position rests on: the consent rights recited in that ruling — over dividends, governance, amendments, and the commencement and settlement of litigation — are familiar terms in the licensed professions where that architecture is established, and are, feature by feature, the list a professional-responsibility reviewer reads as nonlawyer control of a law practice. A law-firm adaptation of that architecture is its own engagement, for counsel and tax advisers together, with its own authority file and its own drafting discipline. It is not the architecture this paper describes. The durability framework here assumes two regarded entities, each respected as what it is, with an arm's-length fee between them — a design that asks nothing of tax ownership of the licensed practice and leaves no such inventory of control for the profession's rules to read.

Law layers its own overlays. The value of a legal practice is bound up in the personal skill, reputation, and licensure of its attorneys, a predicate that weakens both any attempt to shift the practice's entrepreneurial residual to a non-licensed platform and any §1202 posture for the legal practice itself. And non-compete covenants are generally unenforceable against lawyers on access-to-justice and ethics grounds, which changes the retention economics a buyer can underwrite relative to a medical or dental roll-up.

What a buyer underwrites in place of an enforceable covenant is retention design, and rollover equity is not its only instrument. A partner who spent a career on partnership-style distributions does not always value equity the way a corporate seller would, and that mismatch can surface after closing as exactly the departures the deal was underwritten against. A company-financed deferred-compensation arrangement — for tax purposes an unfunded, unsecured promise, the form nonqualified deferral requires, backed economically by the corporation's general assets; in substance cash, vested on a schedule and subject to clawback, earned by continued bona fide service on conditions counsel and the tax advisers approve rather than by a later sale, and never measured by legal fees, matter outcomes, or the practice's profits — answers a different part of the retention problem than equity does, and the two can run together rather than in competition: the deferral accrues at the individual level, the promise is backed by the platform's own balance sheet, and the buyer's retention thesis stops resting on the multiple alone. It carries its own mechanics: compensatory equity cannot be assumed to reach across the line between a licensed practice and its platform — a grant requires a bona fide service relationship to the issuing entity, with securities, valuation, and tax analysis of its own — so where that relationship is absent, a newly promoted partner acquires any platform interest by purchase at fair market value rather than by grant; and a deferred-compensation obligation of real size is the same institutional question Section 04 named — a corporation can fund compensation only for people genuinely providing services to it, a relationship that must exist in fact rather than by recital — governed on a corporate platform by Section 20's accumulated-earnings discipline and, for the payout mechanics themselves, the §404(a)(5) and §409A rules Section 29 sets out. None of that is a reason to prefer one instrument over the other — only a reason to design each on its own footing, on the client's facts, with the client's counsel and tax advisers, under the same partner-level conflict analysis Section 11 applies to any platform economics a partner holds — and, where a clawback or forfeiture would operate economically as a penalty on leaving to practice elsewhere, under the Rule 5.6(a) analysis Section 28 applies to platform-interest transfers.

Law is an earlier-stage MSO market than health services, and formation approaches are converging and increasingly available. What remains scarce is the continuing administration. Law inherits a mature durability discipline; it adds its own overlays; knowing the difference is the value.

SECTION 17

## Real Functions, Assets, and Risks

The platform's value depends on the functions it performs, the assets it uses, and the risks it bears. A durable MSO is not a fee conduit but an operating company providing documented nonlegal services (administration, finance and accounting, technology and data infrastructure, marketing, human resources, facilities), employing or controlling the resources to deliver them, bearing real operating and financial risk, and owning or operating meaningful business assets, including its systems and intellectual property. Everything downstream, including the management fee, the §1202 analysis, and the value a buyer underwrites, rests on it. Where substance is thin, no documentation cures it; where it is real, documentation records it. The threshold authorities are undemanding: Moline Properties (business purpose or activity) and Groetzinger (a trade or business need not serve the public at large); the other tests carry the weight.

Substance is testable. Six things have to be real, documented, and contemporaneous. **Real people:** the genuinely non-legal personnel are employed by the platform, on its payroll, with its benefits and its multi-state registrations, and they actually work there. Personnel who assist in the delivery of legal services — paralegals, legal assistants, litigation support — are a separate category and not a default: Rule 5.3 supervisory responsibility for them stays with the supervising lawyer whoever issues the paycheck, and some jurisdictions, Illinois among them since Public Act 104-0801, restrict a services entity's control over their hiring, termination, and post-employment covenants. Where those personnel sit is a question for counsel. **Real agreements:** executed services agreements, separately scoped and priced, with schedules that describe what is delivered. **Real books:** the platform's own chart of accounts, its own general ledger, intercompany invoicing that actually runs, and fees settled on their stated terms rather than left as year-end entries. **Real governance:** a board calendar, minutes kept as decisions are made, and an adopted plan for the deployment of retained capital. **Real deliverables:** contemporaneous records of work performed and service reporting that a reader can compare against the fee. And **real insurance:** coverage matched to the risks each entity actually bears — for the platform, general liability, property, cyber, errors-and-omissions, and employment-practices coverage as its functions require, alongside the practice's own professional-liability program — because an entity bearing risk carries the insurance that a risk-bearing business carries.

A recital does not satisfy any of the six. Each is a category of fact that either exists in the operating record or does not, and their absence is what a reviewer means when the conclusion is that the entity was not real.

The insurance item carries a companion obligation on the practice's side that formation checklists routinely miss: the firm's own malpractice program was underwritten against the firm as it was. Moving intake, marketing, and staff onto the platform's books changes facts the carrier relied on — who performs intake, who employs the people adjacent to legal delivery, what the firm's headcount and revenue base look like on the next renewal application — and it raises questions only the carrier can answer: whether existing coverage reads correctly over work performed by platform-employed personnel the firm's lawyers supervise under Rule 5.3, whether any predecessor arrangement needs an extended reporting endorsement — the "tail" — with prior-acts and retroactive-date continuity confirmed through the change, and whether policy definitions drafted for a unitary firm still describe the restructured one. A coverage review with the firm's malpractice broker and carrier belongs on the formation checklist, before functions move, and again at the first renewal after they do; discovering a coverage gap through a claim is the expensive version of a conversation that costs nothing at design.

One consequence of real people is important enough to state separately, because it surprises sophisticated owners: moving the workforce into the platform does not necessarily move it out of the practice's benefit-plan world. Under §414(b), (c), (m), and (o), commonly controlled businesses and affiliated service groups can be aggregated and treated as a single employer for retirement-plan eligibility, coverage, and nondiscrimination testing, and for a range of other employee-benefit purposes — and a services organization whose principal business is performing management functions for a professional practice is the fact pattern §414(m)(5) was written for — with or without common ownership. Plan design that assumes two separate employers, where the aggregation rules see one, is how qualified plans fail testing years after formation. The determination belongs to benefits counsel and the plan's advisers, made at design rather than discovered at audit.

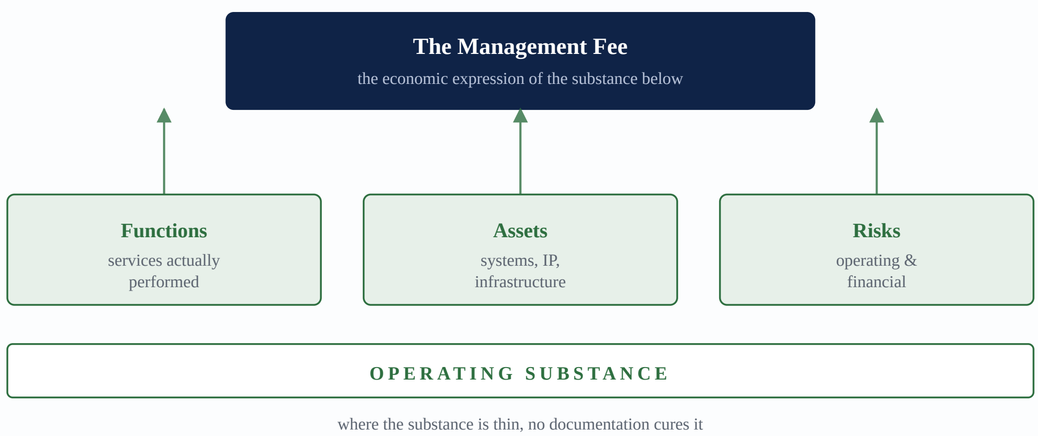


**Figure 8.** The fee is not valuable because it moves economics — it is valuable because it compensates real functions, assets, and risks.

SECTION 18

## Choosing and Defending the Method Under §482

> **§162 AND §482 ASK DIFFERENT QUESTIONS**
>
> Section 162 asks whether real services were rendered, whether the payer benefited, and whether the expense was ordinary, necessary, and reasonable in amount. Section 482 asks whether the price between controlled parties reflects an arm's-length result. They are related and they are not the same test: a fee may correspond to services genuinely performed and still be mispriced, and a fee may be numerically benchmarked with care and still fail if the services were not actually performed or did not benefit the payer. A durable file answers both, separately, and does not let a strong answer to one stand in for the other.

 

The management fee is where the platform's substance is priced and tested. Under §482, a controlled services transaction between the licensed practice and the services company must be priced at arm's-length, and the best-method rule of Treas. Reg. §1.482-1(c) imposes no general hierarchy among the methods: no default, no presumptively safe markup, subject to one important exception stated below. The taxpayer must select the method that most reliably measures an arm's-length result on the available data, and show why the material alternatives were less reliable on the facts.

### The operative frame: seven method categories

Treas. Reg. §1.482-9 provides seven method categories for pricing a controlled services transaction: six specified methods: comparable uncontrolled services price, gross services margin, cost of services plus, services cost, comparable profits, and profit split, together with unspecified methods, which may be applied where they provide the most reliable measure of an arm's-length result and their use is explained against the specified alternatives. The exception to the no-hierarchy rule sits here: where the services cost method is eligible for covered services and is properly applied under §1.482-9(b), the regulation deems it the best method for those services. That is a genuine hierarchy for the narrow category it covers, and a paper that says otherwise would be corrected by the first transfer-pricing specialist to read it.

### Services cost method: cost, but only for what does not drive the business

The services cost method permits charging at cost with no markup, but only for a gated category of covered and low-margin services, and is expressly unavailable under the business-judgment rule for services contributing significantly to the fundamental risks of success or failure of the business (Treas. Reg. §1.482-9(b); Rev. Proc. 2007-13). A fee capturing a substantial portion of the operating firm's EBITDA raises the question whether the charge is routine services or entrepreneurial return tied to that fundamental success, the value the SCM excludes. "Legal" on a covered-services list means routine legal support functions, narrowly specified, not operating a law firm.

### CPM and cost-of-services-plus: routine methods yield routine returns

The comparable profits method and the cost of services plus method benchmark the provider to a routine arm's-length return (Treas. Reg. §1.482-9(e), (f); §1.482-5) — what independent companies performing comparable functions, using comparable assets, and bearing comparable risks earn. They will not sweep the operating firm's nonroutine residual into the management fee: a properly benchmarked fee is evaluated through the selected method, comparables, and facts, not assumed from firm EBITDA. On the compensation side the parallel standard is Treas. Reg. §1.162-7(b)(3): reasonable compensation is "such amount as would ordinarily be paid for like services by like enterprises under like circumstances." Courts testing reasonableness commonly ask what an independent investor would have accepted: the framing of Elliotts, Inc. v. Commissioner, 716 F.2d 1241 (9th Cir. 1983), and of Menard, Inc. v. Commissioner, 560 F.3d 620 (7th Cir. 2009) — a useful discipline on a related-party fee even where it is not the controlling test.

### Profit split and nonroutine contributions — and law's weak predicate

The residual profit split (Treas. Reg. §1.482-6, applied to controlled services under §1.482-9(g)) allocates substantial nonroutine residual profit to the MSO only where it owns nonroutine intangibles, bears real entrepreneurial risk, and both parties make unique and valuable contributions. Law's overlay bites hardest here: a law firm's residual is tied to the personal skill, reputation, and licensure of its attorneys — a weak predicate for shifting nonroutine profit to a non-licensed company that does not, and legally cannot, practice law. Whether a platform's systems, processes, technology, and company-owned intellectual property support a residual allocation is a fact-and-valuation question for economists and counsel — never a template or a promised result.

### The companion charge is its own controlled transaction

Where the platform includes a companion corporation earning a second related-party fee (Variant II of Section 04), that charge is analyzed as a separate controlled transaction, not a rider on the platform's. Shareholder and stewardship activity, services duplicative of what the management company already performs, investment management conducted for the owners, and financing or guarantee functions are not converted into compensable management services by appearing in a second agreement. The recipient must receive a demonstrable benefit; the scope must be nonduplicative; the corporation must actually possess the personnel, assets, authority, and capacity to perform what its agreement describes; and each service, financing, or guarantee component is priced under the method applicable to that kind of transaction. A companion fee that fails this analysis does not merely lose its deduction — it hands a reviewer the argument that the second entity exists for its tax characteristics rather than its functions, which is the reading this entire framework is built to foreclose.

### Penalty exposure makes the fee study a filing-time deliverable

Method selection is documented contemporaneously rather than reconstructed under examination — as a matter of practice always, and, where the §6662 documentation rules apply, as a condition of penalty protection that later documentation cannot satisfy. Sections 6662(e) and (h) impose 20% (substantial) and 40% (gross) valuation-misstatement penalties on §482 adjustments. Protection is conditional: contemporaneous transfer-pricing documentation (the ten principal documents) in existence when the return is filed and produced to the Service within 30 days of request (Treas. Reg. §1.6662-6(d)). There is no retroactive cure. Below the net-adjustment thresholds those penalties require, the ordinary accuracy-related penalty of §6662(a) — negligence or substantial understatement — remains in play, defended on reasonable cause under §6664(c), where the same contemporaneous file and the client's own engagement of its advisers do the work.

### Timing is separate from amount

A correctly priced fee can still be deducted in the wrong year, and the two failures are examined separately. Where §267 or another matching rule applies (the standard case being an accrual-method payor owing an amount to a related cash-method payee under §267(a)(2), which reaches members of a controlled group through §267(b)(3)), the payor's deduction may be deferred until the payee takes the amount into income, and a fee accrued but unpaid at year-end does not produce a deduction merely because the entry was made. Outside those rules, timing still turns on the parties' accounting methods, the all-events test and economic performance under §461, and the period the services actually cover: an amount prepaid for services extending beyond the year is a different question from an amount accrued for services already rendered. These timing rules leave the fee amount untouched; they change only when the deduction exists, and a file that documents amount meticulously while leaving timing to the bookkeeping is documenting half the position.

### The Aspro flip-side is the durability spine

Aspro, Inc. v. Commissioner, 32 F.4th 673 (8th Cir. 2022), is the cautionary authority, read for what it held. Management-fee deductions were disallowed in full and recharacterized as disguised distributions — but on a multifactor §162 reasonableness test weighing fees that tracked ownership rather than services, no distribution history, fees that eliminated taxable income, and no contemporaneous documentation. Reading Aspro as holding that missing documentation alone causes disallowance is a mistake: documentation is never the single dispositive lever. The affirmative flip-side: a written MSA, services benchmarked and independently valued, actual invoicing, and a fee decoupled from ownership distinguish a substantiated arrangement from the record Aspro criticized. Aspro involved an operating company paying its own shareholders, not a law-firm MSO; it is analogical authority, not a case on point.

### Practical consequence for the platform

A straight cost-plus markup is not presumptively acceptable and cannot be assumed to move the practice's economics to the platform. A durable platform's annual re-justification re-documents the best-method selection under §1.482-1(c), including why alternatives were rejected. The fee is the economic expression of substance, and routine-return methods generally support routine returns. The lanes of Section 10 hold here as everywhere: the independent economist supports the method and the arm's-length range, the taxpayer adopts and administers the actual charge, the CPA reports the resulting position, counsel owns the legal conclusions, and the record belongs to its administrator.

SECTION 19

## How a Durable MSO Differs From an Arrangement That Gets Unwound

A management fee paid to a related services company, paired with a favorable tax posture, is also the shape of arrangements examiners and courts have unwound. The difference is not cosmetic. Gregory v. Helvering, 293 U.S. 465 (1935), and Commissioner v. Court Holding Co., 324 U.S. 331 (1945), ask whether an arrangement is in substance what it purports to be, across the steps that produced it. Unwound arrangements share a profile: a fee sized to sweep the operating firm's profit rather than compensate defined services; a number set by the related parties rather than an independent method; a charge tracking ownership or firm results rather than work performed; a file assembled after the fact, if at all. Aspro is the cautionary version. A durable MSO inverts each element. The fee compensates real functions, assets, and risks at routine-return calibration unless genuine nonroutine substance supports more, never reaching for the firm's entrepreneurial residual. An independent economics firm supports the selected method and the arm's-length range; the taxpayer adopts and administers the actual charge, and cannot outsource responsibility for its own return position. The fee is decoupled from firm revenue, profit, and matter outcomes, the discipline Rule 5.4 and Texas Ethics Opinion 706 point toward and Illinois Public Act 104-0801 now requires of arrangements within its reach. The record is contemporaneous, built as the work happens, not reconstructed later. Any reportable-transaction or disclosure obligation is the client's tax advisers' question, addressed openly rather than avoided — and the same body of law asks a mirror-image question of the advisor. The material-advisor disclosure and list-maintenance provisions of §§6111 and 6112, the promoter-penalty standard of §6700, and Circular 230's written-advice rules turn on what an advisor actually does for a fee, not on how its role is labeled, and an advisor that organizes and administers a repeatable structure for multiple clients owes itself the same discipline this paper demands of every client-side position: its posture under those provisions evaluated with its own counsel, on conduct, contemporaneously, rather than assumed away by disclaimer. A paper this insistent that the client's exposures be examined annually would forfeit its own standard by exempting its author's. Lender Management, LLC v. Commissioner, T.C. Memo 2017-246 — a family office, not an MSO, non-precedential, and useful only within its limits — survived common-ownership scrutiny on businesslike conduct, non-family employees, outside providers, and near-arm's-length dealings. It shows what a surviving record looks like, where Aspro shows the opposite; its compensation arrangement, a profits interest in the served entities, is one this structure cannot use. Durability here is not that the structure escapes scrutiny, but that it was built, from the beginning, to be read.

A second reallocation authority sits alongside §482 and is the one most often missed. Under §269A the Service may allocate income, deductions, and other allowances between a personal service corporation and its employee-owners where two conditions hold together: substantially all of the corporation's services are performed for one other entity, and the principal purpose for forming or availing of it is avoidance of federal income tax. Both terms are defined: a personal service corporation is one whose principal activity is performing personal services substantially performed by employee-owners, and an employee-owner is one holding more than 10% of the stock. The exposure is worth taking seriously, and the honest starting point is a concession: a platform serving one practice should expect the substantially-all element to be treated as met — whether it is met in any year remains a factual determination, but it is not the ground to build a defense on. Serving multiple unrelated practices may materially change that analysis; it is not itself a safe harbor, and it is not the illustrated pattern. The defense that remains is stronger than the one usually reached for. Before principal purpose is ever argued, §269A reaches only a personal service corporation — an entity whose principal activity is personal services substantially performed by its employee-owners — and a platform whose services are actually performed by its own nonlegal workforce, the administrators, technologists, marketers, and finance staff of Section 17, rather than by the attorney-owners, may fail that definition at the threshold. That conclusion is never available from the entity diagram: it depends on who actually performs the corporation's services, and it is tested on the facts each year. This is one more consequence of the discipline the paper repeats: real people on the platform's payroll doing the platform's work are not just operating substance, they are the statutory element on which the threshold defense rests. That defense belongs to the operating platform, whose services its own workforce performs; it is not available by construction to a companion corporation whose defined functions are performed by the owner-executives themselves, and that entity's §269A analysis runs on the remaining elements — the more-than-10% ownership test it will ordinarily meet, and principal purpose — which is why the companion corporation's functions, personnel, and business purpose have to be real and documented from formation rather than recited. Where the definition is met on the facts, the remaining elements — the more-than-10% employee-owner test and the principal-purpose requirement — are analyzed on the record the structure builds anyway: services genuinely performed, a business purpose documented at the time, and a fee set on a method rather than to a result.

It is worth reading the authority in the other direction as well, because engineering against what fails is only half the design. H.W. Johnson, Inc. v. Commissioner, T.C. Memo 2016-95, allowed a $500,000 payment by a concrete contractor to an entity owned by its shareholder-officers — compensation for that entity's work securing the contractor's concrete supply at market prices during a shortage — on findings that the payment was ordinary and necessary to the payer's business and of demonstrable value to it. The case has to be read precisely, because it is often cited for more than it holds: it involved a supply arrangement, not a management fee; there was no written agreement obligating the payer to make the payment, and the court did not treat that informality as dispositive, finding the services real and compensable. On the separate officer-compensation issue the court applied the independent-investor test of Elliotts, Inc. v. Commissioner, crediting consistent adherence to a long-standing bonus formula and preferring the taxpayer's benchmarking to the Service's.

The lesson is not that documentation determines the outcome — the payment in that case survived without it. The economics determine the outcome: a formula applied consistently, an operating company left with a return an independent investor would accept, services of demonstrable value, benchmarking more reliable than the Service's.

 

Documentation matters because it keeps those facts demonstrable years later, not because it substitutes for them. Read together, Aspro and H.W. Johnson describe the same test from opposite sides.

One discipline follows and is the one most easily skipped: the feasibility analysis preceding any build is written to reach a decline or a defer where the facts support one, as Section 09 sets out, including where saying so costs the platform the work.

SECTION 20

## Accumulated Capital and the §531 Question

Wherever the platform includes a C-corporation — the companion corporation of Variant II, retaining capital and financing deferred compensation under its own services agreement, or the corporate platform of Variant III (Section 04) — retained earnings raise a distinct tax question, better confronted deliberately than discovered under examination. A Variant I pass-through platform never meets this section: its earnings are taxed to the owners whether retained or not, which is part of why the variant exists. Section 531 imposes a flat 20% accumulated earnings tax on the accumulated taxable income of a corporation formed or availed of to avoid shareholder-level tax through accumulation — a penalty layered on top of the 21% corporate rate, aimed at earnings retained beyond the reasonable needs of the business. The rate is 20% for tax years after December 31, 2012; the pre-2013 rate of 15% still circulating in secondary sources no longer applies. The answer is not to avoid retaining capital — a platform may have entirely legitimate reasons to accumulate — but to justify the accumulation under the reasonable-needs-of-the-business standard. The statutory frame is wider than §531 alone: §532 supplies the avoidance-purpose requirement: the tax attaches to a corporation formed or availed of to avoid shareholder-level tax through accumulation. §533 treats accumulation beyond the reasonable needs of the business as determinative of that purpose unless the corporation proves otherwise by the preponderance of the evidence. The reasonable-needs record therefore serves double duty, answering the substantive accumulation question and rebutting the statutory purpose inference at once. That justification has two established components: a working-capital analysis of the Bardahl type, sizing the operating capital the business genuinely requires across its cash-conversion cycle; and specific, definite, and feasible plans for the retained capital, not a vague intention to accumulate but identifiable business purposes, supported by contemporaneous substantiation created as decisions are made and updated as circumstances change (Treas. Reg. §1.537-1, §1.537-2). The authorities should be classified honestly by weight. The §1.537 regulations are binding. The analytical framework comes from Bardahl Mfg. Corp. v. Commissioner (T.C. Memo 1965-200), a memorandum decision that binds only its own taxpayers, and Technalysis Corp. v. Commissioner (101 T.C. 397, 1993), a regular Tax Court opinion, and precedential. What is published here is the category of substantiation a reviewer expects and the reasoning behind it: never a representation that the right minutes preserve the accumulation, that survival is assured, or that the position is beyond challenge. One figure is deliberately left to the client's CPA. The accumulated-earnings credit under §535(c)(2) is $250,000 generally but $150,000 for a corporation whose principal function is the performance of services in health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, an enumerated-fields test that is its own inquiry, distinct from the separate personal-service-corporation classifications used elsewhere in the Code. Whether a management-only platform serving a law practice sits inside that enumeration is a fact-specific determination turning on what the entity's principal function actually is, and it belongs to the CPA of record, and it stays there. A reviewer will also test a services company against the personal holding company rules of §§542(a)(1) and (2). The ownership condition is tested annually with attribution and is ordinarily satisfied in a closely held platform, so the analysis usually turns on the income test; as Section 22 sets out, a services fee is not automatically outside it. That classification, too, belongs to the CPA of record. Section 531 is not a scare number; it is a standing question with a documented answer. The corporate annual meeting minutes and board resolutions that substantiate the business purpose for retained capital are part of the same record that answers §482 — one record, several readers. Procedure gives the record a second job. Under §534, the burden of proof on the reasonable-needs issue in an accumulated-earnings dispute can shift to the Service where the taxpayer, after the statutory notification, timely submits a statement of the grounds on which it relies and facts sufficient to show the basis for them. That makes contemporaneous budgets, capital plans, board approvals, and evidence of execution more than good governance; they are the material from which that statement will one day have to be constructed, and a statement assembled from a contemporaneous record reads differently from one drafted for the occasion.

The accumulation posture is examined on the record built year by year, not the plan presented before it. Guardian Tax Consultants® facilitates the maintenance of that record as part of the annual servicing program; the client's CPA owns the return position and any personal-service-corporation determination within it.

SECTION 21

## Potential §1202 Treatment and Its Limits

Stock of a corporation practicing law cannot be qualified small-business stock: "law" is an enumerated field under §1202(e)(3)(A), and — separately — a business whose principal asset is the reputation or skill of its employees is excluded as well. The question is whether the services entity's stock sits differently, its value resting in systems, technology, and company-owned intellectual property rather than personal skill. The category rule is settled; the application is fact-dependent, resting on non-precedential authority. Analyzed, not promised.

Two points of precision before the tests. First, the analysis attaches to the management entity organized as a C corporation, Variant III of Section 04, where the operating business and the company-owned IP actually sit inside the corporation. It does not attach to a Variant I pass-through platform at all, and it attaches only in a limited way to Variant II's companion corporation, whose content is retained capital and deferred-compensation funding: assets §1202(e) is written to discount, as Section 22 develops. Claiming the full analysis from an entity doing a different job is one of the recognizable marks of a structure engineered to the result. Second, the exact terms of the management agreement matter to the exclusion itself: "consulting" is an enumerated disqualified field under §1202(e)(3)(A), and a corporation whose agreement reads as advice-giving rather than as the performance of defined management functions — services actually rendered, by the corporation's own personnel, with its own assets — has drafted itself toward the exclusion it was trying to avoid. The scope describes what the company does, and what the company does has to be management, in fact. The same caution reaches any function description drafted around what the owners personally bring rather than what the corporation delivers: where the work in substance is the principals' own judgment, the reputation-or-skill exclusion is in view independently of the enumerated fields, and it bears on Variant III with the most force, since that is where the full §1202 analysis actually runs. One more reason the record has to show the corporation's personnel, systems, and assets performing the services, rather than its owners' expertise wearing the corporation's name.

A tension runs between this section and Section 18, and it deserves resolving on the page rather than leaving to a skeptical reader. Section 18 ordinarily confines routine service activity to a routine, arm's-length return — a nonroutine return is supportable only where the platform itself owns nonroutine intangibles, bears meaningful entrepreneurial risk, or makes unique and valuable contributions of its own — and a corporation earning a routine return can look like a poor candidate for the kind of enterprise value §1202 rewards. The resolution is that the discipline constrains the return to what the platform's own facts warrant; it does not cap the scale of the business. A company earning a routine markup on a cost base that doubles has doubled its earnings, and what a later buyer prices is less the margin than the durability underneath it: owned systems and intellectual property, an assembled workforce, executed agreements, an operating history that reads, and retained capital compounding at the entity across the holding period, deployed within the active-business limits set out below. §1202 asks for a qualified active business, not supernormal profits. Value accretes here the way it accretes at any services company built to last — through what the company owns, what it can deliver without any particular person, and what its record proves — which is why the same annual file that defends the fee is the file that supports the stock. Two structural tests bound it. First, §1202(e)(1)'s active-business requirement: at least 80% of the corporation's assets, by value, used in the active conduct of a qualified trade or business for substantially the entire holding period. Second, an unsettled risk: whether a holding corporation receives active-business look-through for interests in operating pass-through entities, given that the §1202(e)(5) look-through addresses subsidiary corporations rather than LLC or partnership interests. An entity failing these tests may not produce the intended §1202 treatment on sale. The 2025 OBBBA revised the mechanics with two different date triggers that should not be collapsed into one: the tiered 50/75/100% exclusion at three, four, and five years and the raised per-issuer cap are keyed to stock acquired after July 4, 2025, while the raised aggregate-gross-assets ceiling is keyed to stock issued after that date. Stock predating the applicable trigger stays under prior law, with transition questions belonging to counsel (Appendix D). This is §1202 positioning, principal-asset test in view, documented with deal counsel.

One more thing the statute does not offer: pre-clearance. There is no generally available agency certification of QSBS status in advance: the stock either meets the requirements when the gain is realized or it does not, and the determination is made then, on the facts as they accumulated. Counsel may render a fact-dependent analysis or opinion along the way; it does not bind the Service and does not substitute for continuing compliance across the holding period. The strongest available method is therefore not a one-time opinion but an annual record: documenting, year by year as part of the platform's administrative durability file, why the business did not disqualify itself that year: what the corporation's personnel actually did, where its value actually resided, how its assets were actually deployed against the §1202(e) tests. A position assembled retrospectively at the letter of intent argues; a position documented annually simply reads. The conclusion in any year belongs to the client's counsel and CPA — the administration of the record they will rely on is the platform's, and it is the discipline Part Four describes.

SECTION 22

## The Asset-Location Conflict

The two preceding questions are usually analyzed apart from one another. They should not be. A platform that retains capital under Section 20's discipline and holds stock positioned as Section 21 describes is subject to both regimes at once, and the answer that satisfies one of them can defeat the other. This is corporate-variant territory by construction: the companion corporation of Variant II and the corporate platform of Variant III (Section 04); a Variant I pass-through platform has neither retained corporate capital nor stock to position, which is not a defect but a different design answering different problems.

The exposure arrives on a predictable schedule. The ownership condition of §542(a)(2) — more than half the stock's value held by five or fewer individuals during the last half of the year, counted with the §544 attribution rules — is not met by definition, but a closely held platform will ordinarily satisfy it: a firm of seven partners does by arithmetic, and family attribution sweeps in many patterns that look wider than they are. It is a condition tested annually on actual ownership, not assumed, and a platform broadly held across several dozen partners may sit outside it. Where it is met, the analysis turns on the income test in §542(a)(1), which asks whether at least 60% of adjusted ordinary gross income is personal holding company income as §543 defines it.

That test deserves attention before a transaction as well as after one, because a services fee is not automatically outside it. Section 543(a)(7) treats amounts received under a personal service contract as personal holding company income where someone other than the corporation holds the right to designate the individual who performs the services, or the contract itself designates that individual by name or description, and that individual owns 25% or more in value of the corporation's stock; §543(a)(6) does the same for property a 25% shareholder is entitled to use. A platform owned by the professionals it serves, under an agreement letting the practice name the individuals who will do the work, is the fact pattern those provisions describe. Drafting the services agreement so that the platform rather than the practice designates personnel, and so that no individual is named or described in it, is a design response to that, and whether it succeeds on any set of facts is a determination for the CPA of record.

After a transaction the question changes shape. While the platform is operating, service revenue that is not itself personal holding company income ordinarily dominates adjusted ordinary gross income, and the 60% test may not be met, a conclusion that is nevertheless retested annually, including against the personal-service-contract rule of §543(a)(7), rather than assumed from the word "active." A transaction does not create the problem; it removes the income that was keeping the ratio down. In the companion-corporation pattern the removal is direct: the corporation's platform-facing services agreement is commonly terminated or re-scoped in connection with a third-party closing, for the buyer's-arithmetic reason Section 08 describes, and when it ends, the fee income stops while the capital stays. What remains is a capitalized corporation whose adjusted ordinary gross income is now largely dividends, interest, and, subject to their own statutory carve-outs, rents and royalties. Where the income test is met, §541 imposes a tax on undistributed personal holding company income in addition to the regular corporate tax, and before any shareholder-level tax on eventual distribution.

The natural response is to hold the capital in assets that produce appreciation rather than current yield, because appreciation is not income and generates nothing the income test can measure. That instinct is correct as to §541, and it can materially impair or destroy a §1202 position where the portfolio pushes the corporation past the active-business, working-capital, or non-subsidiary-securities limits that follow.

Three provisions do the damage. Section 21 has already set out §1202(e)(1)'s requirement that at least 80% of assets by value be used in the active conduct of a qualified trade or business for substantially the entire holding period. To it §1202(e)(5)(B) adds a ceiling: a corporation fails the active-business requirement where more than 10% of the value of its net assets consists of stock or securities in corporations that are not subsidiaries. And §1202(e)(6) treats reasonably required working capital as active-business use but caps that accommodation, so that after the corporation has existed two years no more than half its assets may qualify on that basis. A diversified portfolio built for appreciation is the precise asset each of those provisions is written to exclude.

 

**THE ASYMMETRY DECIDES THE ORDER**

The two exposures are not equally reversible, and that is what settles which one is planned around. Personal holding company tax is a rate applied to a year, and it is answerable in the year it arises: an actual distribution, or a consent dividend under §565, eliminates the undistributed income the tax reaches, and the option returns every year; even after a determination, the §547 deficiency-dividend procedure can eliminate the tax itself, though not the interest that rode with it. It is expensive only where no one examined the position before the year closed.

Section 1202 does not work that way. Qualification is tested across substantially the entire holding period, so a portfolio held through several of those years cannot be cured by liquidating it before a sale. The curable exposure is the one to solve annually. The one that is not curable has to be decided first, which means at formation, not at the letter of intent.

What resolves the conflict is asset location rather than asset selection. After a transaction the family holds two pools on different terms: personal proceeds taxed once, and corporate capital taxed twice unless the stock qualifies. Growth generally argues for the pool taxed once. The corporation may be considered for what functions best inside a corporation — the funding asset behind a deferred-compensation obligation, insurance held for a corporate purpose, capital genuinely reserved for the next operating business — with one warning attached: serving a corporate objective does not automatically make an asset a qualifying active-business asset. Classification under §1202(e) and under the personal-holding-company income definitions is tested independently, asset by asset and year by year, and the allocation holds only as long as those tests keep coming out the same way.

This is not a conclusion available in the abstract. Section 1202 qualification is issuer-centric and fact-specific: counsel analyzes it at issuance and re-evaluates it in connection with a later transaction, and continuing qualification depends on the facts maintained throughout the holding period, so no one can confirm a future examination result in advance. The deployment of retained capital answers to its own requirement regardless of where the assets are located: the §531 business-purpose discipline discussed in Section 20 still applies. The point is narrower and it is a matter of sequence: these two positions have to be reconciled deliberately, in the year the structure funds, because by the time both are being examined the facts that determined the answer are years old.

SECTION 23

## The Qualified Business Income Question

A management fee paid by an operating practice to a related services company reduces the practice's income. Where that income was producing a §199A deduction, the fee has a cost that has to be weighed against whatever the arrangement produces. Where it was not, the objection does not arise. The question in this section lives on the pass-through side of the structure: a Variant I platform, or the pass-through management company in Variant II (Section 04); for a C-corporation platform no §199A deduction is in issue for the recipient at all, as the box below develops. Which of those is true depends on a determination made before any fee is modeled, which is why a practice's industry classification is a threshold input rather than an administrative one.

Section 199A allows a deduction of up to 20% of qualified business income for owners of pass-through businesses, and was made permanent under the 2025 legislation, but it is limited for a specified service trade or business: a category that expressly includes health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services and brokerage, together with any trade or business whose principal asset is the reputation or skill of its employees or owners. Above the applicable taxable-income threshold the SSTB limitation phases the deduction out entirely.

The determination is made owner by owner rather than firm by firm. Section 199A is claimed on the individual return and the SSTB limitation phases out by reference to each owner's taxable income, so one firm routinely contains partners for whom the deduction is already fully phased out — for whom a management fee costs nothing in §199A terms, because there is nothing left for it to reduce — alongside partners inside or below the phase-in range for whom the fee reduces a deduction they are actually taking. That is why the arrangement's economics are cleaner for the owners of a specified service business than for the operating businesses this structure is more commonly discussed around, and why the model has to be run against the actual distribution of partner circumstances rather than against a single firm-level assumption. Where a group holds non-SSTB operations alongside the practice, the cost is real and belongs in the model before any fee is set rather than in a footnote afterwards. The movement of W-2 wages and qualified property from the practice to the platform bears on the same computation.

#### THE MANUFACTURED-QBI OBJECTION, AND WHY IT POINTS ELSEWHERE

The reflexive characterization of any spun-off services entity is that it is an attempt to convert service income into qualified income: "crack and pack." The regulations were written against exactly that. Treas. Reg. §1.199A-5(c)(2) provides that a trade or business with 50% or more common ownership that provides property or services to an SSTB is itself treated as an SSTB with respect to what it provides; the proposed 80% cliff was replaced in the final regulations with an allocation approach, so partial provision produces partial treatment rather than an all-or-nothing result.

The rule allocates SSTB character to a commonly owned supplier for one purpose: denying a §199A deduction the supplier would otherwise claim. It has no application where the services company is organized as a C corporation, because no §199A deduction is in issue for it, and it makes no determination about the character of the supplier's own trade or business for any other purpose.

What it emphatically does not do is settle the §1202 question, and explicitly so: §199A defines a specified service trade or business by cross-reference to §1202(e)(3)(A). The two provisions run on cross-referenced statutory text — §199A(d)(2) incorporates §1202(e)(3)(A) with modifications — so no firewall exists between them and none should be claimed, though the §199A regulations' field definitions do not by their terms govern §1202. Whether a platform's business is the performance of services in the field of law, or whether its principal asset is the reputation or skill of its employees or owners, is a separate factual determination that turns on what the platform's personnel actually do and where its value resides. Section 21 takes that question up. The §199A anti-abuse regulation answers it in neither direction.

Nor does any of this establish that a structure is respected. Section 482, §269A, and the substance analysis of Section 19 all still apply, and they are where the real testing happens. The narrower point is only that the crack-and-pack objection, raised early and often, is answered by reading the regulation it rests on rather than by conceding it.

Two consequences follow. The classification determination is made early, documented, and owned by someone accountable, because the downstream analysis — whether the fee costs a deduction, the benchmarking set, how the arrangement is described on the return — rests on it. And it is fact-specific and belongs to the client's CPA: a classification adopted for convenience rather than reached on the facts is one of the more efficient ways to undermine an otherwise sound structure.

 

PART FOUR

# The Record Over Time

SECTION 24

## The Annual Substantiation Cycle

Durability is administered, not declared. Each recurring obligation corresponds to a position a later reviewer will test. Contemporaneous board minutes substantiating the business purpose for retaining capital speak to §531. The annual transfer-pricing re-justification (re-documenting the best-method selection under §1.482-1(c), and refreshing the quantitative support on current facts and data rather than rolling the prior year's study forward) speaks to §482. Records that the services were actually performed, and minutes showing how the fee was set rather than merely that it was approved, distinguish a substantiated arrangement from the record Aspro criticized.

Under §7491(a), the burden of proof on a factual issue can shift to the Service, but only where the taxpayer produces credible evidence and complies with applicable substantiation and recordkeeping requirements; for a corporation, only within net-worth and employee limits, generally $7 million and 500 employees, that not every platform meets. Contemporaneous recordkeeping is not merely persuasive: it is a condition to burden-shifting where §7491's separate eligibility requirements are met, and a condition to the transfer-pricing penalty protections described in Section 18 — two more reasons the record is administered rather than asserted.

Administered means something specific. The discipline is defined as an annual cycle on a fixed fiscal calendar rather than as work that arrives when someone remembers it: an annual kickoff and data refresh, a quarterly fee and general-ledger cadence, a mid-year check, a fiscal-year-end review, year-end certification, and renewal. Calendar-driven is the distinction that matters, and it is the standard the discipline is built to. A record produced only when someone asks for it is produced in the year someone asks — reliably not the year a reviewer arrives. Two features distinguish the design from an annual file review. As a standard of Guardian's program rather than any statutory requirement, the independent economic analyses are refreshed each year rather than merely rolled forward, so the fee rests on current facts rather than on a study that was true once. The legal requirement, as Section 10 notes, is that the method and its support remain justified on the facts as they stand. And the cycle is built to terminate in a certification rather than a memo: a signed instrument carrying a preparer, a reviewer, and a risk sign-off, not a summary of work done.

 

## Control objectives drawn from the published record

A control framework is only as credible as the source of its objectives. These are not invented. The factors that contributed to disallowance in Aspro are public, and each implies the recurring control that answers it. The reported record also runs the other way, as Section 19 sets out in H.W. Johnson: consistent adherence to a compensation formula the company had applied for years was itself among the facts the court credited. Long-standing consistency is evidence in its own right. That mapping is the framework's spine, and it is verifiable by anyone who reads the same cases.

CONTROL OBJECTIVES DRAWN FROM THE PUBLISHED RECORD

the factors that contributed to disallowance, and the control each one implies

| WHAT THE RECORD CRITICIZED | THE CONTROL IT IMPLIES |
|---|---|
| Fees paid in lump sums at year end | Invoicing on a fixed cadence, tied to services as delivered |
| Fees tracking ownership percentages | Fee decoupled from ownership and from legal revenue |
| No methodology behind the amount | Method selected on the record, re-justified annually under §1.482-1(c) |
| Fees that zero out operating income | Routine-return calibration; the entrepreneurial residual stays with the practice |
| Services not demonstrably rendered | Service records and deliverables contemporaneous with the invoice |
| Documentation assembled after the fact | The file built forward from the first intercompany invoice |

Analogical, not on point — the factors are the useful part, not the holding.

**Figure 9.** A control framework is only as verifiable as its objectives. These are drawn from the published record rather than asserted — each factor that contributed to disallowance implies the recurring control that answers it.

The logic runs one way only. A control that answers a factor a court actually weighed is a control worth running; a control that answers nothing in the record is administrative overhead. Annual governance does not foreclose examination. It builds the stronger contemporaneous record a regulator, a taxing authority, and a future buyer each read.

## Events that reopen the existing answer

The annual cycle is the floor, not the whole discipline, because some changes cannot wait for the calendar. A defined set of events reopens the existing analysis whenever they occur: an office, employee, or acquisition in a new state; a new service line or the termination of one; a change in investors, governance, or control; personnel moving between the practice and the platform; a material change in the fee, the cost base, or the platform's margin; a new intercompany loan or a material deployment of retained capital; a contemplated financing, sale, or recapitalization; and a change in the law of any state the firm touches. Each of those moves at least one fact a prior conclusion rests on, and the discipline is that the event triggers the review — not the next annual meeting, and not the reviewer who eventually notices.

 

SECTION 25

## The First 365 Days: An Operating Cadence (Principle Level)

The cadence below begins after the transition itself — personnel, benefits, contracts, systems, insurance, banking, intercompany agreements — has been executed in the sequence Section 31 describes, each professional's sign-off in hand before the function it governs moved. Year one determines whether the platform stays readable: to counsel, to lenders, to the CPA of record, and to the buyer who has not yet appeared. The administration begins with the first intercompany invoice, not with the first examination. The categories that follow are principle level: reviewer-facing duties, not internal process — the route a reviewer will travel, not the machinery that runs it. The separation holds throughout: the route is worth publishing, and the machinery behind it is not. Services are performed and invoiced for real: the first intercompany invoice is issued and the services it bills for are rendered, so the relationship is an operating fact rather than a year-end reconciliation. The fee rationale — the method, and why it was chosen over the alternatives — is recorded when the fee is set, not reconstructed later. Board governance begins in year one, with minutes that record the business purpose for any capital the platform retains. The best-method re-justification under §1.482-1(c) is a recurring annual obligation, so the §482 position is re-documented rather than assumed to persist. And professional independence is preserved as an operating reality: control of legal judgment, custody of client files, matter decisions, with delegated nonlegal functions under appropriate supervision.

Each maps to a position a later reviewer will test. Services documentation answers both §482 and Rule 5.4. Business-purpose minutes answer §531. Consistently administered intercompany economics answer buyer diligence. The record built in year one is the record every later reviewer will read, so the platform is built, from the first intercompany invoice, for exactly that reading. Year one is where it begins.

SECTION 26

## The Annual Evidence File

The discipline produces a single reviewer-readable file, assembled across the platform's operating life, evidencing that the platform performed real services, that the fee was independently supported and consistently administered, that capital retention had a documented business purpose, and that any claimed tax posture still rests on the historical facts.

The word "file" undersells what this is: not a binder assembled before a review but a controlled information architecture, ten moving parts held in alignment with one another as each of them changes.

The management services agreement. The current service scope as actually delivered. The economic study supporting the fee. The intercompany invoices. The cost allocations behind them. The governance decisions of record. The documented business purpose for capital retained. The financial reporting. The tax positions as filed. And the transaction diligence materials, if a process ever comes.

Any one of those can be produced on demand by a competent advisor. What cannot be produced on demand is the state in which all ten agree, because agreement is not a document, it is a condition maintained over time. A service line added in year two changes the scope, which changes the cost base, which changes the allocation, which should change the study, which should be reflected in the minutes and consistent with the return. Left alone, those ten drift apart at the speed the business changes. Held in alignment, they read as one account of the same enterprise.

 

Which is why the work is not filing. The recurring judgment is recognizing that an operating change has consequences elsewhere: that a new service line is not merely an operational fact but an economic one, that a staffing shift moves the cost base, that a capital reallocation needs a documented purpose before year-end rather than after, that a change in who decides what may have moved an independence fact. Each of those requires someone to determine whether economic, governance, reporting, or advisor action follows, and to route it before the gap opens. The record is the evidence that discipline produces, not the discipline itself.

The cycle is designed to terminate in an instrument rather than a summary. The Annual Governance Certification is a signed control document whose architecture runs across structural documentation, related-party lending, expense discipline, the management-fee structure, allocation policy, accounting method and tax, the operating-boundary attestation, a risk sign-off matrix, and a final approval, carrying a preparer, a reviewer, and a date. The description stops at the architecture; the control items themselves are proprietary. The point of naming them at all is that a reader can see the shape of the thing: it is built like a workpaper, and it is signed. One component's name is chosen deliberately: the operating-boundary attestation attests operating facts — what reporting ran where, which categories of decision were made by whom, what the governance record shows — and not legal conclusions. Whether the facts attested satisfy any jurisdiction's rule is counsel's determination and no one else's, exactly as Section 11 states; a nonlawyer administrator certifying facts for counsel to evaluate is doing its job, and one certifying compliance would be doing counsel's.

Where a §1202 position is in view, the same logic applies with more force. Qualification is tested across the whole holding period, so evidence never created contemporaneously is difficult to reconstruct later. A certification issued annually, dated, and kept as a continuous series is therefore not a formality; it is the form in which the historical facts remain demonstrable to a buyer's diligence team years afterward. Whether the position qualifies remains the client's tax advisers' conclusion.

A well-maintained file strengthens that record; it does not prevent examination or assure any tax result. Its value is that when a taxing authority or a quality-of-earnings team opens the structure years later, the record was already built for that reading.

## Built to be produced

There is a property of this file that is easy to miss and expensive to get wrong: it exists in order to be handed over. Contemporaneous documentation supporting a transfer-pricing position is not archival. Under Treas. Reg. §1.6662-6(d) it must be in existence when the return is filed and provided to the examiner within thirty days of a request, and its evidentiary value is precisely that it can be produced on that clock. The same is true in commercial diligence, where the file's purpose is to be read by someone underwriting the business.

That is a different category from the legal analysis surrounding the structure, and the category has to be described precisely because it is routinely described loosely. The attorney-client privilege protects confidential communications between client and counsel made for the purpose of obtaining or providing legal advice; the work-product doctrine protects material prepared in anticipation of litigation, on different terms and with different waiver rules. Neither protection reaches underlying facts, and neither attaches to business advice merely because a lawyer delivered it. Their waiver rules differ: attorney-client privilege is generally vulnerable to voluntary disclosure outside protected relationships, while work-product protection can survive some nonadversarial third-party disclosures, depending on whether the disclosure meaningfully increases the likelihood that an adversary obtains the material. In an arrangement with several advisers and an administrator, unexamined circulation is the most likely way either protection is actually lost — so counsel determines the status, permitted recipients, and intended use of each document before it is shared. Nor is a document privileged because of the folder it is filed in. Counsel's advice on how the arrangement should be formed, the professional-responsibility analysis behind it, and the assessment of what could go wrong may be protected; whether any particular document is, and who may hold it without waiving, is counsel's determination made before the document is created. The discipline is knowing, at the moment a document is created, which of the two categories it belongs to.

Confusing them fails in both directions, and the directions are not symmetrical. Producing something intended to stay privileged is a loss. Asserting privilege over the substantiation itself is worse: the documentation was created to be shown, withholding it forfeits the protection it was meant to earn, and a privilege claim over a taxpayer's own transfer-pricing file reads to a reviewer as an answer about the position rather than about the document. Nor should the substantiation file be built in reliance on the practitioner privilege at §7525, which is narrower than it is usually assumed to be. It reaches only communications with a federally authorized tax practitioner — an attorney, certified public accountant, enrolled agent, or enrolled actuary — so communications with anyone outside that set are outside it entirely. It applies only in noncriminal matters before the Service and noncriminal federal proceedings brought by or against the United States, and therefore not in state tax proceedings of the kind Section 12 describes, not in criminal matters, and not in private litigation or commercial diligence. It does not reach return preparation, and it excludes written communications made in connection with promoting participation in a tax shelter.

The practical consequence is a sorting rule applied at creation rather than under examination, and it belongs to the same lane doctrine as everything else here: counsel decides what is privileged, and the record is administered so that the material built to be produced can be produced without disturbing it.

As the front matter states for the paper as a whole, this section describes the purpose of the discipline and the categories it holds in alignment, not the mechanism, sequencing, or control items by which it is implemented, which remain proprietary.

SECTION 27

## Two Files, One Structure: A Durable Record vs. a Thin Record (Illustrative)

This contrast is illustrative and hypothetical. "Platform A" and "Platform B" are teaching constructs: not clients, not named parties, not completed matters. Nothing here predicts an outcome or promises a result for any real structure.

Imagine two law-firm MSO platforms identical on paper at closing: same separation of licensed practice from services company, same form of management services agreement, same structure diagram. They diverge in one respect: the record each builds after signing.

### Platform A: the durable file

The MSO performs real, documented nonlegal services, with the evidence generated as the work is done. A written MSA governs; the fee is benchmarked by an independent economics firm, decoupled from ownership and revenue; invoices are actually issued and actually paid. Contemporaneous minutes record how the fee was set, with the method selected and alternatives rejected, along with the business purpose for retained capital; the best-method selection under §1.482-1(c) is re-justified annually.

 

## Platform B: the thin file

The fee tracks ownership percentages rather than services rendered. No invoices are issued; the relationship lives in the agreement and year-end entries. There is no history of distributions, the fee reduces taxable income to near zero, and nothing contemporaneous records how it was decided. Platform B carries the features Aspro condemned — ownership-linked payments, thin evidence of services, no contemporaneous support — reconstructed after the fact, because no one built the record while the facts were fresh.

## The same file, read by three reviewers

To a professional-responsibility regulator, Platform A shows a fee decoupled from legal revenue; Platform B, independence it cannot prove. To a taxing authority, Platform A offers a benchmarked fee, actual invoicing, and contemporaneous minutes answering §482 and §531 together; Platform B, nothing contemporaneous. To a quality-of-earnings team, Platform A presents a locatable value; Platform B, the quality-of-earnings adjustment or holdback a thin record invites.

The closing binders were identical. What separated them was built afterward, invoice by invoice and minute by minute.

**TWO FILES, ONE STRUCTURE**

identical closing binders; illustrative and hypothetical — not named parties

| PLATFORM A<br>the durable file | PLATFORM B<br>the thin file |
|---|---|
| A written MSA governs; the fee is benchmarked by an independent economics firm, decoupled from ownership and revenue | The fee tracks ownership percentages rather than services rendered |
| Invoices are actually issued and actually paid, on a real cadence | No invoices are issued; the relationship lives in the agreement and year-end entries |
| Contemporaneous minutes record how the fee was set — method selected, alternatives rejected | Nothing contemporaneous records how the fee was decided |
| The best-method selection under §1.482-1(c) is re-justified annually | No history of distributions; the fee reduces taxable income to near zero |

The closing binders were identical. What separated them was built afterward — invoice by invoice, minute by minute.

**Figure 10.** Two hypothetical platforms, identical at closing, diverging only in the record built afterward. A professional-responsibility regulator, a taxing authority, and a quality-of-earnings team each read the same divergence and price it differently. Illustrative, not a prediction for any real structure.

State the limit directly: Platform A is promised no result; it is simply reviewable, in the way its reviewers will read it. Substance cannot be cured by documentation. That is why the difference between the two files can be shown without publishing the control items behind either.

 

### What the difference costs

The same illustrative pair carries the point forward here. The cost of a thin record is paid three times, once to each reviewer.

To the taxing authority. A fee unsupported by the historical facts invites a §482 adjustment recharacterizing it as a disguised distribution — the Aspro pattern. Where an adjustment crosses the statutory thresholds, the §6662(e)/(h) valuation-misstatement penalties may apply — 20% for a substantial misstatement, 40% for a gross one — and as to the net-adjustment penalty, timely documentation compliant with Treas. Reg. §1.6662-6(d) is a necessary component of the exception rather than the whole of it — eligibility and reasonableness requirements still have to be satisfied on the facts. Whether a given platform approaches the net-adjustment thresholds is its own fact question; the file is built for the adjustment itself and for the three later readers, with penalty protection as an additional benefit where the thresholds are in play. Where a C-corporation platform retained capital without documented business purpose, the §531 accumulated-earnings exposure, a further 20%, arrives in parallel. Each is a category of exposure, not a promised outcome.

To the regulator. A fee that in practice tracks firm revenue or profit reads as impermissible fee-sharing under Rule 5.4. Independence real at formation but not demonstrable over time — no record of who controlled professional judgment, held client files, or made matter decisions — forces re-papering at best. The exposure is not that independence was lost, but that a thin file cannot prove it was preserved.

To the next buyer, lender, or recapitalization committee. Inconsistent intercompany economics, an unlocatable platform value, a tax posture resting on undocumented facts: each surfaces in diligence and is settled in the transaction's own currency, as Sections 05 and 15 describe.

The three costs share one root: a record never built for the reading these three reviewers would give it. This is not predicted for any particular structure; these are the failure modes a contemporaneous record forecloses, and why the discipline runs from the beginning of operations rather than being assembled under examination.

SECTION 28

## Ownership Continuity: Departure, Death, and the Transfer of Platform Interests

Law firms are defined by partner mobility. Equity partners lateral, retire, withdraw, and die, and a structure whose professional-responsibility architecture depends on who owns what has to survive each of those events without being redesigned. Most of the writing on law-firm MSOs treats ownership as a state fixed at formation; it is a variable, and it moves on a schedule nobody controls.

The problem has two halves that are usually conflated. A departing partner holds an interest in the practice and, separately, an interest in the platform. The first is governed by the firm's partnership agreement and by the rules of professional conduct. The second is governed by the platform's own governing documents, and nothing requires the two to move together; that is the point, and also the exposure.

Where the interests are locked to one another, so that a partner's platform interest is defined as a function of the partner's practice interest, the platform's economics track partner shares by construction. That is the coupling Sections

18 and 19 identify as the substance problem, and it carries the professional-responsibility problem of Section 11 with it, arriving through the back door of the buy-sell rather than through the fee. Where the interests are genuinely separate, a departure raises an ordinary question of business succession: who may hold the interest, at what value, on what terms, and funded how.

Four questions have to be answered at formation, because answering them under the pressure of an actual departure produces documents that read as though they were.

Who is permitted to hold platform equity. The analysis here assumes a platform with stock outstanding, consistent with the §1202 and corporate-tax discussion in Part Three; where a platform is instead organized as a limited liability company electing classification as an association taxable as a corporation, whether its membership interests are "stock" for §1202(c) purposes is unsettled and belongs on the formation agenda rather than in a later diligence request. A departing lawyer who retains an interest in the services company while no longer practicing at the firm is in a different position from a current partner, and a deceased partner's estate is in a third. Whether continued or inherited ownership is consistent with the applicable professional-conduct rules is a question for counsel in every jurisdiction the firm touches, and the answer determines whether the governing documents need a mandatory transfer on departure or can permit a holdover. And a mandatory-transfer or forfeiture term carries a professional-responsibility dimension of its own: where losing the platform interest on departure operates economically as a penalty on leaving to practice elsewhere — and Section 13 has already conceded that platform value tracks the practice's health — the policy behind Rule 5.6(a)'s bar on restrictive covenants is in view, and the term belongs in front of counsel under that rule and its state analogues, not just in the corporate documents. The design answer is the same one that runs through this section: value the interest independently and pay for it on defined terms, so that departure triggers a purchase rather than a forfeiture.

How the interest is valued. A platform whose value derives from systems, contracts, workforce, and an operating record is capable of independent valuation. But a valuation mechanism written into the governing documents — a formula, a multiple, an appraisal process — becomes a data point that surfaces later, in a transaction or an examination, alongside whatever the economic study says. The two should be capable of being read together.

How the transfer is funded. An unfunded obligation to buy out a departing partner's platform interest is a contingent liability. Whether capital reserved against it is a reasonable need of the business under §537 is a contested question rather than a given. §537(a)(2) makes redemption needs arising under §303 a reasonable need, and the negative implication for other redemption accumulations cuts against them without foreclosing them, so the accumulation requires the same specific, definite, and feasible plan Section 20 describes, and the determination belongs to the CPA of record. Where funding is arranged through insurance held by the platform, three constraints apply together: the notice and consent formalities for employer-owned life insurance under §101(j); the denial of deductions for premiums and carrying interest under §264; and the valuation consequence of Connelly v. United States, 602 U.S. 257 (2024), under which corporate-owned death benefit increases the corporation's value for estate-tax purposes without an offset for the redemption obligation it funds. A cross-purchase or insurance-LLC alternative is one of the design choices settled at formation with estate counsel, not after a death.

What happens to the fee. A departure changes the services actually rendered, the personnel rendering them, and often the cost base underneath. A fee set on a method rather than on a result should move when the underlying facts move, and the record should show it moving for that reason. A management fee that is identical in the year before and the year after a material change in the platform's workforce invites the reasonable question of what method produced both numbers.

Each of these is ordinary; what is particular to law firms is frequency. Ownership will change repeatedly across the holding period over which a §1202 position, a §482 method, and an independence posture must all stay continuously true. A platform with a documented answer to all four questions treats a partner's exit as an operating event; one without treats it as a restructuring, and every restructuring is a new set of facts for a later reviewer.

SECTION 29

## After the Transaction: What the Corporation Does Next

A transaction is treated in most writing as the terminal event. For a platform it is a change of job. In the companion-corporation pattern the change is abrupt and mechanical: the corporation was never part of the purchase, its platform-facing services agreement was commonly terminated or re-scoped in connection with the closing, for the reason Section 08 gives, and whatever capital it accumulated stays exactly where it was — owner-held, undistributed, and no longer earning a fee. The corporation still exists, still holds capital, and now has to be run for a purpose that is no longer the purpose it was formed for. Section 22 sets out the constraint that governs that capital. This section sets out what can be done with it, and what each answer requires to be true.

What arrives at closing is more than purchase price. Consideration in a professional-services transaction is rarely all capital gain: a portion tied to post-closing work, a consulting or transition services agreement the buyer needs in order to keep the business running through integration, and retention or transaction bonuses paid at closing. Those components were never going to receive capital treatment. A covenant not to compete is a standard component of the same list in other verticals and a doubtful one here: Model Rule 5.6(a) restricts agreements limiting a lawyer's right to practice after a relationship ends, Section 16 notes the resulting enforceability problem, and a covenant the lawyers give personally cannot be assigned to a platform that never held a right to practice. Any sale of the practice itself is governed by Model Rule 1.17 and its state analogues. One boundary governs everything that follows: the services in question are bona fide nonlegal transition, integration, management, and consulting work — services the corporation is legally permitted to perform and actually capable of performing. Compensation for legal services, client representation, matter transition, or the exercise of professional judgment belongs to the licensed practice and its lawyers under the professional rules, and is never routed through the platform or the companion corporation. Where the platform is the genuine provider of the post-closing nonlegal services, with the buyer contracting with the entity, the work performed by its people, and reasonable compensation paid out for that work, the consideration for those services is the entity's income rather than the owner's. That is a factual question with a well-established doctrinal answer against it if the facts are not there: assignment of income. An entity organized at the letter of intent is poorly positioned to carry it. An entity with operating history can, and in the companion pattern the natural candidate is the retained corporation itself: the platform now belongs to the buyer, but the companion corporation — with its own years of performing defined functions — can be the entity the buyer contracts with for the transition and post-closing work, earning the service-linked, ordinary-income components of the consideration at the corporate level. That engagement also does exactly what Section 22 wants done, restoring service income that is not personal holding company income in the years the income test would otherwise begin to bite.

One drafting fact decides much of whether it actually does — and its limits deserve stating as plainly as its mechanics. Section 22's personal-service-contract rule is not suspended because the work is real. A transition agreement under which the buyer designates the individual owner-professionals who will perform the permitted nonlegal work — the natural instinct in exactly this engagement, since the buyer is often paying for a named principal's involvement, not for fungible labor — walks the income back into §543(a)(7) where those individuals are 25% shareholders of the corporation. The engagement that avoids that result runs to the corporation, with the corporation staffing it and designating the performers. But the drafting only holds where the facts can: a designation right means something when the corporation has genuine performable capacity — its own personnel, or engaged professionals, who could actually be assigned — and where the owner-attorneys are the only people who can do the work, a contractual right to designate that can only ever resolve to those same shareholders is form the statute's substance test is built to look through. Whether the corporation has that capacity is a fact question answered before the allocation is agreed, and it is one buyers push against, because the compliant structure asks the buyer to accept the entity's staffing decision in place of the name it negotiated for. Where the structure is used, it should leave a dated trail the CPA of record can test annually: the engagement letter running to the corporation, a staffing resolution or assignment record showing the corporation exercising the designation in fact, and the same items carried into the annual file Sections 24 and 26 describe — because the characterization is retested annually rather than settled at signing, and a designation exercised on paper once is not a fact pattern, it is a recital. Whether it holds in any case is a determination for the client's tax advisers, transaction counsel, and the buyer's deal team, made before an allocation is agreed rather than after. True purchase price stays purchase price, and nothing here suggests that capital treatment and installment reporting should be traded away for a corporate rate followed by a second layer on distribution.

 

> **CASE ILLUSTRATION: A CONTINGENCY PRACTICE'S COMPANION CORPORATION THROUGH A SALE (ILLUSTRATIVE COMPOSITE; NOT A NAMED CLIENT OR A COMPLETED TRANSACTION)**
>
> A personal-injury practice had operated for years in Variant II's shape: a pass-through management company running operations, and a companion corporation retaining its own earned service fees at the corporate rate, smoothing the contingency cycle and carrying marketing spend between settlements — corporate capital, never client funds or settlement proceeds. When a third-party investor purchased into the platform, the buyer's underwriting did what Section 08 describes: the companion corporation's services agreement did not survive the closing, because its fee was leakage from the earnings being priced. Nobody bought the corporation, so its accumulated capital stayed exactly where it was: owner-held, undistributed, and, from the day after closing, earning nothing.
>
> Two disciplines took over at once. The personal-holding-company analysis of Section 22 became a live annual question the moment the fee income stopped. And the ordinary-income components of the deal — nonlegal transition and integration services the buyer genuinely needed — were candidates to run through the corporation rather than through the sellers personally: the buyer contracting with an entity holding years of its own operating history, the work performed by its people, the compensation reasonable for the services actually rendered, and non-personal-holding-company service income restored in the exact years the income test would otherwise begin to bite. The guardrails did not move: purchase price stayed purchase price, the service compensation had to be earned in fact, and every characterization would belong to the CPA and transaction counsel on the real numbers of an actual deal. What makes any of it available is never the transaction; it is the corporation's own operating record, built in the years before anyone proposed one, illustrative here, and no less true for it.

What happens afterwards resolves into a small number of paths, and together they answer the owner's first question after closing — what the retained capital can now do other than sit, or leave as a dividend. Each path may be available on appropriate facts, each is tested annually, and none is automatic. A distribution is generally the most mechanically direct of them; it is not a path without analysis of its own.

The corporation can hold assets that produce no current income, which produces no passive income for the test in Section 22 to measure, subject to the limits that attach to whatever asset is chosen, including the denial of deductions for premiums and carrying interest on corporate-owned life insurance and the notice and consent requirements for employer-owned policies. It can be given genuine new work under a new services agreement, which may restore income that is not personal holding company income and materially change the ratio, provided the services are real and the arrangement does not fall into the related-party categories that treat amounts under personal-service and shareholder-use contracts as passive regardless of how they are labeled. New work does not make the test disappear; the character of the income and both statutory tests remain annual determinations. It can stand behind a non-qualified deferred compensation obligation with its retained earnings — informally, the assets remaining the corporation's own and subject to its general creditors, as the unfunded form requires — under which §404(a)(5) defers the corporation's deduction until the participant includes the amount in income, and which must be designed and administered to satisfy §409A — election timing, permissible payment events, no impermissible acceleration — because failure produces immediate inclusion plus an additional tax and interest charge at the participant level. The amount must also be reasonable compensation for services actually rendered. What the arrangement does to undistributed personal holding company income and to accumulated taxable income is a computation for the CPA of record rather than an assumed result. It can distribute: an actual dividend, a consent dividend under §565, or a planned liquidation, which eliminates the exposure at the cost of the shareholder-level tax that was always embedded, and which still requires its own analysis of earnings and profits, corporate-law authorization and solvency, §301/§316 treatment, stock basis, and liquidity. Or it can be held forward for the next generation.

> **THE GENERATIONAL FORK**
>
> Holding the stock until death and moving value out early are alternatives, not a sequence, and the choice is made when the structure funds rather than at the letter of intent.
>
> Held in the estate, the stock receives a basis adjustment at death and the corporation can then be wound down against that basis, at the cost of the full date-of-death value sitting in the taxable estate, and with the adjustment reaching the stock rather than the corporation's assets.
>
> Moved out early through an irrevocable structure, the growth is removed from the estate — at the cost of the basis adjustment, which is not available for what has already left, and subject to the appraisal support, grantor-trust maintenance, and note terms the transfer requires. Anything already moved gets neither.
>
> The estate and transfer-tax work is performed by the client's estate counsel, and the valuation support by an independent appraiser. What the platform contributes is the operating record that makes the interest capable of being valued at all.

Basis discipline runs underneath every one of the five, and it is the arithmetic most often assumed away. A basis adjustment at a shareholder's death reaches the stock — outside basis — and does nothing to the basis of the assets inside the corporation, so a later sale of those assets, or a liquidation, can still produce corporate-level gain under §336 alongside the shareholder-level treatment of §331. The eventual dispositions those paths lead into are not economically interchangeable either: a stock sale, an asset sale, a liquidation, an S conversion carrying §1374's built-in-gains period and, for a corporation with accumulated earnings and profits and passive investment income, the §1375 tax and the §1362(d)(3) termination rule, and holding to death produce different combinations of corporate and shareholder consequences from identical facts, and the choice among them is modeled with the CPA and counsel on real numbers rather than assumed from the labels.

Two horizon questions sit behind all five and are decided earlier than they are usually asked. The tax treatment of a later recapitalization, including the character of proceeds, the treatment of rollover equity, and the carryover of basis and holding periods, turns on transaction form, ownership, basis, holding periods and rollover terms, and is reviewed by the parties' tax and legal advisers rather than settled here. And where an exit contemplates converting a C-corporation platform to S status, §1374 taxes built-in gain recognized within the five-year period following conversion, which makes the timing of that election a horizon question rather than a year-of-sale one.

The pattern across all of them is the one argued throughout. Each path is available on facts, each set of facts has to be maintained rather than established once, and the exposure that runs across every path, the passive-income profile of Section 22, is re-tested every year the corporation exists. It is inexpensive to manage on a schedule and expensive to discover after a year has closed. What the discipline produces after a transaction is the same thing it produced before one: a corporation whose facts are known, current, and documented at the time they were true.

SECTION 30

## Remediation: A Structure Already Built

Much of this paper addresses a structure not yet formed. A substantial number of the firms that will read it already have one, formed by someone else, and are asking a narrower and more urgent question: what can be repaired now, what cannot, and what the attempt itself looks like to a later reviewer.

The first thing to establish is which of two problems is present, because they have different answers. A documentation problem is a structure whose underlying facts are sound, with real services, real people, and a fee within a defensible range, but whose file is thin, stale, or internally inconsistent. A substance problem is a structure whose facts do not support the arrangement at all: a fee that swept the practice's profit, no services actually rendered, no personnel, an entity that exists on paper. The first is largely remediable going forward. The second is not remediable by documentation, and effort spent documenting it makes the position worse rather than better, because a file assembled to describe facts that did not occur is a different and more serious problem than a missing file.

For a documentation problem, the work is prospective and the sequence matters.

The first step is establishing the current position before anything is changed: what the agreements actually say, what fee was actually charged in each open year, what was actually invoiced and paid, what the minutes actually record, and how each year was actually reported. This is fact-gathering, and it is the point at which the scope of the problem becomes known — including whether any year presents an exposure that belongs to counsel rather than to an administrator. That determination should be made early, and the analysis of it belongs with counsel, in the privileged category Section 26 describes, rather than in the substantiation file.

The fee is then corrected prospectively, on a method. An economic analysis performed now supports the fee from now. It does not retroactively support a fee set on a different basis in an earlier year, and describing it as though it did creates a document that contradicts the record it is meant to support. Where the current fee sits outside a defensible range, the correction is applied going forward, the change is documented with its reason recorded at the time, and the reason is the correct one.

The agreements and the governance record are repaired from the current date. New or amended services agreements, a scope that describes what is actually delivered, invoices issued and paid on a cadence, minutes that record decisions as they are made. Every one of these is dated when it is executed. Backdating is not a remediation technique; it converts a civil documentation problem into a question of fraud, with criminal, professional-responsibility, and evidentiary exposure of its own, and a reviewer who finds one instance of it reads every other document in the file differently.

How open years are handled is decided with counsel. Whether a prior year's position is left as filed, amended, or otherwise addressed is a legal and tax determination with consequences that run beyond the structure, and it is the client's counsel and CPA who make it. The relevant point here is only that the decision should be made deliberately and recorded, rather than deferred by default until an examination makes it for them.

 

**WHAT REMEDIATION CANNOT DO**

It cannot create operating history. The record begins when the facts begin, and a structure repaired in year four has three years of thin file behind it that a buyer's counsel will read. What repair produces is a clean line: a documented point at which the discipline started, with everything after it consistent. That is a materially better position than an unrepaired file and a materially worse one than having built it correctly, and both halves of that sentence should be said to the client.

It also cannot make an unwind unnecessary where the facts require one. Where the substance was never there, the durable answer may be to unwind the arrangement, and the timing and manner of that are counsel's to determine — including the recognition that an unwind is itself a fact a later reviewer will consider.

The reason to state this in a paper about building correctly is that the alternative is worse. A firm holding a thin structure will generally do nothing, letting the exposure compound; run a quiet cleanup that produces backdated-looking documents; or call whoever built it. The fourth course, establishing the facts, separating the fixable from the unfixable, correcting prospectively, and routing the rest to counsel, is unremarkable professionally and the one least often written down where an owner can find it.

SECTION 31

## Guardian Tax Consultants® and the Administration of the Record

None of this is written against the firms that own the legal and transactional record. Counsel owns the legal conclusions; independent economists own the fee study and the number; the client's CPA owns the returns. Each is engaged for a conclusion, and each engagement reflects that professional's scope, facts, assumptions, and governing law as of its date.

Guardian Tax Consultants® builds and administers durable professional-services MSOs. The same operating discipline serves all three owners of Section 03, because what each needs is the same thing: the operating and economic architecture holding together, aligned with the facts across the years in which it will be read. The discipline runs in both directions: the material-advisor and promoter provisions Section 19 names ask their question of the advisor as well as the taxpayer, and Guardian's own answer belongs to Guardian's own counsel, kept current the way this paper insists every client-side position be kept.

Stated as work rather than principle, that has two halves. The first is the build. Guardian develops the initial operating and economic design with the client — which functions move, what the platform will own and do, how the fee will be built — while counsel selects the legal architecture that carries it. That design is not one instrument reused from client to client. It is built from the terms of that client's own management services agreement and that client's own objectives, developed together with a transfer pricing analysis supporting the fee and a professional-responsibility review specific to the practice, and only then reduced to a schematic of what actually has to move for that client — which services, which personnel, which systems, which contracts. The functions a schematic most often reaches include billing and collections administration, marketing and intake operations, human resources and benefits administration, technology and systems administration, and facilities management — illustrative, not exhaustive, and not every design reaches all of them. Which functions move, and how much of each, is a question the design answers; it is not a checklist Guardian arrives with. Guardian then sequences and assembles the professional work the design requires — counsel drafting the services agreement and rendering the professional-responsibility analysis on its own judgment, the independent economists supporting the fee, the client's CPA signing off on the tax positions, benefits and insurance advisers on theirs — and holds the gate: no function moves until the sign-off that governs it is in hand. Once it is, Guardian executes the nonlegal transition itself: the entity stood up, with its banking, insurance, and registrations in place; the nonlegal personnel moved onto the platform's payroll and benefits; vendor, technology, lease, and license contracts assigned or re-papered on instruments counsel prepares; systems and company-owned intellectual property located where the design puts them; the intercompany agreements executed; and the first invoice issued. Counsel owns every legal conclusion in that sequence and drafts every instrument that carries one; Guardian owns the sequence, the assembly, and the move. The second half is the administration this paper has described throughout: the executed agreements and their current scope, the annual fee study coordinated with the economists and reconciled to the fee as invoiced, the intercompany invoicing and allocation records, the governance calendar with the minutes and resolutions it produces, the documented business purpose for capital retained, the Annual Governance Certification, and the discrepancy log — every operating change routed to the professional whose conclusion it may affect. Excluded by design from both halves: no legal conclusion, no return position, no valuation, no custody of client or trust funds, and no service that constitutes the practice of law. Guardian is responsible for the accuracy and completeness of the record it administers and for the transition it executes; each professional remains responsible for the conclusions drawn from it. The entry point to either half is the feasibility analysis Section 09 describes — written so that it can return a decline.

That work runs before, during, and after any transaction: record readiness ahead of a process, §482 governance discipline through it, and an examination-ready file from the first intercompany invoice forward whether or not a process ever comes. Guardian does not opine and it does not file; it is answerable for the one thing no point-in-time engagement produces — a longitudinal record that still reads consistently when a regulator, a taxing authority, a lender, or a buyer opens it years later.

The formation proves the concept. The record proves the platform.

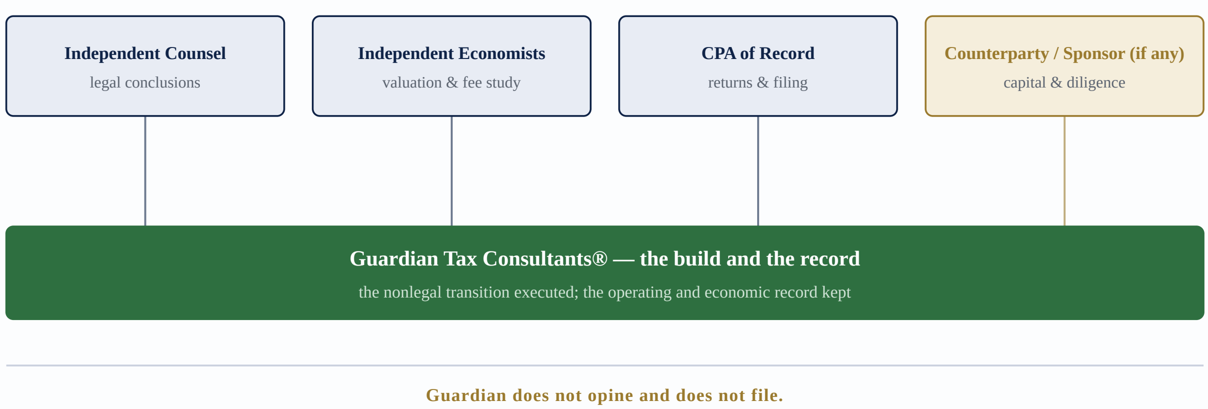


**Figure 11.** Guardian builds the platform and administers its operating and economic record, between counsel, economists, the CPA, and — where one exists — the counterparty or sponsor.

 

APPENDICES

# Reference

## Appendix A — What Each Reviewer Expects to See

### Three audiences, at the category level

For each reviewer, the categories of evidence expected.

### The professional-responsibility / regulatory reviewer expects

Professional independence preserved and supervised over time, not asserted at formation. Services nonlegal in substance, actually rendered by the platform. A fee fixed or cost-based, untied to firm revenue, profit, or matter outcome. Custody of client records and communications, and matter-decision authority, with the licensed practice.

### The taxing authority expects

A written management services agreement. A management fee with an independent, arm's-length basis and a documented best-method selection under §1.482-1(c), including why other methods were rejected. Actual invoicing, on a real cadence, decoupled from ownership. Contemporaneous transfer-pricing documentation in existence at filing (§6662(e); Treas. Reg. §1.6662-6(d)). Board minutes substantiating the business purpose for retained capital (§531; Treas. Reg. §1.537-1).

### The buyer, lender, or quality-of-earnings team expects

Intercompany economics consistently administered. A nonlegal platform owning or operating meaningful, locatable business value. A claimed tax posture still resting on the facts as they developed. A clean, reviewer-readable data room organized by category.

 

**ONE RECORD, THREE READINGS**

the same evidence, asked a different question by each reviewer

| | Professional-Responsibility<br>Rule 5.4 · state analogues | Taxing Authority<br>§482 · §269A · §531 · §1202 | Buyer / Lender / Recap<br>priced value · underwriting |
|---|---|---|---|
| **Services actually rendered** | nonlegal in substance, performed by the platform | documented delivery supporting the deduction | real functions behind the EBITDA |
| **The fee and how it was set** | fixed or cost-based; not tied to firm revenue or profit | arm's-length basis and a documented §1.482-1(c) method | a fee that survives normalization |
| **Governance and minutes** | authority over matter decisions left with the practice | business purpose for capital retained (§531) | consistent administration, not a year-end true-up |
| **Invoicing cadence** | an operating fact, not a paper arrangement | actual invoicing on a real cadence, decoupled from ownership | intercompany economics that tie out |
| **Independence over time** | custody of client files and communications with the practice | facts that still match the return as filed | no latent regulatory repricing risk |

This is the map, not the vehicle: what each audience asks to see, not how the file is built.

**Figure 12.** What each reviewer expects to find in the same record. The paper describes what each audience asks to see; the control items and procedures behind the file remain proprietary.

### The boundary of this appendix

These are reviewer expectations and evidence categories, not Guardian's file. The appendix stops at the category level by design: it describes what each audience asks to see, while the control items, methods, and procedures by which Guardian builds and maintains the file remain proprietary.

### What the record administrator keeps aligned annually

The three reviewers above render verdicts; the fourth function renders none, and its reference list is different in kind. For each professional lane, the administrator tracks the underlying facts and documents that lane's last conclusion rests on, and the events that require re-engagement: for counsel, the governance carve-outs, ownership architecture, and jurisdictional footprint against enacted-law changes and ownership events; for the CPA, the fee as invoiced against the fee as studied, the accounting-method and timing positions, and the state filing footprint; for the economist, the functions, personnel, cost base, and risks against the facts the last analysis priced; for the benefits advisers, the workforce location and plan design against the aggregation rules; for estate and wealth counsel, the ownership, valuation mechanisms, and transfer instruments against what the operating record now shows; and for any transaction adviser, the diligence materials against all of the above. The administrator's product is the discrepancy, routed to the right lane while the facts are fresh — never the professional conclusion, which stays where it belongs.

## Appendix B — Frequently Asked Questions

Educational only; not legal, tax, or investment advice. Permissibility and tax treatment belong to your counsel and CPA; statutory figures require confirmation against current law.

### What is a law-firm MSO

A separate company providing nonlegal services (administration, finance, technology, marketing) to a law practice under a management services agreement. It neither practices law nor owns the practice.

### Why do firms build this with no transaction in view

Because the traditional form creates real wealth annually but little a partner can carry out at the end, and a form in which built value cannot be captured weakens the incentive to build it. The platform is the part of the enterprise where transferable value can exist and compound — toward succession, operator equity, retention, and multi-year investment — whether or not any outside party ever appears. Sections 02 and 04 state the diagnosis and the answers.

### Can nonlawyers own a law firm

In most U.S. jurisdictions, no. ABA Model Rule 5.4 and its state analogues bar nonlawyer ownership of, and fee-sharing in, a law practice. The exceptions are narrow and differ in kind: Arizona maintains a regulated ABS regime; the District of Columbia has a limited exception for active nonlawyer professionals in the firm; Utah's supervised sandbox is closed to new applications and is on track to sunset by its seventh anniversary, August 14, 2027; Washington runs an applicant-specific pilot under individual court authorizations; and Puerto Rico — a U.S. jurisdiction, though not a state — permits up to 49% nonlawyer ownership under conditions adopted in 2025 and effective in 2026, including that the owner contribute only money and provide no services, marketing included, to the office. Tennessee has an open reform docket, outcome pending.

### Can the MSO fee be a percentage of firm revenue

This is a jurisdiction-specific legal question for the firm's own counsel, and Guardian does not answer it. As background: Texas Ethics Opinion 706 (2025), an advisory opinion that binds no one, concludes that a lawyer may not pay a nonlawyer-owned support-services company a fee measured as a percentage of the lawyer's or firm's revenues. It does not address flat or cost-plus fees and approves no alternative structure. Most jurisdictions have issued no guidance at all, and Illinois has now legislated: Public Act 104-0801, effective 7 August 2026, reaches fees keyed directly or indirectly to a firm's fees, revenues, or profits.

### What is Rule 5.4 and why does it govern

The professional-responsibility rule protecting a lawyer's independent judgment from nonlawyer ownership and fee-sharing.

### Is a law-firm MSO permitted in my state

A state-specific legal question for counsel licensed in your jurisdiction; a well-designed MSO addresses Rule 5.4 structurally; whether any particular arrangement complies is counsel's determination.

### What is a §482 management fee, and why benchmark it

The practice and the MSO are related, so §482 requires an arm's-length fee. Benchmarking by independent economists is how the parties test whether the fee reflects the platform's functions, assets, and risks, and documents why the selected method was the most reliable.

 

### Is a straight cost-plus markup automatically acceptable

No. The §482 best-method rule imposes no general hierarchy and no safe default; the taxpayer documents the method most reliably measuring an arm's-length result and why others were rejected. The nearest thing to a default is the services cost method — eligible covered services charged at cost, with no markup at all — which, properly applied under Treas. Reg. §1.482-9(b), is deemed the best method for those services; it is a no-markup method, not a blessing of any particular markup.

### Can a law-firm MSO qualify for §1202 (QSBS)

A law practice cannot: law is a categorically excluded field, as is a business resting on its people's skill or reputation. The question exists only where the management entity is a C corporation (Variant III of Section 04, principally). It runs on the §1202(e)(3) excluded-business test rather than the §199A SSTB definition, and the exact terms of the management agreement matter, since "consulting" is itself an excluded field. The answer is analyzed, not promised, on non-precedential authority binding only its own taxpayers — and it is best supported by an annual record of why the business did not disqualify itself.

### Does the §531 accumulated-earnings tax reach my MSO

Section 531 may impose a 20% tax on accumulated taxable income where a corporation is formed or availed of to avoid shareholder-level tax through accumulation (§532). Under §533, accumulation beyond the reasonable needs of the business creates the statutory purpose inference unless rebutted. A facts-and-circumstances question for the CPA of record and tax counsel, and the reasonable-needs standard turns on contemporaneous documentation of the business purpose for retained capital.

### Can any structure be immune from examination or pre-cleared

No. No agency pre-clears a structure, and a contemporaneous record does not prevent examination; it makes the arrangement reviewable.

### Is there a court case approving law-firm MSOs

Research through September 2, 2026 identified no adjudicated holding approving or invalidating the modern law-firm MSO structure as a whole. Durability rests on Rule 5.4, enacted state statutes, ethics opinions, and analogical non-law-firm tax authority — see Appendix D for the full classification.

### How does forming an MSO differ from maintaining one

Formation is the work that stands the platform up — counsel's drafting and analysis, and the operational transition Section 31 describes — whether or not a transaction is in view. Maintenance is the continuing economic and evidentiary discipline, running from the first intercompany invoice, that keeps the structure reviewable.

### How is rollover equity taxed in a later recapitalization

Potentially as deferral, not permanent exclusion, under an applicable nonrecognition provision whose requirements are met. Treatment turns on transaction form, ownership, basis, holding periods, and rollover terms; the parties' tax advisors' question.

### What does this cost to build, and how long before it pays for itself

No responsible figure fits in a FAQ, but the shape of the answer does. Formation carries real professional cost — transaction and ethics counsel, the independent economic study, entity formation and accounting setup — and the discipline carries a real annual run-rate: the study refreshed as facts change, governance administered, additional returns prepared and filed. Both scale with the practice's size, state footprint, and complexity, which is why Section 09 treats cost against benefit as a threshold feasibility question with decline as an available answer: a platform too small to absorb the cost of being real is a platform that should not be built. Payback is equally fact-specific — it arrives through capital that compounds at the entity, financing the practice could not otherwise reach, retention instruments the partnership form could not offer, and a record that prices at a transaction — and each engagement's own advisers put numbers on it before anything is formed.

### What does Guardian do versus counsel versus the CPA

Guardian Tax Consultants® builds the platform — the operating and economic design, the sequencing of the professional work, and the nonlegal transition — and administers the operating and economic control system, and the record it produces, that keeps the professionals' conclusions aligned over time. The conclusions themselves stay where the paper places them throughout — legal with counsel, the fee study with independent economists, the returns with the client's CPA.

Requirements vary by jurisdiction and over time; nothing here is a legal conclusion about any state.

## Appendix C — Glossary

Descriptive reference definitions; no outcome stated, no methodology embedded.

### Regulatory and ethics terms

MSO (management services organization). Provides nonlegal business services under a services agreement; neither practices the profession nor owns the practice. Rule 5.4. ABA Model Rule and state analogues barring nonlawyer ownership of law practices and fee-sharing. Fee-sharing. Dividing legal fees with a nonlawyer; fees tied to firm revenue or profit can read as fee-sharing. Alternative business structure (ABS). Entity allowing nonlawyer ownership or investment in legal services, permitted in some jurisdictions. Regulatory sandbox. Supervised program (e.g., Utah) permitting otherwise-restricted legal-services arrangements. Corporate-practice-of-medicine (CPOM). Health-licensing doctrine restricting nonphysician control of medical practices; separate from Rule 5.4.

### Tax terms

§482. Arm's-length pricing between related parties. Best-method rule. Treas. Reg. §1.482-1(c); the most reliable method governs, with no general priority among methods, except that an eligible, properly applied services cost method is deemed the best method for covered services under §1.482-9(b). Arm's-length standard. Related-party pricing matching terms unrelated parties would accept. Transfer-pricing. Rules governing controlled (related-party) transaction pricing. Services cost method (SCM). §482 method; cost, no markup, for narrowly defined non-fundamental services. Comparable profits method (CPM). §482 method benchmarking profitability against comparable independents; a routine return. Cost of services plus. §482 services method; cost plus arm's-length markup. Profit split / residual profit split. §482 method allocating combined profit — including residual, nonroutine profit — where both parties make unique and valuable contributions; an unspecified method may also supply the most reliable result on particular facts. Contemporaneous documentation. Documentation existing at filing; required for §6662 penalty protection. §6662(e) valuation-misstatement penalty. 20% (40% if gross) on underpayments from §482 valuation misstatements. §531 accumulated-earnings tax. 20% on accumulated taxable income where a corporation is formed or availed of to avoid shareholder-level tax (§532); accumulation beyond reasonable business needs creates the §533 purpose inference unless rebutted. Bardahl analysis. Working-capital computation substantiating reasonable operating-capital needs. Reasonable needs of the business. §537 standard justifying accumulation; specific, definite, feasible plans. §1202 (QSBS). Gain exclusion on qualified small-business stock meeting statutory requirements; for a services entity, analyzed, not assumed. Specified service trade or business (SSTB). Service businesses, law included, limited under §199A; §1202 uses its own excluded-business test. Active-business requirement. §1202 condition that substantial corporate assets serve an active qualified trade or business throughout the holding period.

### Transaction terms

Management services agreement (MSA). Contract governing services and fees between MSO and practice. Management fee. Fee the practice pays the MSO for services. Rollover equity. Equity a seller retains post-transaction; may be tax-deferred under an applicable nonrecognition provision. §721 / §351 tax-deferred contribution. Property contributed to a partnership (§721) or corporation (§351) without immediate gain recognition, requirements permitting. Companion C-corporation. In Variant II (Section 04), a C corporation engaged under its own services agreement for defined functions, retaining capital and financing deferred compensation, with no cross-ownership with the pass-through management company. Recapitalization ("two bites at the apple"). Later transaction monetizing a further slice of platform value, whether by admitting new capital or by the platform borrowing against its own balance sheet with no equity sold. Quality-of-earnings (QofE). Buy-side diligence testing sustainability and accuracy of reported earnings. Representations & warranties (R&W) diligence. Diligence supporting a transaction's representations, warranties, and any related insurance.

## Appendix D — Cited Authorities, Classified by Weight

Research through September 2, 2026 identified no adjudicated holding approving or invalidating the modern law-firm MSO structure as a whole. These authorities are read in combination, not as a holding on point. Educational only; each tagged by weight.

### Professional-responsibility and regulatory

ABA Model Rule 5.4 and state analogues — Binding where adopted. Texas Ethics Opinion 706 (2025) (construing Tex. Disc. R. Prof. Conduct 5.04(a)) — Persuasive; a state advisory ethics opinion, binding no one, including in Texas. Holds that a lawyer may not pay a nonlawyer-owned support-services company a fee measured as a percentage of the lawyer's or firm's revenues, and that a lawyer may hold equity in a partly nonlawyer-owned company that does not practice law. It does not address flat or cost-plus fees and approves no alternative structure; the contrary reading is a commentator's inference. Where the company provides law-related services to the lawyer's clients, Tex. Rules 1.06 and 1.08 may require written disclosure, an opportunity to consult independent counsel, and informed written consent. Illinois Public Act 104-0801 (HB 5487, 104th Gen. Assembly) — Binding, enacted. Approved by the Governor 7 August 2026, effective on approval. Amends the Illinois Attorney Act to bar covered nonlawyer-owned entities from charging fees based directly or indirectly on an attorney's or firm's fees, revenues, or profits; from interfering with professional judgment; from controlling the hiring and termination of attorneys and allied legal staff; from imposing post-termination restrictive covenants on them; and from revealing, owning, or determining the content of client records and attorney-client communications; client-contract disclosure of the covered arrangement is also required, reaching the firm's engagement documents. Private right of action with statutory damages, fee-shifting, and injunctive relief. Coverage is disjunctive in the operative text of Senate Floor Amendment No. 2: annual global legal-services revenue under $300 million, OR a contingent-fee practice exceeding 50% of revenue in each of the previous three calendar years. The first prong reaches all but the largest global practices; the revenue figure is a carve-out above it, not a narrowing threshold. "Indirectly" is undefined and untested. Illinois counsel owns the construction. Colorado HB26-1421, the Colorado Legal Practice Integrity and Fee-Sharing Prohibition Act — Binding, enacted. Signed 4 June 2026; effective 12 August 2026; repeals September 1, 2029 absent further legislative action. Bars sharing legal fees or revenues with nonlawyers or nonlawyer-controlled organizations participating in legal-service provision, financial arrangements with alternative business structures, and compensation of administrative staff contingent on a percentage of legal fees or revenues or on case outcomes. Private rights of action for clients and competing law firms, with disgorgement. Verified against the Colorado General Assembly record (Section 12). Colorado SB26-174 — Binding, enacted. Signed June 3, 2026; effective August 12, 2026. Prohibits lead-generation marketing for legal services as a deceptive trade practice under the Colorado Consumer Protection Act (Section 12). Verified against the Colorado General Assembly record. South Carolina Bar Ethics Advisory Opinion 25-02 — Persuasive; advisory only, disciplinary authority resting with the South Carolina Supreme Court. Bars a South Carolina lawyer from ABS co-counsel and ABS ownership on the facts presented, applying Rule 8.5(a) (Section 12). Verified against the South Carolina Bar's published opinion. Arizona Administrative Order 2026-31 (Mar. 18, 2026) — Binding within Arizona's ABS regime; amends ACJA §7-209 to add an in-state nexus to its five existing regulatory objectives (Section 12). Verified against the Arizona courts' order and current code text. Washington Supreme Court Order No. 25700-B-721 (Dec. 5, 2024) — Binding as to the pilot it creates; applicant-specific supervised entity-regulation pilot: each participant receives an individual, timebound authorization with a reporting period not exceeding seven years, and the pilot as a whole is scheduled to end ten years after the first entity is authorized unless extended by the Court; no general repeal of nonlawyer-ownership restrictions (Section 12). Verified against the order. Utah Supreme Court Standing Order No. 15 (as amended Sept. 21, 2022) — Binding as to the sandbox; Phase 3, closed to new applications, ABS-only portion closed end of 2024, on track to sunset by its seventh anniversary, August 14, 2027 (Section 12). The sunset date is derived from the sandbox's effective date and the Standing Order's own anniversary-based expiration clause rather than stated as a single sentence in the order; verified against the Office of Legal Services Innovation's published program materials. Puerto Rico Supreme Court, In re: Reglas de Conducta Profesional, 2025 TSPR 64 (approved June 17, 2025; effective January 1, 2026) — Binding in Puerto Rico; permits nonlawyer ownership of a law office up to 49%, conditioned on lawyer operation and control, non-interference with professional judgment, client disclosure, notification, and annual sworn-statement requirements, with a three-year effectiveness review; the owner's contribution must be money, and neither the owner nor the owner's agents may provide services — marketing included — to the office; adopted over dissent and against the rules committee's recommendation (Section 12). Date, dissent, review provision, and effective date verified against the court's official Spanish-language resolution; the ownership conditions verified against professional summaries of the adopted rule text. Tennessee Supreme Court, Order Soliciting Public Comments on Potential Regulatory Reforms to Increase Access to Quality Legal Representation (comment period closed April 30, 2026) — Not authority; an open administrative docket, cited only as evidence the regulatory surface remains in motion (Section 12). Verified against the court's posted order and public comment filings. Ariz. Sup. Ct. Rules (ABS regime, ACJA § 7-209, post-2020 repeal of ER 5.4); Utah Legal Services Innovation Office standing order;

 

D.C. Rule 5.4(b) — Binding in-jurisdiction; carve-outs, not the national rule. State corporate-practice-of-medicine enforcement (decisions and settlements) — Persuasive / analogical only. CPOM rests on health-licensing statutes distinct from Rule 5.4; a negotiated settlement is not a holding. Analogy, not law-firm authority.

### Entity substance, substance-over-form, and burden of proof

PLR 202607011 (Nov. 14, 2025; released Feb. 13, 2026) — Non-precedential under §6110(k)(3); binds only its requesting taxpayer. Ruled that two state-law professional corporations, legally owned by licensed professionals but subject to support-services agreements, nominal-value transfer restrictions, and parent consent rights, were members of the parent's affiliated group under §1504(a) and required to join its consolidated federal return, citing Rev. Rul. 84-79, 1984-1 C.B. 190 (beneficial ownership of professional-corporation stock). Cited as illustration of the contract-based tax-ownership architecture in the licensed professions (Section 16); not a law-firm ruling, and no authority for any professional-responsibility conclusion. Moline Properties, Inc. v. Commissioner, 319 U.S. 436 (1943); Commissioner v. Groetzinger, 480 U.S. 23 (1987) — Supreme Court; precedential, but general entity-separateness and trade-or-business doctrine, not MSO-specific. Gregory v. Helvering, 293 U.S. 465 (1935); Commissioner v. Court Holding Co., 324 U.S. 331 (1945) — Supreme Court; precedential. Foundational substance-over-form and step-transaction doctrine. Lender Management, LLC v. Commissioner (T.C. Memo 2017-246) — Non-precedential; taxpayer win on family-office facts, analogical only. IRC §7491(a) — Binding; burden-shifting on a factual issue, conditioned on credible evidence, substantiation and recordkeeping compliance, and corporate size limits. Neonatology Associates, P.A. v. Commissioner, 115 T.C. 43 (2000), aff'd, 299 F.3d 221 (3d Cir. 2002) — Precedential; reliance on advice from an adviser who promoted or had a stake in the arrangement does not establish reasonable cause under §6664(c) — the reason the client, not a coordinating party, selects and engages its own counsel and economist (Section 10). IRC §7525 — Binding; the federally-authorized-tax-practitioner privilege, materially narrower than commonly assumed: noncriminal federal tax matters only, enumerated practitioners only, no reach into state proceedings, private litigation, diligence, or return preparation, and an express exclusion for written communications promoting tax-shelter participation (Section 26). IRC §6700, §6111, §6112; Treasury Circular 230 — Binding; promoter-penalty, material-advisor disclosure, and list-maintenance provisions, with Circular 230's written-advice standards — applied in this paper to its own author's posture, evaluated with Guardian's own counsel on conduct rather than labels (Section 19).

### Transfer-pricing

IRC §482; Treas. Reg. §1.482-1(c) (best-method rule), §1.482-5, §1.482-6, §1.482-9 — Binding. Section 1.482-9 supplies the seven method categories for controlled services transactions — six specified methods plus unspecified methods — and where the services cost method is eligible and properly applied under §1.482-9(b), it is deemed the best method for covered services, the exception to the general no-hierarchy rule of §1.482-1(c) (Section 18). Rev. Proc. 2007-13 (specified covered services) — Sub-regulatory guidance; binds the Service, not a court. The covered-services categories may reach routine support functions furnished to a law practice; they do not encompass the practice of law or the firm's core entrepreneurial legal business. IRS Practice Units (ISO9411; ISIPUOP_6_9_04, residual profit split) — Guidance, not authority. Treas. Reg. §1.162-7(b)(3) — Binding; the "like services by like enterprises under like circumstances" standard for reasonable compensation. IRC §269A — Binding. Reallocation between a personal service corporation and its employee-owners where substantially all services run to one entity and the principal purpose is tax avoidance; both prongs required. Potentially relevant to a closely held services company serving principally one related practice, subject to the statute's personal-service-corporation, employee-owner, service-concentration, and principal-purpose elements; multiple service recipients may materially alter the analysis but are not independently a safe harbor

(Section 19). IRC §267(a)(2), §267(f) — Binding. Matching rules deferring a related-party or controlled-group payor's deduction until the payee includes the amount. Elliotts, Inc. v. Commissioner, 716 F.2d 1241 (9th Cir. 1983); Menard, Inc. v. Commissioner, 560 F.3d 620 (7th Cir. 2009) — Precedential in-circuit; the independent-investor lens on reasonableness. Persuasive elsewhere. H.W. Johnson, Inc. v. Commissioner, T.C. Memo 2016-95 — Non-precedential; a taxpayer win on two separate issues. A $500,000 payment by a concrete contractor to a shareholder-officer-owned entity, compensating that entity for securing the contractor's concrete supply during a shortage, was allowed as ordinary, necessary, and of demonstrable value notwithstanding the absence of a written agreement. Separately, officer compensation was found reasonable under the Elliotts independent-investor test, crediting adherence to a long-standing bonus formula and preferring the taxpayer's benchmarking. Concrete contracting, not professional services: analogical only. The case is authority that the economics carry the outcome, not that documentation does; it should not be cited for the latter. IRC §6662(e)/(h); Treas. Reg. §1.6662-6 — Binding. Aspro, Inc. v. Commissioner, 32 F.4th 673 (8th Cir. 2022) — Precedential in-circuit but analogical to law-firm MSO facts: an operating C-corporation paying its own shareholders under a multi-factor §162 reasonableness test, not a documentation-alone rule.

### Accumulated-earnings

IRC §531, §532 (avoidance purpose), §533 (presumption from accumulation beyond reasonable needs), §534 (burden-shifting procedure), §535; Treas. Reg. §1.537-1, §1.537-2 — Binding. Bardahl Mfg. Corp. v. Commissioner (T.C. Memo 1965-200) — Non-precedential. Technalysis Corp. v. Commissioner, 101 T.C. 397 (1993) — Precedential; a regular Tax Court opinion. IRC §542(a)(1), (2) — Binding; personal holding company definition (income and ownership tests). IRC §541, §543(a) — Binding; tax on undistributed personal holding company income, and the categories of income the test measures (dividends, interest, rents, royalties, and amounts under personal-service and shareholder-use contracts). IRC §561, §562, §565 — Binding; the dividends-paid deduction and the consent dividend, the annual cure for undistributed personal holding company income. IRC §547 — Binding; the deficiency-dividend procedure, a post-determination cure available against personal holding company tax and unavailable against the accumulated earnings tax — an asymmetry the two-test analysis prices (Section 22). IRC §303; §537(a)(2) — Binding; redemption needs arising under §303 count as reasonable needs of the business, the negative implication for other redemption accumulations cutting against them without foreclosing a documented business-purpose accumulation (Section 28).

### §1202 and deal tax

IRC §1374 — Binding. Built-in gains tax on gain recognized within five years of a C-to-S conversion; a timing constraint on that exit path, not a bar. IRC §1202, as amended by the 2025 OBBBA — Binding. Two distinct date triggers that should not be collapsed: the tiered 50/75/100% exclusion at three/four/five years and the raised per-issuer cap ($15M from $10M, inflation-adjusted; 10×basis unchanged) are keyed to stock ACQUIRED after July 4, 2025, while the raised aggregate-gross-assets ceiling ($75M from $50M) is keyed to stock ISSUED after that date; stock predating the applicable trigger stays under prior law, with transition questions belonging to counsel. Analyzed, not assumed: qualification turns on §1202(e)(3)'s excluded-business test, enumerated fields and "reputation or skill," together with the separate §1202(e)(1) 80% active-asset requirement, and not the §199A SSTB definition. PLRs are non-precedential and bind only their own taxpayers; the Tax Court's memorandum decisions in this area are citable but not formally precedential. IRC §1202(e)(5)(B), (e)(6) — Binding. The 10% ceiling on stock and securities in non-subsidiary corporations, and the treatment of reasonably required working capital as active-business use, capped at half of assets once the corporation has existed two years. Read together with §542–§543, these are the provisions that place the passive-income answer and the §1202 position in tension (Section 22). §199A — qualified-business-income deduction; permanent under OBBBA, SSTB limitation retained, so a law practice remains excluded. Binding. Treas. Reg. §1.199A-5(c)(2) — Binding; the related-party rule treating a business with 50% or more common ownership that provides property or services to an SSTB as an SSTB to the extent of what it provides, on an allocation basis rather than the proposed 80% cliff (Section 23). ABA Model Rule 8.5 and state analogues — disciplinary authority and choice of law; the reason a multi-jurisdiction practice designs to the most restrictive applicable regime (Section 12). Model rules are not themselves binding; the adopting state's version is. State related-member expense add-back statutes — Binding where enacted; described generally. Disallowance of deductions for amounts paid to an affiliate absent a statutory exception, and the reason the federal §482 file is frequently the evidence a state exception turns on. IRC §101(j), §264 — Binding; employer-owned life insurance notice and consent, and the denial of deductions for premiums and carrying interest, where a corporate-owned policy is the asset selected after a transaction (Section 29). Connelly v. United States, 602 U.S. 257 (2024) — Supreme Court; precedential. Corporate-owned life-insurance proceeds increase the corporation's estate-tax value without offset for the redemption obligation they fund; the reason cross-purchase and insurance-LLC alternatives are weighed at formation rather than after a death (Section 28). IRC §404(a)(5); §409A — Binding; the employer's deduction for non-qualified deferred compensation deferred until the participant's inclusion, and §409A's election-timing, permissible-payment-event, and anti-acceleration requirements, failure producing immediate inclusion with an additional tax and interest at the participant level (Sections 16, 29). IRC §414(b), (c), (m), (o) — Binding; controlled-group and affiliated-service-group aggregation treating commonly controlled businesses as one employer for qualified-plan coverage and nondiscrimination testing — the fact pattern a platform-and-practice pairing presents, §414(m)(5) reaching a management organization with or without common ownership; benefits counsel's determination at design (Section 17). IRC §1014 — Binding; basis adjustment at death reaches the stock, not the corporation's inside assets, and is unavailable for interests already transferred out of the estate (Section 29). IRC §721 / §351 / §358 / §362 — Binding, described generally.

### Standing note

Classifying by weight, and stating that no law-firm MSO holding exists, is the signal. Guardian Tax Consultants® reasons durability from these authorities together, overstating none. Current as of September 2, 2026; confirm changes with counsel.

## Appendix E — Transaction Readiness, by Category

What a buyer's diligence team, a lender, or a quality-of-earnings reviewer will ask the record to produce falls into recurring categories. This appendix names the categories and stops there: the item-level contents, sequencing, and testing behind them are part of the administered discipline and are not published.

Historical financial record. Annual statements, the general ledger, and the intercompany invoicing history, reconcilable to one another across every operating year, with the fee as billed traceable to the fee as studied.

Fee sustainability. The current economic analysis, the method history with reasons for any change, and the evidence that the fee moved when the underlying facts moved.

Services and substance. What the platform actually did, evidenced contemporaneously: the service scope as delivered, the personnel who delivered it, and the assets and systems used.

People and organization. The workforce actually employed by the platform, its benefit arrangements read against the aggregation rules, and the treatment of any personnel who assist in the delivery of legal services.

Insurance and risk transfer. The policy inventory across the entities with named insureds as issued, prior-acts and retroactive-date continuity through any restructuring, the platform's own liability, cyber, and employment-practices program, loss runs, and any extended-reporting decision, with the carrier correspondence that evidences the review.

Professional independence. The governance record demonstrating that legal judgment, client files, matter decisions, and client funds stayed where the rules of professional conduct require, in every jurisdiction the firm touches.

Ownership and continuity. The capitalization history, any transfers and their valuations, the buy-sell architecture and its funding, and the estate-planning instruments that touch platform equity.

Capital and governance. Board minutes as kept, the documented business purpose for retained capital, intercompany loans with their terms and their servicing history, and the annual certifications as a continuous series.

Exceptions. The items that do not reconcile, identified by the seller before the buyer finds them, each with its explanation and, where applicable, its correction — dated when it was made.

A file organized to these categories from the first invoice forward is a data room that assembles itself. One organized after a letter of intent is a reconstruction, and reads as one.

 