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INDEPENDENT REVIEW OF LEGAL SERVICES REGULATION

WORKING PAPER LSR-0 | March 2020

ASSESSMENT OF THE CURRENT REGULATORY FRAMEWORK

Stephen Mayson¹

1. Introduction

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-#%4#<#\$%E!!H*+!-J0J&#!+-! (44 (1#: !05!'8#! (%*#&-6!#0, *! ('!1*+, *!0: :&#-#-!%*#!+-3#-!0\$: !
,*04#\$9#-!&0+-#: !05!'8#!'3\$: 0<#\$%04!Z3#-%+ (\$-! (&!*#!V#8+#1P!

SCT! B *5!- * (34: !1#!⑼%#!4#904!-#&8+, #- [!!SVO%+(\$04#T!
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S>T! B *0!0&#!%*#!% (4-! ('!⑼%+ (\$ [!!S2 (&<T!
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CE! H*#!03% (&!*0-!#:#%#Y\$: #J#\$:#\$%V#8+#16!0\$: !-!0\$!\$ (&0&5!J& ('#-- (&!\$!*#!20,34%5! ('!/01-!0\$: !%*#!

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3. Assessment of the current framework

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

H*#! " NR6!0-!JO&#! ('!+ -! < 0&F#% - %3 : 5!+\$!LDCU⁸6! < 0F#- !0!\$3 < 0#&! ('! (O-#&80%+ (\$-!00 (3!4#904!
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0\$: !# !J#&+ \$, #E!!H*#-#!+\$, 43 : #P!4#904!+ - - 3#-!\$ (%!04105-!0#+\$9!, 4#O&45!+ : # \$%+ +004#! (&!
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-#&8+, #! : +' +, 34% !% (!O - - - -!SJO&09&OJ*!LE]TE!!!

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0 : 8+, #!SJO&09&OJ* - ! \ ECUU? \ ECaLTE !!H*+ -!0\$: !% * #!J+ (3-!0344##!J (+ \$!+ : # \$%+ +5! % * #!
(3%, (< #! % * 0!+ -! ('% # \$! : # - , &+O# : !0-!c3\$ < # % !4#904!\$## : W !0\$: 6! (& < 0\$56!+ -!
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4#904!O : 8+, #P! * +9*!0\$: !3\$, #&#O+\$!, (- % -6!, (< J (3\$: # : !0\$! % * #&! (J#\$?# \$: # : ! \$0%3&#X!
, (< J4# ! + % 56! 1 + % * !0- - (, +O%# : !' #0!0\$: !%+ < #!, (< < + % < # \$% % * #!&+ - F! ('!# - , 040%+ (\$X!
: +' +, 34% 5!+\$!+\$: +\$9! % * #!&+9*!J& (8+ : #&X!0\$: !% * #!J#&, #+8# : !40, F! ('!J&O, %+, 04+5!0\$: !
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< 0F#- !+! % * 0& : #&! (&! % * (- #! 1 * (! < +9* % ! 1+ - * !% (!- # #F!4#904!O : 8+, #!% (!' \$: !% * #&! 105!% (!0\$!
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JE! M##! " (< J#%+ (\$!0\$: !NO&F#-!R3%* (&%5!SLDCUP!RJJ#\$: +!YTE!! " (< JO&O+8#10JJ&(0, *#-1% (!4#904! - #&8+, #-!
⑼%+ (\$!O% (3, *# : ! (\$!\$! / MV?LISLDLDP!JO&09&OJ*!LECTE!!

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

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

@E!!! M##! " (< J#%+ (\$!0\$: !NO&F#-!R3%* (&%5!SLDCUTE!

gE! N (&#!&#, # \$%!0\$: !#1%#\$-+8#1&#-#0&, *!05!h (3A (8!SLDLDT6! (\$!0#*O4! ('! % * #! / #904!M#&8+, #-! ; (O& : !0\$: !H*#! / O1!
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! Y\$%#&<#: +0&+#-!S-3, *!0-!#-%0#!09#\$%-6! < (&%909#!0&(F#&-!0\$: !%&0: #!3\$+(\$-T!, 0\$!0#!
8#&5!+\$'43#\$%+0!+\$!+\$F+\$9!, (\$-3<#&-!%(!J&(8+: #&-6!%*3-!'+4+\$9!0!J(%#\$%+0!40,F('!
+\$'(&<0%+(\$!0\$: !#!J#&+#\$, #!+\$!-##F+\$9!0: 8+, #!0\$: !&#J&#-#\$%+(\$!e!%*(39*!%*#!
+\$%#&#-!-!0\$: !+\$, #!\$+8#-!('!%*#-#!+\$%#&<#: +0&+#-!i <05!\$(%!0!105-!0#!0!49\$#: j!1+!*!
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'(&!%*0!+#1!10-!J304+-*#:#!\$!_, % (O#&!LDC@E !!Y!-!0--#--<#%\$!('!'*#!M, (%%+ - *!'&O<#1 (&F!
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, (\$%#1%!('!'*+!V#8+#1E!H*#!&#, (< <#%\$:O%+(\$!*0!%*#!#1%+!#!c4O15#&#!-*(34: !O#!J&(<#%, #:# :!
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OO-# :!⑼%+(\$!SLDC@P!J09#-!>C?>LT!O&#!JO&#+, 34O&45!J#&+\$\$%\$E!

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

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

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

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

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4.6 The independence of regulation and regulators

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03%!+#!:(#-!\$(%!&#Z3+&#!%*#!-%&3,%3&046!'+\$0\$,+04!(&!<0%#&+04!-#J0&O%+(\$!'!%*#!&#-J#,%+8#10(:+#-!
,0&&5+\$9!%*#!<!(3%E!!H*#!-#J0&O%+(\$!0\$:%!+\$:#J#\$:#\$,#!0#%1##\$!⑼%(&5!0\$:%!
&#J&#-#%O%+8#10,%+8+##-!+!'0&!'&(<!,(<J4##6!0\$:%!*0-19+8#1&+#!%(!-(<#!%#\$-+(\$!0#%1##\$!
%*#!<!SJO&#+,340&45!\$!(%+(\$!%*#!MVR!0\$:%!;!M;6!0-\$(\$:#:%!05%*#!"NR!SLDCUP!JO&09&OJ* -!
]EC>U!0\$:%!]EC>aTE!!!

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

H*+!-,0\$!0#!:(\$#!+'!⑼%(&-!0&#!'&###!'&(<!J(4+%,04!+\$'43#\$,#6!0\$:%!'&(<!%*#!+'\$43#\$,#(!'
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7\$:#&!%*#!,3&&#\$!⑼%(&5!'&O(!)&-4.6(0)12.5(\$0)-9.2(!)&-4.6(0)12.5(\$0)-9.2(!)&(*)-9.(\$

-300#,%!%(!\$#9(%+O%+(\$ 6!,*0\$9#!0\$:!*#J(--+O+4%5(!!(O-(4#-,\$\$,#!0\$:!,(\$%#-%004#!
0,,#--TE!

)8#\$!0-!&#,\$\$%45!0-!N05!LDC@6!%*#!M;!,(\$,43:#:#!0!(<04!+\$8#-%+90%+(\$!+\$%(!%*#!
(%+(\$-*+J!0#%1##\$!%*#!O1!M(+,#%5!0\$:!*#MVR!!V%!,(\$,43:#:!*%0%!*#!O1!M(+,#%5!-!
0&&0\$9#<#\$%-!'(&!(8#&-+9*%!0\$:!<(\$+(&+\$9!(!%*#!MVR!:3&+\$9!*#J#&+(:!3\$:#&+\$8#-%+90%+(\$!
1#&#!\$(!%J&(J(&%+(\$0%#!(&!%&0\$-J0&#%6!0\$:!*%0%!*#MVR!10-!\$(%&#-J(\$-+04#!SO-!+%-*(34:!
*08#!O##\$T!'(&!:#-+9\$+\$9!0\$:!<0\$09+\$9!+%-!(1\$!0JJ(+%<#\$%-!J&(#--E!

Y\$!J0&%6!%*#!00+4+%5!%(!-#J0&0%#!1+4!0#!:&+8#\$!05!<(&#J&09<0%+,!,(\$-+:#&0%+(\$-(!%*#!,(-%!(!
+\$:#J#\$:#\$,#E!!Y'!0!-<044#&!0JJ&(8#:#&9340%(&!<3-%!J05!'(&!+%-!(1\$!J&#<+-#-!0\$:!
-3JJ(&+\$9!&#-(3&,#-!S1+*(3%!*#!0#\$\$'+%!(!-<#(!%*#!#,(\$<+#!(!- ,04#!(&!(!- *0&+\$9!

23& * #&6!% * #! : + '#&#&\$! * +-% (&#-6! -+b#10\$: !- , (J#('!' * #!, 3&&#&\$!OJJ&(8# : !⑼% (&-14#0 : -!% (!(%+8#! : +-J0&+5! ('!OJJ&(0 , *10\$: !&#- (3& , +\$96!0-!1#4!0-!'&09 <#&\$%O%+ (\$!0\$: ! : 3J4+ , 0%+ (\$! ('!⑼% (&5!&#- (3& , #!0 , & (-!% * #! (%O4+5! ('!⑼%# : !4#904! -#&8+ , #-E!!H * + -!J (%#&\$%+0445! , �%#-! , (\$'3-+(\$! ('! , 4+#&\$!0\$: ! , (\$-3 <#&-6! , (-?+\$#''+ , +\$, +#!\$!% * #!J&(8+-\$(\$! ('!⑼%+ (\$!S1+* * ! , (-!-!O (&\$#! : +''#&#&\$%45!05!% * #!⑼%# : ! , (< < 3\$%5!0\$: 6!34%+ < 0%#456!% * #!##?J05+\$9! , 4+#&\$-TE!!!

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

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

H * #! " NR||-!8#1! (\$!+\$: #J#\$: # \$, #!+ -!# ! J&#- -# : !0-! ' (4 (1 -!SLDCUP!J0&09&0J *]EC>]TP!

R-!0!9#&\$#&0! < 0%#&6!1#! , (\$-+ : #&!% * 0!+\$: #J#\$: # \$, #! ('!O!⑼% (&!& (< !% * #!J&(8+ : #&-!% * 0!+!% !⑼%#-!-!0!F#5!J&+\$, +J4#!% * 0!- * (34 : !0#!%OF#&\$!+\$ (\$!0 , , (3\$%!+\$!0\$5!+#! ('!O!⑼% (&5! '0 < #1 (&F! B#104- (!&# , (9\$+-#!% * 0!0\$!+\$: #J#\$: # \$ %!4#904!J& ('#-+(\$!+-!+ < J (&0\$%!) (&-# , 3&+\$9! < 0\$5! ('!' * #!J304+ , !+\$%#&#-#! , (\$, #&\$-!o(%+\$9!% (!% * #!&34#! ('!4016!0 , , #-!% (!Q3-%+ , #!0\$: ! , (\$-3 < #&! J&(%# , %+ (\$pE!R-!-3 , *6!J&#-#&8+\$9!% * #!J& ('#-+(\$!-!+\$: #J#\$: # \$, #!& (< !9 (8#&\$ < #&\$!+-!04- (!0!F#5! , (\$-+ : #&0%+ (\$!\$!0- -#-+-\$9!0\$5!J (%#&\$%+0! , * 0\$9#-! (% * #! , 3&&#&\$!⑼% (&5!-%&3 , %3&#E!

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

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4.7 The perceived 'mission' of regulators

H * #! / #904!M#&8+ , #-!R , %! -#% -! (3%!+%-!#+9 * #!⑼% (&5! (OQ# , %8#-!+\$!-# , %+ (\$!C!S-##!04- (!J0&09&0J * !>EL!00 (8#TE!!Y\$! * + -!'+\$04!&#J (!M+&! f 08+ : ! " 4# < #&\$%+ -0+ : !# ! J4+ , +45!% * 0!SLDD>P!L@TP! iY\$!0!⑼% (&5!0 (: 5!% * #!J304+ , !+\$%#&#-#! - * (34 : ! * 08#!J&+ < 0 , 5jE!!H * 3-6! * + -!8#1!10-!8#&5! , 4#0&45!% * 0!+!+\$! ('!' * #!⑼% (&5! (OQ# , %8#-!+-!% (!O#!J&+8+4#9# : ! (8#&!% * #! (% * #&-!% * #&\$!+!- * (34 : !

e!

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

B+%* (3%!*+6!%&3-%!+\$!c%*#!-!-%#<W!0\$: !+%-!09#\$\$-!1+4!0#!Q# (J0&: +-# :E!!R, , (&: +\$9!% (!&#-#0&, *!
'& (<!*%#! /#904!M#&8+, #-!" \$-3<#&!^0\$#46!J304+, !%&3-%!+\$!4015#&-! : #, 4+\$#: !'& (<!>an!\$!LDC!
% (!>Ln!+\$!LDCU6!03%!*0-!&# (8#&# : !-4+9*%45!-+\$, #!% (!>] n!S-+<+0&!% (!0, , (3\$%0\$-6!03%!4(1#&!
%*0\$!%*#!@Dn!' (&! : (, % (&-T !03%1+\$%&+93+\$945!* (-#!, (\$-3<#&-!1* (!*0 :!3-# :!0!4#904!-#&8+, #-!
J&(8+ : #&1+\$!%*#!JO-%!1 (!5#D&-!1#&#!<0&9+\$0445!4#--!+\$, 4+\$#: !% (!%&3-%!4015#&-!%*0\$!* (-#!1* (!
*0 :!\$ (%E !!!

" (\$'+ : #\$, #!%*0!, (\$-3<#&+9*%-!0&#!J&(%#, %#: !1*#\$! : #04+\$9!1+#!4015#&-!*0-!0#\$\$!&+-\$9!
-4+9*%45! (8#&1%*#!5#0&-6!03%!-%+44!-+%-!Q3-%!0#4 (1!Jn!S0\$: !+!*+9*#&! (&!%* (-#!1* (!*08#10#%#&!
F\$ (14# : 9#! (!'1*0%!4015#&-! : (TE!

Y\$!0 : :+%(\$6!+#!1 (34 :!04- (!-#&<!%*0%!*#&#!+!-!O!-+<+40&!J+, %3&#!' (&!- <044!O\$: !<# : +3<?-+b# : !
03-+\$#- -#-!SMN) -TE!!Y\$!-3!8#5-!' (&!%*#! /M ; ! (!'- (<#!CD6DDD!MN) - 6!00(3%!*04! (!'!*#<!
, * ((

H*+!1 (34:!'3&%*#&13\$: #&<+#!J304+, !0\$:!, 4+#\$!, (\$'+: #\$, #!:\$!*#!⑼% (&5!'&O<#1 (&F!' (&!
4#904!-#&8+, #-6!*#!&34#(!'!4016!*#!+5!('!O, , #-!% (!03-%+, #6!0\$:!*#!0: <+%-&0%+(\$('!
03-%+, #E!

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

H*#&!&#J (&#!+-!04- (!, 4#0&+!\$!+%-!0--#--<#%!*%0!*%#!'&O<#1 (&F!: (#-!\$(%!<##%!*%#!0#%#&!
⑼%+(\$!J&+\$, +J4#-(!'!O, , (3\$%00+4+56!, (\$-+-#%\$, 56!J&(J (&#+ (\$04+56!%&0\$-J0&#\$, 56!0\$:!
%0&9#%+9!SLDCUP!J0&09&0J* -!UE]6!UEUg!0\$:!UEa\TE!

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

References

R < #&+, 0\$! ; 0&!R-- (,+0%+ (\$! " (< <+-- +(\$! (\$!%*#!23%3&#! ('!/#904!M#&8+, #-!SLDCUT!cY--3#-!J0J#&! , (\$, #&\$+\$9!3\$⑼%#:#!/M^!#\$%+#+#-!X!080+4004#!0%P!
[*%J-PGG 1 1 1E0<#&+, 0\\$00&E \(&9G, \(\\$%\\$%G : 0 < G000G+ < 09#-G \('!+, #mJ&#-+: #S%G!+\\$04m3\\$⑼%# : m4- Jm#\\$%+% +#-m+--3#-mJ0J#&EJ: '!!](#)

R--56!VE!SLDCCT!cV#8+-+%+\$9!%*#!&+9*%!!% (!-#4'?&#J&#-#\$%0%+(\$!6! 6! I (4E! \D6!J09#!LUa!
; 0&%(\$6! ; E=ESLDC>T!cH*#!4015#&||-!< (\$ (J(45!e!1 *O%I9 (#-!0\$: !1 *O%! -%05-!6! 6! I (4E!
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; +\$9*0 < 6!HE!SLDCDT! !S/ (\$: (\$6!R##\$!/O\$#T!

; NA!V#-#0&, *!SLDC@T!cH*#!4#904!\$##: -! ('!- < 04!03-+\$#- #-!LDC\?LDC!aX!080+4004#!0%P!
[*%J-PGG&#-#0&, *E4#904-#&8+, #-0\(O&: E\(&9E3FG1J?, \(\\$%\\$%G<#: +062YkR/?M<04?; 3-+\\$#-?V#J \(&?2\); ? LDC@EJ: '!!](#)

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