

## Rule 16 – European cross-border practice

### Solicitors’ Code of Conduct 2007

Professional Ethics

Dated 10 March 2007 and commencing on 1 July 2007

#### Contents

<b>Rule 16 – European cross-border practice .....</b>	<b>1</b>
Introduction .....	1
Rule 16 – European cross-border practice .....	2
16.01 Definition and application.....	2
Definition.....	2
Application of this rule .....	2
16.02 Occupations considered incompatible with legal practice .....	2
16.03 Fee sharing with non-lawyers .....	3
16.04 Co-operation between lawyers of different CCBE states.....	3
16.05 Correspondence between lawyers in different CCBE states .....	3
16.06 Paying referral fees to non-lawyers .....	4
16.07 Disputes between lawyers in different member states .....	4
Guidance to rule 16 – European cross-border practice .....	4
Incompatible occupations – 16.02 .....	6
Fee sharing – 16.03.....	6
Correspondence between lawyers in different CCBE states – 16.05....	7
(a) “Confidential” .....	7
(b) “Without prejudice” .....	7
Referral fees – 16.06 .....	7
Disputes between lawyers in different CCBE states – 16.07 .....	8

## Rule 16 – European cross-border practice

### Introduction

The purpose of rule 16 is to apply the provisions of the CCBE Code to European cross-border practice. This is necessary to provide a system of

mutual professional understanding for professional relations between lawyers of different CCBE states. Although the CCBE Code contains a large number of requirements, rule 16 contains only those requirements which are not replicated elsewhere in these rules.

## **Rule 16 – European cross-border practice**

### **16.01 Definition and application**

#### *Definition*

- (1) (a) European cross-border practice is:
- (i) any professional activity in a CCBE state other than the UK, whether or not you are physically present in that CCBE state; and
  - (ii) any professional contact with a lawyer of a CCBE state other than the UK.
- (b) For the purposes of this rule professional contacts and professional activities taking place within a firm or in-house legal department are not European cross-border practice.

#### *Application of this rule*

- (2) (a) If you are a solicitor this rule applies to your European cross-border practice from an office in, or outside, England and Wales.
- (b) If you are an REL this rule applies to your European cross-border practice from an office within the UK.
- (c) If you are an RFL and you are a partner in an MNP, a director of a recognised body which is a company, or a member of a recognised body which is an LLP, this rule applies to your European cross-border practice from an office in England and Wales.
- (d) This rule applies to a recognised body incorporated in England and Wales in relation to its European cross-border practice from an office in, or outside, England and Wales; and
- (e) This rule applies to a recognised body incorporated outside England and Wales in relation to its European cross-border practice from an office in England and Wales.

### **16.02 Occupations considered incompatible with legal practice**

- (1) If you act in legal proceedings or proceedings before public authorities in a CCBE state other than the UK, you must, in that state, comply with any rules regarding occupations incompatible with the practice of law, as if you were a lawyer of that state, whether or not you are based at an office in that state.
- (2) If you are a solicitor based at an office in a CCBE state other than the UK, you must respect any rules regarding participation in commercial or

other activities not connected with the practice of law, as they are applied to lawyers of that state.

### **16.03 Fee sharing with non-lawyers**

- (1) You must not share your professional fees with a non-lawyer situated in a CCBE state other than the UK except:
  - (a) within a firm which is permitted under rule 12 (Framework of practice); or
  - (b) with your retired partner or predecessor, or the dependants or personal representatives of your deceased partner or predecessor; or, in the case of a body corporate, a retired director, member or shareowner, or the dependants or personal representatives of a deceased director, member or shareowner.
- (2) If you are practising from an office in a CCBE state other than the UK, whether or not you are physically present at that office, you must not share your professional fees from that practice with a non-lawyer, except:
  - (a) within a firm which is permitted under rule 12 (Framework of practice); or
  - (b) with your retired partner or predecessor, or the dependants or personal representatives of your deceased partner or predecessor; or, in the case of a body corporate, a retired director, member or shareowner, or the dependants or personal representatives of a deceased director, member or shareowner.

### **16.04 Co-operation between lawyers of different CCBE states**

- (1) If you are approached by a lawyer of a CCBE state other than the UK to undertake work which you are not competent to undertake, you must assist that lawyer to obtain the information necessary to find and instruct a lawyer capable of providing the service asked for.
- (2) When co-operating with a lawyer of a CCBE state other than the UK you must take into account the differences which may exist between your respective legal systems and the professional organisations, competencies and obligations of lawyers in your respective states.

### **16.05 Correspondence between lawyers in different CCBE states**

- (1) If you are practising from an office in a CCBE state and you want to send to a lawyer in a different CCBE state (with the exception of the UK) a communication which you wish to remain “confidential” or “without prejudice”, you must, before sending the communication, clearly express your intention in order to avoid misunderstanding, and ask if the lawyer is able to accept the communication on that basis. When you send the communication you must express your intention clearly at the head of the communication or in a covering letter.

- (2) If you are the intended recipient of a communication from a lawyer in another CCBE state which is stated to be “confidential” or “without prejudice”, but which you are unable to accept on the basis intended by that lawyer, you must inform the sender accordingly without delay. If the communication has already been sent you must return it unread without revealing the contents to others. If you have already read the communication and you are under a professional duty to reveal it to your client you must inform the sender of this immediately.

#### **16.06 Paying referral fees to non-lawyers**

You must not pay a fee, commission or any other compensation to a non-lawyer as a consideration for referring a client to you:

- (a) if the non-lawyer is situated in a CCBE state other than the UK; or
- (b) if you are practising from an office in a CCBE state other than the UK, whether or not you are physically present at that office.

#### **16.07 Disputes between lawyers in different member states**

- (1) If you consider that a lawyer in a CCBE state other than the UK has acted in breach of a rule of professional conduct you must draw the breach to the other lawyer’s attention.
- (2) Before commencing any form of proceedings against the other lawyer, you must inform the Law Society and the other lawyer’s bar or law society in order to allow them an opportunity to assist in resolving the matter.

#### **Guidance to rule 16 – European cross-border practice**

1. Since 1990 the CCBE Code, interpreted in the light of article 1 of the CCBE Code and the CCBE’s Explanatory Memorandum, has been binding upon solicitors in relation to their European cross-border practice. The current version of the CCBE Code applies in relation to all the CCBE states and their legal professions, which are as follows.

Austria	Rechtsanwalt
Belgium	avocat/advocaat/Rechtsanwalt
Bulgaria	advokat
Croatia	odvjetnik
Cyprus	dikegóros
Czech Republic	advokát
Denmark	advokat
Estonia	vandeadvokaat

Finland	asianajaja/advokat
FYRO Macedonia	advokat
France	avocat
Germany	Rechtsanwalt
Greece	dikegóros
Hungary	ügyvéd
Iceland	lögmaður
Ireland	solicitor; barrister
Italy	avvocato
Latvia	zvērīnāts advokāts
Liechtenstein	Rechtsanwalt
Lithuania	advokatas
Luxembourg	avocat/Rechtsanwalt
Malta	avukat; prokuratur legali
Montenegro	advokat
Netherlands	advocaat
Norway	advokat
Poland	adwokat; radca prawny
Portugal	advogado
Romania	avocat
Serbia	advokat
Slovakia	advokát/advokátka
Slovenia	odvetnik/odvetnica
Spain	abogado/avocat/abokatu/avogado
Sweden	advokat
Switzerland	Rechtsanwalt/Anwalt/Fürsprecher/Fürsprech/avocat/avvocato/advokat
Turkey	avukat

Ukraine	advokat
United Kingdom	solicitor; barrister/advocate

2. If you comply with these rules in relation to your practice generally, and with rule 16 in relation to European cross-border practice, you will also comply with the requirements of the CCBE Code, as interpreted in the light of article 1 of the CCBE Code and the CCBE's Explanatory Memorandum.

#### *Incompatible occupations – 16.02*

3. Subrule 16.02(1) prohibits you from pursuing any occupation prohibited to local lawyers as incompatible with the practice of law, in another CCBE state in which you act in legal proceedings or proceedings before a public authority. This does not prevent you from pursuing such an occupation in the UK if it is permitted under these rules, or in another CCBE state where it is allowed.
4. Subrule 16.02(2) requires you to “respect” the rules regarding incompatible occupations in a CCBE state where you are established. If you are registered under the Establishment Directive any such local rule will apply to you directly. If you are established in a CCBE state, but you are not subject to the Establishment Directive, you may not be subject to the host state rule but rule 16 will apply. “Respect” for a rule is not the same as an obligation to comply with that rule, but the Board of the Solicitors Regulation Authority would expect you to comply with the spirit of such a rule where it is not unreasonable to do so.

#### *Fee sharing – 16.03*

5. Although 8.02 (Fee sharing with other non-lawyers) allows you to share fees with a non-lawyer “fee sharer” in some circumstances, this is prohibited under rule 16 in respect of European cross-border practice.
6. Interpreting how the prohibition applies to a firm in the UK sharing fees with a non-lawyer fee sharer operating in more than one CCBE state, and how it applies to a firm of solicitors practising in more than one CCBE state, may be complex. For example:
  - (a) rule 16 would prohibit your firm from sharing fees with a non-lawyer company whose principal place of business is in a CCBE state other than the UK, or with a non-lawyer company's branch establishment in a CCBE state other than the UK; and
  - (b) if your firm has its main office in the UK and a branch office in another CCBE state, the fees of the branch office cannot be shared with a non-lawyer, so the firm cannot share a percentage of its fees as a whole with a non-lawyer. However, the firm could share a percentage of the fees of its UK office, and of any office in a state which is not a CCBE state, with a non-lawyer fee sharer, provided:
    - (i) the fee sharer is situated in the UK or in a state which is not a CCBE state; and

- (ii) the requirements of 8.02 are met.

### *Correspondence between lawyers in different CCBE states – 16.05*

- 7. Subrule 16.05 reflects the requirements of article 5.3 of the CCBE Code. Differences between the ways in which client business is conducted in different states can give rise to misunderstandings between lawyers, and this provision is designed to help avoid such misunderstandings. Terms such as “confidential” and “without prejudice” are not of universal application.

- (a) “Confidential”

- In some states all communications between lawyers (written or by word of mouth) are automatically regarded as not to be produced in court and as not to be disclosed to others, even the lawyers’ clients. In other states such communications must be marked “confidential” before they are to be regarded in this way.

- On the other hand, in some states, including the UK, the lawyer has to keep the client fully informed of all relevant communications from the lawyer acting for another party, and marking a letter “confidential” is no more than a reminder to the recipient that it is not to be disclosed to anyone but the other lawyer’s client.

- (b) “Without prejudice”

- In some states, if a lawyer wishes to indicate that a letter is sent in an attempt to settle a dispute, and is not to be produced in court, the lawyer should mark the letter as “without prejudice”.

- These important national differences give rise to many misunderstandings, so you need to be careful in conducting cross-border correspondence.

- 8. Where 16.05 applies, you must ask in advance whether your communication can be accepted on the basis you intend, and you must express your intention clearly at the head of your communication or in a covering letter.
- 9. If 16.05 applies and you are informed that a communication is to be sent to you on a basis which you are not able to respect – for example, that it must not be disclosed to your client – you must inform the other lawyer immediately so that the communication is not sent. If it has already been sent you must return it to the sender unread and without revealing its contents or referring to it in any way. It can happen that, as a result of misunderstanding between sender and recipient, the recipient has already read the communication. If this happens to you, you may be under a professional duty to reveal the contents to your client, either under these rules or under rules of an Establishment Directive state in which you are registered. If so you must tell the sender immediately.

### *Referral fees – 16.06*

- 10. Although rule 9 (Referrals of business) allows you to have an arrangement for the referral of clients with a non-lawyer, and, subject to

disclosure, to pay the introducer, such payments are prohibited under rule 16 in respect of European cross-border practice.

11. As with the prohibition on fee sharing with a non-lawyer, there are complexities involved in interpreting how the prohibition applies to a firm practising in more than one state, and to an arrangement with a non-lawyer introducer operating in more than one state. For example:
  - (a) rule 16 would prohibit your firm from paying for a referral from a non-lawyer company whose principal place of business is in a CCBE state other than the UK, or from a non-lawyer company's branch establishment in a CCBE state other than the UK; and
  - (b) if your firm has its main office in the UK and a branch office in another CCBE state, the branch office cannot pay for referrals from a non-lawyer, but the UK office, and any office in a state which is not a CCBE state, could do so provided that:
    - (i) the introducer is situated in the UK or in a state which is not a CCBE state; and
    - (ii) the requirements of rule 9 (Referrals of business) are met.

*Disputes between lawyers in different CCBE states – 16.07*

12. If a professional dispute arises between you and a lawyer in a CCBE state other than the UK, it is desirable that the dispute be settled in a friendly way, and this is the purpose of the requirements of 16.07. Under 16.07(2) you will need to contact the Law Society's International Unit.