

SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules 2013

Preamble

Rules dated 30 August 2013 made by the Solicitors Regulation Authority Board under sections 31, 79 and 80 of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985 and section 83 of the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007 regulating the conduct of solicitors and their employees, registered European lawyers and their employees, registered foreign lawyers, recognised bodies and their managers and employees and licensed bodies and their managers and employees.

Rule 1

The Introduction to the SRA Handbook shall be amended as follows:

- (a) in paragraph 3, in the first sentence of sub-paragraph (a), after "regulate and" replace "to" with "underpin";
- (b) in paragraph 3, insert after sub-paragraph (f):
 - "(g) **Overseas Rules**
 - (i) Introduction
 - (ii) Overseas Rules."; and
- (c) replace the existing sub-paragraphs (g) and (h) with (h) and (i) respectively.

Rule 2

The SRA Principles 2011 shall be amended as follows:

- (a) in paragraph 2.3, replace paragraph (a) with:
 - "(a) apply to individuals and firms we regulate, whether traditional firms of solicitors or ABSs, in private practice or in-house. Where a firm or individual is *practising overseas*, the Overseas Principles apply;" ;
- (b) replace paragraph 4.1 with:
 - "4.1 The Principles apply to you if you are:
 - (a) a body practising from an office outside England and Wales only if you are required to be an *authorised body* as a result of the nature of your practice and you have been *authorised* by the SRA accordingly; or
 - (b) a *manager* of such a body.
 - GUIDANCE NOTE
 - In most circumstances, overseas offices of authorised bodies based in England and Wales, will not require authorisation with the SRA

and will be governed by the SRA Overseas Rules. However, in some circumstances, because of the work that is being carried out from the overseas office, it will need to be authorised (see Rule 2.1(e) and have regard to Rule 2.1(g) of the SRA Overseas Rules). In those circumstances, the Principles and Code of Conduct apply."; and

- (c) replace paragraph 4.2 with the following:

"4.2 The Principles apply to you if you are an individual engaged in *temporary practice overseas*."

Rule 3

The SRA Code of Conduct 2011 shall be amended as follows:

- (a) in the Introduction to the SRA Code, in the section headed "The Principles", in the second sentence of the first paragraph, after "regulate and" replace "to" with "underpin"
- (b) in chapters 1 to 12, delete the paragraphs headed "Overseas Practice" and the outcomes OP1.1 to 1.3, OP2.1, and OP8.1;
- (c) in Chapter 7, at the end of O(7.10) replace "." with ";" and insert:
"O7.11
You identify, monitor and manage the compliance of your *overseas practices* with the SRA Overseas Rules;
O.7.12
You identify, monitor and manage all risks to your business which may arise from your *connected practices*." ;
- (d) in Chapter 7, at the end of IB7.4 replace "." with ";" and insert:
"IB(7.5) you maintain systems and controls for managing the risks posed by any financial inter-dependence which exists with your *connected practices*.
IB (7.6) you take appropriate action to control the use of your brand by any body or individual outside of England and Wales which is not an *overseas practice*." ;
- (e) in Chapter 13, delete rules 13.3 to 13.6; and
- (f) after Chapter 13, insert:

"Chapter 13A: Practice Overseas

13A.1 If you are an individual or body *practising overseas*, the Code does not apply to you, but you must comply with the SRA Overseas Rules.

13A.2 Subject to rule 13A.1 above, the Code is applicable to you as set out in 13A.3 to 13A.6 below if you are:

- (a) a body practising from an office outside England and Wales, only if you are required to be an *authorised body* as a result of the nature of your practice and you have been *authorised* by the SRA accordingly;

- (b) a *manager* of such a body; or
- (c) an individual engaged in *temporary practice overseas*.

13A.3 The following provisions of the Code apply:

- (a) chapter 3 (conflicts of interest);
- (b) chapter 4 (confidentiality and disclosure);
- (c) chapter 5 (your client and the court), to the extent that your practice relates to litigation or advocacy conducted before a court, tribunal or enquiry in England and Wales or a British court martial;
- (d) outcomes 6.1 to 6.3 (your client and introductions to third parties);
- (e) chapter 7 (management of your business);
- (f) outcomes 8.1 and 8.4 (publicity);
- (g) outcomes 9.1 to 9.7 (fee sharing and referrals), except where they conflict with the *SRA European Cross Border Practice Rules*, in which case the latter will prevail;
- (h) chapter 10 (you and your regulator);
- (i) chapter 11 (relations with third parties), except that Outcome 11.3 only applies if the land in question is situated in England and Wales; and
- (j) outcomes 12.3 to 12.6 (separate businesses).

13A.4 In addition, you must meet the following outcomes:

O(13A.1) you properly account to your *clients* for any *financial benefit* you receive as a result of your instructions unless it is the prevailing custom of your local jurisdiction to deal with *financial benefits* in a different way;

O(13A.2) *clients* have the benefit of insurance or other indemnity in relation to professional liabilities which takes account of:

- (a) the nature and extent of the risks you incur in your practice overseas;
- (b) the local conditions in the jurisdiction in which you are *practising*; and
- (c) the terms upon which insurance is available; and you have not attempted to exclude liability below the minimum level required for practice in the local jurisdiction;

O(13A.3) you do not enter into unlawful contingency fee arrangements;

O(13A.4) you do not discriminate unlawfully according to the jurisdiction in which you are practising; and

O(13A.5) publicity intended for a jurisdiction outside England and Wales must comply with any applicable law or rules regarding lawyers' publicity in the jurisdiction in which your office is based and the jurisdiction for which the publicity is intended.

13A.5 You must be aware of local laws and regulations governing your practice in an overseas jurisdiction.

13A.6 if compliance with any outcome in the Code would result in your breaching local laws or regulations you may disregard that outcome to the extent necessary to comply with that local law or regulation." .

Rule 4

The SRA Accounts Rules 2011 shall be amended as follows:

- (a) Replace the words "(overseas practice)" with "(overseas)" wherever they appear.
- (b) In the title to Part 7 of the accounts rules replace "Overseas practice" with "Practice from an office outside England and Wales".
- (c) In Rule 47.1 replace "overseas practice" with "practice from an office outside England and Wales".

Rule 5

The Introduction to Authorisation and Practising Requirements shall be amended as follows:

- (d) in paragraph 2, in the second sentence replace "apply to" with "underpin".

Rule 6

The SRA Practice Framework Rules 2011 shall be amended as follows:

- (a) in Rule 1.2, at the end of rule 1.2(f) replace "." with ";" and insert:
 - "(g) as a *manager, employee, member or interest holder* of an *overseas practice*.";
- (b) in Rule 2.2, at the end of rule 2.2(f) replace "." with ";" and insert:
 - "(g) as a *manager, employee, member or interest holder* of an *overseas practice*.";
- (c) in Rule 4, after rule 4.1 insert:

"4.1A If your *in-house practice* comprises:

- (a) employment in a body within England and Wales, rules 4.2 to 4.18 and 4.26 apply to you;
 - (b) employment in a foreign law firm which is not an *overseas practice*, rules 4.19 to 4.21 apply to you; and
 - (c) employment in a body overseas, including where you are *practising overseas*, rules 4.22 to 4.25 apply to you." ;
- (d) in Rule 4.22, replace "to your overseas practice" with "to your *in house practice* where you are employed in a body outside England and Wales";
 - (e) in Rule 4.23, replace "to your overseas practice" with "to your *in house practice* where you are employed in a body outside England and Wales";
 - (f) in Rule 5 after Rule 5.2 insert:
"5.3 Nothing in rule 5.2 above prevents an *authorised body* from practising through an *overseas practice* for which it is the *responsible authorised body*."
 - (g) in the Guidance notes to Rule 5, after (iii) insert:
“(iv) An authorised body may practise through one or more overseas practices, which do not themselves require authorisation by the SRA. However, when considering whether authorisation is required for offices overseas, authorised bodies should consider the activities to be carried on from those offices, and note that rule 8.4 of the SRA Authorisation Rules provides that an authorised body may not carry on an activity unless through a body and individual who is authorised to carry on that activity.”;
 - (h) at the end of Rule 15 insert:
"Guidance note:
(i) See also the reporting requirements relating to the practising address and registered addresses of your overseas practices set out in:
 - (a) Rule 4.4 of the SRA Authorisation Rules;
 - (b) Rule 18.2 of the SRA Practice Framework Rules; and
 - (c) Rule 3.2 of the SRA Overseas Rules.";
 - (i) in Rule 18.2:
 - (i) at the end of paragraph (f) delete "or", and
 - (ii) at the end of paragraph (g) replace "." with "; or" and insert:
“(h) *overseas practices*, including any contact details and practising/registered addresses of its *overseas practices*.”; and
 - (j) Replace Rule 20 with “Rule 20: Overseas Practice - Deleted”

Rule 7

The SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 shall be amended as follows:

- (a) in Rule 4, after rule 4.3 insert:

"4.4 An application by a *licensable body* or *legal services body* for *authorisation* must notify the SRA of the practising address and, where different, the registered address, of any *overseas practices* for which it would, if *authorised*, be the *responsible authorised body*.";
- (b) in the Guidance notes to Rule 8, in paragraph (xv), in sub-paragraph (a), at the end of sub-paragraph (E) replace "." with ";" and insert:

"(F) Rule 3.2 of the SRA Overseas Rules (and, to note in particular the obligation to notify the SRA where partners, managers, members, solicitor employees or other professionally qualified staff of an overseas practice are subject to a criminal conviction or disciplinary finding, and if the practice itself is in serious financial difficulty).";
- (c) in the Guidance notes to Rule 9, after paragraph (i) insert:

"(ii) The SRA may impose conditions on an authorised body in response to concerns about an overseas practice, in respect of the body's conduct as a responsible authorised body. This might include, for example, where the overseas practice is providing reserved legal activities when it is not authorised to do so and this is within the knowledge of the authorised body.";
- (d) in Rule 22.1, in paragraph (a):
 - (i) at the end of sub-paragraph (xii) delete "or", and
 - (ii) at the end of sub-paragraph (xiii) after ";" insert: " or
 - (xiv) the body, where it is a *responsible authorised body*, has failed to comply with any obligations under the SRA's *regulatory arrangements* in respect of its *overseas practices*."; and
- (e) in Rule 34.2, in paragraph (f) after "*practising addresses*" insert "and the addresses of its *overseas practices*".

Rule 8

The SRA Practising Regulations 2011 shall be amended as follows:

- (a) in the Guidance notes to Regulation 4, in paragraph (xii), in sub-paragraph (a), at the end of sub-paragraph (E) replace "." with ";" and insert:

"(F) Rule 3 of the SRA Overseas Rules."

Rule 9

Part 1 of the SRA Training Regulations 2011 (Qualification Regulations) shall be amended as follows:

- (a) in the Introduction to the Training Regulations – Part 1 Qualification Regulations, in the section headed "The Principles", in the second sentence of the first paragraph, after "regulate and" replace "to" with "underpin".

Rule 10

Part 2 of the SRA Training Regulations 2011 (Training Provider Regulations) shall be amended as follows:

- (a) in the Introduction to the Training Regulations – Part 2 Training Provider Regulations, in the section headed "The Principles", in the second sentence of the first paragraph, after "regulate and" replace "to" with "underpin".

Rule 11

Part 3 of the SRA Training Regulations 2011 (CPD Regulations) shall be amended as follows:

- (a) in the Introduction to the Training Regulations – Part 3 CPD Regulations, in the section headed "The Principles", in the second sentence of the first paragraph, after "regulate and" replace "to" with "underpin".

Rule 12

The SRA Admission Regulations 2011 shall be amended as follows:

- (a) in the Introduction to the Admission Regulations, in the section headed "The Principles", in the second sentence of the first paragraph, after "regulate and" replace "to" with "underpin".

Rule 13

The SRA Qualified Lawyer Transfer Scheme Regulations 2011 shall be amended as follows:

- (a) in the Introduction to the Qualified Lawyer Transfer Scheme Regulations, in the section headed "The Principles", in the second sentence of the first paragraph, after "regulate and" replace "to" with "underpin".

Rule 14

The SRA Higher Rights of Audience Regulations 2011 shall be amended as follows:

- (a) in the Introduction to the Higher Rights of Audience Regulations, in the section headed "The Principles", in the second sentence of the first paragraph, after "regulate and" replace "to" with "underpin".

Rule 15

The SRA Quality Assurance Scheme for Advocates (Crime) Notification Regulations 2012 shall be amended as follows:

- (a) in the section headed "The Principles", in the second sentence of the first paragraph, after "regulate and" replace "to" with "underpin".

Rule 16

The SRA Suitability Test 2011 shall be amended as follows:

- (a) in the Introduction to the Suitability Test, in the section headed "The Principles", in the second sentence of the first paragraph, after "regulate and" replace "to" with "underpin".

Rule 17

The Introduction to Client Protection shall be amended as follows:

- (a) in paragraph 2, in the second sentence, replace "apply to" with "underpin".

Rule 18

The Introduction to Discipline and Cost Recovery shall be amended as follows:

- (a) in paragraph 2, in the second sentence, replace "apply to" with "underpin".

Rule 19

The Introduction to Specialist Services shall be amended as follows:

- (a) in paragraph 2, in the second sentence, replace "apply to" with "underpin".

Rule 20

The Glossary to the SRA Handbook shall be amended as follows:

(a) in the definitions of the following terms:

- (i) client account (overseas practice),
- (ii) client money (overseas practice),
- (iii) firm (overseas practice),
- (iv) manager (overseas practice),
- (v) non-lawyer, and
- (vi) practice from an office,

replace the words "overseas practice" with "overseas" wherever they appear;

(b) after the definition of "connected person" insert:

"connected practice

means a body providing legal services, established outside of England and Wales which is not an overseas practice or an excluded body but is otherwise connected to an authorised body in England and Wales of which if it is part, or a recognised sole practitioner in England and Wales, by virtue of:

- (i) being a parent undertaking, within the meaning of section 1162 of the Companies Act 2006, of the authorised body;
- (ii) being jointly managed or owned, or having a partner, member or owner in common, or controlled by or, with the authorised body;
- (iii) participating in a joint enterprise or across its practice generally, sharing costs, revenue or profits related to the provision of legal services with the authorised body or recognised sole practitioner; or
- (iv) common branding,

and in this definition:

(A) a "**body**" means a natural person or company, limited liability partnership or partnership or other body corporate or unincorporated association or business entity; and

(B) an "**excluded body**" means a body which is part of:

- (I) a Verein or similar group structure involving more than one body providing legal services in respect of which the authorised body in

England and Wales connected to it is not regarded as being the body which is the headquarters of that Verein or similar group structure or a significant part of it; or

- (II) a joint practice, alliance or association or association with the authorised body in England and Wales connected to it which is controlled by a body providing legal services established outside of England and Wales; or
 - (III) a group of affiliated bodies providing legal services which is not managed or controlled by an authorised body in England and Wales.
- (C) A **joint enterprise** means any contractual arrangements between two or more independent bodies which provide legal services, for profit and/or other defined purpose goal which apply generally between them, not just agreed on a matter by matter basis.
- (D) **Common branding** means the use of a name, term, design, symbol, words or a combination of these that identifies two or more legal practices as distinct from other legal practices or an express statement that a legal practices is practising in association with one or more other named firms." ;
- (c) after the definition of "entitled to practise", insert:

Established

- (i) For the purpose of the definition of "overseas practice", the status of an individual as being established outside England and Wales may be indicated by any of the following factors:
 - (A) a requirement for a work permit;
 - (B) the intention to reside outside of England and Wales for a period of 6 months or longer;
 - (C) a requirement for authorisation with local regulatory body;
 - (D) an overseas practising address nominated in mySRA;
 - (E) an employment contract with a legal practice established outside England and Wales

(ii) An individual who is temporarily seconded, assigned or transferred to work in an overseas practice, being supervised and managed for the duration of his or her secondment, transfer or assignment, by partners in the overseas practice, will normally be treated as practising overseas.”;

(d) in the definition of "overseas practice", replace paragraph (i) with:
"(i)

(A) a branch office of an *authorised body*;

(B) a *subsidiary company* of an *authorised body*;

(C) a subsidiary undertaking, within the meaning of section 1162 of the Companies Act 2006, of an *authorised body*;

(D) an entity whose business, management or ownership are otherwise in fact or law controlled by an *authorised body* or *recognised sole practitioner*;

(E) an individual acting as a representative (whether as an employee or agent) of an *authorised body* or *recognised sole practitioner*; or

(F) a *sole principal* whose business, management or ownership are otherwise in fact or law controlled by an *authorised body* or *recognised sole practitioner*,

established outside of England and Wales and providing legal services but which does not carry out *reserved legal activities* and whose *practice* does not predominantly comprise the provision of legal services to clients, or in relation to assets, located in England and Wales; and”;

(e) in the definition of practice:

(i) at the end of the second sub-paragraph (i), delete "and", and

(ii) at the end of the second sub-paragraph (ii), replace "." with "; and" and insert:

"(iii) in the *SRA Overseas Rules* where it shall be given its natural meaning.”;

(f) after the definition of "practising address" insert:

"Practising overseas

means the conduct of a practice:

- (i) of an overseas practice;
- (ii) of a manager, member or owner of an overseas practice in that capacity;
- (iii) of a solicitor established outside England and Wales for the purpose of providing legal services in an overseas jurisdiction; and
- (iv) of an REL established in Scotland or Northern Ireland for the purpose of providing legal services in those jurisdictions.

(g) after the definition of "regulated home reversion plan" insert

"regulated individual

means:

- (i) a solicitor;
- (ii) an REL; and
- (iii) a manager, member or owner of an overseas practice.";

(h) after the definition of "reserved work" insert:

"responsible authorised practice

in respect of an overseas practice means the authorised body or recognised sole practitioner referred to in whichever of paragraph (i) (A) to (F) of the definition of 'overseas practice' is applicable to that practice.";

(i) replace the definition of "separate business" with:

"means a business, wherever situated, which is not an *authorised body*, a *recognised sole practitioner*, an *authorised non-SRA firm*, or an *overseas practice*, or comprises *in-house practice* or practice overseas which is permitted by the SRA Practice Framework Rules.";

(j) after the definition of "SRA Insolvency Practice Rules" insert "SRA Overseas Rules" means the SRA Overseas Rules 2013; and

(k) after the definition of "take a trainee" insert "**temporary practice overseas**"

means the situation where:

- (i) a *solicitor* is practising but not established overseas; or
- (ii) an *REL* is practising from an office in Scotland or Northern Ireland;

but the solicitor or REL is not *practising overseas*."

Rule 21

These amendment rules shall come into force on 1 October 2013, with the exception of rules 6(h) and 7(a) which shall come into force on 1 October 2014.