

# Guidance

## Guidance

### Firm authorisation

#### *Firm authorisation*

Updated 25 November 2019 (Date first published: 4 July 2019)

#### *Status*

This guidance does not form part of our Standards and Regulations. However, we will have regard to it when exercising our regulatory functions.

#### *Who is this guidance for?*

Solicitors intending to provide legal services to the public or a section of the public. For the purposes of this guidance this includes solicitors, SRA registered European lawyers (REs) and SRA registered foreign lawyers (RFLs). Note that, since 1 January 2021, only a defined group of Swiss lawyers can be registered European lawyers.

Other lawyers or non-lawyers who wish to operate a business providing legal services under our regulation.

#### *Purpose of this guidance*

To help you understand whether you are required to have your business authorised and/or to help you to establish if your business meets the basic requirements to be authorised.

This guidance goes through the requirements in full, defining specific terms. You can see a summary of the requirements in the associated checklists "Does my business need to be authorised?"

[<https://www.sra.org.uk/solicitors/guidance/business-need-authorised/>] " and "Can my business be authorised? [<https://www.sra.org.uk/solicitors/guidance/can-my-business-be-authorised/>] ".

#### *General*

Certain services can only be provided to the public where the person delivering them (whether that be an individual or a business or organisation) is authorised to do so (called an authorised person).

For those who need or want us to authorise and regulate their business, there are certain essential requirements they and the business must meet.

This guidance explains when you need to have your business authorised and the requirements you must meet to be eligible for authorisation.

Please note that meeting the requirements for authorisation does not guarantee we will grant your application. All applications must be assessed to ensure the suitability of those involved and any risks to our regulatory objectives. Following authorisation, an annual fee is payable each October.

### *When your business must be authorised*

You will need to get your legal services business authorised if it provides any of the following:

- i. reserved legal services for the public, unless your business is exempt from requiring authorisation (see below)
- ii. immigration services, unless your business is regulated by the Office of the Immigration Services Commissioner (OISC)
- iii. claims management services, unless your business is regulated by the Financial Conduct Authority (FCA)
- iv. regulated financial services activities, unless your business is regulated by the FCA.

Depending on the people involved and the work you are doing, you may be able to choose whether you apply for authorisation with us or another approved regulator for legal services. An approved regulator is one permitted under the Legal Services Act 2007 (LSA) to regulate some or all reserved legal activities. You can find a list of the approved regulators, and what they are permitted to regulate, on the LSB's website

[<https://legalservicesboard.org.uk/>] .

### *What are reserved legal activities?*

Reserved legal activities are ones which can legally only be provided by someone authorised by an approved regulator to do so. They are set down in detail in section 12 and Schedule 2 to the LSA.

We are an approved regulator for all of these, except notarial activities, which are regulated by the Master of the Faculties.

- Rights of audience: the right to appear before and address a court, including the right to call and examine witnesses.
- Conduct of litigation:
  - i. the issuing of proceedings before any court in England and Wales
  - ii. the commencement, prosecution and defence of such proceedings, and
  - iii. the performance of any ancillary functions in relation to such proceedings.



- Reserved instrument activities:
  - i. preparing any instrument of transfer or charge for the purposes of the Land Registration Act 2002
  - ii. making an application or lodging a document for registration under that Act
  - iii. preparing any other instrument relating to real or personal estate for the purposes of the law of England and Wales or instrument relating to court proceedings in England and Wales.
- Probate activities: preparing any probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales. Probate papers means papers on which to found or oppose a grant of probate, or a grant of letters of administration.
- Administration of oaths: the exercise of the powers conferred on a commissioner for oaths by:
  - i. the Commissioners for Oaths Act 1889
  - ii. the Commissioners for Oaths Act 1891
  - iii. section 24 of the Stamp Duties Management Act 1891.

### *Exemption from authorisation*

There are limited situations in which a business or organisation may provide reserved legal activities to the public without needing to be authorised. For example:

- Non-commercial organisations such as community interest companies, charities or independent trade unions, who are permitted to carry on reserved legal activities under section 23(2) of the LSA.

In addition, a lawyer may be able to offer reserved legal services on their own account without additional authorisation. This is permitted under our rules for solicitors who are SRA-regulated freelance solicitors. More information about this can be found in our guidance on 'Preparing to become a sole practitioner or an SRA-regulated freelance solicitor' [<https://www.sra.org.uk/solicitors/guidance/preparing-sole-practitioner-regulated-independent-solicitor/>]. Further exemptions can be found in Schedule 3 to the LSA, but they are very specific.

### *Eligibility to be authorised*

If your business only provides non-reserved legal services, it does not need to be authorised. However, you can still have your business authorised if you choose to.

There are a variety of reasons why such businesses may choose to be authorised. For example, you may want to reassure clients that your practice has the protections that arise from being authorised by us, such as the requirement to have a specific level of indemnity insurance.

To be eligible for authorisation, your business must:

- i. Intend to deliver legal services (we may, at our discretion, allow exemptions to this requirement where we consider it is in the public interest).

For example, some overseas regulators will only allow their lawyers and legal services businesses to work together with England and Wales firms where the business and all corporate owners are authorised by us. While a corporate owner may provide no legal services, we may agree it is in the public interest to authorise the entity to allow the international corporate structure to operate.

- ii. Be one of the following:

- i. the sole practice of a solicitor or REL
- ii. a legal services body, in which all managers and interest holders are legally qualified
- iii. a licensable body, in which at least one manager is an authorised person (other than another licensed body).

- iii. Meet the practising address requirements, which are:

- i. licensable bodies must have a practising address in England and Wales
- ii. legal services bodies and sole practices must have a practising address in the United Kingdom.

- iv. If the business is a company, be incorporated and registered in England and Wales, Scotland or Northern Ireland under Parts 1 and 2 of the Companies Act 2006

### ***Business composition and authorisation***

The following are the different types of business we can authorise, and the type of authorisation they receive.

#### ***Sole practice***



A sole practice is where a solicitor practises on their own account, providing services in their own name, or under a trading name (commonly called a sole trader in the non-legal world). When we authorise a sole practice, it is called a 'recognised sole practice'.

If you are practising through a limited company, that is not a sole practice and the company itself must be authorised.

### *Legal services body*

In simplest terms, this is a firm within which all managers/interest holders are lawyers. Specifically, a legal services body is a partnership, company or limited liability partnership (LLP) of which:

- a. at least one manager is:
  - i. a solicitor with a current practising certificate, or
  - ii. an REL, or
  - iii. (in the case of a partnership or LLP) a body corporate which is a legally qualified body (see below) with at least one manager who is a solicitor with a current practising certificate or an REL, and
- b. all of the managers and interest holders are legally qualified.

Legally qualified means any of the following:

- i. an authorised person who is an individual
- ii. an RFL
- iii. an advocate or solicitor in Scotland
- iv. a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland
- v. a recognised body
- vi. a licensed body of which lawyers are entitled to exercise, or control the exercise of, more than 90% of the voting rights of that licensed body
- vii. an authorised non-SRA firm of which lawyers are entitled to exercise, or control the exercise of, more than 90% of the voting rights of that authorised non-SRA firm, or
- viii. a body which provides professional services such as are provided by individuals who are authorised persons or lawyers of other jurisdictions, and in respect of which all managers and interest holders are legally qualified.

When we authorise a legal services body, it is called a recognised body.

### *Licensable body*

A licensable body is one within which the managers/interest holders includes both lawyers and non-lawyers. They vary widely with some being nearly entirely comprised of lawyers, and others being nearly entirely managed and/or owned by non-lawyers. In simple terms, they must have at least one lawyer manager and one non-lawyer manager or interest holder.

What makes a body licensable is set out at section 72 of the LSA but, in summary:

- A body is a licensable body if a non-authorised person:
  - a. is a manager of that body, or
  - b. has an interest in the body.
- A body ("B") is also a licensable body if:
  - a. another body ("A") is a manager of B, or has an interest in B, and
  - b. non-authorised persons are entitled to exercise, or control the exercise of, at least 10% of the voting rights in A.

When we authorise a licensable body, it is called a licensed body. This is also sometimes referred to as an alternative business structure (ABS).

### *Other requirements for authorisation*

As well as meeting the eligibility requirements above, businesses seeking authorisation must also:

- i. provide evidence that they can obtain the required level of qualifying professional indemnity insurance with a participating insurer
- ii. nominate a compliance officer for legal practice (COLP) and a compliance officer for finance and administration (COFA) (together described as compliance officers)
- iii. identify all managers and owners of the body
- iv. have at least one manager or employee, or procure the services of an individual, who has practised as a lawyer for at least three years
- v. seek all necessary role holder approvals under the SRA Authorisation of Firms Rules (see below)
- vi. seek any approvals necessary under The Money Laundering, Terrorist Financing and Transfer of Funds

(Information on the Payer) Regulations 2017 (MLR 2017).

### *Role holders*

When you apply for authorisation, you need to ensure you also apply for approval of any role holder requiring it.

### *All firms*

Every firm seeking authorisation must identify all managers, owners and compliance officers. They will also need to apply for approval of any manager or owner who we consider requires approval. Rule 9.3 of the SRA Authorisation of Firms Rules allows us to decide that we will not need to approve managers who are not involved in.

- a. the day to day or strategic management of the authorised body;
- b. compliance by the authorised body with the SRA's regulatory arrangements; or
- c. the carrying on of reserved legal activities, or the provision of legal services in England and Wales.

This is not a determination you can make yourself. You can only use rule 9.3 to reduce the number requiring approval if we have first agreed you may do so.

We will also not need to approve those managers and owners who are deemed to be approved to hold those roles under rules 13.2 and 13.3 of the SRA Authorisation of Firms Rules. Those rules set out specific criteria for when a person can be deemed fit and proper to hold their role. This includes certain individuals and firms authorised and regulated by us, and certain previously approved managers and owners.

When considering applications for approval we will apply our SRA Assessment of Character and Suitability Rules.

### *MLR 2017*

If your firm is an independent legal professional (ILP), trust or company service provider (TCSP) and/or a tax adviser, as defined by the MLR 2017 (see below), you are required to nominate a money laundering reporting officer and a money laundering compliance officer. You must also seek our approval for all beneficial owners, managers and officers of the firm.

You can see who falls into the categories of ILP, TCSP and tax adviser in our associated guidance.

These approvals are a statutory requirement and separate from approvals made under our own regulations.

If you are unsure if your firm is subject to the MLR 2017, or what additional requirements apply to your firm under the regulations, please read our guidance [<https://www.sra.org.uk/solicitors/guidance/money-laundering-terrorist-financing-transfer-funds-information-payer-regulations-2017/>] .

## *Terminology*

Other terms you need to understand in relation to the above are as follows:

- 'Manager' means:
  - a. the sole principal in a recognised sole practice
  - b. a member of a UK registered LLP
  - c. a director of a company
  - d. a partner in a partnership (non-corporate), or
  - e. in relation to any other body, a member of its governing body.
- 'Lawyer' within the context of the above guidance means a member of one of the following professions, entitled to practise as such:
  - a. the profession of solicitor, barrister or advocate of the UK
  - b. an authorised person other than one authorised by the SRA
  - c. any profession approved by the SRA for RFL status, and
  - d. any other regulated legal profession specified by the SRA for the purpose of this definition.
- 'Authorised person' means a person (corporate or unincorporate) who is authorised by the SRA or another approved regulator to carry on a reserved legal activity. This includes RELs and European lawyers registered with the Bar Standards Board.
- A non-authorised person is one who is not any of the following:
  - a. an authorised person (see above)
  - b. an RFL
  - c. an advocate or solicitor in Scotland
  - d. a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland
  - e. a body which is legally qualified.
- Interest holder: A person has an interest in a body if:
  - a. the person holds shares in the body, or





- b. the person is entitled to exercise, or control the exercise of, voting rights in the body.
- 'Shares' means:
  - a. in relation to a body with a share capital, allotted shares (within the meaning of the Companies Acts)
  - b. in relation to a body with capital but no share capital, rights to share in the capital of the body
  - c. in relation to a body without capital, interests:
    - a. conferring any right to share in the profits, or liability to contribute to the losses, of the body, or
    - b. giving rise to an obligation to contribute to the debts or expenses of the body in the event of a winding up.
- 'Owner' means any person who holds a material interest in an authorised body, and in the case of a partnership, any partner regardless of whether they hold a material interest in the partnership.
- Material interest: In summary, a material interest is where a person holds 10% or more shares or voting rights in a body, or a parent undertaking of that body, alone or by association. The full test is more complex and can be found at paragraphs 3 and 5 of Schedule 13 to the LSA.

### *Loss of authorisation*

It is important to note that, under section 18 of the LSA, an authorised body will automatically cease to be authorised where:

- a recognised body becomes licensable (ie a non-lawyer becomes a manager or interest holder), or
- a licensed body ceases to be licensable (ie it loses its last or only non-lawyer manager or interest holder)

and remains that way for 90 days.

Remember that a non-lawyer includes a non-authorised holding company, even if it is entirely owned by solicitors or other lawyers. Firms have found themselves losing authorisation after inserting a company in the structure for tax purposes.

It is therefore important that you remain vigilant about those involved in your business, and their status, and inform us at the earliest opportunity if

you identify a significant change. We find that firms can sometimes find themselves in this situation unintentionally and then worry about telling us. However, the sooner you notify us, the more we can do to help, such as re-authorising the firm as the correct type of body or approving a new non-lawyer manager.

### *Next steps*

If you wish to apply for authorisation, please go to our Firm-based authorisation [<https://www.sra.org.uk/solicitors/firm-based-authorisation/>] page where you will find all the necessary application forms, along with details of fees and timescales.

### *Further help*

If you require further assistance, please contact the Professional Ethics helpline [<https://www.sra.org.uk/home/contact-us/>] .