

By email only (under s203 of the Legal Services Act 2007)



**LEGAL SERVICES
BOARD**

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Paul Philip,
Solicitors Regulation Authority,
The Cube,
199 Wharfside Street,
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21 October 2014

Dear Paul,

Decision notice for the Solicitors Regulation Authority (SRA) application for approval of changes to its regulatory arrangements relating to multi-disciplinary practices (MDPs)

Please find enclosed our final decision notice granting the SRA's application for approval of changes to regulatory arrangements relating to multi-disciplinary practices (MDPs).

This decision notice should be considered effective as of today, 21 October 2014.

The LSB is pleased to see the SRA amending its rules in this area in the light of experience. The previous processes for assessing MDPs were clearly not moving at a pace commensurate with the ambition of the 2007 Act and the practice of making approvals by virtue of extensive waivers raised its own problems in terms of consistency of regulation. We therefore welcome the new approach, which we trust will enable the authorisation process to run more smoothly and therefore enable innovative business models to reach the market more quickly. We also welcome your commitment to keep the process under review in order to ensure that it works effectively for firms of all sizes, rather than larger players alone.

A copy of the decision notice will be published on our website within two working days.

I have sent an identical letter to Charles Plant and copied this letter to Mark Stobbs and Simon Garrod at The Law Society.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Chris Kenny', with a horizontal line extending to the right and a short vertical line at the end.

Chris Kenny
Chief Executive

E chris.kenny@legalservicesboard.org.uk

Enclosures



Decision notice

Issued by the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007

The Solicitors Regulation Authority's application for approval of changes to its regulatory arrangements in respect of Multi-disciplinary practices (MDP)

The Legal Services Board (LSB) has granted an application from the Solicitors Regulation Authority (SRA) approving alterations to the regulatory arrangements in respect of its multi-disciplinary practices. The Law Society is an approved regulator and the SRA is the regulatory arm to which The Law Society has delegated its regulatory functions.

This decision notice sets out the decision taken, including a brief description of the changes. The notes at the end of this notice explain the statutory basis for the decision. The chronology for the LSB's handling of this application is set out at the end of this decision notice.

Proposed changes

1. The changes, referred to as Regulatory Arrangements (Multi-disciplinary practices) Rules [2014], and which only apply to MDPs as licensed bodies (Alternative Business Structures – ABS), introduce new paragraphs to Chapter 13 – *Application and waiver provisions* - of the SRA Code of Conduct 2011, in relation to MDPs and to solicitors, registered foreign lawyers (RFLs) and registered European lawyers (RELs) working in mixed teams of professionals under external regulation. The affect of the changes are to exclude non-reserved legal activity from the definition of SRA 'regulated activity' in the licence of an MDP ABS.
2. There are consequential changes to the SRA Principles 2011 and the SRA Practice Framework Rules 2011, to clarify that solicitors working in non-SRA authorised entities can provide non-reserved legal activities. There are further alterations to the SRA Practice Framework Rules 2011 to confirm that individuals providing immigration services in an SRA authorised body do not require approval from the Office of the Immigration Services Commissioner or another approved regulator.
3. Annex A to this notice sets the specific amendments to the SRA's regulatory arrangements.

Key issues considered in the assessment of the application

4. The LSB welcomes the broad approach the SRA is taking to ABS MDPs through these changes. Given the potential implications and risks, we also hope it will continue to review the impact of the new framework on both providers and consumers.
5. As part of the assessment of the application, we reviewed the changes against the Policy Statement that was included in the application. We wanted to ascertain the extent to which the alterations met the policy intentions of the SRA in respect of MDPs. In doing so, we asked the SRA to clarify a number of points and we present our observations below.

Impact on smaller firms

6. We were interested in the extent to which smaller firms would benefit from the changes and asked the SRA if it had or planned to assess the impact on such firms. While the SRA said it had not undertaken a detailed cost-benefit analysis of impact on small firms, it had taken account of practical problems that have been encountered in ABS applications and potential applications in the development of its MDP changes. We noted there was a wide ranging consultation that involved interviews with relevant firms covered by the changes. Furthermore, we were reassured by the SRA's commitment that if it becomes apparent to the SRA that there are issues with the framework which are having unintended consequences in hindering applications from small (or any size) firms from proceeding, the SRA will review its approach.

External regulation

7. SRA said it will not seek to bring within the scope of its rules, non-legal professional activities that are subject to "suitable external regulation". The SRA's intention to weight another external regulation scheme against its own regulatory arrangements could appear to sit oddly with the less restrictive approach to MDPs the changes are trying to implement. We asked how SRA intended to ascertain whether an individual was subject to an external scheme and how the assessment that it is "suitable external regulation" would be made. SRA advised that it would not be assessing the arrangements of other regulators, but whether the regulator's framework was compatible with the SRA's, in order to help ensure there was not conflict or duplication. The LSB is content that this is a proportionate approach.

Insurance

8. We sought clarification of the position on MDPs and insurance. The SRA Policy Statement states that it would be preferable if the same insurer covers all of the MDP's activities (even if not all SRA regulated) and that this should meet the SRA's minimum terms and conditions for Professional Indemnity Insurance. It also said that the SRA would consider a waiver from the minimum standards on a case-by-case basis. The LSB wanted to know how a preference, as expressed in the policy statement, could be enforced as a regulatory arrangement, from which a waiver could be granted.
9. The SRA responded that a waiver will only be required in relation to SRA regulated activity within an MDP. It recognises that an MDP may already have insurance covering the whole of the firm and could provide a waiver from the minimum standards of the SRA

regulated activity if existing insurance already covers the whole of the firm and the SRA regulated activity only forms a small part. While there may be some risks, provided caution is exercised when the SRA makes its case-by-case decisions on waivers, we consider it to be a proportionate approach.

Conflicts of interest

10. We asked why the Code of Conduct Chapter 3 on Conflicts of Interests had not been included as one of the provisions from the Code that will apply if an individual (solicitor, RFL or REL) is conducting non-reserved legal activity under suitable external regulation. The SRA responded that the provisions in Chapter 3 are more specific and restrictive than some of the broader rules applied by other regulators, where different practices apply. For example, the SRA did not consider it reasonable to prevent lawyers from assisting in accountancy commercial matters as part of a mixed team under external regulation. Paragraph 15 of the Policy Statement covers the general duty in respect of conflict of interest without imposing the specific restrictions in Chapter 3. The LSB also considers this to be proportionate.

Decision

11. The LSB has considered the SRA's application against the criteria in paragraph 25(3) of Schedule 4 to the Legal Services Act 2007 (the Act). It considers that there is no reason to refuse this application; accordingly, the application is granted.
12. The Annex to this decision notice contain the specific amendments to the SRA's regulatory arrangements changes approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the SRA on 25 September 2014.
- The 28 day initial decision period for considering the application ends on 22 October 2014.
- This decision notice is effective from 21 October 2014.
- The decision notice will be published on our website on 22 October 2014.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
21 October 2014

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that
 - (a) granting the application would be prejudicial to the regulatory objectives
 - (b) granting the application would be contrary to any provision made by or by virtue of this Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
 - (c) granting the application would be contrary to the public interest
 - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
 - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
 - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules¹ about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

¹ Rules for Rule Change Applications – Version 2 (November 2010)

Annex A

SRA Amendments to Regulatory Arrangements (Multi-disciplinary Practices) Rules [2014]

Preamble

Rules dated [date of approval by LSB] made by the Solicitors Regulation Authority Board under Part I, Part II, section 79 and 80 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985 and section 83 of, and Schedule 11 to, 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.

Rule 1

In paragraph 3.2 (a) of the SRA Principles 2011, after "*approved regulator*" insert "or carrying on any other activity that is not precluded by the terms of your authorisation from the firm's *approved regulator*".

Rule 2

Chapter 13 of the SRA Code of Conduct 2011 shall be amended as follows:

- (a) in paragraph 13.1, replace "2 to 10" with "13.2 and 13.7 to 13.11";
- (b) replace paragraph 13.10 with:

"13.10 Where in accordance with this chapter, the requirements of the Code apply to a *licensed body*, this Code applies to the *regulated activities*-carried on by the body."; and

- (c) insert a new paragraph 13.11 as follows:

"13.11 Where the *licensed body* is an *MDP*, the Code applies to the body, any *solicitor*, *REL* or *RFL* who is a *manager*, *employee* or *owner* of the body and any other person who is a *manager* or *employee* of the body as follows:

- (a) in relation to any *regulated activities*; and
- (b) in relation to any other *non-reserved legal activities*:
 - (i) outcomes 1.7, 1.9 to 1.11, and 10.6 apply to the body; and
 - (ii) outcomes 1.7, 1.9 to 1.11, chapters 4, 10, 11 and 13 to 15, apply to a *solicitor*, *REL* or *RFL* who is a *manager*, *employee* or *owner* of the body."

Rule 3

In rule 4.2 of the SRA Accounts Rules 2011, replace “those activities for which the *MDP* is regulated by the *SRA*” with “*your regulated activities*”.

Rule 4

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

(a) in Rule 1.1, replace sub-paragraph (d)(i) with:

“(i) *reserved legal activity* of a sort the firm is authorised by the firm's *approved regulator* to carry out or any other activity that is not precluded by the terms of your authorisation from the firm's *approved regulator*, or”;

(b) in Rule 2.1, replace sub-paragraph (d)(i) with:

“(i) *reserved legal activity* of a sort the firm is authorised by the firm's *approved regulator* to carry out or any other activity that is not precluded by the terms of your authorisation from the firm's *approved regulator*, or”;

(c) in Rule 3.1, replace sub-paragraph (c)(i) with:

“(i) *reserved legal activity* of a sort the firm is authorised by the firm's *approved regulator* to carry out or any other activity that is not precluded by the terms of your authorisation from the firm's *approved regulator*, or”;

(d) in Rule 6.1, delete sub-paragraphs (e), (f) and (g); and

(e) in Rule 7.1, delete sub-paragraphs (e), (f) and (g).

Rule 5

Replace the guidance notes to Rule 7 of the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 with:

“Guidance note

- (i) If a licensed body carries out a range of legal and non-legal activities (a multi-disciplinary practice or “MDP”) the SRA’s jurisdiction will not generally extend to cover the “non-legal” activities of the licensed body (unless covered by a specific condition on the licence). Such non-legal activities may be regulated by another regulator, and some activities may not fall within the regulatory ambit of any regulator. The SRA’s jurisdiction may also not extend to some non-reserved legal activities in accordance with the terms of the licence.”.

Rule 6

The SRA Handbook Glossary 2012 shall be amended as follows:

- (a) replace the definition of “**authorised activities**” with:

“authorised activities

means:

- (i) any *reserved legal activity* in respect of which the body is authorised;
- (ii) any *non -reserved legal activity* except, in relation to an *MDP*, any such activity that is excluded from *regulated activity* on the terms of the licence;
- (iii) any other activity in respect of which a *licensed body* is regulated pursuant to Part 5 of the *LSA*; and
- (iv) any other activity a *recognised body* carries out in connection with its *practice.*”;

- (b) after the definition of “**non-registered European lawyer**” insert:

“non-reserved legal activity

means a legal activity that falls within section 12(3)(b) of the *LSA.*”;

- (c) replace the definition of “**regulated activity**” with:

“regulated activity

means:

- (i) subject to sub-paragraph (ii) below:
 - (A) any *reserved legal activity*;

(B) any *non-reserved legal activity* except, in relation to an *MDP*, any such activity that is excluded on the terms of the licence;

(C) any other activity in respect of which a *licensed body* is regulated pursuant to Part 5 of the *LSA*; and

(ii) in the *SRA Financial Services (Scope) Rules*, an activity which is specified in the *Regulated Activities Order*.”; and

(d) replace the definition of “**out-of-scope money**” with:

“out-of-scope money

means money held or received by an *MDP* in relation to the *MDP’s regulated activities*.”

Rule 7

These amendment rules shall come into force on 31 October 2014 or the date of approval by the Legal Services Board, whichever is the later.