

SRA BOARD
24 July 2013



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SRA Overseas Rules [2013] and SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules 2013

Introduction

1. This paper invites the Board to make the **[Draft] SRA Overseas Rules [2013]** and the **[Draft] SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules 2013**, subject to the approval of the LSB. These Overseas Rules implement the SRA's proposed new regime for regulated individuals and bodies practising overseas and the Amendment Rules clarify the conduct regime governing temporary practise in other jurisdictions and make the necessary changes to other sections of the SRA Handbook in order to implement the overseas regime. These Rules must be made together and are intended for inclusion in version 8 of the SRA Handbook, which should be published on 1 October 2013.

Background

2. The SRA made a commitment when the SRA Handbook entered into force in 2011 to revisit the issue of its application to practise in other jurisdictions. The attached rules are the result of 18 months of reflection and consultation on this issue.
3. Our new regime for those practising in other jurisdictions comprises two elements:
 - a. A new section of the SRA Handbook (**annex 1**) containing rules for regulated individuals practising overseas and for the overseas offices of authorised bodies. This is accompanied by new requirements in the SRA Code of Conduct that impose obligations on authorised bodies with overseas offices to take responsibility for the compliance of these offices with the new Overseas Rules and to manage the risk of their wider international relationships;
 - b. Amendments to the SRA Handbook which apply a modified version of the Code of Conduct to regulated individuals practising temporarily in another jurisdiction (set out in **annex 2** and explained in more detail in **annex 3**).
4. The collective benefit of these new rules is as follows:
 - a. They will apply a more proportionate conduct regime to those who are established to practise overseas. This regime will be based on the SRA Principles but with slight modifications to take account of the specificities of overseas practice;

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- b. They will create a new regulatory vehicle, called an 'overseas practice' for authorised bodies to use when setting up offices in other jurisdictions. Overseas practices will not in themselves be authorised and so will be able to be subject to a less detailed conduct regime. They will be held accountable through their parent or 'responsible authorised body' in England and Wales.
 - c. The corporate form of an overseas office under the control of an authorised body, whether it is a branch or subsidiary, will be irrelevant to the way in which the rules are applied. This will simplify matters both for the SRA and for authorised bodies that open overseas offices.
 - d. The rules will focus on managing the risks of overseas practise, upholding the reputation of the SRA's regulated community, both individually and collectively, and ensuring the ongoing character and suitability of regulated individuals regardless of where they are practising.
5. Further details can be found in the draft submission to the Legal Services Board at **annex 4**, in the proposed introduction to the Overseas Rules at **annex 5** and the summary of responses to the SRA's last consultation at **annex 6**.

Statutory approval process

6. The new rules and the consequential changes to the Handbook must be approved by the Legal Services Board. We are also proposing an introduction to the Overseas Rules and some amendments to the introductions to some other sections of the Handbook. These introductions do not have the force of rules and do not need to be approved by the LSB, but are included here for information.

Consideration by other committees

7. The new rules and the amendments proposed to the SRA Handbook have been considered by the Standards Committee.

Equality and diversity

8. The proposed changes do not substantively change the obligation on individuals and bodies practising overseas in relation to equality and diversity. The only overseas requirement under the existing Code of Conduct was for a regulated individual or body to observe Principle 9:

"Run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity".

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and to observe the following outcome:

OP(2.1): You do not discriminate unlawfully according to the jurisdiction in which you are practising.

The proposed new Overseas Rules require regulated individuals and overseas practices to observe the Principle stated above and to observe local law in any jurisdiction in which they are practising. In addition, however, the guidance attached to this Principle makes it clear that the SRA expects those within its regulatory ambit to 'do what they reasonably can to encourage equality or opportunity and respect for diversity'.

Recommendations

9. It is recommended:

(a) that the Board makes the [Draft] SRA Overseas Rules [2013] and the Consequential Amendments to the SRA Handbook arising from the Overseas Rules [2013], subject to the approval of the Legal Services Board; and

(b) that the Chair of the SRA Board certifies under Regulation 32(4) of The Law Society's General Regulations that the proposed changes are urgent.

Annexes

Annex 1	[Draft] SRA Overseas Rules [2013]
Annex 2	[Draft] SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules [2013]
Annex 3	Scope document for [Draft] SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules [2013]
Annex 4	Draft Submission to the Legal Services Board
Annex 5	Proposed Introduction to the Overseas Rules
Annex 6	Summary of responses to SRA Consultation on proposed Overseas Rules
Annex 7	SRA Board Risk Assessment

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This paper is for decision

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SRA Overseas Rules 2013

The SRA Overseas Rules dated [date of approval of the Legal Services Board] 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.

Part 1: The Overseas Principles

Rule 1: Overseas Principles

1.1 You

- (a) as a *regulated individual practising overseas* must ensure that you; or
- (b) as a *responsible authorised body* must ensure that your *overseas practice*, and individual managers, and members and owners of your *overseas practice* (who are, for the purposes of these rules, 'those for whom you are responsible');

comply with the Overseas Principles stated below.

1.2 Each of the Overseas Principles stated below, is supplemented by a note to assist individuals and bodies to determine how best to comply with each Principle. These notes do not form part of the Principles and are for guidance only.

1.3 Overseas Principle 1: You must uphold the rule of the law and the proper administration of justice in England and Wales.

Guidance note

- (i) Your obligations to clients, the court and third parties in England and Wales with whom you are dealing on behalf of your clients are unaffected by the location outside England and Wales from which you practise or by the location of your overseas practice.

1.4 Overseas Principle 2: You must act with integrity.

Guidance note

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- (i) Personal integrity is central to your role as the client's trusted adviser and should characterise all of your professional dealings with clients, the court, other lawyers and the public, wherever they are being conducted. You should use your judgment when considering how best to maintain your integrity at all times and avoid any behaviour outside England and Wales which undermines your character and suitability to be an authorised person. A **responsible authorised body** should ensure that its **overseas practices** observe comparable standards.

1.5 Overseas Principle 3: You must not allow your independence or the independence of your overseas practice to be compromised.

Guidance note

- (i) "Independence" means your own independence and that of your firm and your **overseas practice**, and not merely your ability to give independent advice to a client. You should avoid giving control of your **overseas practice** to a third party beyond any local legal or regulatory ownership requirements.

1.6 Overseas Principle 4: You must act in the best interests of each client.

Guidance note

- (i) You should act in good faith and do your best for each of the clients for whom you are (or your **overseas practice** is) acting. In particular, you should follow the local legal or regulatory requirements of the jurisdiction in which you or your **overseas practice** are practising in relation to confidentiality and conflicts of interest. If no such requirements exist, you should be guided by what you consider to be the best interests of each client in the circumstances.

1.7 Overseas Principle 5: You must provide a proper standard of service to your clients/the clients of your overseas practice.

Guidance note

- (i) You should provide a proper standard of client care and work. This includes exercising competence, skill and diligence and taking into account the individual needs and circumstances of each client as well as the particular requirements and circumstances of the jurisdiction in which you are working. If your client meets the definition of a complainant under Section 128(3) of the Legal

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Services Act 2007 or the Legal Services Act 2007 (Legal Complaints) (Parties) Order 2010, you should inform the client who is regulating the legal services you or your **overseas practice** is providing to the client, what client protections are in place and whether they have the benefit of professional indemnity insurance or other indemnity.

- 1.8 Overseas Principle 6: You must not do anything which will or will be likely to bring into disrepute the **overseas practice**, yourself as a **regulated individual** or **responsible authorised body** or, by association, the legal profession in and of England and Wales.

Guidance note

- (i) This includes any behaviour which occurs within or outside your professional practice which undermines your own reputation, that of the practice within which you are a manager or solicitor employee, or the wider reputation of the legal profession in and of England and Wales.

- 1.9 Overseas Principle 7: You must comply with your legal and regulatory obligations in England and Wales, and deal with your regulators and ombudsmen in England and Wales in an open, timely and co-operative manner and assist and not impede any authorised person or body practising in England and Wales in complying with their legal and regulatory obligations and dealings with their regulators and ombudsmen.

Guidance note

- (i) As a **responsible authorised body**, you should ensure that you, and those for whom you are responsible, comply with all of the reporting and notification requirements that apply to you and respond promptly and substantively to communications. You should ensure that you (and those for whom you are responsible) do not cause, contribute or facilitate a failure to comply with the SRA's regulatory arrangements by any authorised person or body practising in England and Wales. Regulated individuals **practising overseas** should assist their **responsible authorised body** to comply with its regulatory obligations to the SRA.

- 1.10 Overseas Principle 8: You must run your business/the business of your overseas practice or carry out your/their role in the business effectively and in accordance with proper governance and sound financial and risk management principles.

Guidance note

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- (i) As a **responsible authorised body** you are required to ensure that your relations with your **overseas practice** accord with sound governance, financial and risk management principles. You should ensure that those for whom you are responsible under these rules assist you in meeting your obligations to the SRA in relation to managing any risks that your **overseas practice** might pose to your operations.

1.11 Overseas Principle 9: You must run your business/the business of your overseas practice or carry out your/their role in the business in a way that encourages equality of opportunity and respect for diversity.

Guidance note

- (i) Every jurisdiction has its own legal, regulatory and cultural framework for equality and diversity. The SRA does not expect, or require, regulated individuals or bodies **practising overseas** to approach these issues as they would in England and Wales. It does, however, expect that SRA **regulated individuals** and bodies will, within whatever legal, regulatory and cultural context in which they are **practising overseas**, do what they reasonably can to encourage equality of opportunity and respect for diversity.

1.12 Overseas Principle 10: You must protect client money and assets.

Guidance note

- (i) You and those for whom you are responsible should comply with local regulatory requirements in relation to client money, documents and assets and, in any event, you should ensure that they are protected appropriately.

Part 2: **Application**

Rule 2: **Application**

2.1 With regard to the Overseas Principles set out in Rule 1:

- (a) they apply in full to you if you are a **regulated individual practising overseas**, or a **responsible authorised body** in relation to each of its **overseas practices**;
- (b) you will be committing a breach if you permit another person to do anything on your behalf which, if done by you, would constitute a breach of these rules;

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- (c) you should ensure that you and those for whom you are responsible under these rules comply with all legal and regulatory obligations applicable in the jurisdiction outside England and Wales in which you or they are practising. You, and those for whom you are responsible under these rules, should not cause, contribute to or facilitate a failure to comply with those legal or regulatory obligations by any other person or body subject to them;
- (d) where there is a conflict between compliance with the Overseas Principles set out in Rule 1 and/or the Reporting Requirements set out in Rule 3 on the one hand, and any requirements placed upon you or those for whom you are responsible under these rules by local law or regulation on the other hand, the latter shall prevail, with the exception of Overseas Principle 6, which must be observed at all times;
- (e) nothing in these rules removes or modifies the requirements under the Legal Services Act 2007, for authorisation to be obtained for the delivery of *reserved legal activities*;
- (f) if you are a solicitor and your practice predominantly comprises the provision of legal services in England and Wales then, regardless of where you are established, the *SRA* will apply the full Handbook to your practice;
- (g) if you are a *regulated individual practising overseas*, or a *responsible authorised body*, you must ensure that you, or those for whom you are responsible under these rules, comply with any requirements under:
 - (i) the SRA Property Selling Rules 2011;
 - (ii) the *SRA Insolvency Practice Rules*;
 - (iii) the *SRA European Cross-border Practice Rules*;
 - (iv) the *SRA Financial Services (Scope) Rules*;
 - (v) the SRA Financial Services (Conduct of Business) Rules 2001; and
 - (vi) the SRA Quality Assurance Scheme for Advocates (Crime) Regulations [2013];

which apply to you or your *overseas practice*.

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Part 3: Reporting requirements

Rule 3: Reporting requirements

- 3.1 The **SRA** does not expect or require the same level of detailed monitoring, reporting and notification from those **practising overseas** as it would expect of authorised individuals and bodies in England and Wales. The level of reporting the **SRA** expects is proportionate to the level of regulatory risk posed by an **overseas practice**.
- 3.2 You, as a **regulated individual practising overseas** or as a **responsible authorised body**, must monitor any material or systemic breaches of the Overseas Principles that apply to you or to those for whom you are responsible and report them to the **SRA** when they occur, or as soon as reasonably practicable thereafter. In relation to an **overseas practice**, a material or systemic breach will relate either to the character and suitability of an individual, the financial vulnerability of an **overseas practice** outside of established business planning, or a pattern of behaviour within an **overseas practice** that infringes Overseas Principle 6. Notifications by the compliance officer of a **responsible authorised body**, or by another person on behalf of an **overseas practice** will satisfy these requirements without separate notifications from each individual or body who has knowledge of the breach. For example, you will be required to:
- (a) notify the **SRA**, if you, or any of the partners, members, managers, solicitor employees or other professionally qualified employees in your overseas practice, are convicted by any court of a criminal offence or become subject to disciplinary action by another regulator;
 - (b) notify the **SRA** immediately if you believe that your firm or your **overseas practice** is in serious financial difficulty;
 - (c) provide the **SRA** with documents held by you or your **overseas practice**, to which it is entitled, and any necessary permissions to access information as soon as possible following a notice from the **SRA** to do so.
 - (d) provide the **SRA**, if you are a **responsible authorised body**, with an annual return which:
 - (i) identifies the contact details of the office(s) from which you are, or your **overseas practice** is, practising, and
 - (ii) confirms that you have fulfilled your reporting and notification obligations.

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Part 4: Commencement

Rule 4: Commencement

4.1 These Rules shall come into force as follows:

- (a) Rule 1, 2 and 4 of these rules shall come into force on [date of approval of the Legal Services Board], for:
 - (i) *regulated individuals* falling within the definition of *practising overseas*, and
 - (ii) persons falling within paragraph (i)(a) and (e) of the definition of *overseas practice*,
- (b) Otherwise, these rules shall come into force on 1 October 2014.

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SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules 2013

Preamble

The SRA Overseas Rules dated [date] 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

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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 practise 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 practises* with the SRA Overseas Rules;
O.7.12
You identify, monitor and manage all risks to your business which may arise from your *connected practises*." ;
- (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 practises*.
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.

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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 practise 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;

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(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:

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- "(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.";

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- (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, or to clients, 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

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(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:

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- (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:

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- (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 it is part, or a recognised sole practitioner in England and Wales, by virtue of:

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- (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

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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

- (ii) 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 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

- (iii) 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*;

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- (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;

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- (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 practise overseas which is permitted by the SRA Practice Framework Rules.";
- (j) after the definition of "take a trainee" insert "SRA Overseas Rules" means the SRA Overseas Rules 2013; and
- (k) **"temporary practise 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 [the date of approval by the Legal Services Board], with the exception of rules 6(h) and 7(a) which shall come into force on 1 October 2014.

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Annex 3: Scope document for [Draft] SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules [2013]

Introduction

Rule	Issue	Solution	Implementation date	Minor change or significant policy requiring consultation
Paragraph 3	Need for amendment to ensure that Overseas Principles are clear in their derivation from the SRA Principles.	Amend paragraph (a) to read " apply to all those we regulate and <u>underpin</u> all aspects of practice ".	1 October 2013	Minor consequential change
Paragraph 3 (g)	Insertion of Overseas Rules into structure of the Handbook	After paragraph 3(f) insert a new paragraph 3(g) as follows: 'SRA Overseas Rules' (i) Introduction (ii) Overseas Rules and renumber subsequent paragraphs	1 October 2013	Minor consequential change

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SRA Principles 2011

Rule	Issue	Solution	Implementation date	Minor change or significant policy requiring consultation
Paragraph 2.3 (a) (notes)	Need to explain how Overseas Principles fit with application of SRA Principles	Add at the end of paragraph (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 <i>practising overseas</i> , the Overseas Principles apply"	1 October 2013	Minor consequential change
Paragraph 4.1	Amendments to the application of the SRA Principles in relation to practice from an office outside England and Wales to cover circumstances in which a firm does need to be separately authorised outside England and	Substitute the following wording: 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 <i>authorised body</i> as a result of the nature of your practice and you have been <i>authorised</i> by the <i>SRA</i> accordingly; or (b) a <i>manager</i> 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 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 Rules 2.1(e) and have regard to Rule 2.1(g) of the Overseas Rules). In those circumstances, the Principles and Code of Conduct apply.	1 October 2013	Minor consequential change

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	Wales e.g for provision of reserved legal activities			
Paragraph 4.2	Temporary practice	4.2 The Principles apply to you if you are an individual engaged in <i>temporary practise overseas</i> .	1 October 2013	Minor consequential change

SRA Code of Conduct 2011

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
The Principles	Amend wording around application of Principles to cover slightly different application internationally	Amend the second sentence in paragraph 1 of the preamble to state "They apply to all those we regulate and <u>underpin</u> all aspects of <i>practice</i> ."	1 October 2013	Minor consequential changes
The Code	Need to remove existing references in the Code of Conduct to 'Overseas Practice' which are now overtaken by the new rules.	Delete the provisions relating to "Overseas Practice" at the end of each chapter.	1 October 2013	Minor consequential changes
Chapter 7 (management of your business)	Addition of new domestic outcomes to impose obligations on authorised bodies with overseas offices and connected practices – nb. This is an important basis for possible	To add new outcomes 7.11 and 7.12: O7.11 You identify, monitor and manage the compliance of your <i>overseas practices</i> with the Overseas Rules.	1 October 2013	Major change consulted on

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	compliance action against firms who will be held responsible for the conduct of their overseas practices.	<p>O.7.12 You identify, monitor and manage all risks to your business which may arise from your <i>connected practices</i>. IB(7.4) you maintain systems and controls for managing the risks posed by any financial inter-dependence which exists with your <i>connected practices</i>. IB (7.5) 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 <i>overseas practice</i>.</p>		
Rule 13	(application and waivers provisions)	To delete rules 13.3 to 13.6		
		<p>To draft new chapter 13A (Practice overseas) as follows: 13A.1 If you are an individual or body <i>practising overseas</i>, 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 <i>authorised body</i> as a result of the nature of your practice and</p>		

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		<p>you have been <i>authorised</i> by the SRA accordingly;</p> <p>(b) a <i>manager</i> of such a body; or</p> <p>(c) an individual engaged in <i>temporary practise overseas</i>.</p> <p>13A.3 The following provisions of the Code apply:</p> <p>(a) chapter 3 (conflicts of interest);</p> <p>(b) chapter 4 (confidentiality and disclosure);</p> <p>(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;</p> <p>(d) outcomes 6.1 to 6.3 (your client and introductions to third parties);</p> <p>(e) chapter 7 (management of your business);</p> <p>(f) outcomes 8.1 and 8.4 (publicity);</p> <p>(g) outcomes 9.1 to 9.7 (fee sharing and referrals), except where they conflict with the <i>SRA European Cross Border Practice Rules</i>, in which case the latter will prevail;</p> <p>(h) chapter 10 (you and your regulator);</p> <p>(i) chapter 11 (relations with third parties), except that Outcome 11.3 only applies if the land in question is situated in England</p>		
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		<p>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 <i>clients</i> for any <i>financial benefit</i> you receive as a result of your instructions unless it is the prevailing custom of your local jurisdiction to deal with <i>financial benefits</i> in a different way; O(13A.2) <i>clients</i> 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 <i>practising</i>; 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</p>		
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		<p>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.</p> <p>13A.5 You must be aware of local laws and regulations governing your practice in an overseas jurisdiction.</p> <p>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.</p>		
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Solicitors Accounts Rules 2011

Rule	Issue	Solution	Implementation date	Minor change or significant policy requiring consultation
Title to Part 7	Need to avoid confusing use of term 'overseas practice'	replace "Overseas practice" with "Practice from an office outside England and Wales"	1 October 2013	Minor drafting change
Rule 47.1	Need to avoid confusing use of term 'overseas practice'	replace "overseas practice" with "practice from an office outside"	1 October 2013	Minor drafting change

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		England and Wales".		
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Introduction to Authorisation and Practising Requirements

Rule	Issue	Solution	Implementation date	Minor change or significant policy requiring consultation
Paragraph 2	Need for amendment to ensure that Overseas Principles are clear in their derivation from the SRA Principles	Amend the second sentence to substitute the words "underpin" for "apply to", so this reads "The Principles <u>underpin</u> all aspects of practice..."	1 October 2013	Minor consequential change

SRA Practice Framework Rules 2011

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
Rule 1.2	To permit solicitors to practise in overseas practices outside England and Wales.	To add new 1.2(g): "as a <i>manager, employee, member</i> or <i>interest holder</i> of an <i>overseas practice</i> ."	1 October 2013?	Minor consequential changes
Rule 2.2	To allow RELs practising from an office in Scotland or Northern Ireland to practise in overseas practices	To add new 2.2(g): "as a <i>manager, employee, member</i> or <i>interest holder</i> of an <i>overseas practice</i> ."	1 October 2013	Minor consequential changes

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Rule 4	In house practice	To add a new 4.1A: "If your <i>in-house practice</i> 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 <i>overseas practice</i> , rules 4.19 to 4.21 apply to you; and (c) employment in a body overseas, including where you are <i>practising overseas</i> , rules 4.22 to 4.25 apply to you." 4.22 and 4.23 to be amended to replace "to your overseas practice" with the words "to your <i>in house practice</i> where you are employed in a body outside England and Wales".	1 October 2013	Minor consequential changes
Rule 5.2	To permit authorised bodies to practise from an office outside England and Wales in the form of an overseas practice.	To add new 5.3: "Nothing in rule 5.2 above prevents an <i>authorised body</i> from practising through an <i>overseas practice</i> for which it is the <i>responsible authorised body</i> ." To add Guidance Note: (iii) 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	1 October 2013	Minor consequential changes

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		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 <i>authorised body</i> may not carry on an activity unless through a body and individual who is authorised to carry on that activity.		
Rule 15	Need to add overseas practices to rules on notification of practising addresses	To add Guidance Note: 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 3.2.4 of the SRA Overseas Rules.	1 October 2013	Minor consequential changes
Rule 18.2	Need to amend rule on information and documentation to include requirements on overseas practices.	Amend 18.2 to remove "or" at the end of (f), and to add at the end of (g), "; or (h) <i>overseas practices</i> , including any contact details and practising/registered addresses of its <i>overseas practices</i> ."	1 October 2013	Minor consequential changes
Rule 20	Compliance with practice	Delete rule 20 as it duplicates provisions	1 October 2013	Minor

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	requirements for overseas practice.	elsewhere. Replace it with "Rule 20: Overseas Practice Deleted"		consequential changes
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SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
Rule 4	To require applications for authorisation as ABS to provide information on overseas practices.	Add a new 4.4: "An application by a <i>licensable body</i> or <i>legal services body</i> for <i>authorisation</i> must notify the SRA of the practising address and, where different, the registered address, of any <i>overseas practices</i> for which it would, if <i>authorised</i> , be the <i>responsible authorised body</i> ."	1 October 2013	Minor consequential changes
Rule 8	General conditions on authorisation – need to cross-refer to the Overseas rules	To amend the Guidance note at (xv) to add: (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).	1 October 2013	Minor consequential changes
Rule 9	Guidance notes to clarify the conditions that can be imposed on an authorised body because of the conduct of an	To add Guidance note: (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	1 October 2013	Minor consequential changes

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	overseas practice	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, or to clients, of the authorised body.		
Rule 22.1	Adding compliance with the Overseas rules as a condition on authorisation	To amend 22.1(a) to remove "or" at the end of (xii), and to add at the end of (xiii), "; or (xiv) the body, where it is a <i>responsible authorised body</i> , has failed to comply with any obligations under the <i>SRA's regulatory arrangements</i> in respect of its <i>overseas practices</i> ."	1 October 2013	Minor consequential changes
Rule 34.2	Maintenance of the register of authorised bodies	To amend 34.2(f) to add after " <i>practising addresses</i> " the words "and the addresses of its <i>overseas practices</i> ".	1 October 2013	Minor consequential changes

SRA Practising Regulations 2011

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
Rule 4 (guidance)	Add information requirements on overseas practices to requirements for recognised sole practitioners	To amend para (xii) to add: (E) Rule 3 of the SRA Overseas Rules.	1 October 2013	Minor consequential changes

Solicitors Keeping of the Roll regulations 2011 - No change proposed

SRA Training Regulations 2011 – Part 1 - Qualification Regulations

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation

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The Principles	Need to explain how Overseas Principles fit with application of SRA Principles	Amend second sentence in paragraph 1 to substitute the word "underpin" for "to", so this reads: "They apply to all those we regulate and underpin all aspects of practice".	1 October 2013	Minor consequential changes
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SRA Training Regulations 2011 - Part 2 - Training Provider Regulations

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
The Principles	Need to explain how Overseas Principles fit with application of SRA Principles	Amend second sentence in paragraph 1 to substitute the word "underpin" for "to", so this reads: "They apply to all those we regulate and underpin all aspects of practice".	1 October 2013	Minor consequential changes

SRA Training Regulations - Part 3 - CPD Regulations

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
The Principles	Need to explain how Overseas Principles fit with application of SRA Principles	Amend second sentence in paragraph 1 to substitute the word "underpin" for "to", so this reads: "They apply to all those we regulate and underpin all aspects of practice".	1 October 2013	Minor consequential changes

SRA Admission Regulations 2011

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Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
The Principles	Need to explain how Overseas Principles fit with application of SRA Principles	Amend second sentence in paragraph 1 to substitute the word "underpin" for "to", so this reads: "They apply to all those we regulate and underpin all aspects of practice".	1 October 2013	Minor consequential changes

SRA Qualified Lawyer Transfer Scheme Regulations 2011

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
The Principles	Need to explain how Overseas Principles fit with application of SRA Principles	Amend second sentence in paragraph 1 to substitute the word "underpin" for "to", so this reads: "They apply to all those we regulate and underpin all aspects of practice".	1 October 2013	Minor consequential changes

SRA Higher Rights of Audience Regulations 2011

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
The Principles	Need to explain how Overseas Principles fit with application of SRA Principles	Amend second sentence in paragraph 1 to substitute the word "underpin" for "to", so this reads: "They apply to all those we regulate	1 October 2013	Minor consequential changes

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		and underpin all aspects of practice".		
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SRA Quality Assurance Scheme for Advocates (Crime) Notification Regulations 2012

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
The Principles	Need to explain how Overseas Principles fit with application of SRA Principles	Amend second sentence in paragraph 1 to substitute the word "underpin" for "to", so this reads: "They apply to all those we regulate and underpin all aspects of practice".	1 October 2013	Minor consequential change

SRA Suitability Test 2011

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
The Principles	Need to explain how Overseas Principles fit with application of SRA Principles	Amend second sentence in paragraph 1 to substitute the word "underpin" for "to", so this reads: "They apply to all those we regulate and underpin all aspects of practice".	1 October 2013	Minor consequential change

Introduction to Client Protection

Rule	Issue	Solution	Implementation	Minor change or
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			date	significant policy change requiring consultation
Paragraph 2	Need to explain how Overseas Principles fit with application of SRA Principles	Amend the second sentence to substitute the words "underpin" for "apply to", so this reads "The Principles underpin all aspects of practice..."	1 October 2013	Minor consequential changes

SRA Indemnity Insurance Rules 2013 (subject to LSB approval) - No change proposed

SRA Indemnity (Enactment) Rules -No change proposed

SRA Indemnity Rules 2012 - No change proposed

SRA Compensation Fund Rules 2011 - No change proposed

SRA Intervention Powers (Statutory Trust) Rules 2011 - No Change proposed

Introduction to Discipline and Cost Recovery

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
Paragraph 2	Need to explain how Overseas Principles fit with application of SRA Principles	Amend the second sentence to substitute the words "underpin" for "apply to", so this reads "The Principles <u>underpin</u> all aspects of practice..."	1 October 2013	Minor consequential changes

Disciplinary Procedure Rules - No change proposed

Cost of Investigations Regulations - No change proposed

Introduction to Specialist Services

Rule	Issue	Solution	Implementation	Minor change or
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			date	significant policy change requiring consultation
Paragraph 2	Need to explain how Overseas Principles fit with application of SRA Principles	Amend the second sentence to substitute the words "underpin" for "apply to", so this reads "The Principles <u>underpin</u> all aspects of practice..."	1 October 2013	Minor consequential changes

SRA Property Selling Rules 2011 - No change proposed – but cross-referred to in Overseas Rules

SRA Financial Services (Scope) Rules - No change proposed but cross-referred to in Overseas Rules

SRA Financial Services (Conduct of Business) Rules 2011 - No change proposed – but cross-referred to in Overseas Rules

SRA European Cross Border Practice Rules 2011 - No change proposed – but cross referred to in Overseas Rules

SRA Insolvency Practice Rules 2011 - No change proposed – but cross referred to in Overseas Rules

Glossary

Rule	Issue	Solution	Implementation date	Minor change or significant policy change requiring consultation
Definitions deriving from overseas Accounts Rules	Need to avoid confusion with definition of overseas used in new rules	Substitute the words "(overseas practice)" with "(overseas)" in the definitions of: Client account (overseas practice) Client money (overseas practice) Firm (overseas practice) Manager (overseas practice)	1 October 2013	Minor consequential change

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		Non-lawyer Practice from an office		
Overseas practice	Need to revise definition of overseas practice in light of overseas rules.	Delete paragraph (i) and substitute with: 'overseas practice': (i) means: (A) a branch office of an <i>authorised body</i> ; (B) a <i>subsidiary company</i> of an <i>authorised body</i> ; (C) a subsidiary undertaking, within the meaning of section 1162 of the Companies Act 2006, of an <i>authorised body</i> ; (D) an entity whose business, management or ownership are otherwise in fact or law controlled by an <i>authorised body</i> or <i>recognised sole practitioner</i> ; (E) an individual acting as a representative (whether as an employee or agent) of an <i>authorised body</i> or <i>recognised sole practitioner</i> , or (F) a <i>sole principal</i> whose business, management or ownership are otherwise in fact or law controlled by an <i>authorised body</i> or <i>recognised sole practitioner</i> , established outside of England and Wales and providing legal services but which does not carry out <i>reserved legal activities</i> and whose <i>practice</i> does not predominantly comprise the provision of legal services to clients, or in relation to assets, located in England and Wales; and (ii) in the <i>SRA Indemnity Rules</i> , means a practice	1 October 2013	Proposal consulted on

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		carried on wholly from an <i>overseas</i> office or offices, including a <i>practice</i> deemed to be a <i>separate practice</i> by virtue of paragraph (ii) of the definition of <i>separate practice</i> .		
Practice		Amend to delete "and" from the end of the second (i) and add at the end of (ii): "and, (iii) in the <i>SRA Overseas Rules</i> where it shall be given its natural meaning.		
Separate business	To ensure Overseas Practices are not restricted by Separate Business rule	Amend glossary definition of "separate business" to read "separate business means a business, wherever situated, which is not an <i>authorised body</i> , a <i>recognised sole practitioner</i> , an <i>authorised non-SRA firm</i> , or an <i>overseas practice</i> , or comprises <i>in-house practice</i> or practise overseas which is permitted by the SRA Practice Framework Rules"	1 October 2013	Minor consequential change
Responsible authorised body	Need for new definition of "responsible authorised body"	RESPONSIBLE AUTHORISED BODY The 'responsible authorised body' in respect of an overseas practice is 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.	1 October 2013	Proposal consulted on
Connected practice	Need for new definition of "connected practice"	CONNECTED PRACTICE ' <i>Connected practice</i> ' means a body providing legal services, established outside of England and	1 October 2013	Proposal consulted on.

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		<p>Wales which is not <i>an overseas practice</i> or an excluded body but is otherwise connected to an authorised body in England and Wales of which it is part, or a recognised sole practitioner in England and Wales; by virtue of :</p> <ul style="list-style-type: none">(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. <p>An "excluded body" means a body which is part of:</p> <ul style="list-style-type: none">(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		
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		<p>body providing legal services established outside of England and Wales; or</p> <p>(III) a group of affiliated bodies providing legal services which is not managed or controlled by an authorised body in England and Wales.</p> <p>A 'body' means a natural person or company, limited liability partnership or partnership or other body corporate or unincorporated association or business entity</p> <p>A <i>joint enterprise</i> 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.</p> <p>A <i>common brand</i> 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 practice is practising in association with one or more other named firms.</p>		
Practising Overseas	Need to define 'Practising Overseas'	<p>PRACTISING OVERSEAS</p> <p>'Practising overseas' means the conduct of a practice:</p> <p>(i) of an <i>overseas practice</i>;</p> <p>(ii) of a <i>manager, member</i> or <i>owner</i> of an <i>overseas practice in that capacity</i>;</p> <p>(iii) of a solicitor established outside England and</p>		Proposal consulted on

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		Wales for the purpose of providing legal services in an overseas jurisdiction; and (iv) of a REL established in Scotland or Northern Ireland for the purpose of providing legal services in those jurisdictions.		
Established	Need to add definition of 'established'	<p>ESTABLISHED</p> <p>(i) For the purposes of the definition of overseas practice, the status of an individual as being established outside England and Wales may be indicated by the following factors:</p> <p>(A) a requirement for a work permit;</p> <p>(B) the intention to reside outside of England and Wales for a period of 6 months or longer;</p> <p>(C) a requirement for authorisation with local regulatory body;</p> <p>(D) an overseas practising address nominated in mySRA;</p> <p>(E) an employment contract with a legal practice established outside England and Wales</p> <p>(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.</p>	1 October 2013	Definition consulted on
Regulated individual	Need to add definition of "Regulated individual" to cover	<p>REGULATED INDIVIDUAL</p> <p>'Regulated individual' means:</p>	1 October 2013	Definition requested in

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	circumstances of practising overseas.	(i) a <i>solicitor</i> , (ii) an <i>REL</i> ; and (iii) a <i>manager, member</i> or <i>owner</i> of an <i>overseas practise</i> .		consultation
Temporary practise overseas	Need to add definition of “Temporary practise overseas” to cover circumstances where individuals are providing services overseas but their practice is based in England and Wales.	<p>TEMPORARY PRACTISE OVERSEAS</p> <p>'Temporary practise overseas' means the situation where:</p> <p>(i) a <i>solicitor</i> is practising but not established overseas; or</p> <p>(ii) an <i>REL</i> is practising from an office in Scotland or Northern Ireland; but the solicitor or REL is not <i>practising overseas</i>.</p>		Added for clarification of application

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Application made by the Solicitors Regulation Authority Board to the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007, for the approval of the SRA Overseas Rules [2013] and SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules 2013

A. Summary

1. This application is made to the Legal Services Board for approval of changes to the SRA's regulatory arrangements in relation to the provision of legal services by authorised bodies and regulated individuals in jurisdictions outside England and Wales. These new arrangements are designed to modernise the regime governing practice in other jurisdictions. The detail of the proposed new arrangements is set out in section C below, but in summary these proposals do the following:
 - Create separate regimes governing the different circumstances in which an SRA regulated individual or authorised body is practising temporarily in another jurisdiction, as opposed to when they are permanently established and practising overseas.
 - Replace the SRA Principles and detailed outcomes in the SRA Code of Conduct with a set of Overseas Principles which adapt the SRA Principles in an appropriate and proportionate manner for regulated individuals and bodies who are practising overseas.
 - Introduce the concept of 'an overseas practice' which simplifies both the process of initial authorisation for new offices overseas and the application of SRA regulatory requirements across the different structures that a single authorised body might establish in different jurisdictions.
 - Introduce the concept of 'a responsible authorised body' which allows the SRA to hold an authorised body to account in England and Wales for the conduct of overseas practices under its control in other jurisdictions
 - Introduce the concept of 'a connected practice' which is a risk management tool designed to require authorised bodies to manage their wider international relationships with foreign law firms.
2. The proposals do not remove or modify the requirements for individuals and bodies to obtain authorisation in order to provide reserved legal activities, regardless of where they are practising.

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3. As a whole, the proposed rules are intended to apply a more proportionate regulatory regime to overseas practice, taking into account the risks posed to the SRA's regulatory objectives, the need to ensure that consumers in England and Wales are protected, the requirements of local regulatory regimes in other jurisdictions and the importance of the globalisation of legal services to the UK economy.

B. Details of the SRA's current regulatory arrangements

4. Since October 2011 the SRA has adopted an outcomes focused approach to regulation. This is a regulatory regime that focuses on the high level principles and outcomes that should drive the provision of services to clients. The SRA Code of Conduct replaces detailed rules with a Code which sets out the mandatory outcomes we expect the firms and individuals we regulate to achieve in particular contexts whilst allowing flexibility in how those outcomes are achieved.
5. The current regulatory arrangements apply the SRA Principles and Code of Conduct to regulated individuals and authorised bodies practising in other jurisdictions. The application of the outcomes in the Code of Conduct is modified to some extent and in certain chapters of the code separate overseas outcomes are imposed. These conduct rules are accompanied by provisions in the Practice Framework Rules and Authorisation Rules, which set out the form in which an authorised body may practise overseas as well as the rules governing solicitors, Registered European Lawyers, Registered Foreign Lawyers and solicitors working in-house when practising in other jurisdictions. There are also separate overseas provisions in the Solicitors Accounts Rules.

C. Rationale for amendment

6. The SRA gave an undertaking to stakeholders when the new Handbook came into force in October 2011 that the arrangements relating to overseas practice would be reviewed.
7. In November 2011 we published a Green Paper setting out the rationale for amending the existing approach. This rested largely on two pillars: firstly, it had become clear that even the modified mandatory outcomes in the SRA Code of Conduct were more prescriptive than necessary for overseas practice; and secondly, the Practice Framework Rules in the Handbook were not flexible enough to take into account the structures through which firms were often practising overseas, leading to unnecessary complexity.

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8. The Code of Conduct in its current form has two main shortcomings. First it limits its overseas application to regulated individuals 'practising from an office in another jurisdiction'. This leaves some uncertainty about the situation of regulated individuals who might be flying out of England and Wales to practise temporarily in another jurisdiction. Secondly, even though modified, the mandatory outcomes in the Code of Conduct are still disproportionate to the risks posed by overseas practice, given that they often sit alongside additional requirements in the host jurisdiction. The move to entity based regulation has also resulted in the imposition of disproportionately detailed SRA requirements on lawyers who may be working in their home jurisdictions under their home title.

9. The Practice Framework Rules, which were designed to maintain the integrity of the authorisation system for reserved legal activities, do not sit easily with the requirement in many jurisdictions for firms to set up new local entities rather than branch offices of an authorised body. Where firms are required to set up subsidiary offices in order to establish in another jurisdiction, this results in the imposition of different SRA regulatory requirements on the solicitors and others working within these subsidiaries or 'foreign law practices' compared to their counterparts in one of the authorised body's overseas branch offices. The creation of subsidiaries also brings with it various requirements such as the need to create overarching governance arrangements. All of this has not only made life complex for the firms themselves but has also reduced the SRA's ability to get to grips with the structure of large international firms and therefore fully to understand the risks that they pose to the SRA's regulatory objectives. The current rules are somewhat unclear on what authorisation means in an overseas context with the result that there is little consistency in how this is handled. Lastly the current system also creates the potential for the creation of a misleading impression of the true extent of the SRA's reach or ability to enforce overseas.

D. Nature and effect of the proposed alterations to the SRA's regulatory arrangements

10. The (draft) SRA Overseas Rules [2013] and the SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules 2013, which are set out at annexes 1 and 2, were made by the SRA Board on 24 July 2013, subject to approval by the Legal Services Board (LSB). These changes are intended to address the issues with the current application of the SRA Handbook to overseas practise as identified above. They do the following:
 - They create new Overseas Rules. These will sit as a separate section in the Handbook and are designed to apply to solicitors and regulated SRA individuals

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and entities established and practising overseas. The current modified version of the Code of Conduct applying to Overseas Practice will now be applied only to temporary practice in other jurisdictions and to the limited circumstances in which an authorised body must have an overseas office that is authorised for reserved legal activities.

- The Overseas Rules comprise a set of principles-based conduct rules, application provisions and reporting requirements. The proposed conduct requirements are based on the SRA Principles alone, both in order to reinforce their role as the core of the SRA's regulatory regime and because imposing conduct requirements at a high level is proportionate to our regulatory objectives overseas. The Overseas Rules will, however, slightly modify the SRA Principles in order either to clarify obligations on firms overseas or to make their requirements manageable in regulatory terms. Overseas Principle 6 has also been redrafted to make it relevant to overseas practice and now requires that those to whom the rules apply 'must not do anything which will, or will be likely, to bring into disrepute the overseas practice, yourself as a regulated individual or responsible authorised body or, by association the legal profession in and of England and Wales'. This is our fundamental requirement for overseas practice. It is worth noting that we have also included some guidance to indicate how the SRA Principles apply overseas. In the absence of such guidance, they can only be interpreted with reference to the Code of Conduct and the detailed outcomes it requires.
 - These conduct rules apply both to regulated individuals practising overseas and to a new concept we are proposing to introduce known as a 'responsible authorised body'. A responsible authorised body is a body which has offices under its control in other jurisdictions and it is required by the proposed rules to ensure that its overseas offices (or 'overseas practices') comply with the Overseas Principles, notification and reporting requirements. A counterpart obligation is proposed for Chapter 7 of the Code of Conduct on 'Managing your business'.
 - Authorised bodies will be expected to manage any risk of their other formal international relationships, which would be known as 'connected practices'. This is also covered by a new domestic outcome in the Code of Conduct.
11. The SRA Board is satisfied that its proposals will assist the SRA's regulatory arrangements in the following way:

(a) Authorisation

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12. The combined impact of the proposed Overseas Rules and the consequential changes that are proposed to the rest of the Handbook will make it easier both for firms and for the SRA to determine what needs to happen when an authorised body opens an office in another jurisdiction. If a body in another jurisdiction is, de facto or de jure, under the control of the authorised body in England and Wales, it will become 'an overseas practice' and the Overseas Rules will apply to it. It will only be in exceptional cases, where firms are conducting reserved activities directly from offices in other jurisdictions that such offices will need to be full branches of the England and Wales authorised body. As a rule, therefore, firms will not need to think about the regulatory consequences of the corporate form in which they open overseas offices. This clearer process will also save time within the SRA's authorisation function since there will only rarely be a need for a firm to enter into discussions about the need for an overseas office to be 'authorised' through its establishment as a branch office.

(b) Risk

13. The introduction of the Overseas Rules and in particular the concepts of 'an overseas practice', a 'responsible authorised body' and a 'connected practice' will give the SRA a better overview of the risk profile of international firms. The introduction of 'overseas practices' in place of branches, subsidiaries and other offices, will make the structure of large firms more transparent to the SRA. The concept of a 'responsible authorised body' will make it clear that the authorised body in England and Wales is responsible for ensuring that its overseas practices are run on sound governance, financial and risk management principles. This represents a formal extension of risk management across the firm as a whole and strengthens the position of those responsible within the firm for compliance. The introduction of the concept of a 'connected practice', through an additional outcome in the SRA code of conduct, is designed to require firms to focus more attentively on the risks of their relationships with other bodies to whom their businesses are connected, whether formally or informally.

14. The reporting and notification requirements contained in the Overseas Rules will also assist the SRA's assessment of risk in relation to individual firms or to practice in particular jurisdictions. These requirements go beyond the collection of information on criminal and disciplinary matters relating only to regulated individuals and require reporting from overseas practices when there are any issues raised about the suitability of any partner, member, manager or professionally qualified employee. This is risk management information (in particular where it concerns an individual outside the SRA's regulated community) that will allow both the SRA and the responsible authorised body in England and Wales to pick up issues of concern at an early stage.

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(c) Supervision

15. The vast majority of authorised bodies that will be covered by the Overseas Rules come under the SRA's regulatory management regime (i.e. they will have a designated SRA regulatory manager). The supervision function will therefore play an important part in rolling out this regime and assisting firms with its implementation. In order to ensure that the transition to the new arrangements is as smooth as possible, we intend to stagger the introduction of the conduct aspects of the Overseas Rules and the introduction of the concept of an overseas practice. We are proposing that the new rules will apply, on their entry into force, to the existing overseas branch offices of an authorised body. Subsidiary and other offices will only be included in the regime on entry into force of the 'overseas practice' vehicle which will be timed to coincide with the practising certificate renewal exercise in 2014. This will both give the responsible authorised bodies the time in which to communicate to their overseas offices, which are currently outside any SRA oversight, what this will mean for them in practice, and it will allow the SRA to build the specific data requirements for overseas practices into its IT system for the renewals exercise in 2014.
16. Once the proposed new rules are fully in force, the supervision function will be responsible for the ongoing discussion with responsible authorised bodies about their application. To a large extent, this new regime will be a formalisation of the dialogue which already takes place between international firms and their SRA regulatory managers. The new regime will however clarify the SRA's expectations and regulatory objectives in relation to overseas practice.

(d) Enforcement

17. There are limits on the SRA's enforcement ability in other jurisdictions and this new regime is not intended to create any requirement for the SRA to engage in such activity in other jurisdictions. By creating the concept of the 'responsible authorised body', we are making it possible, if required, for the SRA to undertake enforcement action in England and Wales against an authorised body as a result of any actions or failures of its overseas practices. The duty on a responsible authorised body to ensure that its overseas practices assist with compliance is made explicit in Overseas Principle 7.

E. Statement in respect of the Regulatory Objectives

18. The SRA Board is satisfied that its proposed new Overseas Rules will support the regulatory objectives contained in the Legal Services Act 2007

Protect and promote the public interest

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19. The Overseas Rules will protect and promote the public interest in a number of ways. First and foremost, they are designed to ensure that the rule of law in England and Wales is not undermined by the activity of regulated individuals or related bodies in other jurisdictions. We have deliberately chosen not to attempt to extend the obligation on regulated individuals to include upholding the rule of law in other jurisdictions. This is not to suggest that our regulated community should not be upholding the rule of law wherever they are; it is rather because of the difficulty of defining and requiring compliance with this concept in all jurisdictions. We believe the obligation becomes stronger by focusing it clearly on England and Wales. The requirement on our regulated community to follow local law and regulation is made clear elsewhere in these rules, together with our intent to cooperate with our fellow regulators in other jurisdictions.

20. Secondly, the public interest is protected by these proposed new rules through the emphasis which they place on the reputation of 'the legal profession in and of England and Wales'. This is designed to support and enhance the standing of English legal services and English law around the world.

Protect and promote the interests of consumers

21. Consumers are increasingly seeking legal advice in other jurisdictions. Our new rules clarify the obligations on our regulated community, whether they are advising clients in relation to other jurisdictions from an office in England and Wales, or from an overseas office. A regulated individual or overseas practice advising a consumer from England and Wales will be under an obligation to provide information to their client about the regulation of legal services in the jurisdiction where they are based and what protections are available to them.

Promote adherence to the professional principles

22. The requirements on authorised persons in relation to the professional principles, as set out in the Legal Services Act 2007, are clear and unambiguous in their application in England and Wales. Outside of this jurisdiction, however, concepts such as 'duty to the court' and 'clients' best interests' may have a different interpretation. We have tried through the Overseas Principles and the guidance connected to them, to ensure that the underlying meaning of the professional principles is reflected in the requirements on those practising overseas.

F. Statement in respect of the Better Regulation Principles

23. The SRA considers that the proposed alterations fulfil our obligation under section 28 of the Legal Services Act to have regard to the Better Regulation Principles.

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24. The proposals are proportionate in that they do not require detailed compliance with the Code of Conduct by firms and individuals who are based in overseas offices and subject to local law and regulatory requirements.
25. The proposals are targeted on the SRA's main regulatory concerns in relation to overseas practice: to ensure that overseas practices are well run and do not add to the risk of authorised bodies in England and Wales in an unmanaged way; to promote confidence in legal services from England and Wales and of SRA regulation; and to ensure that any information relevant to the character and suitability of regulated individuals is picked up, regardless of where it arises.
26. We have been transparent in developing our proposed new Overseas Rules and we have sought out and taken account of the views of stakeholders from a variety of quarters in this final proposal.

G. Statement in relation to desired outcomes

27. The SRA's desired outcome is that the individuals and firms that it regulates maintain high standards and reinforce confidence in legal services from England and Wales when practising in other jurisdictions.

H. Statement in relation to stakeholder engagement

28. The SRA published a discussion document on international practice in November 2011. Since then, we have issued two consultations containing specific proposals and have held extensive discussions with different segments of the profession, with consumer and client representatives and with legal regulators from other jurisdictions.

I. Statement in relation to impact on other Approved Regulators

29. All of the other approved regulators were invited to comment on our various consultations on the draft overseas rules. They have chosen not to do so, no doubt because their regulatory arrangements and the position of the individuals whom they regulate is unaffected by the changes we propose.

J. Implementation timetable

30. We are proposing to stagger the introduction of the Overseas Rules as outlined in paragraph 15. The code of conduct element of these proposals, if agreed, will enter into force on 1 October 2013. Overseas practices, together with the notification and

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reporting requirements which apply to them will be introduced on the commencement of the practising certificate renewal period in 2014.

K. SRA Contact

Richard Collins, Executive Director, SRA

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Introduction to the Overseas Rules

This section of the Handbook contains the SRA Overseas Rules.

Although the SRA primarily regulates the provision of legal services by solicitors, firms and other authorised persons practising in England and Wales, it also needs to provide a regulatory framework for authorised persons and bodies established overseas in order to take account of the regulatory risk they pose in England and Wales. This must be proportionate, reflecting the different level and type of risks posed to the SRA's regulatory objectives by practising overseas, as well as the existence, in many jurisdictions, of local regulatory requirements.

These rules apply to regulated individuals practising overseas and to responsible authorised bodies. Subject to Rule 2.1(e) of these rules, the SRA Code of Conduct does not apply to regulated individuals and authorised bodies practising overseas since its requirements are, in many cases, not relevant to, or may have a disproportionate impact, on them.

These rules are the starting point for the conduct of SRA regulated individuals and authorised bodies providing legal services outside England and Wales. They apply to those regulated individuals who are established in practice overseas and those authorised bodies or recognised sole practitioners with responsibility for or control over, bodies or branch offices overseas. They do not apply to those engaged in temporary practice overseas or authorised bodies established overseas to whom the Principles and relevant sections of the SRA Code of Conduct and the SRA Handbook apply.

The Overseas Principles are modified from the general SRA Principles, in order to take account of the different legal, regulatory and cultural context of practice in other jurisdictions, which may require different standards of conduct to those required in England and Wales. There is no intention to imply a lower standard of general behaviour; regulated individuals practising overseas and responsible authorised bodies are therefore required to ensure that they, or those for whom they are responsible, under these rules, behave in a way which meets both the SRA's Overseas Rules and its character and suitability requirements. For guidance on the SRA's approach to factors relevant to the assessment of an individual's suitability see the SRA Suitability Test.

Regulators in many other jurisdictions rely on certificates of good standing granted by the SRA to regulated individuals and authorised businesses who wish to practise overseas and, in many cases, they will also expect and require that the SRA's regulatory oversight will continue to operate alongside the local regulatory regime. Nonetheless, applicable law and local regulation should prevail in circumstances in which compliance with the Overseas Principles would create difficulties, with the exception of principle 6 which must be observed at all times, even if to do so would result in a breach of local law or regulation.

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In addition to the obligations of those regulated individuals practising overseas, the SRA also requires that a recognised sole practitioner or authorised body in England and Wales will identify, monitor and manage risks arising from its overseas practices and connected practices to ensure they do not undermine its financial viability, or its ability to fulfil its compliance and regulatory obligations, its reputation and that of SRA regulation and the legal profession of England and Wales in general. These obligations are also present in the domestic SRA Code of Conduct.

A failure to meet these obligations may result in the SRA taking regulatory action against a regulated individual or an authorised body and its managers. Such action may include limiting, or removing, the right to practise as an authorised body or individual regulated by the SRA.

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Summary of Feedback from Consultation on Handbook Amendments on Proposed Overseas Rules

Summary

1. This paper reports on feedback to the latest consultation on the SRA's overseas rules and outlines how the SRA has adapted its proposals in the light of the comments received.

Results of Latest Consultation

2. On 20 May the Standards Committee approved for publication the 3rd consultation issued by the SRA on its proposed new overseas rules. The consultation went live on 21 May and closed on 25 June. The consultation outlined the following proposals:
 - A new and separate set of Overseas Rules, designed to sit as a separate section in the Handbook and which would apply to solicitors and regulated SRA individuals and entities established overseas.
 - The proposed rules contained a set of principles based conduct rules, application provisions and reporting requirements.
 - The conduct rules were closely modelled on the SRA Principles with minor exceptions to ensure greater relevance to overseas practice.
 - These rules would apply to solicitors established overseas and to entities under the control of an SRA authorised body in England and Wales, which would become known as 'overseas practices'.
 - Authorised bodies would also be expected to manage any risk of their other formal international relationships, which would be known as 'connected practices'.
 - The notification and reporting requirements proposed for this regime were designed to be proportionate to the risk to the SRA's regulatory objectives.
3. We received 10 written submissions on our proposals and during the consultation period we also met with the Legal Ombudsman's Office to discuss the potential impact of the new rules on their work. Responses were received from a number of professional bodies and from international law firms and Anglo-Scottish MNPs. We received one response from a sole practitioner based overseas. The relatively low number of responses reflects the extensive consultation we have already undertaken both written and face to face.
4. All of the responses received were positive but there were a few remaining substantive points which we have taken on board in our final proposed version of the new rules

Substantive points raised by respondents to the consultation

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5. There were a number of useful substantive points raised by respondents. None of these points queried the fundamental direction of our proposal but there were many useful suggestions for drafting clarification. We have taken these on board where we felt that they added value.
6. All respondents expressed support for the proposed new Overseas Principles but a number raised the issue of the status of the explanatory notes included after the statement of each Principle in Rule 1. There was some concern that it was not clear whether these were actually part of the rules or really explanatory guidance. The LSB has indicated to us that it wishes to discourage the inclusion of too much guidance in rules as this undermines the shift to outcomes focused regulation, a position which we support in principle. We therefore wanted to avoid the risk that these explanatory notes were not accepted by the LSB, as without them there is a risk that the interpretation of the Overseas Principles would default to the notes to the Principles applying to 'domestic' practice, so they were presented in our consultation as an integral part of the rules. We have decided on balance, however, that it is better to make it clear that these explanatory notes are not actually part of the rules but also explain in our submission to the LSB that their inclusion is nonetheless essential in order to avoid any confusion between the way in which they are intended to apply and the way in which the domestic Principles are applied.
7. The Law Society and CLLS both suggested that the note to Principle 2 (Act with Integrity) should be amended to say that 'A responsible authorised body should ensure that its overseas practice observes ~~the same~~ comparable standards'. It was felt inappropriate to require the same standards across the very different circumstances that might prevail in other jurisdictions. Given the requirement in Principle 1 to adhere to domestic obligations when practising in England and Wales, there is no risk to the SRA's regulatory objectives in accepting this suggestion.
8. A few respondents raised the requirement in Principle 5 (Provide a proper standard of service to your client) of the need to provide information to clients on how the legal services being provided were regulated and to which protections they were or were not entitled. The City of London Law Society and the Law Society both felt this was disproportionate and not necessarily useful for international clients. Liverpool Law Society raised a related point on the need for the rules to tie in with the Legal Ombudsman's remit. Our intention was not to impose unnecessarily burdensome obligations on firms in relation to sophisticated clients, but we also have to be mindful of the increasing number of unsophisticated clients who are purchasing legal services abroad and who need clarity on their protections. Our dialogue with the Legal Ombudsman on this issue has been very useful and we have therefore proposed an amendment to the note under Principle 5 which provides criteria for firms to use in deciding on the level of information which is appropriate.
9. The CLLS raised the question of the disclosure and reporting obligations in Principle 7 and rule 3.2(c) which they felt would raise problems in jurisdictions in which confidentiality or professional privilege requirements prevented disclosure to the SRA. We have pointed out to the CLLS in separate discussions with them that rule 2.1(d) provides for local law and regulation to override reporting requirements where there is an

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issue and rule 3.2(c) emphasises that the SRA can only ask for documents ‘to which it is entitled’.

10. A number of respondents, notably the Law Society and CLLS, had comments on rule 3 in relation to reporting requirements. The main concern was the level of reporting required. In fact some text had been inadvertently omitted from final version of the consultation document in the translation from the description of the rules into their legal form. The reinstatement of this omitted text, which clarifies that the level of reporting required is material and systemic and defines what this means in practice, meets these concerns. This also deals with a point raised by another respondent on the responsibilities of the COLP under these rules.
11. There were requests for additional glossary definitions of the terms “Reserved legal services” and ‘regulated individuals’. We have been able to address the former simply by amending our text to read ‘reserved legal activities’ which is already a defined glossary term. A suggested definition of ‘regulated individual’ in the context of these rules which is implicit in the practising framework and authorisation rules has been added.
12. There was a general feeling amongst respondents that the definitions of overseas practice and connected practices were too complex. We have discussed these in detail with a number of different parties and have reformulated our definitions, which now more accurately capture our intentions. We have also provided a new definition to assist with the question of ‘establishment’.
13. The CLLS queried the need for a new outcome in the domestic code focused on connected practices (and indeed of the need for the concept of connected practices to be included at all) and pointed out that there were two existing outcomes which covered the same risk management ground:

“O(7.3) you identify, monitor and manage risks to compliance with all the Principles, rules and outcomes and other requirements of the Handbook, if applicable to you, and take steps to address issues identified;

O(7.4) you maintain systems and controls for monitoring the financial stability of your firm and risks to money and assets entrusted to you by clients and others, and you take steps to address issues identified;

They suggested that there was a risk that authorised bodies with foreign parents (e.g. the London offices of US firms) might take the new outcomes in the overseas chapter as suggesting that they did not need pay heed to their financial interdependencies. We do not agree on the basis that Outcomes 7.3 and 7.4 are clear and unambiguous in their application to any authorised body. We feel that although there are no specific obligations that attach to a connected practice itself, we are drawing attention through the addition of new outcome 7.12, to the need for firms to be explicitly conscious and managing reputational risk in relation to their overseas relationships, which goes beyond financial risk (covered in O7.4) or compliance with the Handbook (covered in O7.3). This is underlined in our proposed indicative behaviour (IB7.4) which

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highlights the importance of appropriate licensing of firm brands to connected practices.

14. The Association of Immigration Advisers posed an interesting question in their response: They queried how we intended to define 'legal profession' and measure 'damage' in the light of the requirement in Overseas Principle 6 "To not do anything which will be likely to bring into disrepute the overseas practice...or, by association, the legal profession in and of England and Wales". In drafting this we were thinking of the legal 'sector' or 'industry' in its widest sense, and we did not wish to define 'bringing into disrepute', for obvious reasons. We think this remains a useful construction and one that could have an important part to play in enforcement action, so we do not intend to alter our drafting.

Other points raised in responses

15. There were some other points raised by respondents which we have decided not to take on board. These are as follows:
- Both the Law Society and the CLLS suggested that the rules should be renamed 'International Practice Rules' rather than 'Overseas Rules' on the grounds that the latter had 'colonial' connotations. However, we need to distinguish between practice that takes place entirely in another jurisdiction (i.e. in another UK jurisdiction or overseas) as opposed to 'international practice' which may be conducted from a base in England and Wales. There will therefore still be international application requirements in the domestic code of conduct and we feel it would be clearer if 'international practice' and 'practising overseas' were clearly separate. It is also worth noting that the Companies Act 2006 makes reference to 'overseas company' and defines it as 'a company incorporated outside the United Kingdom'. This marries with our intention to capture establishment in another jurisdiction, although overseas practices may include branch offices and foreign subsidiaries using the form of an English LLP. We have also indicated our intention to add UK specific rules to the Handbook in future.
 - The Law Society suggested the deletion of references to 'cultural framework' and 'cultural context' in Principle 9 on equality and diversity on the grounds that these could be used as grounds for discrimination. We however feel that the note to Principle 9 makes it clear that the SRA is nonetheless expecting those it regulates to 'do what they reasonably can to encourage equality of opportunity and respect for diversity.'
 - The Law Society and CLLS also suggested that the note to Principle 8, on the requirement to run a business effectively, should be limited to managing material and systemic risks only. We felt that this was confusing our notification and reporting requirements, which do focus only on material and systemic risks, from the wider responsibility of a law firm to run its overseas practices on 'sound financial and risk management principles'.

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- The Law Society of Scotland raised a concern over the drafting of Principle 3 on independence. They suggested that third party control could be defined as prohibiting partnership structures which do not mandatorily require ownership by non-solicitor lawyers but which permit it (e.g. in Scotland, under current rules many firms have branch offices which have very mixed Scots/English ownership and the requirement in Scotland is for only one Scottish solicitor principal. We disagree on the grounds that 'third party' means 'another party beyond the two principals' and clearly does not cover those directly involved in the management or control of a firm, as in the example cited by the LSS.
 - The Law Society of Scotland also suggested that the reporting requirements we were imposing were too wide as they required reporting on criminal convictions and disciplinary sanctions imposed on any 'partners, managers, solicitor employees or other professional employees'. They suggested that there should be a threshold of materiality. Whilst we recognise that very minor disciplinary infringements might appear to be of little concern in isolation, they may be part of a larger pattern and represent important data for effective risk management of a firm as a whole.
16. There were also a number of points which the SRA will need to pick up in future workstreams or activities:
- Liverpool Law Society raised the question of the interaction of the Overseas Rules with the Solicitors Accounts Rules (SAR) and pointed out that the SARs were (in their view) unnecessarily complex in how they applied overseas. At present the rules apply to "overseas law firms controlled by lawyers of England and Wales" and we will need to consult more widely on changes that might be desirable to this construction. Our proposed transitional arrangements for the introduction of Overseas Practices will give us time to review the appropriate application of the SARs to overseas practices in greater depth.
 - Liverpool Law Society also raised the question of 'Find a solicitor' – the Law Society's online search facility for individual solicitors and practices – which LLS felt was inconsistent in how it currently represented different types of offices overseas. This facility is currently undergoing a major redesign and we are working with the Law Society to ensure that the concept of overseas practices is incorporated appropriately within the reconfiguration.
 - The Law Society of Scotland wanted further consideration to be given to position of RELs, RFLs, EELs and dual qualified solicitors in relation to these new rules. This point is picked up to some extent in the consequential amendments to the 'domestic' Handbook but we appreciate that there is still further simplification work to be done. This simplification, however, would need to be undertaken through changes to the domestic rules: the practising framework rules and the authorisation rules in particular.
 - A number of respondents echoed views expressed throughout the process of creating these new rules, that there is a need for the creation of a specific regime relating to the UK within our rules. We agree but feel that this will be much easier

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to define once the overseas rules have been finalised. We have been in discussion with both the Law Societies of Scotland and Northern Ireland on this issue and will be meeting later in the year to begin taking this forward.

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Board Risk Assessment

Summary of issues for consideration	
<p>This paper invites the Board to make the [Draft] SRA Overseas Rules [2013] and the Amendment to Regulatory Arrangements (Overseas Rules) Rules [2013], subject to the approval of the LSB. The draft Rules introduce a new regime for overseas practise and make any necessary amendments to the Handbook in order to introduce this regime. The policy changes proposed have been considered on a number of occasions both by the Board and by the Standards Committee.</p>	
Report is for	
<input type="checkbox"/> Noting/information	<input checked="" type="checkbox"/> Decision
<input type="checkbox"/> Approval	
Business/operational risk	
<p>The proposed changes propose a more proportionate regime for overseas practice which will be easier for the SRA and firms to operate. It will also assist both the Supervision team and the risk centre to obtain a much clearer picture of the SRA's regulated community overseas.</p>	
Finance	
<p>There are no major financial implications from these proposals. However, we are confident that once the concept of 'an overseas practice' is introduced that there will be scope for considerable savings in terms of the time spent by both authorisation and supervision functions in engaging with firms prior to office openings.</p>	
Communications	
<p>The SRA intends to communicate these changes directly to those individuals and firms most affected. Most of the latter are firms under regulatory management and the supervision function will be critical to the successful communication of these new rules.</p>	
Equality and diversity implications	
<p>The proposed new Overseas Rules apply the same standard to overseas practise as that set out in version 7 of the SRA Handbook. The guidance to new Overseas Principle 9 however does make it clear that the SRA expects its regulated community to go beyond the statutory minimum in relation to equality and diversity when established for practice in another jurisdiction.</p>	
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