



Legal Services Board – Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

The Solicitors Regulation Authority (SRA) rule change application for approval of the SRA Overseas Rules 2013 and SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules 2013

The Legal Services Board (LSB) has granted an application from the SRA for approval of the 'SRA Overseas Rules 2013' and consequential changes to the SRA Code of Conduct 'SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules 2013'.

This decision notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Law Society is an approved regulator and the SRA is the regulatory arm to which the Law Society has delegated its regulatory functions.
2. Paragraph 25 of Schedule 4 to the Act explains that the LSB may only refuse an application setting out a proposed change to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹) will be met. For example, the LSB's granting of the application to alter the regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, if the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about how the application to alter the regulatory arrangements must be made including the contents of that application. The rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the regulatory objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

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

of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) of Schedule 4 to the Act requires that each proposed alteration has been made or is likely to be made in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration. This therefore includes the LSB's rules.

4. The chronology for the LSB's handling of this application can be found towards the end of this decision notice.

Background

5. The SRA primarily regulates the provision of legal services by solicitors, firms and other authorised persons practising in England and Wales, and also provides 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. The SRA's approach aims to be proportionate and reflect the different level and type of risk involved with practising overseas while also taking into account the local regulatory regime already in place in many jurisdictions outside England and Wales.
6. In 2011, the LSB granted approval of the SRA's new Handbook which, for the first time, brought together the SRA's regulatory arrangements in one place. At that time, the SRA also made a commitment to revisit the issue of the Handbook's application to practising in jurisdictions outside of England and Wales.
7. Over the past 18 months, the SRA has publically consulted and reflected on its proposed changes with input from different segments of the legal profession, consumer and client representatives and legal regulators from other jurisdictions. The SRA has also met with the Legal Ombusman (LeO) to discuss potential impacts on their work.

Proposed changes

8. The proposed changes to the SRA's current regulatory regime relating to practising outside England and Wales arose from two main issues:
 - that the mandatory outcomes in the SRA Code of Conduct were more prescriptive than necessary for overseas practice;
 - the Practice Framework Rules in the Handbook were not flexible enough to take into account the structures through which firms were often practising overseas, which lead to unnecessary complexity.
9. The new regime proposed by SRA aims to address this by introducing the following changes to its regulatory arrangements:
 - The introduction of a new set of 'SRA Overseas Rules [2013]' to sit in a separate section in the Handbook. These rules will 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.

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 'SRA Overseas Rules [2013]' and to manage the risk of their wider international relationships.

- The 'SRA Overseas Rules [2013]' comprise a set of principles-based conduct rules or 'Overseas Principles', the application of those provisions and the reporting requirements. The Overseas Principles are based on the general SRA Principles, and take into account 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.
- Overseas Principle 6 is a fundamental requirement for overseas practice which requires that those to whom the rule applies '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'. It is important to note that the applicable law and local regulation should prevail in circumstances in which compliance with the Overseas Principles would create difficulties, with the exception of Overseas Principle 6, which must be observed at all times even if to do so would result in a breach of local law or regulation.
- Consequential amendments to the SRA Handbook (SRA Amendment to Regulatory Arrangements (Overseas Rules) Rules 2013) which apply a modified version of the Code of Conduct to regulated individuals practising temporarily in other jurisdictions only and to the limited circumstances in which an authorised body must have an overseas office that is authorised for reserved legal activities.

Decision

10. During its consideration of the application, the LSB sought clarification from the SRA that they have the powers to impose and enforce these rules for its regulated community providing services outside England and Wales. The SRA confirmed that its power to make rules governing the work of solicitors are set out in Section 31 Solicitors Act 1974 (which allows the Law Society (delegated to the SRA) to make rules "for regulating in respect of any matter the professional practice, conduct, fitness to practise and discipline of solicitors") and in Section 9 Administration of Justice Act 1985 (which provides a power to make rules "making provision as to the management and control of legal services bodies"). These new rules have been drafted so that the authorised body in England and Wales is responsible for the conduct of an overseas practice under its control and it is that authorised body that would be subject to enforcement action if that were necessary as a result of a breach of the SRA Overseas Rules. For individual solicitors employed in firm outside England and Wales, their status as an authorised person on the Solicitors' Roll means that the SRA will have the authority to hold that person accountable for any breaches of the SRA Code of Conduct or other regulatory arrangements, including where the behaviour occurred overseas. The LSB is content with the SRA's explanation and analysis.

11. The LSB has considered the SRA's application against the criteria in paragraph 25(3) of Schedule 4 to the Act, and considers that there is no reason to refuse this application; accordingly, the LSB grants this application.

12. The Annex to this Decision Notice contains the rule changes approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the SRA on 5 August 2013.
- The 28 day initial decision period for considering the application ends on 1 September 2013
- This Decision Notice is effective from 30 August 2013.
- The Decision Notice will be published on our website on 2 September 2013.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
30 August 2013

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

- (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 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 **authorised 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 **authorised 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

- (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;
- (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 **SRA 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**.

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 persons** and **authorised 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.

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.

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

In most circumstances, overseas offices of authorised bodies based in England and Wales, will not require authorisation with the SRA

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

- (c) replace paragraph 4.2 with the following:

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

Rule 3

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

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

"Chapter 13A: Practice Overseas

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

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

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

(b) a *manager* of such a body; or

(c) an individual engaged in *temporary practice overseas*.

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

(a) chapter 3 (conflicts of interest);

(b) chapter 4 (confidentiality and disclosure);

(c) chapter 5 (your client and the court), to the extent that your practice relates to litigation or advocacy conducted before a court, tribunal or enquiry in England and Wales or a British court martial;

(d) outcomes 6.1 to 6.3 (your client and introductions to third parties);

(e) chapter 7 (management of your business);

(f) outcomes 8.1 and 8.4 (publicity);

(g) outcomes 9.1 to 9.7 (fee sharing and referrals), except where they conflict with the *SRA European Cross Border Practice Rules*, in which case the latter will prevail;

(h) chapter 10 (you and your regulator);

(i) chapter 11 (relations with third parties), except that Outcome 11.3 only applies if the land in question is situated in England and Wales; and

(j) outcomes 12.3 to 12.6 (separate businesses).

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

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

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

(a) the nature and extent of the risks you incur in your practice overseas;

(b) the local conditions in the jurisdiction in which you are *practising*; and

(c) the terms upon which insurance is available; and you have not attempted to exclude liability below the minimum level required for practice in the local jurisdiction;

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

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

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

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

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

Rule 4

The SRA Accounts Rules 2011 shall be amended as follows:

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

Rule 5

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

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

Rule 6

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

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

- (a) employment in a body within England and Wales, rules 4.2 to 4.18 and 4.26 apply to you;
- (b) employment in a foreign law firm which is not an *overseas practice*, rules 4.19 to 4.21 apply to you; and
- (c) employment in a body overseas, including where you are *practising overseas*, rules 4.22 to 4.25 apply to you." ;

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

Rule 7

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

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

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

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

"(ii) The SRA may impose conditions on an authorised body in response to concerns about an overseas practice, in respect of the body's conduct as a responsible authorised body. This might include, for example, where the overseas practice is providing reserved legal activities when it is not authorised to do so and this is within the knowledge, 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
 - (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 (D) replace "." with ";" and insert:

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

Rule 9

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

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

Rule 10

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

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

Rule 11

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

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

Rule 12

The SRA Admission Regulations 2011 shall be amended as follows:

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

Rule 13

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

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

Rule 14

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

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

Rule 15

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

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

Rule 16

The SRA Suitability Test 2011 shall be amended as follows:

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

Rule 17

The Introduction to Client Protection shall be amended as follows:

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

Rule 18

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

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

Rule 19

The Introduction to Specialist Services shall be amended as follows:

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

Rule 20

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

- (a) in the definitions of the following terms:
 - (i) client account (overseas practice),
 - (ii) client money (overseas practice),
 - (iii) firm (overseas practice),
 - (iv) manager (overseas practice),
 - (v) non-lawyer, and
 - (vi) practice from an office,

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

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

"connected practice

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

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

and in this definition:

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

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

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

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

- (II) a joint practice, alliance or association or association with the authorised body in England and Wales connected to it which is controlled by a body providing legal services established outside of England and Wales; or
- (III) a group of affiliated bodies providing legal services which is not managed or controlled by an authorised body in England and Wales.

(C) A **joint enterprise** means any contractual arrangements between two or more independent bodies which provide legal services, for profit and/or other defined purpose goal which apply generally between them, not just agreed on a matter by matter basis.

(D) **Common branding** means the use of a name, term, design, symbol, words or a combination of these that identifies two or more legal practices as distinct from other legal practices or an express statement that a legal practices is practising in association with one or more other named firms." ;

(c) after the definition of "entitled to practise", insert:

Established

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

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

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

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

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

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

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

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

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

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

(e) in the definition of practice:

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

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

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

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

"Practising overseas

means the conduct of a practice:

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

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

"regulated individual

means:

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

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

"responsible authorised practice

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

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

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

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

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

means the situation where:

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

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

Rule 21

These amendment rules shall come into force on [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.

