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International Consultation
Solicitors Regulation Authority
24 Martin Lane
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By post and by email (consultation@sra.org.uk)

Dear Sirs,

Re: Response of the CLLS Professional Rules and Regulation Committee to "The regulation of international practice" consultation

The City of London Law Society ("CLLS") represents approximately 14,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 18 specialist committees. This response in respect of the SRA's "The regulation of international practice" consultation has been prepared by the CLLS Professional Rules & Regulation Committee.

As the two don't always correspond, we should make clear at the outset that our responses are to the 26 questions listed at the end of the Consultation, not to the questions in the body of your paper.

1. *Have we selected the right balance of regulatory objectives to target internationally?*

   Generally, yes. However, there is a danger inherent in focusing on the professional principles too heavily. This is because some of the Principles are linked to specific Outcomes and if the effect of the focus on the Principles is ultimately to require firms to satisfy the Outcomes overseas, then our view is that the balance is wrong. This is because the training and monitoring requirements which would be placed on firms in relation to their overseas operations would be excessive and disproportionate. This is particularly the case given that a viable alternative is, we believe, available (see further in 19 below).

2. *Have we identified clear enough outcomes for regulation internationally?*

   Yes, although we believe the outcome of ensuring adherence to "professional principles" is – if that is a reference to the SRA Principles – overly rigid, (see below). It is important for the SRA to bear in mind that in many cases an overseas office of a large SRA Authorised firm is a significant entity in its own right and managed and staffed entirely (or almost entirely) by local lawyers. While they will operate to a high professional standard such that it is not difficult to expect them to satisfy appropriate broad principles of professional conduct, it is quite another matter to expect them to remain familiar with the detailed rules (or Outcomes) of another jurisdiction, as well as those of their own. If, intentionally or not, that is the effect of the approach suggested by the SRA, then in our view the intended outcome is not appropriate.

3. *Have we chosen the right tests against which to assess any resulting regime for international practice?*

   We would suggest two further tests:-

   a. Are the demands placed on SRA authorised firms by the proposals in proportion to the risk to (a) consumers and (b) the reputation of firms "headquartered" in England and Wales?

   b. Can the SRA in practice monitor and regulate the SRA Authorised firms' overseas activities pursuant to the proposals without unreasonable cost?

4. *Do we need to authorise any entities outside England and Wales or should we simply regulate individuals?*

   Given the move to entity regulation, in our view it makes sense to have some regulation of entities affecting their operations overseas.

5. *Is it possible to separate regulatory oversight from firm structure?*

   We agree that it is not a desirable regulatory outcome for the extent of SRA supervision of an economically interdependent group of businesses to be determined by the finer details of the structures involved; with the effect that businesses that are indistinguishable to clients fall to be regulated in different ways. We think in principle it should be possible to develop an approach to regulatory oversight that is not directly linked to the particular structures involved, but which is based upon a common group identity. However verein structures, in particular, will present challenges and will require further consideration.

6. *How do we define those firms whose operations outside England and Wales would be part of group recognition?*

   Given the objective of ensuring high standards by a "brand name" associated with England and Wales, we consider the SRA's approach to be correct. However, greater clarification is required in respect to the terms "headquartered" and "substantial centre of gravity". In addition, the proposals in relation to verein structures need fleshing out.

7. *Would we inadvertently create other regulatory gaps by following this approach?*

   Not that we can see.

8. *Are there other types of entity that currently require recognition that are not covered in the approach we outline?*

   We do not believe so.

9. *Is there any justification for regulating foreign legal service providers, where these are providing services to the consumer market?*

   We agree with the response given by the Law Society.

10. *Are there circumstances in which solicitors might need to work overseas that are not currently covered by the current rules?*

    No.

11. *Does group authorisation impose sufficient oversight to protect the public interest effectively?*

    Yes.

12. *Is automatic recognition of the legal professions of other jurisdictions accompanied by a greater reliance on individual practitioner checks for suitability, a sufficiently rigorous approach?*

    Yes: However, suitability tests will only work in practice if firms can obtain prior approval; an SRA Authorised firm must be able to ascertain before making an offer of partnership that a foreign lawyer will be considered suitable. As one example why this is important:- if a lawyer qualified in the US decides to move firm, he/she will normally do so on very short notice, leaving one firm as soon as notice is handed in, and starting at the new firm the following Monday. Such a lawyer will be unlikely to accept an offer of partnership which is conditional on the approval of the SRA, and would also be reluctant to join as an associate pending approval. The hiring firm needs to be able to make a confidential application for approval as part of their due diligence on the individual concerned.

13. *Does foreign legal manager status for regulated foreign lawyers based in the UK, mirroring the lawyer manager status granted to other regulated UK legal professionals, offer adequate guarantees that standards will be upheld?*

    We are not sure that we understand the proposal. Are you proposing that "foreign lawyer managers" comply with the SRA Principles (except where these conflict with their own professional rules of conduct), whether they are practising in England and Wales or overseas? If so, we would have thought that while practising in England and Wales they should have been subject to the Code as RFL's now are. While practising abroad, they should be subject to the same regime as any other overseas partner/solicitor of a firm "headquartered" in England/Wales.

14. *Is it appropriate to retain RFL status as an option for lawyers joining an authorised body or its wider group, where they have no home regulator or have had to surrender their regulated status?*

    Yes.

15. *Is it appropriate to replace the requirement for individual RFL registration for foreign lawyer partners based abroad with a requirement for initial approval and some training requirement in the professional principles where these partners are in SRA-regulated bodies?*

    Yes, provided the training requirement can be satisfied in-house and is proportionate.

16. *Are there other aspects of RFL status, such as the limited rights to conduct reserved immigration work or the portability of the status between firms that are important and would be lost in such a proposal?*

    Not that we are aware of.

17. *If the boundaries of reserved legal services are extended, does it add anything to have a separate authorisation process for foreign providers?*

    We are not sure we understand the question; in particular, we do not understand why any extension of reserved legal services (such that they must be carried out by Solicitors) would impact on whether foreign legal service providers in England and Wales should be subject to an authorisation process.

18. *How can we make the recognition of European law firms more straightforward? Would it make sense to combine a Framework Services Directive and Establishment Directive approach, so that we would give automatic recognition to a European firm opening a branch in England and Wales, regardless of its structure, and only require full authorisation if a firm intended to bring solicitors into the partnership or if its partners wanted to make use of article 10 of the Directive which allows for assimilation into the profession?*

    We do not have any comment on this at this stage.

19. *Are the kind of supervisory requirements suggested above for overseas offices under group supervision appropriate?*

    Broadly, yes, but we have concerns about how, in practice, the SRA can de-link some of the Principles from Outcomes (as would be required for this proposal to work). In this context, we agree with the comments made (in response to the same question) by the Law Society regarding, in particular, Principle 4 and chapters 3 and 4, and Principle 9. If de-linkage can be achieved, that would be the best solution. However, if it proves difficult effectively to de-link the Principles from the Outcomes, then we would suggest an alternative approach. This is to require solicitors overseas and overseas offices of SRA Authorised firms headquartered in England and Wales to

comply not with the Principles but with new Core Obligations for Overseas Practice. These Core Obligations might simply read as follows:-

> *"You will:*
>
> *(1) uphold the rule of the law and the proper administration of justice;*
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> *(2) comply with applicable law and professional regulation in the jurisdictions in which you practise overseas; and*
>
> *(3) not do anything which will or be likely to bring into disrepute yourself, the firm headquartered in England and Wales of which you are part or, by association, the legal profession in England and Wales."*

These Obligations would be supplemented by a requirement that the firm has systems and controls in place (including training and supervision) to minimise the risks that overseas representatives of the firms fail to live up to this statement. Similarly, the firm could be required to extend Principle 8 (efficient running of the business) to its overseas practice.

It seems to us that Core Obligations such as these would ensure that a firm headquartered in England/Wales would ensure that its overseas offices operate to an appropriate standard without the confusion of "baggage" of Outcomes associated with the Principles.

20. *How should the Handbook deal with the specific issue of different conflict rules in different jurisdictions?*

We believe that this need not be complicated. The first point is that the Outcomes in Chapters 3 and 4 have to be entirely de-linked from the requirements for Overseas practice. Thereafter, in our view, a firm need simply ensure that (a) it and its lawyers comply with the conflict rules applicable in the country where the work is to be done and (b) any of its lawyers working outside the jurisdiction in which he/she is admitted also comply with the rules of that jurisdiction to the extent that they apply abroad.

Where a firm is acting on a matter in two or more jurisdictions, it is possible that the firm would be permitted to do something (such as act without consent from another party) in one jurisdiction which it could not do in the other(s). In such event, the firm would have to comply with the higher (more restrictive) standard.

We recommend that English solicitors should, as individuals, not be required to comply with the SRA conflict rules when working abroad. We do not believe that the

SRA need be concerned that a Solicitor might work in a jurisdiction where there are no local rules. Such countries are, we believe, extremely rare. If it was to arise, and the solicitor were to act for both sides to a matter in conflict, such conduct would likely to infringe the (de-linked Principles), or the test we suggest in response to Q19 above.

Finally, if the SRA was to adopt an approach similar to the one we suggest in 19 above, we do not believe anything more would need to be said to give effect to our recommendation in response to this question.

21. *Is it appropriate to treat different types of Verein structures differently for supervision purposes and if so, what level of supervision/information is appropriate for these different types, bearing in mind the legal limits of the SRA's regulatory reach over any Verein structure?*

    We believe it probably is appropriate to do so. The SRA's supervision should be sufficient to ensure that the reputation of the London headquartered part of the verein structure – and by associated the reputation of the English legal profession – is not damaged by the conduct of the overseas operations.

22. *Should the SRA seek the powers to require foreign firms to register in some form or would this potentially mislead consumers as to the extent of this regulation?*

    We do not see any current imperative for foreign firms to be registered.

23. *Should the SRA create a lighter supervisory regime for European law firms that are not practising English and Welsh law but which are still required to register with us under the Establishment Directive?*

    We would need to consider this further with you before reaching a view.

24. *Are the sort of compliance tests outlined above the right ones?*

    Broadly, yes. Whether the SRA applies the Principles (de-linked from the Outcomes), or an approach similar to that suggested in our response under 19 above, we presume that a firm headquartered in England/Wales will have to have systems in place to ensure the overseas offices operate to the requisite standard. This obligation should fall principally on those in the headquarters with executive management responsibilities. Whereas the Authorative Rules impose a duty on the COLP/COFA to ensure compliance within England/Wales, it would rarely be appropriate to place a similar duty on the COLP/COFA in respect of overseas compliance.

25. *Will it always be appropriate to hold the English and Welsh practice to account for actions undertaken elsewhere in a "group" and if not, what alternative enforcement arrangements can we put in place?*

    Where the headquarters are in England/Wales, it is appropriate to expect the managers of that practice to have systems and controls in place overseas, which can reasonably be expected to minimise the risks of breach of the standards. The SRA would also be able to "hold to account" individual solicitors working abroad who fall short. We do not believe there are any other enforcement actions which would be appropriate.

26. *Should there be a new overseas practice chapter of the Handbook or can these issues be dealt with simply by including guidance and qualifications within the existing structure of the Handbook?*

    There should be a new overseas practice chapter.

Yours faithfully

Chris Perrin
Chair
Professional Rules & Regulation Committee

THE CITY OF LONDON LAW SOCIETY
PROFESSIONAL RULES & REGULATION COMMITTEE

Individuals and firms represented on this Committee are as follows:

Chris Perrin (Clifford Chance LLP) (Chair)

R. Butterworth (Bird & Bird LLP)

R. Cohen (Linklaters LLP)

Ms S. deGay (Slaughter and May)

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