THE CITY OF LONDON LAW SOCIETY

Legal Services Act: New forms of practice and regulation

Consultation Paper 5: Changes to the Recognised Bodies Regulations

The City of London Law Society (**CLLS**) represents over 13,000 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 17 specialist committees. This response in respect of the SRA's consultation regarding change to the Recognised Bodies Regulations has been prepared by the CLLS Professional Rules and Regulation Committee.

Q1 Do you agree with the basic criteria for approval of non-lawyers as managers?

The "basic criteria" here are very broadly stated. We take it that the "criteria and procedures for approving non-lawyer managers" referred to in the SRA's Consultation Paper No 1, will be publicly available. On that basis, and subject to the points made in response to Q11 below, we agree with the basic criteria as stated in Regulation 3.2 (a).

Q2 Do you think a foreign lawyer whose profession has no strong element of self-regulation should be allowed to participate in a recognised body? If so, should such a foreign lawyer be permitted (and required) to participate as an RFL?

We agree that such a foreign lawyer should be permitted (but not required) to participate as an RFL, providing they otherwise satisfy the criteria for suitability to be a member/partner of the firm.

Q3 Do you think the Regulations should give the Solicitors Regulation Authority discretion to require or to undertake checks on the suitability of proposed managers who are authorised by other approved regulators?

We note that Regulation 2.2(a) empowers the Authority to refuse an application for initial recognition if it is not satisfied that a manager or a person with an interest in the body is a suitable person. Such provision should give the Authority flexibility in the level of investigation it makes of such managers, whether or not they are members of another professional body, without more.

Q4 Do you think we have adequately covered the circumstances in which it may be necessary to impose conditions on a recognised body? If not, please give further details.

We agree that the circumstances are adequately covered.

Q5 Do you agree that a non-lawyer manager of a body should be able to carry his or her approval over to a body which is benefiting from a temporary emergency recognition? If not, please explain.

We agree that a non-lawyer manager of a recognised body should be able to carry his or her approval over to such a body.

Q6 Do you agree that a non-lawyer manager of a body with a temporary emergency recognition should have to be approved in relation to the new recognised body before its substantive application for recognition can be determined? If not, please explain.

No. It is inconsistent to impose such a requirement, given that the non-lawyer manager's approval will already have been carried over in the temporary emergency recognition granted to the new partnership under Regulation 5.3(b). There is a risk of duplication of effort (and cost) in imposing such a requirement.

Q7 Do you think the limitations on temporary emergency recognition strike the right balance between helping a partnership brought into being by unexpected events and ensuring that it is suitable? If not, please explain.

Yes - given the safeguard in Regulation 5.3 (c) that the partnership must otherwise comply with Rule 14 of the Solicitors' Code in relation to its composition and structure. Note also our comments under Q11 below.

Q8 Do you think it is appropriate, in the public interest, to require the register of recognised bodies to state all a firm's practising styles? If not, please explain.

We agree that it is appropriate.

Q9 Do you think we have struck the right balance between transparency and the protection of individuals in reserving discretion to allow a body's practising address to be kept private? If not, please explain.

Yes, but we recommend that this is an untrammelled discretion of the Authority, exercised at the body's request. Given the relative lack of success of the "Confidentiality Orders" regime that was available to directors of companies registered with the Register of Companies, it is difficult to be prescriptive as to what the "exceptional circumstances" might be.

Q10 Do you believe any of the proposed amendments to the Regulations annexed will have a particular impact (adverse or otherwise) on any group or category of persons? If so please give further details.

Other than in relation to unincorporated partnerships, we do not believe that the proposed amendments to the Regulations will have a particular impact on any group or category of persons.

Q11 Have you any other comments on the draft amendments to the Regulations?

We have a general concern that in many instances the Authority is to take decisions on the basis of what steps it "considers" appropriate. While there is a facility for appeal, there is no embedded concept of reasonableness in this approach.

We believe that this concept should be introduced in several places in the Regulations - e.g. Regulations 2.2 (a), 3.2 (a) (ii) and 4.2 (c), should start "the Authority, acting reasonably, is not satisfied....". The reason for this is that the only way of appealing matters beyond the appeal stage is via judicial review, which will take the Regulations as they find them, and apply only Wednesbury unreasonable principles, which will mean that, in the absence of an express obligation on the Authority to act reasonably,

any SRA decision would only be overturned if it is perverse. Given that some of these decisions could have serious consequences on individuals and firms, there should be controls that the Authority should not act in an arbitrary fashion.

Regulation 5:

- It is conceivable that an LLP or limited company could suffer a "partnership split" as well as a general partnership, with, say, a significant number of members or shareowners breaking away from the existing recognised body. Hitherto, such circumstances may have been rare, given the relatively small number of incorporated practices. With the increased number of LLPs, particularly, such circumstances could arise for an incorporated recognised body.

- The 28-day temporary recognition period seems unnecessarily short, and we suggest a period of 56 days, given the safeguard contained within Regulation 5.3 (c).

Regulation 7:

- Appeals should be heard very promptly, and within the time limit before any decision takes effect. This would mean that an individual must exercise the right of appeal within say 7 days, and the hearing must take place within say 21 days after this.

- A related point is that under Regulation 7.5, should there be a process allowing an individual who has appealed to suspend the imposition of the SRA's decision to allow a prompt appeal to take place?

- In Regulation 7.4 (a) and (b), should the default position be acceptance rather than refusal?

Regulation 8.1:

- Annual renewal is burdensome for recognised bodies which have changed very little. We would recommend that renewal takes place every three years but there should be an obligation to notify of any intervening significant changes (by reference to a list).

Regulation 8.6:

- To reduce administrative costs, any recognised body that has recognition beyond 31 October 2009, should be able to retain it for the full three year period unless it proposes to change the structure of the organisation to an LDP – but see also our comments in relation to Regulation 8.1 above.

April 2008