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Dear Sirs

Response of the CLLS Professional Rules and Regulation Committee to the SRA Consultation on Phase 2 of the Red Tape Initiative on removing unnecessary regulations and simplifying processes

Introduction

1 The City of London Law Society ("CLLS") represents approximately 15,000 City lawyers through individual and corporate memberships 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 and high net wealth individuals, often in relation to complex, multi-jurisdictional legal issues.

2 The CLLS responds to a variety of consultations of importance to its members through its specialist committees. This response to your April 2013 consultation paper on Phase 2 of the Red Tape Initiative ('the Phase 2 Consultation') has been prepared by the CLLS Professional Rules and Regulation Committee (see list of members attached).

Background

1 At the SRA's Open Forum meeting in September 2012, Charles Plant invited the CLLS to come up with the top 10 requirements which the SRA could relax so as to make recognised bodies' lives easier.

2 As a result of that process, the CLLS submitted a 'Top 10 wish list' (attached as Annex 1 to this letter) to the SRA on 9 October 2012. That wish list evidently informed the 10 initial proposals set out in the first Red Tape Initiative consultation.

3 In the event, 9 of the 10 wishes were granted (save in relation to the suggested deemed approval of EELs, re which please also see below) following the conclusion of that consultation, as is evidenced by the 1 April 2013 Release Notes for the SRA Handbook, Version 7.

4 Item 8 on the wish list was: 'Remove the need to report trivial breaches of the Handbook (including of the SAR, for instance where it is a bank error which has been corrected)'.

5 Whilst not included as a proposal for consultation in the first Initiative, that wish appears to have informed Proposal 1 in the Phase 2 Consultation, which is expressed as removing the obligation of the compliance officers of recognised bodies and sole recognised practitioners to report non-material breaches as part of the annual submission of information to the SRA.

6 Proposal 2 is around amendments to the SRA Practising Regulations 2011.

7 In overview, the CLLS welcomes these proposed changes, as being practical steps to reduce administrative and bureaucratic burdens on regulated firms, whilst maintaining the necessary protections for the profession and its practitioners and members of the public via a proportionate, risk based approach.

Response to Proposal 1

1 The CLLS agrees with this proposal. It is appropriate that different considerations may apply for the rules applicable in this regard to ABSs and to those which apply to regulated firms. As the Consultation paper notes, this will not reduce the administration of recording material and non-material breaches by a COLP and a COFA, as any register of breaches will need to include both: so that the COLP and COFA are able to identify any significant pattern of non-material breaches which may, together, give rise to an effective material breach which will need to be reported.

2 However it makes eminent good sense to reduce the volume of annual information reports being submitted to the SRA by regulated firms – to enable the SRA to focus more effectively on material issues occurring at regulated firms, which may impact on the profession and the public it serves. This should also have the effect of reducing costs to the SRA, without reducing the ability of the SRA to supervise and have oversight of the regulated firms it regulates.

Response to Proposal 2

1 We deal below with each of the Sub Proposals in turn.

2 Sub Proposal (a)

2.1 This proposes that a solicitor or European lawyer will not be made subject to the provisions of Regulation 3, which mandate disclosures in a new or replacement Practising Certificate or European lawyer registration application and give the SRA discretion to refuse an application or to impose conditions on the Practising Certificate (provided the usual Regulation 2 conditions have been met) if the applicant ceased to be a manager of an authorised body or an authorised non-SRA firm or director of a company or member of an LLP 36 months prior to an insolvency event.

2.2 This will reduce the application of Regulation 3 to those renewing and replacing their practising certificates in circumstances when their association with the insolvent entity is relatively historic and they have not been a member or a manager for a period of three years preceding the insolvency event and are therefore arguably not associated with management decisions and ownership decisions which may have contributed to the insolvency event.

2.3 The CLLS supports this proposal as being one which is fair, just and practical and which should have no impact on the SRA's ability to protect the public from the granting of practising certificates to persons who may be unfit to hold them. The time frame proposed mirrors the Insolvency Service's guidance on appropriate time frames with regard to the dis-qualification of directors who have been associated with companies that have become insolvent and this seems an appropriate parallel to consider.

2.4 However, we would additionally suggest that first time applicants who are applying two or more years after a relevant insolvency event need not disclose, even if they were involved with an insolvent entity in its last three years of trading. If the Secretary of State has exercised its powers and the director (or as relevant) has been disqualified, this will result in a notifiable event under Regulation 3.1(q). If this has not occurred within two years after the insolvency event, the Secretary of State will be 'out of time' to disqualify and it seems unlikely that the SRA will be interested in independently vetting an applicant's conduct in the 36 months prior to an, at the relevant time, historic, insolvency event.

3 Sub Proposal (b)

3.1 This proposes removal of the six week notice period required when an applicant for a Practising Certificate or registration as a European lawyer is subject to Regulation 3.

3.2 The CLLS welcomes this process as being a sensible method of reducing the time and expense incurred by applicants and the SRA in the renewal process.

4 Sub Proposal (c)

4.1 Finally the SRA's proposal to remove the requirement to re-report Regulation 3 events on subsequent practising certificate renewal applications is welcomed. If the SRA has considered a candidate's involvement in a Regulation 3 event and decided to grant a practising certificate in any event, having decided that the candidate is fit to practise, it seems appropriate that such candidates should not have to re-report the same event each subsequent year during the renewal process.

4.2 Again this seems a just result and also a sensible efficiency to save time and costs in the administration of the practising certificate renewal processes, without creating any danger to clients and/or the public of "unfit" practitioners being awarded certificates to practise.

4.3 However, as opposed to clarifying that applicants need not declare an historic event again, once an application for a Practising Certificate or registration as an European lawyer has been granted free from any conditions in respect of that event, would it be simpler just to clarify that a relevant event need only ever be declared to the SRA on one occasion?. Clearly it is imperative that the SRA's record keeping and information systems can cope with this change.

Furthermore…

1 With a view to removing other unnecessary regulations and streamlining processes, the CLLS makes the following additional submissions.

1.1 **Rule 13.2 of the Authorisation Rules:** We do not understand or agree the rationale for the SRA resisting the deemed approval of EELS, along with RELs and RFLs, pursuant to Rule 13.2 of the Authorisation Rules. By definition EELs are European Community regulated pursuant to the Establishment of Lawyers Directive 98/5/EC. Their appointment as authorised body managers or owners will be subject to the Rule 13.2 conditions. The absence of a prior registration with the SRA, given that they will come onto the SRA's radar by virtue of their appointments as managers or owners of an authorised body, is not a valid reason for subjecting them to a more lengthy and complex approval process, than is applicable to RELs and RFLs.

1.2 **Form RB2 (Application for initial recognition of a Limited Liability Partnership):** When applying to the SRA for recognition of an LLP, details of any deemed approved authorised body member of that LLP need to be supplied in section 11 of Form RB2. It is also necessary to supply details of the individual managers within the deemed approved authorised body member. It is odd that the SRA requires this level of detail in relation to a proposed member which is already any authorised body, and therefore known to and regulated by it.

In City firms the managers of that LLP are likely to be deemed approved solicitor managers. Those who are non-deemed approved will be likely to be exempt European lawyers who practise from offices outside of England and Wales and who are members in good standing in European Economic Area legal professions as set out in Article 1 of the Establishment of Lawyers Directive (98.5.EC). The managers of any SRA authorised body member will already be known to the SRA in this capacity. The interests of these managers in the LLP for which the application is being made, is indirect and remote.

In light of the above we believe that the requirement to supply individual manager details is an unnecessary bureaucratic burden on applicant firms and that these managers present little or no risk to the regulatory objectives of the Act. In particular we believe that the cost and administration involved in asking non-deemed foreign lawyers to complete sections 11.2 to 11.6 of the RB2 form (which include the Suitability Test) and collect certificates of good standing from their respective local Bars is an unnecessary and disproportionate burden. Moreover, given the timescale in which such

applications for recognition are dealt with by the SRA, this information very swiftly becomes out of date as the membership of the authorised body (in the case of an authorised body which is a City firm) will in all likelihood change subsequent to the date on which the application is submitted.

Accordingly, we request removal of the requirement in the RB2 form (and from equivalent forms used to apply for SRA authorisation of other types of entity or body) to supply details of any of the managers (whether deemed approved or not) of a proposed authorised body member.

1.3 **Practising Certificates:** The CLLS supports the Practising Certificate renewal process becoming automatic, in the case of practitioners who have not notified a material change to relevant information held about them to the SRA pursuant to Outcome 10.3 in the preceding practising year. It is submitted that this would significantly reduce the burden of administration around the renewal process on practitioners and the SRA.

Yours faithfully

Alasdair Douglas
Chair, CLLS

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)

Tracey Butcher (Mayer Brown International LLP)

Roger Butterworth (Bird & Bird LLP)

Raymond Cohen (Linklaters LLP)

Sarah de Gay (Slaughter and May)

Antoinette Jucker (Pinsent Masons LLP)

Jonathan Kembery (Freshfields Bruckhaus Deringer LLP)

Heather McCallum (Allen and Overy LLP)

Douglas Nordlinger (Skadden Arps Slate Meagher & Flom UK LLP)

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