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Solicitors Regulation Authority
Registered European Law Firm Consultation
24 Martin Lane
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14th April 2014

Dear Sirs

Response of the CLLS Professional Rules and Regulation Committee to the SRA's consultation regarding proposed changes to the registered European lawyer regime (the "Consultation")

The City of London Law Society ("CLLS") represents approximately 15,000 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 specialist committees. This response to the Consultation has been prepared by the CLLS Professional Rules and Regulation Committee (see list of members attached).

The Consultation Questions

We turn now to the specific questions raised in the Consultation.

Question 1: Is the principle of permitting RELS to work in entities which are not required to be authorised acceptable?

Overall, we agree that the principle of permitting RELs to work in entities which are not required to be authorised is an acceptable one. It is reasonable for the SRA to adopt a fair and proportionate response to the challenges now being faced by European lawyers wishing to establish in England and Wales as a result of the move towards entity based regulation.

However, this is all the more understandable in so far as we consider lawyers "who have established in England and Wales purely with the intention of practising their home state and European law." It is clearly anomalous (and disproportionate) for the entity in which such RELs are engaged, to be subject to the full panoply of SRA regulation, which is otherwise the result of the operation of Rule 2.1 (*practice from an office in England and Wales*) of the Practice Framework Rules as presently drafted.

We do question, however, if it really in the best interests of consumers, to allow a European law firm to establish a non-regulated business which is permitted to practise (non-reserved) English law services in competition with authorised businesses in England and Wales. We also note that the exclusion in new rule 2.1(f) only relates to reserved work and not all "solicitor-like" activities (Chapter 12 of the Code); and we question what level of consideration (if any) has been given to the potential impact (i.e. the increased competition) on authorised firms in this regard. The conditions set out in 2.1 (f) go some way towards mitigating both of these concerns.

We do acknowledge that as other professionals or businesses are able to carry on these "solicitor-like" activities in England and Wales without needing to be authorised, provided that they don't employ any E&W solicitors to do so (rule 1.1 of the Practice Framework Rules – which we assume is not going to have a consequential amendment to permit Exempt European Practices ("EEPs") to employ solicitors), there is an argument that EEPs should have similar rights.

We wish to raise two points with regard to the definition of 'Exempt European Practice':

Firstly, we note that only two forms of structure are provided for: (i) a body incorporated in an Establishment Directive state and (ii) a partnership with legal identity formed under the law of such a state. We query whether there might be European partnerships with no separate legal identity which could be included here? If not, is this a deliberate omission on the SRA's part?

Secondly, the definition ends with the following: "whose ultimate beneficial owners do not include any lawyers of England and Wales." It is not clear to us why England and Wales qualified lawyers are excluded from beneficial ownership provided they are not controllers in the EEP. We expect that the wording may be included as an anti-avoidance type provision to stop England & Wales solicitors setting up such a practice in partnership with RELs to avoid the need to become authorised to conduct an English law practice. However, we feel that the position of dually qualified European lawyers has not been considered if the SRA is indeed minded to keep the currently drafted exclusion. In such an instance, we consider that dually qualified lawyers should be able to have beneficial ownership provided that they do not also practise as an E&W solicitor through the EEP.

Question 2: Is there a better way of achieving the same result, other than creating a new form of entity – the Exempt European Practice?

An alternative would be to overhaul the Practice Framework Rules to clarify in simple terms what forms of practice are permissible and what are not. The current Rules are unwieldy, complex and difficult to understand, and require reference to definitions and other terms not contained in the Rules. However, remaining within the scope of this consultation and subject to our substantive comments raise elsewhere, the SRA's proposal seems simple and comprehensible.

Question 3: Are there forms of European practice that should be permitted but which are not covered by the proposed definition of Exempt European Practice? (NB. This is not intended to give flexibility to any entity to become an Exempt European Practice, which is a permitted structure for Establishment Directive lawyers in their home members states).

As stated above, we have raised the question as to whether there are European partnerships with no separate legal identity which should be similarly permitted.

Question 4: Which elements of the SRA Code of Conduct 2011, if any, can be disregarded as applicable only to entities rather than individuals and which elements of it should therefore not apply to RELs in Exempt European Practices?

Our view is that that is sometimes unclear and it would be quite an extensive exercise to extract the obligations which apply only to entities from those which apply to individuals. If this is to be done for EEPs it should also apply to all authorised bodies and individuals. By way of example, the SRA Principles apply both to the running of the business as well as the individuals' carrying out of their role in the firm in relation to the management of the business (Principle 8) and equal opportunity and respect for diversity (Principle 9). However, whilst many of the outcomes of chapter 7 (Management of the Business) appear to apply to the entity it is very clear (even explicitly in the preamble) that everyone has a role to play in this, particularly senior management. This is an area which requires further reflection and is perhaps best addressed by the SRA.

Question 5: Have we achieved the right balance in terms of the rights and obligations that would apply both to Exempt European Practices and the RELs working in them?

Please refer to our comments in Question 1.

Question 6: Is this new regime sufficiently clear for consumers, and, if not, what more could we do to ensure that suitable protections exist?

Again, subject to our comments elsewhere, the notification requirements set forth in part (iv) of the consultation seem sensible and adequate to protect the consumer, and proportionate to the risks.

Yours faithfully

RAYMOND COHEN
LINKLATERS LLP
On behalf of the Professional Rules & Regulation Committee

THE CITY OF LONDON LAW SOCIETY
PROFESSIONAL RULES & REGULATION COMMITTEE

Individuals and firms represented on this Committee are as follows:

Tracey Butcher (Mayer Brown International LLP)
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