

SRA BOARD
16 October 2008

CLASSIFICATION – PUBLIC



**LSA - changes to SRA's rules and regulations
further amendments reflecting the re-write of s 9A AJA
and to correct errors and omissions**

EXECUTIVE SUMMARY

Introduction

In July and September 2008 the SRA Board made a body of rules and regulations to implement legal disciplinary practices (LDPs) and firm-based regulation, to implement the changes introduced by the Legal Services Act 2007 (the LSA). In response to requests from the Solicitors Regulation Authority (SRA), the representative Law Society and the City of London Law Society, the Ministry of Justice (MoJ) agreed the text of a re-write of the over-restrictive section 9A of the Administration of Justice Act 1985 (the AJA) – the section which defines a "legal services body". The Board were asked to approve, subject to further consultation, new changes to the rules and regulations which are needed to reflect the changes to section 9A and to correct errors and omissions. In addition to the changes proposed in the original paper, a number of other changes were proposed in an additional paper handed round at the meeting (all of which are consolidated in the paper as it now stands). The rules and regulations will be brought back to the Board in November to be formally made.

Decisions of the Board

As recommended, the SRA Board:

- (1) approved the Solicitors' Code of Conduct (LDPs and Firm Based Regulation) Amendment (No. 2) Rules [2009] as set out in **Annex 1**, subject to further consultation;
- (2) approved the SRA Recognised Bodies (Amendment) Regulations [2009] as set out in **Annex 2**, subject to further consultation; and
- (3) approved the SRA Practising (Amendment) Regulations [2009] as set out in **Annex 3**, subject to further consultation.

Annexes

1. [Draft] Solicitors' Code of Conduct (LDPs and Firm Based Regulation) Amendment (No. 2) Rules [2009]
2. [Draft] SRA Recognised Bodies (Amendment) Regulations [2009]
3. [Draft] SRA Practising (Amendment) Regulations [2009]
4. New section 9A of the AJA as rewritten in draft statutory instrument, with explanatory provisions in section 9 AJA and section 72 LSA
5. Risk assessment
6. Equality and diversity implications

Authors: Chris Bramall and Penny Butler
Date of this version of the paper: 17 October 2008

**LSA - changes to SRA's rules and regulations
further amendments reflecting the re-write of s 9A AJA
and to correct errors and omissions**

1. Background

- 1.1 In July and September 2008 the Board made a body of rules and regulations to implement LDPs and firm-based regulation, to implement the changes introduced by the LSA.
- 1.2 One of the provisions of the LSA is the insertion of a new section 9A in the AJA to define a "legal services body" - i.e. a solicitors' practice or LDP which the SRA will be entitled to recognise as a recognised body.
- 1.3 The SRA, the representative Law Society and the City of London Law Society pointed out to the MoJ that section 9A as enacted would introduce a two-tier limit on the structure of recognised bodies, which is a new restriction, is onerous for firms, and is not justified on any regulatory ground.
- 1.4 The MoJ have responded positively to these representations, and have now published a draft statutory instrument to be made under Schedule 22 to the LSA, which will re-write section 9A and remove the two-tier restriction.
- 1.5 The Board were asked to approve the further changes to the rules and regulations which are needed to reflect the changes to section 9A. The changes are of a technical nature, and have already been the subject of consultation with the representative Law Society, the City of London Law Society, and a number of firms who have expressed particular interest in the questions raised. However it is appropriate for the profession and other stakeholders to have the opportunity to comment on the proposed changes.
- 1.6 The Board took the opportunity to approve other changes to correct errors, omissions and ambiguities. Apart from the correction of slips, these changes are of a highly technical nature. In addition to the changes proposed in the original paper, a number of other changes were proposed in an additional paper handed round at the meeting (all of which are consolidated in the paper as it now stands).
- 1.7 A risk assessment is attached at **Annex 5**, and an assessment of the equality and diversity implications is attached at **Annex 6**, in the form in which they were presented to and approved by the Board. As to a regulatory impact assessment, the object of the SRA, together with the representative Law Society and the City of London Law Society, has been to seek the removal of statutory restrictions and requirements which seemed to the SRA to have no regulatory justification. To the extent permitted by the policy of the MoJ and the constitutional conventions applying to statutory instruments, the authors of this paper believe that these efforts have been successful.
- 1.8 The authors of the paper apologised to the Board for the late delivery of the report, and for a number of last-minute additions to the changes proposed. However the authors believed this was unavoidable given the complexity of the task and the short time available. It was important that the Board should approve the rule changes in principle at their October meeting in order that these changes can be considered by the Secretary of State's Consultative Panel and other regulators in time to meet the SRA's timetable for the introduction of LDPs and firm-based regulation. It was reported to the meeting that the representative Law Society had not made any objection to the proposals. The changes to the rules and regulations will be brought back to the Board in November to be formally made.

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2. Changes to the Code of Conduct

Changes to reflect the re-write of section 9A

- 2.1 The new version of section 9A of the AJA, as rewritten by the MoJ's draft statutory instrument, is attached at **Annex 4**, which also includes necessary explanatory provisions from the amended section 9 of the AJA and from section 72 of the LSA. The new version of section 9A is no less complex than the preceding version – indeed it is more complex, because it has been added to. The main points to remember are that:
- ◆ a body – partnership, limited liability partnership (LLP) or company – cannot become or remain a recognised body unless it meets the requirements of a "legal services body" as set out in section 9A, so the SRA's rules cannot permit it to recognise a body which falls outside those requirements;
 - ◆ the AJA gives the SRA the power to make rules allowing it to recognise "legal services bodies", but this does not preclude the SRA's rules from restricting the types of "legal services body" which it will recognise.
- 2.2 The aim has been to produce in rule 14 of the Code (see **Annex 1**) a compulsory "management and control requirement" for all recognised bodies which is capable of being understood without reference back to the amended section 9A, and to the related provisions of section 9 of the AJA and section 72 of the LSA, because relying on these complex provisions to interpret the obligations could only lead to frustration and misunderstanding.
- 2.3 The new "management and control requirement". which replaces the "management condition" in the previous version of the rules, is aimed at:
- ◆ removing the unjustified and unintended limitation, imposed by the earlier version of section 9A, which restricted recognised bodies to a two-tier structure, and reverting to the situation under the current rules which permit a recognised body to have a complex structure;
 - ◆ reinforcing Parliament's intention of restricting non-lawyer participation in "legal services bodies", and hence non-lawyer participation in recognised bodies, to 25% as measured by three different indicators: number of "managers" (partners in a partnership, members of an LLP, or directors of a company); proportion of shares or other ownership rights legally held; and proportion of voting rights exercised or controlled;
 - ◆ reinforcing Parliament's intention to bar outside ownership of "legal services bodies", and hence outside ownership of recognised bodies, by preventing any body from having an ownership interest in a recognised body unless the body is itself at least 75% owned by lawyers ;
 - ◆ ensuring that these objectives are achieved by modelling the new "management and control requirement" more closely on section 9A(2), and by introducing the new concept of a "legally qualified body" which reflects the amended section 9A(6); a "legally qualified body" is the only type of body which can own or part own a recognised body, and at least 75% of the ultimate beneficial ownership of a "legally qualified body", as well as of the recognised body itself, must be in the hands of lawyers;
 - ◆ maintaining the current standard of control over recognised bodies – though instead of insisting on 100% management and control by lawyers as at present, the new rules insist on 75% management and control by lawyers with

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all non-lawyer "managers" and owners being individuals subject to a strict process of approval by the SRA; and

- ◆ making specific provision, in response to representations made by the profession, to allow non-lawyers to join a partnership or LLP without requiring every such non-lawyer to be made a director of all the firm's wholly owned companies (such as their wholly owned executor, trustee or nominee companies).

2.4 Three more points should be particularly noted.

- ◆ The rules do not and are not intended to replicate the terminology or modes of expression of section 9A. The authors are satisfied, however, that the rules do achieve the same effect as section 9A wherever this is necessary and/or appropriate, whilst, they hope, avoiding at least some of the complexities of section 9A.
- ◆ In line with the previous point, no attempt has been made, in the definition of a "legally qualified body" to replicate all the five categories of body which are "legally qualified" in terms of amended section 9A(6)(d) to (h). Instead, the rules are designed to meet the requirement in section 9A(6C) of defining those bodies which will fall within section 9A(6)(h), whilst also encompassing recognised bodies with participation by the other categories of "legally qualified" body such as existing recognised bodies and existing legal partnerships. Thus the rules will not inadvertently exclude from recognition bodies with participation by existing recognised bodies or existing legal partnerships. The rules are expressed to be made under section 9A (see the changes to the preamble to the rules), and the definition of "legally qualified body" is expressed to be for the purposes of section 9A(6)(h) and (6C) (see the changes to rule 24).
- ◆ The two-tier limit on the structure of recognised bodies under the previous version of section 9A did provide important elements of regulatory control over recognised bodies. With only a one- or two-tier structure permitted, every lawyer, every "legally qualified" body and every non-lawyer participating in a recognised body as "manager" or owner would be directly subject to the SRA's rules and the disciplinary jurisdiction of the SRA and the Tribunal. This will no longer be the case under the new and more relaxed version of section 9A. As discussed with the MoJ, the representative Law Society and the City of London Law Society, this means that it would no longer be appropriate to relax the current requirement that the corporate "tiers" within the structure of a recognised body must themselves be recognised bodies. The current exception for European corporate practices is reinstated and a new exception introduced for authorised non-SRA firms. Under the rule changes proposed, every "legally qualified body" must either itself be a recognised body, or a European corporate practice, or an authorised non-SRA firm (such as a firm of licensed conveyancers authorised by the Council for Licensed Conveyancers).

2.5 The rewriting of section 9A has necessitated extensive changes to the Code of Conduct and in particular to rule 14, as can be seen in **Annex 1**. As well as the changes set out above, there are knock-on changes as follows:

- ◆ Rule 14.04 contained a provision that if a body formerly practising as a member of a partnership is left as the sole remaining principal, it may be able to obtain temporary emergency recognition as a recognised body. Under the

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new regime set out above, such a body will either be a recognised body already, or an authorised non-SRA firm and so entitled to practise as such, or a European corporate practice which must be based entirely outside England and Wales. There is no need, therefore, for temporary emergency recognition for any of these categories of body.

- ◆ New definitions of "legally qualified body", "ultimate beneficial owners" and "European corporate practice" appear in rule 24. The concept of a "qualifying body" has become redundant for the purposes of the Code and has been deleted, and references replaced by references to "legally qualified bodies".

Correction of errors and omissions, etc.

2.6 The opportunity has been taken to correct, in **Annex 1**, a number of errors, omissions and ambiguities in the Code, as follows.

(za) Rule 4.02 (duty of disclosure) – ensuring that the rule applies only to the fee earner and supervisor actually responsible for the matter

Rule 4.02 of the Code of Conduct is addressed to "you", and thus appears to be addressed to the firm as much as to the individual solicitor. However it is apparent from the wider context of rule 4 as a whole, as well as the wording of 4.02 itself, that 4.02 is intended to apply to the individual solicitor and not to the firm. The City of London Law Society has pointed out that applying 4.02 to any "manager" or employee of a firm would unjustifiably widen the scope of the rule, and would, for instance, make it impossible ever to set up an information barrier within a firm. Amendments are proposed to rule 4.02 to make clear that the rule only applies to the fee earner dealing with the matter, or the person supervising the matter.

(a) Rule 12.05(1) – correction of provision relating to individuals authorised by other approved regulators

A European lawyer registered with the Bar should come within this provision. The use of "lawyer of England and Wales" excluded such a lawyer in error, and has been corrected.

(b) Rule 14.01(3) – correction of errors in the text

- ◆ The reference to "lawyers of Establishment Directive states" has been corrected to "lawyers of Establishment Directive professions".
- ◆ There is a reference to the loss of the only, or last remaining solicitor or REL active in the practice whose role ensures compliance with the management and control requirement. This should refer to any lawyer eligible to be a manager.

(c) Rule 14.02(1)(c)(ii) – correction of provision about information to be obtained about a manager authorised by another approved regulator

A European lawyer registered with the Bar should come within this provision. The use of "lawyer of England and Wales" excluded such a lawyer in error, and has been corrected.

(d) Rule 15.01(1)(b) – correction of error in rule about the overseas application of the Code

By some strange process the rule, which is about activities outside England and Wales, emerged as applying to activities in England and Wales, and this has been corrected.

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(e) Rule 15.01(2)(b) – correction of omission about application of Code in Scotland and Northern Ireland

The Code as modified by rule 15 should apply to a European lawyer registered with the Bar who is manager of a solicitor-controlled or REL-controlled recognised body. The new provision repairs the omission.

(f) Rule 16.01(2) – repair of omission in the application of the rule on European cross-border practice

A European lawyer registered with the Bar who is manager of a recognised body should have been included, and the new provision repairs the omission.

(g) Rule 20.01(1) and (2) – correction of reference to repealed regulations

The reference to the Higher Courts Qualification Regulations 1990 is out of date, and because of the wording of the latest regulations it is necessary to specify a person authorised by another approved regulator to do higher courts advocacy.

(h) Rule 20.01(5)(a)(i) – clarification in relation to the authorisation of a recognised body to provide advocacy services

The wording has been changed to make it clear that in order to provide higher court advocacy services a recognised body must have a manager or employee entitled to exercise higher court rights.

(i) Rule 20.01(6)(a)(i) and (b)(i) – correction in relation to the authorisation of a recognised sole practitioner to provide advocacy services

The wording has been corrected to cover an employee entitled to exercise higher court rights by virtue of the Lawyers' Services Directive.

(j) Rule 24 – definition of "lawyer "

The wording has been corrected to refer to "an Establishment Directive profession" rather than "a legal profession of an Establishment Directive state".

(k) Rule 24 – definition of "lawyer of England and Wales"

The wording has been corrected to exclude a European lawyer registered with the Bar.

(l) Rule 24 – definition of "practice"

Wording has been inserted to cover the practice of a European lawyer registered with the Bar and the activities of the employee of a recognised sole practitioner.

(m) Rule 24 –definition of "reserved work"

A Council member pointed out that the definition of "reserved work", insofar as it is intended to cover all non-contentious work covered by "reserved instrument activities" as defined in paragraph 5 of Schedule 2 to the LSA, could be defective, in that some reserved drafting activities might not be included. A catch-all provision has therefore been inserted.

(n) Minor errors

There are a number of slips - words omitted, words wrongly inserted, and wrong cross-references. All these are corrected in **Annex 1** and require no further explanation here. The definitions of "Recognised Bodies Regulations", "register of European lawyers" and "register of foreign lawyers" appeared in rule 24 in the wrong alphabetical order and this has been corrected.

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Change consequential on change to the "cold calling" rule

- 2.7 As recommended by a separate paper on its October agenda the Board made changes to rule 7.03 on "cold calling". Assuming that the changes receive the concurrence of the Master of the Rolls, the amendment rules will now need to show the background text as thus amended in place of the current background text. This potential change is dealt with in **Annex 1**.

3. Changes to the SRA Recognised Bodies Regulations [2009]

- 3.1 The changes made by the Board to the SRA Recognised Bodies Regulations [2009] are as follows and are set out in **Annex 2**.

(a) Preamble

The regulations now have to be made under section 9A of the AJA as well as under section 9.

(b) Regulation 3 (applications for approval of non-lawyer managers)

- ◆ It was always intended (and flagged up in the relevant consultation paper) that a member of a lawyer's profession should not be able to participate in a recognised body as an approved non-lawyer, but should be free to do so only as a lawyer. This would mean, in the case of a barrister, legal executive or solicitor, holding a practising certificate. It has been noticed that the wording of 3.2(a) does not achieve this, because a "lawyer of England and Wales" is defined in rule 24 of the Code of Conduct as a person who is authorised to practise. An amendment to 3.2(a) repairs this error.
- ◆ Regulation 3.3(a)(i) gives the SRA power to refuse approval of a non-lawyer as suitable to be a manager of a recognised body by reason of the non-lawyer having been fined or ordered to pay costs by the Solicitors Disciplinary Tribunal. However, this does not take account of the possibility that the candidate might at some stage have been subject to more stringent disciplinary action by the Tribunal or by the Court. The provision could also be interpreted as not applying if the candidate has only been reprimanded. An amendment to 3.3(a)(i) covers a reprimand or any disciplinary sanction by the Tribunal, and striking off or suspension by the Court.
- ◆ Under 3.3(a)(viii) of the regulations the SRA may refuse approval of a non-lawyer who has been director of a company or member of an LLP which has been the subject of a winding up order. After the consultation closed a respondent pointed out that a company facing insolvency may be wound up voluntarily in order to avoid a winding up order. Such circumstances could properly be taken into account when deciding whether or not to approve a non-lawyer manager.
- ◆ There were two paragraphs numbered 3.6. The first was an earlier draft of the second and has been deleted.

(c) Regulation 9 (revocation)

The current regulations provide for automatic expiry of an insolvent body's recognition. The expiry provisions were deliberately reduced, but by an oversight, the power to revoke recognition of an insolvent body was omitted. This omission has been corrected. There is a power to impose a condition on the recognition of an insolvent body but in some cases revocation may be more appropriate.

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(d) Regulation 12 (the register)

The accidental omission of managers who are "exempt European lawyers" has been corrected by inserting a new sub-paragraph (iii) in 12.2(h).

(da) Rectifying omission of provision for notifying third parties

The SRA Practising Regulations [2009] include, at regulation 15, provision for the SRA to notify third parties of decisions made under the regulations – a firm in which the solicitor, etc., is an employee or "manager" or has an ownership interest; an approved regulator; the Legal Services Board; the Legal Complaints Service or Office for Legal Complaints; a profession's regulatory body; or a law enforcement agency. It is an anomaly that no corresponding provision appears in the SRA Recognised Bodies Regulations [2009] – the danger being that the absence of such a provision might imply that the SRA has no right to notify such third parties. It is therefore proposed to insert an analogous provision in the Recognised Bodies Regulations.

(e) Minor errors

There are a number of slips - words omitted, words wrongly inserted, and wrong cross-references. These are corrected in **Annex 2**.

4. Changes to the SRA Practising Regulations [2009]

4.1 The changes made by the Board to the SRA Practising Regulations [2009] are as follows, and are set out in **Annex 3**.

(a) Regulation 2 (application for PC or registration)

In 2.3(a)(i) the list of persons who cannot by law register with the SRA as RELs was incomplete. Lawyers registered under the Establishment Directive with the Bar Standards Board, the Faculty of Advocates or the Bar Council of Northern Ireland have been added.

(b) Regulation 3 (application following certain events)

- ◆ Under 3.1(a)(i) the SRA may refuse a practising certificate or impose a condition by reason of a solicitor having been reprimanded, fined or ordered to pay costs by the Solicitors Disciplinary Tribunal. However, a solicitor might have previously been subject to sanction for serious misconduct (including being struck off or suspended and subsequently reinstated) and the SRA might wish to impose a condition on his or her practising certificate, so 3.1(a)(i) has been amended to include the solicitor having been made the subject of disciplinary sanction by the Tribunal, or struck off or suspended by the Court.
- ◆ Under 3.1(a)(ii) the SRA may refuse a practising certificate or impose a condition by reason of a solicitor having at some stage been subject to an order of the SRA under section 43 of the Solicitors Act. (Section 43 orders made by the Tribunal are covered elsewhere). However, as the SRA came into being only relatively recently, the provision needs to include a section 43 order made by the Law Society.
- ◆ Under 3.1(k)(iv) of the regulations the SRA may refuse a practising certificate or impose a condition by reason of a solicitor having been manager of a body corporate which was the subject of a winding up order. After the consultation closed a respondent pointed out that a company facing insolvency may be wound up without a court order - for example, voluntarily in order to avoid a winding up order. Such circumstances could properly be taken into account

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when deciding whether to grant or impose a condition on a practising certificate.

(ba) Rectifying omission of provision to lift suspension of bankrupt RFL

Regulation 5 makes provision in relation to an application by a solicitor or REL, suspended by reason of bankruptcy, for reinstatement, but fails to make similar provision for an RFL. It is proposed to repair this omission by amending regulation 5.

(c) Regulation 9 (expiry and revocation)

- ◆ 9.1(b) lists certain events which will automatically cause an REL's registration to expire. One such event, omitted in error from 9.1(b)(i) is the REL becoming an Irish barrister. An Irish barrister is by law disqualified from being registered with the SRA. This omission has been corrected.
- ◆ 9.2 lists certain situations in which the SRA may revoke a practising certificate or registration. The SRA may revoke a foreign lawyer's registration if satisfied that he or she has no intention of practising in a recognised body. Under the new regime for LDPs and firm-based regulation an RFL will also legitimately be able to practise as such in an authorised non-SRA firm or as the employee of a recognised sole practitioner. 9.2(a)(iv) is amended accordingly.

(d) Regulation 12 (register of foreign lawyers)

Regulation 12 lists the information which must appear in the register of foreign lawyers. This includes practising addresses - not the RFL's addresses as a foreign lawyer, but only his or her addresses as an RFL. Given that an RFL will now legitimately be able to practise as such in an authorised non-SRA firm or as the employee of a recognised sole practitioner, the addresses of such a body or employment now need to appear in 12.2(2)(g) and (h).

(e) Regulation 17.4 (interpretation)

References to the persons who prescribe fees have been removed as they will change as parts of the LSA are implemented.

(f) Minor errors

There are a number of slips in the regulations, all of which are corrected in **Annex 3**.

5. Decisions of the Board

As recommended, the SRA Board:

- (1) approved the Solicitors' Code of Conduct (LDPs and Firm Based Regulation) Amendment (No. 2) Rules [2009] as set out in **Annex 1**, subject to further consultation;
- (2) approved the SRA Recognised Bodies (Amendment) Regulations [2009] as set out in **Annex 2**, subject to further consultation; and
- (3) approved the SRA Practising (Amendment) Regulations [2009] as set out in **Annex 3**, subject to further consultation.

Annexes

1. [Draft] Solicitors' Code of Conduct (LDPs and Firm Based Regulation) Amendment (No. 2) Rules [2009]
2. [Draft] SRA Recognised Bodies (Amendment) Regulations [2009]

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3. [Draft] SRA Practising (Amendment) Regulations [2009]
4. New section 9A of the AJA as rewritten in draft statutory instrument, with explanatory provisions in section 9 AJA and section 72 LSA
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**[Draft] Solicitors' Code of Conduct (LDPs and Firm Based Regulation) Amendment (No. 2)
Rules [2009]**

Rules dated [1 March 2009] and commencing [1 March 2009]

made by the Solicitors Regulation Authority Board

under sections 31, 32, 33A, 34, 79 and 80 of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985, with

- the concurrence of the Master of the Rolls under sections 32 and 33A of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985;*
- the concurrence of the Lord Chancellor under paragraph 16 of Schedule 22 to the Legal Services Act 2007; and*
- the approval of the Secretary of State under Schedule 4 to the Courts and Legal Services Act 1990;*

further amending the Solicitors' Code of Conduct 2007.

1. The Solicitors' Code of Conduct 2007 as amended by the Solicitors' Code of Conduct (LDPs and Firm Based Regulation) Amendment Rules [2009] ("the previous amendment rules") shall be further amended as follows.

2. The preamble to the Solicitors' Code of Conduct 2007 shall be further amended as follows:

"Rules dated 10 March 2007 commencing 1 July 2007 made under Part II of the Solicitors Act 1974 and ~~section 9~~ [sections 9 and 9A](#) of the Administration of Justice Act 1985 with the concurrence of the Master of the Rolls under sections 32 and 33A of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985, the concurrence of the Lord Chancellor under paragraph 16 of Schedule 22 to the Legal Services Act 2007 and the approval of the Secretary of State under Schedule 4 to the Courts and Legal Services Act 1990, regulating the conduct of solicitors and their employees, registered European lawyers and their employees, registered foreign lawyers, and recognised bodies and their managers and employees."

3. Rule 2.05 (complaints handling) shall be further amended as follows:

"(1) If you are [a](#) recognised body, a manager of a recognised body or a recognised sole practitioner, you must ensure:"

3A. Rule 4.02 (duty of disclosure) shall be amended as follows:

"~~You~~ [If you are a lawyer or other fee earner you](#) must disclose to a client [for whom you are personally acting on a matter, or whose matter you are personally supervising,](#) all information of which you are aware which is material to that client's matter regardless of the source of the information, subject to:"

4. On the coming into force of the changes to rule 7.03 (unsolicited visits or telephone calls) made by the Solicitors Regulation Authority Board on 16 September 2008, or the commencement date for section 9A of the Administration of Justice Act 1985, whichever is the later, rule 7.03 shall stand amended as follows in place of the amendments as made by the previous amendment rules:

"7.03 Unsolicited approaches in person or by telephone

- (1) You must not publicise your [firm or](#) practice by making unsolicited approaches in person or by telephone to a member of the public.
- (2) "Member of the public" does not include:

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- (a) a current or former client;
- (b) another ~~lawyer~~ firm or its manager;
- (c) an existing or potential professional or business connection; or
- (d) a commercial organisation or public body."

5. Rule 12.05 (framework of practice - managers and employees authorised by another approved regulator) shall be further amended as follows:

- "(1) If you are a manager or employee of a recognised body or an employee of a recognised sole practitioner and you are not a solicitor but you are ~~a lawyer of England and Wales authorised by an approved regulator other than the SRA~~, you must not:
- (a) be held out in any way which suggests that you are, or are entitled to practise as, a solicitor;"

6. Rule 14.01(2) (recognised bodies - the relevant lawyer requirement) shall be further amended as follows:

- "(2) (a) At all times at least one manager of a recognised body must be:
- (i) a solicitor with a current practising certificate;
 - (ii) an REL; or
 - (iii) (in the case of a partnership or LLP) ~~a qualifying body as defined in rule 24~~ a legally qualified body with at least one manager who is a solicitor with a current practising certificate or an REL.
- (b) If an event which could not reasonably have been foreseen would put a recognised body in breach of the relevant lawyer requirement but within 28 days the situation is remedied, the recognised body will be deemed to have remained in compliance with the relevant lawyer requirement and to that extent will not be liable to have its recognition revoked under regulation ~~9(b)~~ 9.1(b) of the Recognised Bodies Regulations."

7. Rule 14.01(3) (recognised bodies - the management requirement) shall be further amended as follows:

"*Management and control requirement*

- (3) (a) ~~(i)~~ At least 75% of the body's managers must be:
- ~~(A)~~ (i) individuals who are, and are entitled to practise as, lawyers of England and Wales, lawyers of Establishment Directive ~~states~~ professions, or RFLs; or
 - ~~(B)~~ (ii) ~~if the body is a partnership or LLP) qualifying bodies, or bodies which would be qualifying bodies except that they have no solicitor or REL as a manager~~ legally qualified bodies;
although a legally qualified body cannot be a director of a recognised body which is a company, as under 14.06(1) all the directors must be individuals,; and:
 - ~~(ii)~~ at least 75% of the voting rights in the body must be exercisable by or controlled by persons within (i)(A) or (B) above; and
 - ~~(iii)~~ if the body has shares, such persons must hold at least 75% of the shares.

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- (b) Individuals who are, and are entitled to practise as, lawyers of England and Wales, lawyers of Establishment Directive professions or RFLs must make up at least 75% of the ultimate beneficial ownership of the recognised body.
- (c) Individuals who are, and are entitled to practise as, lawyers of England and Wales, lawyers of Establishment Directive professions or RFLs, and/or legally qualified bodies, must:
- (i) exercise or control the exercise of at least 75% of the voting rights in the recognised body; and
 - (ii) if the recognised body is a company with shares, hold (as registered members of the company) at least 75% of the shares.
- (d) Every owner of the recognised body must be:
- (i) an individual who is, and is entitled to practise as, a lawyer of England and Wales, a lawyer of an Establishment Directive profession or an RFL;
 - (ii) a legally qualified body; or
 - (iii) an individual who is approved under regulation 3 of the Recognised Bodies Regulations and, subject to (e) below, is a manager of the body.
- (e) An individual who is not entitled under (d)(i) above may be an owner of a recognised body without being a manager of the body if:
- (i) the recognised body is a company which is wholly or partly owned by a partnership or LLP which is a legally qualified body;
 - (ii) the individual is approved under regulation 3 of the Recognised Bodies Regulations and is a manager of the partnership or LLP; and
 - (iii) the individual is precluded under the partnership agreement or members' agreement from exercising or authorising any vote in relation to the company.
- ~~(b)~~(f) If an event which could not reasonably have been foreseen would put a recognised body in breach of the management and control requirement but within 28 days the situation is remedied, the recognised body will be deemed to have remained in compliance with the management and control requirement and to that extent will not be liable to have its recognition revoked under regulation ~~9(b)~~ 9.1(b) of the Recognised Bodies Regulations.
- ~~(e)~~(g) If the only, or last remaining ~~solicitor, REL~~ lawyer of England and Wales, lawyer of an Establishment Directive profession or RFL whose role in the body ensures compliance with the management and control requirement:
- (i) is committed to prison in civil or criminal proceedings;
 - (ii) becomes and continues to be unable to attend to the practice of the body because of incapacity caused by illness, accident or age;
 - (iii) becomes and continues to be a person who lacks capacity under Part 1 of the Mental Capacity Act 2005;
 - (iv) abandons the practice of the body; or
 - (v) is made subject to a condition on his or her practising certificate or registration which would be breached by continuing to fulfil that role,

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the body must inform the Solicitors Regulation Authority within seven days and must within 28 days either ensure that the body can fulfil the management [and control](#) requirement without reference to that person, or cease to practise."

8. Rule 14.02(1) (recognised bodies - duties in relation to compliance) shall be further amended as follows:

- "(c) A recognised body must not take on a new manager without first being satisfied of that manager's eligibility, by:
- (i) checking that any solicitor has a practising certificate, that any REL or RFL is registered with the Solicitors Regulation Authority, and that the practising certificate or registration is not subject to a condition which would preclude that person becoming a manager;
 - (ii) obtaining (and retaining, for production to the Solicitors Regulation Authority if required) ~~written confirmation from the approved regulator of any other lawyer of England and Wales in respect of any lawyer authorised by an approved regulator but not by the SRA, written confirmation from the approved regulator~~ to the effect that the lawyer is authorised by that approved regulator, entitled to practise and not subject to a condition or other restriction which would preclude that person becoming a manager;"

9. Rule 14.04 (recognised bodies which are partnerships) shall be further amended as follows:

- "(1) Provided that the fundamental requirements for all recognised bodies set out in 14.01 are met, a recognised body which is a partnership may have all or any of the following as a partner:
- (a) a lawyer of England and Wales (including a solicitor with a current practising certificate);
 - (b) an REL;
 - (c) an RFL;
 - (d) an exempt European lawyer;
 - (e) an individual approved under regulation 3 of the Recognised Bodies Regulations;
 - (f) ~~a qualifying body as defined in rule 24 (including another recognised body);~~
 - (g) ~~a body which would be a qualifying body except that it has no solicitor or REL as a manager. a qualifying body as defined in rule 24~~ [a legally qualified body](#).

* * * * *

- (4) If a partnership change results in there being only one remaining principal who or which needs to be recognised as a recognised sole practitioner ~~or as a recognised body~~ but could not reasonably have commenced an application in advance of the change, the firm need not cease to practise if the remaining principal:
- (a) is a solicitor, ~~REL or qualifying body~~ [or REL](#);
 - (b) notifies the Solicitors Regulation Authority within seven days;
 - (c) is granted temporary emergency recognition.
- (5) (a) Temporary emergency recognition may be granted for an initial period of 28 days and may be extended in response to a reasonable request by the applicant.

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- (b) During the initial 28 day period, or such extended period as the Solicitors Regulation Authority may allow, the remaining principal must:
 - (i) cease to practise, and notify the Solicitors Regulation Authority; or
 - (ii) commence a substantive application for recognition as a recognised sole practitioner (or, if the remaining principal has taken on a new partner ~~or is a qualifying body~~, as a recognised body) by submitting a completed application form, together with the prescribed fee and any Compensation Fund contribution required.

* * * * *

- (8) If the principal(s) in the new firm could not reasonably have commenced an application for recognition in advance of the change, the new firm may practise from the date of the split provided that the following conditions are met:

- (a) the new firm is:
 - (i) a partnership ~~or body corporate~~, which complies with rule 14 of the Solicitors' Code of Conduct in its formation, composition and structure; or".

10. Rule 14.05 (recognised bodies which are LLPs) shall be further amended as follows:

"(1) Provided that the fundamental requirements for all recognised bodies set out in 14.01 are met, a recognised body which is an LLP may have all or any of the following as a member:

- (a) a lawyer of England and Wales (including a solicitor with a current practising certificate);
- (b) an REL;
- (c) an RFL;
- (d) an exempt European lawyer;
- (e) an individual approved under regulation 3 of the Recognised Bodies Regulations;
- (f) ~~a qualifying body as defined in rule 24 (including another recognised body);~~
- (g) ~~a body which would be a qualifying body except that it has no solicitor or REL as a manager. a qualifying body as defined in rule 24~~ a legally qualified body."

11. Rule 14.06 (recognised bodies which are companies) shall be further amended as follows:

"(2) Provided that the fundamental requirements for all recognised bodies set out in 14.01 are met, a recognised body which is a company may have all or any of the following as a member or shareowner:

- (a) a lawyer of England and Wales (including a solicitor with a current practising certificate);
- (b) an REL;
- (c) an RFL;
- (d) an exempt European lawyer;
- (e) an individual approved under regulation 3 of the Recognised Bodies Regulations, who is also a director of the company;
- (f) ~~a qualifying body as defined in rule 24 (including another recognised body);~~

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~~(g) — a body which would be a qualifying body except that it has no solicitor or REL as a manager a qualifying body as defined in rule 24 a legally qualified body.~~

Prohibition on creating third party interests

- (3) A member or shareowner must not create any charge or other third party interest over his or her interest in the company, except by holding a share as nominee for a non-member shareowner who is eligible to be a member or shareowner under ~~(1)~~(2) above."

12. Rule 15.01(1) (application of core duties to overseas practice) shall be further amended as follows:

"(1) (a) Rule 1 (Core duties) applies to your overseas practice.

- (b) In relation to activities ~~in~~ outside England and Wales which fall outside the scope of practice as defined by rule 24, whether undertaken as a lawyer or in some other business or private capacity:

- (i) 1.06 (public confidence) applies to you if you are a solicitor, an REL or an RFL;".

13. Rule 15.01(2) (general application of the Code to overseas practice) shall be further amended as follows:

"(b) Subject to (3) and (4) below, these rules apply, in relation to practice from an office in Scotland or Northern Ireland:

- (i) to a solicitor or REL as an individual, whether or not the solicitor's or REL's firm or employer is subject to these rules;
- (ii) to a solicitor-controlled recognised body;
- (iii) to an REL-controlled recognised body (as defined in rule 24); and
- (iv) to a lawyer of England and Wales other than a solicitor, to a European lawyer registered with the Bar Standards Board and to a non-lawyer, in relation to practice as a manager of a solicitor-controlled recognised body or an REL-controlled recognised body,".

14. Rule 16.01(2) (application of the rule on European cross-border practice) shall be further amended by adding a new sub-paragraph (f) as follows:

"(f) If you are a manager of a recognised body and you are registered with the Bar Standards Board under the Establishment Directive, this rule applies to your European cross-border practice from any of office of the recognised body in the UK to the extent that the rule applies to the body itself under (d) above."

15. Rule 20.01(1) (authorisation of solicitors to do reserved work and immigration work) shall be further amended as follows:

"(1) As a solicitor, provided that you comply with 20.02(1) you are authorised by the Solicitors Regulation Authority:

(a) to undertake the following reserved work:

- (i) the exercise of any right of audience which solicitors had immediately before 7 December 1989;
- (ii) the exercise of any additional right of audience if you have a relevant higher courts advocacy qualification ~~under the Higher Courts Qualification Regulations 1990~~ awarded by the SRA or another approved regulator;".

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16. Rule 20.01(2) (authorisation of RELs to do reserved work and immigration work) shall be further amended as follows:

"(2) As an REL, you are authorised by the Solicitors Regulation Authority:

(a) to undertake the following reserved work:

- (i) the exercise of any right of audience which solicitors had immediately before 7 December 1989;
- (ii) the exercise of any additional right of audience provided that you have a relevant higher courts advocacy qualification ~~under the Higher Courts Qualification Regulations 1990~~ awarded by the SRA or another approved regulator."

17. Rule 20.01(5) (authorisation of recognised bodies to do reserved work and immigration work) shall be further amended as follows:

"(5) (a) A recognised body is authorised by the Solicitors Regulation Authority to undertake the following reserved work:

- (i) advocacy before a court or immigration tribunal provided the manager or employee exercising the right of audience is authorised by the Solicitors Regulation Authority, or otherwise entitled, to do so."

18. Rule 20.01(6) (authorisation of recognised sole practitioners to do reserved work and immigration work) shall be further amended as follows:

"(6) (a) A recognised sole practitioner who is a solicitor is authorised by the Solicitors Regulation Authority:

- (i) to provide any reserved work which the solicitor is authorised to provide under (1)(a) above, and any other advocacy service to the extent that an employee of the firm exercising a right of audience is authorised by the Solicitors Regulation Authority ~~or another approved regulator~~, or otherwise entitled, to do so;

* * * * *

(b) A recognised sole practitioner who is an REL is authorised by the Solicitors Regulation Authority:

- (i) to provide any reserved work which the REL is authorised to provide under (2)(a) above, and any other advocacy service to the extent that an employee of the firm exercising a right of audience is authorised by the Solicitors Regulation Authority ~~or another approved regulator~~, or otherwise entitled, to do so."

19. Rule 24 (interpretation) shall be further amended as follows:

(a) the definition of "eligible to be a member or shareowner" shall be further amended as follows:

"eligible to be a member or shareowner" in rule 14 (Recognised bodies), mean a person who falls within one of the following categories:

- (a) a solicitor with a practising certificate;
- (b) a registered European lawyer;
- (c) a registered foreign lawyer;

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- (d) a lawyer of an Establishment Directive profession (including the UK);
 - (e) a lawyer of England and Wales;
 - (f) an individual approved under regulation 3 of the Recognised Bodies Regulations as suitable to be a manager of a recognised body;
 - (g) a ~~qualifying body (including another recognised body)~~ legally qualified body, and "ineligible" must be construed accordingly;"
- (b) the following definition shall be inserted in place of the definition of "European corporate practice" deleted by the previous amendment rules:
- "European corporate practice" means a lawyers' practice which is a body incorporated in an Establishment Directive state, or a partnership with separate legal identity formed under the law of an Establishment Directive state:
- (a) which has an office in an Establishment Directive state but does not have an office in England and Wales;
 - (b) whose ultimate beneficial owners include at least one individual who is not a lawyer of England and Wales but is, and is entitled to practise as, a lawyer of an Establishment Directive profession;
 - (c) whose managers include at least one such individual, or at least one body corporate whose managers include at least one such individual;
 - (d) 75% of whose ultimate beneficial ownership is in the hands of individuals who are, and are entitled to practise as, lawyers of Establishment Directive professions, lawyers of England and Wales, and/or RFLs; and
 - (e) 75% of whose managers comprise such individuals, and/or bodies corporate 75% of whose managers comprise such individuals;"
- (c) the definition of "lawyer" shall be further amended as follows:
- "lawyer" means a member of one of the following professions, entitled to practise as such:
- (a) the profession of solicitor, barrister or advocate of the UK;
 - (b) a profession whose members are authorised to practise by an approved regulator other than the Solicitors Regulation Authority;
 - (c) ~~a legal profession of~~ an Establishment Directive ~~state~~ profession other than ~~the a~~ UK profession;"
- (d) the definition of "lawyer of England and Wales" shall be amended to read:
- "lawyer of England and Wales" means a solicitor with a current practising certificate or an individual who is authorised to practise in England and Wales by an approved regulator other than the Solicitors Regulation Authority, but excludes a member of an Establishment Directive profession registered with the Bar Standards Board;"
- (e) the following definition shall be inserted after the definition of "legal profession":
- "legally qualified body" for the purposes of these rules and for the purposes of section 9A(6)(h) and (6C) of the Administration of Justice Act 1985 means a body which would meet the services requirement in 14.01(1) and is:

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- (a) a recognised body;
 - (b) an authorised non-SRA firm of which individuals who are, and are entitled to practise as, lawyers of England and Wales, lawyers of Establishment Directive professions or RFLs make up at least 75% of the ultimate beneficial ownership; or
 - (c) a European corporate practice;"
- (f) the definition of "practice" shall be further amended as follows:
 - "practice" means:
 - (a) the activities of a solicitor, in that capacity;
 - (b) (i) the activities of an REL in the capacity of lawyer of an Establishment Directive profession, from an office or offices within the UK; or
(ii) the activities of a member of an Establishment Directive profession registered with the Bar Standards Board, in that capacity, from an office or offices in the UK;
 - * * * * *
 - (e) the activities of an individual non-lawyer:
 - (i) as a manager of a recognised body; or
 - (ii) employed in England and Wales by a recognised body or recognised sole practitioner."
- (g) the definition of "qualifying body" shall be deleted;
- (h) the definitions of "Recognised Bodies Regulations", "register of European lawyers" and "register of foreign lawyers" shall be moved so that they appear in the table in the correct alphabetical order;
- (i) the definition of "reserved work", shall be amended as follows:
 - "reserved work" means the following activities:
 - * * * * *
 - (d) the preparation of instruments and the lodging of documents relating to the transfer or charge of land, and the preparation of trust deeds disposing of capital, within paragraph 5 of Schedule 2 to the Legal Services Act 2007, and the preparation of any other instrument coming within sub-paragraph (1)(c) of that paragraph;" and
- (j) at the end of the definition of "UK" the word "and" shall be deleted, and after that definition the following definition shall be inserted:
 - "ultimate beneficial owners" in relation to a body means all those individuals who together beneficially own the body, whether:
 - (a) directly, as partners in a partnership, members of an LLP or shareholders in a company, or
 - (b) indirectly:
 - (i) as beneficial owners of shares held by nominees or trustees, or

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(ii) by way of an ownership interest in one or more intermediate bodies corporate, or

(iii) by way of some combination of (i) and (ii) above;

and "ultimate beneficial ownership" should be construed accordingly; and".

20. These amendment rules, with the exception of rule **4**, shall come into force on [1 March 2009].

Changes to Recognised Bodies Regulations

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[Draft] SRA Recognised Bodies (Amendment) Regulations [2009]

Rules dated [1 March 2009] and commencing [1 March 2009], made by the Solicitors Regulation Authority Board under sections 79 and 80 of the Solicitors Act 1974 and sections 9 and 9A of the Administration of Justice Act 1985, with the concurrence of the Master of the Rolls under section 9 of the Administration of Justice Act 1985 and the concurrence of the Lord Chancellor under paragraph 16 of Schedule 22 to the Legal Services Act 2007, amending the SRA Recognised Bodies Regulations [2009].

1. The SRA Recognised Bodies Regulations [2009] shall be amended as follows.
2. The preamble to the SRA Recognised Bodies Regulations [2009] shall be amended as follows:

"Rules dated [1 March 2009] and commencing [1 March 2009], made by the Solicitors Regulation Authority Board under sections 79 and 80 of the Solicitors Act 1974 and ~~section 9~~ [sections 9 and 9A](#) of the Administration of Justice Act 1985, with the concurrence of the Master of the Rolls under ~~the latter section~~ [section 9 of the Administration of Justice Act 1985](#) and the concurrence of the Lord Chancellor under paragraph 16 of Schedule 22 to the Legal Services Act 2007, making provision as to:"

3. Regulation 3 (approval of non-lawyer managers) shall be amended as follows:

"3.1 ~~A~~[An](#) individual who is not a lawyer of England and Wales, an REL, an RFL or an exempt European lawyer must be approved by the SRA under this regulation in order to be:

- (a) a manager of a recognised body; or
- (b) a manager of a body corporate which is a manager of a recognised body.

3.2 The following are not eligible for approval under this regulation:

- (a) a [member \(practising or non-practising\) of any profession coming within the meaning of](#) lawyer of England and Wales (including a solicitor);

* * * * *

3.3 The SRA has a discretion to reject an application under regulation 3 if it is not satisfied that the individual concerned is suitable to be involved in the provision of legal services, and to exercise influence over the conduct of the recognised body concerned because:

- (a) the applicant, the individual concerned or any recognised body or authorised non-SRA firm in which that individual has previously been a manager or employee, has been:
 - (i) ~~fined-reprimanded, made the subject of disciplinary sanction~~ or ordered to pay costs by the Solicitors Disciplinary Tribunal, [or struck off or suspended by the Court](#);

* * * * *

- (viii) has been a director of a company or [a member of an](#) LLP which has been the subject of a winding up order, an administration order or administrative receivership; or has entered into a voluntary arrangement under the Insolvency Act 1986; [or has been otherwise wound up or put into administration in circumstances of insolvency](#);

* * * * *

Changes to Recognised Bodies Regulations

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~~3.6—The SRA may at any time request an approved individual or the body concerned to provide such information or documentation as it considers necessary to satisfy the SRA that the individual continues to meet the criteria for approval.~~

3.6 The SRA may at any time require the production of information or documentation from:

- (a) an approved individual;
- (b) a recognised body in which an approved individual is a manager; or
- (c) the body which originally obtained approval for that individual and holds information and documentation under 3.4(c)(iii) above;

in order to satisfy the SRA that the individual met the criteria for approval or continues to meet the criteria for approval."

4. Regulation 4 (conditions on recognition) shall be amended as follows:

"4.2 The purposes for which the SRA may impose a condition are set out in (a) to (g) below.

(a) The SRA considers that:

- (i) the condition would limit, restrict, halt or prevent an activity or activities on the part of the body, or of a manager or employee of the body, which is putting or is likely to put at risk the interests of clients, third parties or the public, and
- (ii) it is in the public interest to impose the condition."

5. Regulation 5 (temporary emergency recognition) shall be amended as follows:

"5.1 If a partnership split brings into being ~~in~~ a new partnership which is not a recognised body:

* * * * *

5.3 The SRA may grant an application for temporary emergency ~~temporary~~ recognition if the following conditions are met."

6. Regulation 8 (notification of decisions by the SRA) shall be amended as follows:

"8.7 If a body's recognition commenced on or after 1 March 2009 but before 1 November 2009, the renewal date will be 31 October 2009."

7. Regulation 9 (revocation of recognition) shall be amended as follows:

"9.1 The SRA may revoke a body's recognition, if:

* * * * *

- (f) an approved regulator other than the SRA has authorised the body; ~~or~~
- (g) the SRA has decided under regulation ~~2.2.5~~ not to renew the body's recognition, or
- (h) a relevant insolvency event within the meaning of paragraph 32(1A) of Schedule 2 to the Administration of Justice Act 1985 has occurred in relation to the recognised body which has not triggered expiry of recognition under regulation 10,

and the SRA is satisfied that revocation would not present a risk to clients, to the protection of client money or to any investigative process."

8. Regulation 12.2 (register of recognised bodies) shall be amended as follows:

Changes to Recognised Bodies Regulations

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- "(h) a list of the body's managers, and in respect of each manager, whether that manager is:
- (i) a lawyer of England and Wales, and if so the nature of his or her qualification;
 - (ii) an REL, and if so his or her professional title and jurisdiction of qualification;
 - (iii) an exempt European lawyer, and if so his or her professional title and jurisdiction of qualification;
 - (iv) an RFL, and if so his or her professional title and jurisdiction of qualification;
 - (v) an individual approved under regulation 3;
 - (vi) a company, and if so whether it is a recognised body;
 - (vii) an LLP, and if so whether it is a recognised body; and".

- 8A. (1) The heading to Part 4 shall be amended as follows:

**"PART 4 - INTERPRETATION, WAIVERS ~~AND~~, RECONSIDERATION AND
NOTIFYING THIRD PARTIES"**

- (2) After regulation 16 (reconsideration) insert a new regulation 17 as follows:

"Regulation 17 – Notifying third parties of decisions

The SRA may, if it considers it in the public interest to do so, notify any or all of the following persons of a decision made under these regulations:

- (a) a recognised body or authorised non-SRA firm of which the body or individual concerned is a manager or has an ownership interest;
- (b) a recognised sole practitioner, recognised body or authorised non-SRA firm of which the individual concerned is an employee;
- (c) any approved regulator;
- (d) the Legal Services Board;
- (e) the Legal Complaints Service or the Office for Legal Complaints;
- (f) the regulatory body for any profession of which the individual concerned is a member or which regulates the body concerned;
- (g) any law enforcement agency."

- (3) Re-number the existing regulation 17 (commencement and repeal) as regulation 18 accordingly.

9. These amendment regulations shall come into force on [1 March 2009].

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[Draft] SRA Practising (Amendment) Regulations [2009]*Regulations and rules dated [1 July 2009] and commencing [1 July 2009]**made by the Master of the Rolls under section 28 of the Solicitors Act 1974 with the concurrence of the Secretary of State and the Lord Chief Justice under that section, and**made by the Solicitors Regulation Authority Board under sections 13, 13ZA, 31, 79 and 80 of the Solicitors Act 1974 and paragraphs 2 and 3 of Schedule 14 to the Courts and Legal Services Act 1990 with the concurrence of the Master of the Rolls under section 31 of the Solicitors Act 1974 and paragraph 2 of Schedule 14 to the Courts and Legal Services Act 1990**amending the SRA Practising Regulations [2009].*

1. The SRA Practising Regulations [2009] shall be amended as follows.

2. Regulation 2 (applications for practising certificates and registration) shall be amended as follows:

"2.3 (a) Where application is made under regulation 2 for initial registration or for renewal of registration in the register of European lawyers the SRA must grant the application if:

- (i) the applicant is not (subject to (c) below) a solicitor, barrister or advocate of any of the UK jurisdictions, a barrister of the Irish Republic, [or registered under the Establishment Directive with the Bar Standards Board, the Faculty of Advocates or the Bar Council of Northern Ireland.](#)"

3. Regulation 3 (application following certain events) shall be amended as follows:

"3.1 Regulation 3 applies (subject to 3.3 below) to an initial application for a practising certificate, an application for replacement of a practising certificate, an initial application for registration in the register of European lawyers and an application for renewal of registration in the register of European lawyers, in any of the following circumstances.

(a) The applicant has been:

- (i) reprimanded, ~~fined~~ [made the subject of disciplinary sanction](#) or made the subject of an order under section 43 of the Solicitors Act 1974, ordered to pay costs or made the subject of a recommendation to the SRA to consider imposing a condition, by the Solicitors Disciplinary Tribunal, [or struck off or suspended by the Court;](#)
- (ii) made the subject of an order under section 43 of the Solicitors Act 1974 [by the Law Society or the SRA](#) or rebuked or fined under section 44D of that Act by the SRA;

* * * * *

(k) The applicant:

* * * * *

- (iv) has been a director of a company or a member of an LLP which has been the subject of a winding up order, an administration order or administrative receivership; or has entered into a voluntary arrangement under the Insolvency Act 1986; [or has been voluntarily wound up in circumstances of insolvency.](#)"

4. Regulation 4.2 (application to be a recognised sole practitioner) shall be amended as follows:

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~~(e)~~(d) When granting an application under regulation 4 the SRA may impose a condition on the applicant's practising certificate or registration in accordance with regulation 6."

4A. Regulation 5 (applications for reinstatement) shall be amended as follows:

"The following applications are to be treated as made under these regulations:

* * * * *

- (b) an application for reinstatement of a suspended registration in the register of foreign lawyers under paragraph 12(2) of Schedule 14 to the Courts and Legal Services Act 1990 or under section 16(3)(b) of the Solicitors Act 1974."

5. Regulation 9 (revocation and expiry) shall be amended as follows:

- " (b) The registration of a registered European lawyer expires:
- (i) if the lawyer becomes a solicitor, barrister or advocate of any of the UK jurisdictions or a barrister of the Irish Republic;

* * * * *

- 9.2 (a) The SRA may revoke a practising certificate, registration in the register of European lawyers or registration in the register of foreign lawyers:

* * * * *

- (iv) at any time, if the SRA is satisfied, in the case a registered foreign lawyer, that the lawyer has no intention of practising in a recognised body or an authorised non-SRA firm or as the employee of a recognised sole practitioner; or".

* * * * *

6. Regulation 12 (register of foreign lawyers) shall be amended as follows:

"12.2 The register must contain, in respect of each registered foreign lawyer, the following information:

* * * * *

- (g) the registered name and place or places of business of any recognised body or authorised non-SRA firm of which the lawyer is a manager or in which the lawyer has an ownership interest;
- (h) the registered name of any recognised sole practitioner ~~or,~~ recognised body or authorised non-SRA firm who or which is the lawyer's employer, and the address of the lawyer's place of employment;"

7. Regulation 17.4 (interpretation) shall be amended as follows:

"17.4 In these regulations:

* * * * *

- (c) "prescribed fee" means a fee prescribed:
- (i) under section 11 of the Solicitors Act 1974 ~~by the Master of the Rolls, with the concurrence of the Secretary of State and the Lord Chief Justice for an application for~~ a practising certificate or registration in the register of European lawyers;
- (ii) under ~~sections 13ZB and 79~~ section 13ZB of the Solicitors Act 1974 ~~by the SRA Board, for an application~~ for authorisation as a sole practitioner; or

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- (iii) under paragraph 2 of Schedule 14 to the Courts and Legal Services Act 1990 ~~and section 79 of the Solicitors Act 1974 by the SRA Board, with the concurrence of the Master of the Rolls, for an application~~ for registration in the register of foreign lawyers;

* * * * *

- (f) "SRA" means the Solicitors Regulation Authority; ~~and~~ _____

- ~~(g) "SRA Practising Regulations" means the SRA Practising Regulations [2009]."~~

8. These amendment regulations shall come into force on [1 July 2009].

New section 9A AJA and explanatory provisions

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**Administration of Justice Act 1985:
new section 9A inserted by the Legal Services Act 2007:
text as rewritten by the draft Schedule 22 order**

9A Legal services bodies

- (1) For the purposes of section 9, a “legal services body” means a body (corporate or unincorporate) in respect of which —
 - (a) the management and control condition, and
 - (b) the relevant lawyer condition,are satisfied.
- (2) The management and control condition is satisfied if—
 - (a) at least 75% of the body's managers are legally qualified,
 - (b) the proportion of shares in the body held by persons who are legally qualified is at least 75%,
 - (c) the proportion of voting rights in the body which persons who are legally qualified are entitled to exercise, or control the exercise of, is at least 75%,
 - (d) all the persons with an interest in the body who are not legally qualified are managers of the body, and
 - (e) all the managers of the body who are not legally qualified are individuals approved by the Society as suitable to be managers of a recognised body.
- (3) The Society may by rules under section 9 provide that, in relation to specified kinds of bodies, subsection (2) applies as if the references to 75% were to such greater percentage as may be specified (and different percentages may be specified for different kinds of bodies).
- (4) The relevant lawyer condition is satisfied in relation to a body if at least one manager of the body is —
 - (a) a solicitor,
 - (b) a registered European lawyer, or
 - (c) a qualifying body.
- (5) For that purpose a qualifying body is a body in respect of which —
 - (a) the management and control condition is satisfied,
 - (b) the relevant lawyer condition is satisfied by virtue of subsection (4)(a) or (b), and
 - (c) the services condition is satisfied.
- (6) For the purposes of this section the following are legally qualified —
 - (a) an authorised person who is an individual;

New section 9A AJA and explanatory provisions

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- (b) a registered foreign lawyer (within the meaning of section 89 of the Courts and Legal Services Act 1990 (c 41));
 - (c) a person entitled to pursue professional activities under a professional title to which the Directive applies in a state to which the Directive applies (other than the title of barrister or solicitor in England and Wales);
 - (d) an authorised person which is a body in respect of which —
 - (i) the services condition is satisfied, and
 - (ii) the management and control condition would be satisfied if the references in subsection (2) to persons who are legally qualified were to persons who are legally qualified by virtue of paragraphs (a) to (c);
 - (e) a body which provides professional services such as are provided by individuals who are authorised persons or lawyers of other jurisdictions, and in respect of which the management and control condition would be satisfied if the references in subsection (2) to persons who are legally qualified were to persons who are legally qualified by virtue of paragraphs (a) to (c);
 - (f) a legal partnership which —
 - (i) was in existence immediately before the commencement of this paragraph,
 - (ii) since that time has continued to be a partnership of the kind mentioned in rule 12.01(1)(b), 12.02(1)(b) or 12.04(1)(c)(i) of the pre-commencement conduct rules (framework of practice), and
 - (iii) has not, since that time, had a body corporate (other than a body within paragraph (g)) as a member;
 - (g) a body corporate which —
 - (i) was recognised under section 9 immediately before the commencement of this paragraph, and
 - (ii) has since that time continued to satisfy the requirements of rule 14.03(1) and 14.04(1) to (3) or the requirements of rule 14.05(1) to (3) of the pre-commencement conduct rules (restrictions on directors, owners etc. of incorporated practices);
 - (h) a body which —
 - (i) is an authorised person and satisfies the services condition, or
 - (ii) provides professional services such as are provided by individuals who are authorised persons or lawyers of other jurisdictions,and which satisfies the requirements of rules under subsection (6C).
- (6A) For the purposes of subsection (6)(f), a partnership is to be treated as the same partnership despite a change in membership, if any person who was a member before the change remains a member.

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- (6B) For the purposes of (6)(f) and (g), the references in the pre-commencement conduct rules to a recognised body are to be construed as references to a body which was recognised under section 9 immediately before the commencement of subsection (6)(f) and (g).
- (6C) The Society must make rules for the purposes of paragraph (h) of subsection (6) prescribing the requirements relating to management and control which must be satisfied by or in relation to a body for it to fall within that paragraph.
- (7) For the purposes of this section, the services condition is satisfied in relation to a body if the body provides only services which may be provided by a recognised body (having regard to rules under section 9(1A) and (1C)).
- (8) For the purposes of this section —
- “authorised person” has the same meaning as in section 9;
 - “the Directive” means Directive 98/5/EC of the European Parliament and the Council, to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained;
 - “legal partnership” means a partnership in which a qualified solicitor, a registered European lawyer or a recognised body is permitted to practise by virtue of rules made under section 31 of the Solicitors Act 1974 (c. 47), as those rules had effect immediately before the commencement of subsection (6)(f);
 - “manager”, in relation to a body, has the meaning given by section 9;
 - “pre-commencement conduct rules” means rules under Part 2 of the Solicitors Act 1974 or section 9 of this Act, known as the Solicitors’ Code of Conduct 2007, as those rule had effect immediately before the commencement of subsection (6)(f) and (g);
 - “recognised body” has the same meaning as in section 9 (subject to subsection (6B) above);
 - “registered European lawyer” has the same meaning as in section 9;
 - “shares” has the same meaning as for the purposes of Part 5 of the Legal Services Act 2007 (see sections 72 and 109 of that Act);
 - “the Society” has the meaning given by section 87(1) of the Solicitors Act 1974;
 - “specified” means specified in rules made by the Society;
- and a person has an interest in a body if the person has an interest in the body for the purposes of section 9.

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**Administration of Justice Act 1985:
section 9 as amended by the Legal Services Act 2007:
relevant provisions**

9 Incorporated practices

- (1) The Society may make rules —
- (a) making provision as to the management and control of legal services bodies;
 - (b) prescribing the circumstances in which such bodies may be recognised by the Society as being suitable bodies to undertake the provision of any solicitor services or other relevant legal services;
 - (c) prescribing the requirements which (subject to any exceptions provided by the rules) must at all times be satisfied by bodies so recognised if they are to remain so recognised; and
 - (d) regulating the conduct of the affairs of such bodies.
- (1A) Where the Society makes rules under subsection (1), it must by rules under subsection (1)(c) prescribe the requirement that (subject to any exceptions provided by the rules) recognised bodies must not provide services other than —
- (a) solicitor services, or
 - (b) solicitor services and other relevant legal services.
- (1B) “Relevant legal services” means —
- (a) solicitor services, and
 - (b) where authorised persons other than solicitors or registered European lawyers are managers or employees of, or have an interest in, a recognised body, services of the kind provided by individuals practising as such authorised persons (whether or not those services involve the carrying on of reserved legal activities within the meaning of the Legal Services Act 2007).
- (1C) The Society may by rules under this section provide that services specified, or of a description specified, in the rules are not to be treated as solicitor services or other relevant legal services.

* * * * *

- (8) In this section —
- “the 1974 Act” means the Solicitors Act 1974;
 - “authorised person” means an authorised person in relation to an activity which is a reserved legal activity (within the meaning of the Legal Services Act 2007);
 - “the Society” has the meaning given by section 87(1) of the 1974 Act;
 - “legally qualified” and “legal services body” have the meaning given by section 9A;

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“manager”, in relation to a body, has the same meaning as in the Legal Services Act 2007 (see section 207 of that Act);

“recognised body” means a body for the time being recognised under this section;

“registered European lawyer” means a person who is registered with the Law Society under regulation 17 of the European Communities (Lawyer’s Practice) Regulations 2000.

“solicitor services” means professional services such as are provided by individuals practising as solicitors or lawyers of other jurisdictions.

and a person has an interest in a body if the person has an interest in the body within the meaning of Part 5 of the Legal Services Act 2007 (see sections 72 and 109 of that Act).

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**Legal Services Act 2007 section 72:
relevant provisions**

72 “Licensable body”

* * * * *

- (3) For the purposes of this Act, a person has an interest in a body if —
- (a) the person holds shares in the body, or
 - (b) the person is entitled to exercise, or control the exercise of, voting rights in the body.

* * * * *

- (6) In this Act “shares” means —
- (a) in relation to a body with a share capital, allotted shares (within the meaning of the Companies Acts);
 - (b) in relation to a body with capital but no share capital, rights to share in the capital of the body;
 - (c) in relation to a body without capital, interests—
 - (i) conferring any right to share in the profits, or liability to contribute to the losses, of the body, or
 - (ii) giving rise to an obligation to contribute to the debts or expenses of the body in the event of a winding up;

and references to the holding of shares, or to a shareholding, are to be construed accordingly.

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Risk Assessment

Summary of issues for consideration:

(What are the key issues arising from this paper / proposal / strategy?)

To make further changes to the body of rules and regulations made by the SRA Board in July and September 2008. These further changes are (1) to reflect the Government's re-write of section 9A of the AJA 1985 (the definition of a "legal services body" and (2) to correct errors and omissions.

Report is for:

Noting / Information

Decision

Approval

Business/Operational Risk:

(What are the risks and benefits of proceeding with this paper / proposal / strategy?)

No risks from proceeding. There is a new statutory requirement to make rules under section 9A, so the SRA would be in breach if it did not proceed. There are also obvious risks of attempting to regulate LDPs with defective rules. It is important that the Board approve the rule changes at the October meeting, subject to formal making in November following further consultation, as otherwise the timetable for implementing LDPs will be put at risk.

Finance:

(What are the financial implications?)

none

Communications:

(What are the communications implications?)

The rule changes - and especially the changes resulting from the rewriting of section 9A - will need to be communicated to the profession and other stakeholders for purposes of consultation. This will be done on the web and through an announcement in the Gazette.

Equality and Diversity Implications:

(What are the potential implications / impact on Equality, Diversity and Human Rights?)

none

Authors: Chris Bramall / Penny Butler

SRA BOARD
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Equality and diversity implications

Date of Report/Paper: 8 October 2008

Name of the paper / proposal / policy	"LSA – changes to SRA's rules and regulations – further amendments reflecting the re-write of s 9A AJA and to correct errors and omissions"
Authors	Chris Bramall / Penny Butler
Date	8 October 2008
Committee / Board it will be submitted to	SRA Board
Date of submission	16 October 2008

What are the main aims of the paper / proposal / policy?

To ask the SRA Board to approve (subject to consultation) further changes to the body of rules and regulations made by the Board in July and September 2008. These further changes are (1) to reflect the Government's re-write of section 9A of the AJA 1985 (the definition of a "legal services body" and (2) to correct errors and omissions.

Is the paper / proposal / policy likely to have an equality and diversity implications for particular groups?

Yes No This is not known (please give details below)

The changes are technical in nature and are aimed at preserving existing practice rights, correcting errors and omissions, and ensuring that the SRA complies with statutory requirements.

Please indicate if there are any implications on the basis of race, age, gender, disability, religion or belief and sexual orientation.

none

Has an initial EIA been carried out?

Yes (please attach to this form)
 No (please provide details on when this will be carried out)

Not a policy change, therefore not required. These are technical amendments to fulfil policy decisions already taken with the benefit of an EIA assessment.

If not, when do you intend to carry out an initial EIA and bring to the committee?

not applicable

Board / committee decision and date.

SRA Board, 16 October 2008