

Draft SRA European Cross-Border Practice Rules (Annex E1)

Rules dated [the date of the approval of the Legal Services Board] commencing [insert commencement date] made by the Solicitors Regulation Authority Board under Part II of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985 and section 83 of the Legal Services Act 2007, with the approval of the Legal Services Board under section 83 of and paragraph 19 of Schedule 4 to the Legal Services Act 2007.

1 Purpose

The purpose of these rules is to set the standard for professional conduct in the context of *European cross-border practice*.

2 Application

2.1 In these rules:

- (a) *European cross-border practice* means:
 - (i) *professional activity* in a *CCBE state* other than the *UK*, whether or not you are physically present in that *CCBE state*; and
 - (ii) any professional contact with a *lawyer* of a *CCBE state* other than the *UK*.

- (b) *Professional contacts* and *professional activities* taking place within a *firm* or in-house legal department do not constitute *European cross-border practice*.

2.2 These rules apply to *European cross-border practice* from any office by:

- (a) *solicitors*;
- (b) *managers of authorised bodies* who are *lawyers of England and Wales*;
- (c) *non-lawyer managers of authorised bodies*;

- (d) *managers of authorised bodies* who are registered with the Bar Standards Board under the Establishment Directive; and
- (e) *authorised bodies*.

2.3 These rules also apply to *European cross-border practice* from an office in England and Wales by:

- (a) *registered European lawyers (REL)*; and
- (b) *any registered foreign lawyer (RFL)* who is a *manager* or an *employee* of an *authorised body*.

3 Occupations considered incompatible with legal practice

- 3.1 If you act in legal proceedings or proceedings before public authorities in a *CCBE state* other than the *UK*, you must, in that state, comply with any rules regarding occupations incompatible with the practice of law, as if you were a *lawyer* of that state, whether or not you are based at an office in that state.
- 3.2 If you are a *solicitor* based at an office in a *CCBE state* other than the *UK*, you must respect any rules regarding participation in commercial or other activities not connected with the practice of law, as they are applied to *lawyers* of that state.

4 Fee sharing with non-lawyers

- 4.1 You must not share your professional fees with a *non-lawyer* situated in a *CCBE state* other than the *UK* except:
 - (a) within a *firm* and only as permitted under **SRA Practice Framework Rules 2011**; or
 - (b) with a retired *manager, member, owner* or predecessor of the *firm*, or the dependants or personal representatives of a deceased *manager, member, owner* or predecessor.
- 4.2 If you are *practising* from an office in a *CCBE state* other than the *UK*, whether or not you are actually present at that office, you must not share your professional fees from that practice with a *non-lawyer*, except:
 - (a) within a *firm*, and only as permitted under **SRA Practice Framework Rules 2011**; or
 - (b) with a retired *manager, member, owner* or predecessor of the *firm*, or

the dependants or personal representatives of a deceased *manager, member, owner* or predecessor.

5 Co-operation between lawyers of different CCBE states

- 5.1 If you are approached by a *lawyer* of a *CCBE state* other than the *UK* to undertake work which you are not competent to undertake, you must assist that *lawyer* to obtain the information necessary to find and instruct a *lawyer* capable of providing the service asked for.
- 5.2 When co-operating with a *lawyer* of a *CCBE state* other than the *UK* you must take into account the differences which may exist between your respective legal systems and the professional organisations, competencies and obligations of *lawyers* in your respective states.

6 Correspondence between lawyers in different CCBE states

- 6.1 If you are *practising* from an office in a *CCBE state* and you want to send to a *lawyer* in a different *CCBE state* (with the exception of the *UK*) a communication which you wish to remain "confidential" or "without prejudice", you must, before sending the communication, clearly express your intention in order to avoid misunderstanding, and ask if the *lawyer* is able to accept the communication on that basis. When you send the communication you must express your intention clearly at the head of the communication or in a covering letter.
- 6.2 If you are the intended recipient of a communication from a *lawyer* in another *CCBE state* which is stated to be "confidential" or "without prejudice", but which you are unable to accept on the basis intended by that *lawyer*, you must inform the sender accordingly without delay. If the communication has already been sent you must return it unread without revealing the contents to others. If you have already read the communication and you are under a professional duty to reveal it to your *client* you must inform the sender of this immediately.

7 Paying referral fees to non-lawyers

- 7.1 You must not pay a fee, commission or any other compensation to a *non-lawyer* as a consideration for referring a *client* to you:
- (a) if the *non-lawyer* is situated in a *CCBE state* other than the *UK*; or
 - (b) if you are *practising* from an office in a *CCBE state* other than the *UK*, whether or not you are physically present at that office.

8 Disputes between lawyers in different member states

- 8.1** If you consider that a *lawyer* in a *CCBE state* other than the *UK* has acted in breach of a rule of professional conduct you must draw the breach to the other *lawyer's* attention.
- 8.2** Before commencing any form of proceedings against the other *lawyer*, you must inform the Law Society and the other *lawyer's* bar or law society in order to allow them an opportunity to assist in resolving the matter.

9 Fee of lawyers of other CCBE states

- 9.1** If in the course of *practice* you instruct a *lawyer* of a *CCBE state* other than the *UK* you must, as a matter of professional conduct, pay the *lawyer's* proper fees unless the lawyer is *practising* as a *lawyer of England and Wales*; or
- (a)** you have expressly disclaimed that responsibility at the outset, or at a later date you have expressly disclaimed responsibility for any fees incurred after that date;
 - (b)** the *lawyer* is an *REL* or is registered with the Bar of England and Wales under the *Establishment Directive*; or
 - (c)** the *lawyer* is an *RFL* based in England and Wales and *practising* in a *firm*.
- 9.2** If in the course of *practice* you instruct a business carrying on the *practice of a lawyer of a CCBE state* other than the *UK* you must, as a matter of professional conduct, pay the proper fees for the work that *lawyer* does, unless:
- (a)** you have expressly disclaimed that responsibility at the outset, or at a later date you have expressly disclaimed responsibility for any fees incurred after that date; or
 - (b)** the business is a *firm*.

10 Interpretation

All italicised terms in these rules are to be interpreted in accordance with Chapter 14 of the SRA Code of Conduct 2011, save for the following terms which are to be interpreted as follows:

10.1 'CCBE' means the Council of the Bars and Law Societies of Europe;

10.2 'CCBE Code' means the CCBE's Code of Conduct for European

lawyers;

10.3 'CCBE state'

means any state whose legal profession is a full member, an associate member or an observer member of the *CCBE*;

10.4 'European cross-border practice'

has the meaning set out in rule 2.1

10.5 'Firm'

means any business through which a *solicitor* or *REL* carries on *practice* other than *in-house practice*

10.6 'non-lawyer'

means

- (a) an individual who is not a *lawyer practising* as such; or
- (b) a *body corporate* or partnership which is not:
 - (i) an *authorised body*;
 - (ii) an *authorised non-SRA firm*; or
 - (iii) a business, carrying on the *practice of lawyers* from an office or offices outside England and Wales, in which a controlling majority of the *owners* and *managers* are *lawyers*;

10.7 'owner'

in relation to a body (whether incorporated or unincorporated) means a person with any ownership interest in the body.

10.8 'practice of a lawyer of a CCBE state'

means the activities of a *lawyer* of a *CCBE state* in that capacity.

10.9 'professional activity'

means a professional activity which is regulated by the *SRA*.

10.10 'professional contact'

means professional contact which is regulated by the *SRA*.

11 Commencement and repeal

11.1 These rules shall come into force on [6] October 2011.

11.2 Rule 16 of the Solicitors' Code of Conduct 2007 shall be repealed.