

Annex 1

SRA ~~Overseas-International Practice~~ Rules 2013

Introduction to the ~~Overseas-International Practice~~ Rules

Although the SRA primarily regulates the provision of legal services by solicitors, firms and other authorised persons practising in England and Wales, it also needs to provide a regulatory framework for authorised persons and bodies established overseas in order to take account of the regulatory risk they pose in England and Wales. This must be proportionate, reflecting the different level and type of risks posed to the SRA's regulatory objectives by *practising overseas*, as well as the existence, in many jurisdictions, of local regulatory requirements.

These rules¹ apply to individuals and bodies *practising overseas* and to *responsible authorised bodies*. The SRA Code of Conduct does not apply to individuals and bodies *practising overseas* since its requirements are, in many cases, not relevant to, or may have a disproportionate impact on them.

These rules are the starting point for the conduct of SRA regulated individuals and authorised bodies providing legal services outside England and Wales. They are modified from the general SRA ~~principles~~Principles, in order to take account of the different legal, regulatory and cultural context of practice in other jurisdictions, which may require different standards of conduct ~~than to those~~ required in England and Wales. ~~Regardless of~~Consistent with these differences, there is no intention to imply a lower standard of general behaviour; regulated individuals *practising overseas* and *responsible authorised bodies* are therefore required to ensure that they, or those for whom they are responsible under these rules, behave in a way which meets both the SRA's ~~Overseas-International Practice~~ Rules and its character and suitability requirements.

Regulators in many other jurisdictions rely on certificates of good standing granted by the SRA to regulated individuals and authorised businesses who wish to practise overseas and, in many cases, they will also expect and require that the SRA's regulatory oversight, will continue to operate alongside the local regulatory regime. Nonetheless, applicable law and local regulation should prevail in circumstances in which compliance with the overseas principles would create difficulties, with the exception of principle 6 which must be observed at all times even if to do so would result in a breach of local laws.

In addition to the obligations of those individuals *practising overseas*, the SRA also requires that a recognised sole practitioner or authorised body in England and Wales will identify, monitor and manage risks arising from its *overseas practices* ~~or and~~ *connected practices* to ensure they do not undermine its financial viability, or its ability to fulfil its compliance and regulatory obligations, its reputation in England and Wales and that of SRA regulation and the legal profession of England and Wales in general. These obligations are also present in the domestic SRA Code of Conduct.

A failure to meet these obligations may result in the SRA taking regulatory action against an individual or an authorised body and its managers. Such action may include limiting, or removing, the right to practise as an authorised body or individual regulated by the SRA.

¹ The intention is to consolidate all requirements relating to overseas practice such as accounts rules and indemnity insurance, etc., into these rules.

The SRA ~~Overseas-International Practice~~ Rules 2013

Preamble

The SRA ~~Overseas-International Practice~~ Rules dated [date] commencing [date] made by the Solicitors Regulation Authority Board under sections

31, 79 and 80 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 paragraph 19 of Schedule 4 to the Legal Services Act 2007 regulating the conduct of solicitors and their employees, registered European lawyers and their

Comment [AAU1]: To distinguish other types of practising outside England & Wales. It would also be helpful to avoid using the term "overseas" as it has "colonial" connotations for many global firms which can be inflammatory. We have not included changes to other drafting using the word "overseas" but these should also be considered.

Comment [AAU2]: It is important, to avoid confusion, to explain there may be different standards that potentially could be perceived to result in a "lower" standard of behavior.

Comment [AAU3]: Helpful to highlight the implications of this override as the consequence may be to prevent firms practising in jurisdictions where local compliance would be an issue.

employees, registered foreign lawyers, recognised bodies and their managers and employees and licensed bodies and their managers and employees.

Rule 1 - The Overseas Principles

1 You

- (a) as a regulated individual *practising overseas* must ensure that you; or
- (b) as a *responsible authorised body* must ensure that your *overseas practice*, and individual managers, members and owners of your *overseas practice* (who are, for purposes of these rules, referred to as those for whom you are responsible under these rules).

comply with the Overseas Principles stated below (Guidance Notes have been added below each Principle to assist in interpretation of these Principles but they do not form part of these rules-):

(1) Uphold the rule of the law and the proper administration of justice in England and Wales

Note: Your obligations to clients, the court and third parties in England and Wales with whom you are dealing on behalf of your clients are unaffected by the standards in the location outside of England and Wales from which you practise or by the standards in the location of your *overseas practice*.

(2) Act with integrity

Note: Personal integrity is central to your role as the client's trusted legal adviser and should characterise all of your professional dealings with clients, the court, other lawyers and the public wherever they are being conducted. You should use your judgment when considering how best to maintain your integrity at all times and avoid any behaviour outside England and Wales which undermines your character and suitability to be an authorised person. A *responsible authorised body* should ensure that its *overseas practice* observes the same comparable standards.

(3) ~~Not-Do not~~ allow your independence or the independence of your *overseas practice* to be compromised

Note: 'Independence' means your own independence and that of your firm and your *overseas practice*, and not merely your ability to give independent advice to a client. You should avoid giving control of your *overseas practice* to a third party beyond any statutory local legal or regulatory local ownership requirements.

(4) Act in the best interests of each client

Note: You should act in good faith and do your best for each of the clients for whom you are (or your overseas practice is) acting. In particular, you should follow the local legal or regulatory requirements of the jurisdiction in which you or your *overseas practice* are practising in relation to confidentiality and conflicts of interest. If no such requirements exist, you should be guided by what you consider the best interests of each client requires in the circumstances.

(5) Provide a proper standard of service to your clients/the clients of your *overseas practice*

Note: You should provide a proper standard of client care and work. This includes exercising competence, skill and diligence and taking into account the individual needs and circumstances of each client as well as the particular requirements and circumstances of the jurisdiction in which you are working. You should inform clients by whom the legal services provided to them are regulated, what client protections are in place for them and whether they have the benefit of professional indemnity insurance or other indemnity.

(6) ~~Not-Do not~~ do anything which will or be likely to bring into disrepute the *overseas practice*, yourself as a regulated individual or *responsible authorised body* or, by association, the legal profession in and of England

Comment [AAU4]:
Does this term need to be defined?

Comment [AAU5]:
Please delete or explain in guidance who is treated as a "Member" of an overseas practice (as defined). All lawyers, all employees, everyone held out as a partner or just shareholders in a group structure?

Comment [AAU6]:
They cannot be identical standards because of the different contexts and regulatory environment in relevant jurisdictions.

Comment [AAU7]:
See explanation for deletion in cover note. This will not be practicable or necessary in most cases, especially when dealing with sophisticated clients.

and Wales

Note: This includes any behaviour which occurs within or outside your professional practice which undermines your own reputation, that of the practice within which you are a manager or solicitor employee, or the wider reputation of the legal profession in and of England and Wales.

(7) Comply with your legal and regulatory obligations in England and Wales, and deal with your regulators ~~and ombudsmen~~ in England and Wales in an open, timely and co-operative manner and assist and not impede any authorised person or body practising in England and Wales in complying with their legal and regulatory obligations and dealings with their regulators ~~and ombudsmen~~.

Note: You should ensure that you and, in the case of a responsible authorised body, those for whom you are responsible under these rules comply with all of the reporting and notification requirements that apply to you and respond promptly and substantively to communications. You should ensure that you (and those for whom you are responsible under these rules) do not cause, contribute or facilitate a failure to comply with the SRA's regulatory arrangements by any authorised person or body practising in England and Wales. Individuals *practising overseas* should assist their *responsible authorised body* to comply with its regulatory obligations to the SRA. Your obligations under this Principle are subject to the constraints of any client confidentiality or legal professional privilege (or similar) obligations which prevail in the jurisdictions outside England and Wales in which you are practising.

Comment [AAU8]: Do ombudsmen have jurisdiction overseas?

(8) Run your business/the business of your *overseas practice* or carry out your/their role in the business effectively and in accordance with proper governance and sound financial and risk management principles

Note: As a *responsible authorised body* you are required to ensure that your relations with your *overseas ~~practise-practice~~* accord with sound governance, financial and risk management principles. You should ensure that those for whom you are responsible under these rules assist you in meeting your obligations to the SRA in relation to managing any material or systemic risks that your *overseas practice* might pose to your operations.

Comment [AAU9]: See explanation in cover note on the need for this carve-out, as previously discussed with the SRA.

(9) Run your business/the business of your *overseas practice* or carry out your/their role in the business in a way that encourages equality of opportunity and respect for diversity

Note: Every jurisdiction has its own legal, regulatory and cultural framework for equality and diversity. The SRA does not expect, or require, its authorised individuals or bodies *practising overseas* to approach these issues as they would in England and Wales. It does, however, expect that SRA authorised individuals and bodies will, within whatever legal, regulatory and cultural context in which they are *practising overseas*, do what they reasonably can to encourage equality of opportunity and respect for diversity.

Comment [AAU10]: It is only material and systemic breaches that are to be monitored and reported and so in respect of which obligations to the SRA arise.

(10) Protect client money and assets.

Note: You and those for whom you are responsible should comply with local regulatory requirements in relation to client money, documents and assets and, in any event, you should ensure that they are protected appropriately.

Rule 2 - Application

2. With regard to the ~~principles~~ Overseas Principles set out in Rule 1:
 - 2.1 They apply in full to you in relation to your overseas practice, if you are a regulated individual *practising overseas* or a *responsible authorised body*.

- 2.2 You will be committing a breach if you permit another person to do anything on your behalf, which if done by you, would constitute a breach [of these rules](#).
- 2.3 You should ensure that you and those for whom you are responsible [under these rules](#) comply with all legal and regulatory obligations applicable in the jurisdiction outside England and Wales in which you or they are practising. You and those for whom you are responsible [under these rules](#) should not cause, contribute to or facilitate a failure to comply with those legal or regulatory arrangements by any other person or body subject to them.
- 2.4 Where there is a conflict between [compliance with](#) the Overseas Principles [set out in Rule 1](#) and/or the Reporting Requirements [set out in Rule 3](#) on the one hand and any requirements placed upon you or those for whom you are responsible [under these rules](#) by local legal or regulatory obligations on the other hand, the latter shall prevail, with the exception of principle 6, which must be observed at all times.
- 2.5 Nothing in these rules removes or modifies the requirements, under the Legal Services Act 2007, for authorisation to be obtained for the delivery of reserved legal services.
- 2.6 If you are a solicitor and your practice predominantly comprises the provision of legal services in England and Wales then, regardless of where you are established, the SRA will apply the full Handbook to your practice.

Rule 3 - Reporting Requirements

- 3.1 The SRA does not expect or require the same level of detailed monitoring, reporting and notification from those *practising overseas* as it would expect of authorised individuals and bodies in England and Wales. It does, however, require that material and systemic breaches [of the Overseas Principles](#) are monitored and reported to it when they occur [in accordance with these rules](#). Notifications by the compliance officer of a responsible authorised body, or by another person on behalf of an overseas practice will satisfy these requirements without separate notifications from each individual or body who has knowledge of the breach.
- 3.2 The level of reporting the SRA expects is proportionate to the level of regulatory risk posed by an *overseas practice*. You, [as a regulated individual practising overseas or as a responsible authorised body](#), must notify the SRA of any material or systemic breaches of the ~~overseas~~ [Overseas principles-Principles](#) that apply to you or those for whom you are responsible [under these rules](#). In this context, you will be required to:
- 3.2.1 Notify the SRA, ~~(if you are a responsible authorised body)~~ if you, or any of the partners, managers, solicitor employees or other [professional employees](#) in your *overseas practice*, are convicted by any court of a criminal offence or become subject to disciplinary action by another regulator;
- 3.2.2 Notify the SRA immediately if you believe that your firm or your *overseas practice* is in serious financial difficulty;
- 3.2.3 Provide the SRA with documents held by you or your *overseas practice*, to which it is entitled, and any necessary permissions to access information as soon as possible following a notice from the SRA to do so, [providing this would not breach client confidentiality or legal](#)

Comment [AAU11]: It is important to specify on whom these reporting obligations fall.

Comment [AAU12]:
Please clarify if this is intended to be an exclusive list of what will be considered "material" or "systemic" for these purposes. Is it now intended that the same standard of "materiality" for breaches should apply for domestic breaches?

Comment [AAU13]:
Please explain in guidance to whom this will apply: just lawyers or support staff if they have some sort of professional qualification?

[professional privilege \(or similar\)](#)

[obligations which prevail in jurisdictions outside England and Wales in which you are practising.](#)

- 3.2.4 Provide the SRA ([if you are a responsible authorised body](#)) with an annual return which
- a. identifies the contact details of the office(s) from which you are, or your *overseas practice* is, practising, and
 - b. confirms that you have fulfilled your reporting and notification obligations [under these rules](#).

Comment [AAU14]:

See explanation in cover note on the need for this carve-out as previously discussed with the SRA. If not included here, guidance on the meaning of “to which it is entitled” would ne helpful, to clarify this will not override professional privilege (and similar obligations) or client confidentiality.

[NB. Other provisions relating to overseas accounts rules, overseas provisions in relation to professional indemnity insurance, etc., will be consolidated into this section].

Annex 2: New glossary definitions

Overseas practice

'an overseas practice' means the practice of a body (whether acting as principal or as an employee or agent on behalf of an authorised body) which is:

- (a) a branch office of an authorised body;
- (b) a subsidiary company of an authorised body;
- (c) a subsidiary undertaking, within the meaning of section 1162 of the Companies Act 2006, of an authorised body;
- (d) ~~an entity~~ a body whose business, management or ownership ~~are~~ is otherwise in fact or law controlled by an authorised body or recognised sole practitioner; or
- ~~(e) an employee (but not of (a) to (d) above) of an authorised body or recognised sole practitioner; or~~
- ~~(f)~~ (e) a sole principal whose business, management or ownership are otherwise in fact or law controlled by an authorised body or recognised sole practitioner,

~~established outside of England and Wales and providing legal services but which does not carry except to the extent that such body carries out reserved legal activities in England and Wales and provided that such and whose practice does not predominantly comprise the provision of legal services to clients or in relation to assets located in England and Wales.~~

Responsible authorised body

The 'responsible authorised body' in respect of an overseas practice is the authorised body or recognised sole practitioner referred to in whichever of paragraph (a) to (e) of the definition of 'overseas practice' as is applicable to that practice.

Connected practice

'Connected practice' means a body providing legal services, established outside of England and Wales:

- (a) which is not an overseas practice;
 - (b) but is connected to.
 - (i) an authorised body in England and Wales; or
 - (ii) a recognised sole practitioner in England and Wales;
- by virtue of:
- (iii) being a parent undertaking, within the meaning of section 1162 of the Companies Act 2006, of the authorised body;
 - (iv) being jointly managed or owned, or having a partner, member or owner in common, or controlled by or, with the authorised body;
 - (v) participating in a joint enterprise or across its practice generally sharing costs, revenue or profits related to the provision of legal services with the authorised body or recognised sole practitioner; or
 - (vi) common branding,
- except if the body is part of:
- (vii) a verein or similar group structure or joint enterprise involving several bodies providing legal services in respect of which the authorised body in England and Wales connected to it is not regarded as being the body which is the headquarters of that structure or joint enterprise or the headquarters of a significant part of it;

Comment [AAU15]:

This deletion is intended to simplify the definition since, with the addition of the additional text in the lead-in and broad definition of 'body', employees acting on behalf of an authorised body or its controlled businesses will be captured in any event.

Comment [AAU16]:

Some reserved legal activities can be provided overseas – should not they be subject to the overseas practice regime?

Comment [AAU17]:

These changes are needed to avoid excluding from 'overseas practice' a business which carried out a small amount of reserved legal activities.

Comment [AAU18]:

This revised definition takes into account separate discussions with the SRA to simplify and clarify what is intended.

(viii) a joint practice, alliance or association with the authorised body in England and Wales connected to it which is controlled by a body providing legal services established outside of England and Wales; or

(ix) a group of affiliated bodies providing legal services which is not managed or controlled by an authorised body in England and Wales.

A 'body' means a natural person or company, limited liability partnership or partnership or other body corporate or unincorporated association or business entity.

Guidance

A joint enterprise refers to any contractual arrangements between two or more independent bodies which provide legal services, for profit and/or other defined purpose or goal which apply generally between them, not just agreed on a matter by matter basis.

A common brand means the use of a name, term, design, symbol, words or a combination of these that identifies two or more legal practices as being connected as distinct from other legal practices. It would include one firm allowing another within its brand to say it was practising "in association with" a named other firm's brand.

~~'Connected practice' means a body providing legal services, established outside of England and Wales:-~~

~~(a) which is not an overseas practice;~~

~~(b) but is otherwise connected to,~~

~~(i) an authorised body in England and Wales which if it is part of,~~

~~a Verein or similar group structure providing legal services, the authorised body is the headquarters of the Verein or group structure, or of a significant part of that Verein or group structure;~~

~~a joint practice, the authorised body is not a branch office or a subsidiary of the body established outside England and Wales; or~~

~~(ii) a recognised sole practitioner in England and Wales;~~

~~by virtue of:~~

~~(iii) being a parent undertaking, within the meaning of section 1162 of the Companies Act 2006, of the authorised body;~~

~~(iv) being jointly managed or owned, or having a partner, member or owner in common, or controlled by or, with the authorised body;~~

~~(v) sharing costs, revenue or profits related to the provision of legal services with the authorised body or recognised sole practitioner; or~~

~~(vi) common branding.~~

~~A 'body' means a natural person or company, LLP or partnership or other body corporate or unincorporated.
[Add Guidance about types of arrangements that are and are not "connected practices"]~~

Practising overseas

'Practising overseas' means the conduct of a practice:

- (a) of an *overseas practice*;
- (b) in that capacity, of a manager, member or owner of an *overseas practice*; and
- (c) a solicitor established outside England and Wales for the purpose of providing legal services in an overseas jurisdiction.

Guidance

The question of whether an individual is established outside England and Wales will be fact specific, to distinguish a temporary presence overseas of someone normally based in England and Wales, but the following factors may tend to indicate a more permanent establishment:

- a requirement for a work permit;
- the intention to reside outside of England and Wales for a period of 6 months or longer;
- a requirement for authorisation with local regulatory body;
- an overseas practising address nominated in mySRA;
- an employment contract with a legal practice established outside England and Wales

An individual who is temporarily seconded, assigned or transferred to work in an overseas practice, being supervised and managed for the duration of his or her secondment, transfer or assignment, by partners or others in the overseas practice, will normally be treated as practising overseas.

Comment [AAU19]:
Important to provide guidance on how to deal with temporary short-term secondments.

Annex 3: New related domestic outcomes

Draft Outcome 7.11 ~~and 7.12~~ (Management of your business)

O(7.11) You identify, monitor and manage the compliance of all material and systemic risks to your business which may arise as a result of -your overseas practices with the Overseas Rules not complying with the Overseas Rules.

O(7.12) You identify, monitor and manage all material and systemic risks, to your business which may arise from your connected practices.

IB(7.3) You maintain systems and controls for managing the risks posed by any financial inter-dependence which exists with your connected practices.

~~— You identify, monitor and manage risks to your business which may arise from your connected practices.~~

~~you maintain systems and controls for managing the risks posed by any financial inter-dependence which exists with your connected practices.~~

IB(7.4) you if you license your brand to any connected practice, you take reasonable steps to [control the use] of your brand by any ~~such body-connected practice or individual outside of England and Wales which is not an overseas practice~~ in order to protect your reputation.

Comment [AAU20]:

Please add guidance to explain what will be treated as “controlling the use” of a brand unless the “reasonable steps” language is added. Will formal licensing terms of themselves be sufficient or will monitoring and quality control at specific levels be reviewed? Can it really apply to bodies which are themselves licensees not licensors or go further than taking reasonable steps?