

Draft SRA Overseas Rules and Cross-border Practice Rules

Introduction

Part A of these rules sets out provisions for those who have established to provide legal services outside of England and Wales, for example as an overseas representative, or a branch office or subsidiary of an authorised firm. The rules set out in Part A are a modified version of the SRA Principles, together with key standards relating to client money and assets, and information and reporting requirements.

Authorised firms are required to ensure that those overseas practices for which they are responsible, and those who manage and own those overseas practices, meet the principles and standards set out in Part A of these rules. Regulated individuals who are established overseas must also meet the principles and standards set out in Part A of these rules, in place of the SRA Principles and Code of Conduct for individuals. These rules do not apply to those who are providing services on a temporary basis from outside of the jurisdiction; instead, the SRA Principles and Code of Conduct for Individuals will apply to them.

This reflects the fact that detailed regulatory requirements are less appropriate in a situation where the services are being provided from outside of the jurisdiction, and where there will be different legal, regulatory and cultural practices. However, authorised firms will themselves be required to meet the full requirements of our regulatory arrangements and individuals established overseas will need to meet those requirements of our other rules and regulations which apply to them as solicitors or RELs.

The Cross-border Practice Rules set out in Part B of these rules apply to those who are engaged in professional activities in another state that is a member of the Council of the Bars and Law Societies of Europe (CCBE) and those who are in professional contact with a lawyer of another CCBE State whether or not they are physically present in that state.

PART A: Overseas Rules

Application

- 1.1 The Overseas Rules apply to you:
 - (a) as a **regulated individual** who is **practising overseas**, in place of the SRA Principles and the **SRA Code of Conduct for Individuals**; or
 - (b) as a **responsible authorised body** in that you must ensure that your **overseas practice** and the individual **managers**, and **members** and **owners** of your **overseas practice** (who are for the purposes of these rules 'those for whom you are responsible') comply with the Overseas Rules.
- 1.2 In the event of any conflict between the Overseas Rules and any requirements placed on you or on those for whom you are responsible by local law or regulation, then local law or regulation must prevail, with the exception of Overseas Principle 2 which must be observed at all times.

- 1.3 Notwithstanding Rule 1.1 the SRA Principles and **SRA Code of Conduct for Individuals** will apply instead of the Overseas Rules if you are a **solicitor** or a **REL**, and your practice predominantly comprises the provision of legal services to clients within England and Wales, or in relation to assets located in England and Wales.
- 1.4 If you are a **regulated individual** who is **practising overseas** or a **responsible authorised body**, you must ensure that you, or those for whom you are responsible under these rules, comply with any other applicable requirements under the **SRA's regulatory arrangements**.

Overseas Principles

- 2.1 You must:
1. uphold the rule of the law and the proper administration of justice in England and Wales
 2. act in a way that upholds public trust and confidence in the solicitors' profession of England and Wales and in legal services provided by **authorised persons**
 3. act with independence
 4. act with honesty and with integrity
 5. act in a way that encourages equality, diversity and inclusion having regard to the legal, regulatory and cultural context in which you are **practising overseas**
 6. act in the best interests of each **client**
 7. provide a proper standard of service to your **clients**
 8. carry out your role and run your business effectively and in accordance with proper governance and sound financial and risk management principles.

Dealings with client money

- 3.1 In all dealings you have with **client money** you must:
- (a) safeguard **client money** and **assets** entrusted to you;
 - (b) keep **client money**, separate from money which belongs to you;
 - (c) on receipt, pay **client money** promptly into, and hold it in, an **overseas client account**, unless:
 - (i) to do so would conflict with your obligations under local law or regulation or with any obligation relating to any specified office or appointment you hold; or

- (ii) you agree in the individual circumstances an alternative arrangement in writing with your **client** or the third party for whom the money is held;
- (d) only withdraw **client money** from an **overseas client account**:
 - (i) for the purposes for which it is being held;
 - (ii) following receipt of instructions from the **client**, or the third party for whom the money is held; or
 - (iii) on the **SRA's** prior written authorisation or in the circumstances **prescribed** from time to time.
- (e) return **client money** promptly to the **client** or third party for whom money is held as soon as there is no longer any proper reason to retain those funds;
- (f) have effective accounting systems and proper controls over those systems in order to ensure compliance with these rules;
- (g) keep and maintain for at least six years accurate, contemporaneous and chronological **accounting records** in order to provide details of all money received and paid from all **overseas client accounts** and to show a running balance of all **client money** held in those accounts;
- (h) account to **clients** or third parties for a fair sum of interest on any **client money** held by you on their behalf, as required by local law and customs of the jurisdiction in which you are practising and otherwise when it is fair and reasonable to do so in all circumstances. You may by a written agreement come to a different arrangement with the **client** or the third party for whom the money is held as to the payment of interest but you must provide sufficient information to enable them to give informed consent.

Reporting, cooperation and accountability

- 4.1 You must cooperate with the **SRA**, other regulators, ombudsmen and those bodies in England and Wales, with a role overseeing and supervising the delivery of, or investigating in relation to legal services.
- 4.2 You must actively monitor compliance with these rules, and report any serious breach to the **SRA** when this occurs, or as soon as reasonably practicable thereafter.
- 4.3 You must notify the **SRA** immediately if:
 - (a) you or anyone you are responsible for is convicted by any **court** of a criminal offence or become subject to disciplinary action by another regulator;
 - (b) you have grounds to believe that you or anyone you are responsible for under these rules is in serious financial difficulty.
- 4.4 You must respond promptly to the **SRA** and:

- (a) provide full and accurate explanations, information and documentation in response to any requests or requirement;
 - (b) ensure that relevant information which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the **SRA**.
- 4.5 If you are a **responsible authorised body**, you must complete and deliver to the **SRA** an annual return in respect of your **overseas practice**, in the form **prescribed**.
- 4.6 If you are a **responsible authorised body**, the **SRA** may, on reasonable notice, require you to obtain an accountant's report in respect of your **overseas practice**. The report must:
- (a) confirm whether the report should be qualified on the basis of a failure to comply with these rules, such that money belonging to **clients** or third parties is, or has been, or is likely to be placed, at risk; and
 - (b) be signed by a qualified accountant approved by the **SRA**.

Part B: Cross-border practice rules

- 5.1 This part applies to European cross-border practice from any office by:
- (a) **solicitors**;
 - (b) **managers** of **authorised bodies** who are not authorised by an **approved regulator** (other than the **SRA**) under the **LSA**; and
 - (c) **authorised bodies**.
- 5.2 These rules apply to **European cross-border practice** from an office in England and Wales by:
- (a) **REs**; and
 - (b) **RFLs** who are a **manager** or an employee of an **authorised body**.
- 5.3 When engaged in **European cross-border practice** you must ensure that you comply with any applicable provisions of the Council of the Bars and Law Societies of Europe's Code of Conduct for European lawyers.

Supplemental Notes

Made by the SRA Board on [date]

Rules made under sections 31, 32, 33A and 34 of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985 and section 83 of, and paragraph 20 of schedule 11 to the Legal Services Act 2007

Approved by the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007, on [date]

Commencing on [date] and replacing the SRA Overseas Rules 2013