

## Recognised bodies – limited liability partnerships

Professional Ethics

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*This booklet is about how to incorporate all or part of your practice as a **limited liability partnership**. A separate booklet for incorporating a practice as a company is available from Professional Ethics on 0870 606 2577.*

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## Section 1 – Guidance on LLPs

### Glossary

#### AJA

means the Administration of Justice Act 1985.

#### LLP

means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000.

#### REL

means a registered European lawyer, registered with the Solicitors Regulation Authority under regulation 17 of the European Communities (Lawyer's Practice) Regulations 2000.

#### RFL

means a registered foreign lawyer, registered under section 89 of the Courts and Legal Services Act 1990.

#### SIPR

means the Solicitors' Incorporated Practice Rules 2004; any reference to a rule is a reference to the SIPR unless otherwise stated.

#### Establishment Directive

means the Establishment of Lawyers Directive 98/5/EC.

#### Establishment Directive state

means a state in which the Establishment Directive applies – i.e. the states of the European Union and Iceland, Liechtenstein, Norway and Switzerland.

#### European corporate practice

means a lawyers' practice incorporated in or formed under the law of an Establishment Directive state, which does not practise from an office in England and Wales, and which is either:

- (i) a body corporate wholly owned (whether directly or indirectly) and directed by RELs and/or non-registered European lawyers, or by such persons together with solicitors with practising certificates, RFLs and/or barristers of England and Wales; or
- (ii) a lawyers' partnership with separate legal identity whose partners are all RELs and/or non-registered European lawyers, or such persons together with solicitors with practising certificates, RFLs and/or barristers of England and Wales.

#### Non-registered European lawyer

means a member of a legal profession which is covered by the Establishment Directive, who is not a solicitor, REL or RFL, a barrister of England and Wales, Northern Ireland or the Irish Republic, or a Scottish advocate; and who is not based at an office in England and Wales.

## **What is an LLP?**

1. For the purpose of this booklet “LLP” means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000 either in England and Wales or in Scotland. It does not include limited liability partnerships formed in any other country.
2. Despite the name “limited liability partnership”:
  - (a) an LLP is not a partnership;
  - (b) an LLP has members, not partners;
  - (c) partnership law does not apply to an LLP.

An LLP is a corporate body. It is incorporated by registration with the Registrar of Companies under the Limited Liability Partnerships Act 2000. Limited liability partnerships formed outside the UK cannot be incorporated by registration under the Limited Liability Partnerships Act 2000.

3. Although it is a body corporate, an LLP is not a company, and is unlike a company in a number of important ways:
  - (a) it does not have shares or shareholders;
  - (b) it does not have directors – only members;
  - (c) it does not have a memorandum and articles; and
  - (d) any members' agreement is a purely private document.

## **What features does an LLP have?**

### **Limited liability**

#### **Liability of the LLP**

4. The LLP has a legal personality of its own and will be fully liable in contract and tort for the acts and defaults of its members and employees.
5. It is open to the LLP to limit its liability by agreement with a client. However, see paragraph 24 of Schedule 2 to the AJA and principle 12.11 in The Guide to the Professional Conduct of Solicitors (1999), dealing with the limitation of liability to clients.
  - (a) Paragraph 24 of Schedule 2 to the AJA renders void any provision in a contentious business agreement that would relieve the LLP from liability which would otherwise apply. Where there is a contentious business agreement a court might well construe a separate contract relating to liability as part of that agreement.
  - (b) Principle 12.11 prohibits limitation of the LLP's liability below the compulsory minimum level of insurance cover under the indemnity rules (currently £3,000,000 per claim).

### Liability of individuals

6. One of the attractions of practice through an LLP is the protection it may give individuals against the risk of a large claim falling wholly or partly outside the firm's professional indemnity insurance cover.
  - (a) An individual member of the LLP (unlike a partner in a partnership) will not in general be liable in contract or tort, by virtue of being a member of the LLP, for acts or defaults of fellow members or of the LLP's employees.
  - (b) Members of the LLP will not be liable for the debts and obligations of the LLP, subject to certain statutory qualifications, particularly sections 214 and 214A of the Insolvency Act 1986.
7. However, members will not be protected from liability incurred in their own right, either in contract (e.g. where a member guarantees the contractual obligations of the LLP) or in tort (e.g. for negligent misstatement). The extent to which an individual member or employee of the LLP will be liable in tort for his or her own misstatements is in some doubt. There are at least two views:
  - (a) One view is that individuals in an LLP will not incur liability in tort except in exceptional cases. This view relies on the judgement in *Williams v. Natural Life Health Foods Ltd* [1998] 1 WLR 830; [1998] 2 All ER 57. The case related to a limited company and the House of Lords held that the director of the company would only be liable in negligence if:
    - (i) he or she assumed personal responsibility for the advice; and
    - (ii) the claimant relied on this assumption of responsibility, and
    - (iii) the claimant's reliance on this assumption of responsibility was reasonable.
  - (b) The contrary view is that a solicitor or other fee earner would often or always be liable to clients in tort, because the courts would regard legal advice given in the course of a solicitor-client relationship in a different light from representations made (as in the *Williams* case) in the course of arm's length negotiations. This view has been put forward by the Government and the Law Society.

It would therefore be dangerous to assume that LLP status will protect solicitors from the consequences of personal negligence, which could sometimes include negligent supervision of staff.

8. Insurance may be available to protect a liable member's family and dependants in relation to claims against personal assets.

### Tax treatment

9. LLPs are, in general, treated like partnerships for tax purposes. A transition from partnership to LLP, if handled correctly, need not give rise to a tax charge.

## **Which type of business organisation?**

10. Solicitors and RELs who are in joint practice have four basic choices as to the business organisation for their practice – a partnership, an unlimited company, a limited company, or an LLP. If you are considering changing to a corporate structure, you may wish to look at the option of incorporating as a company. A separate booklet on companies is available from Professional Ethics on 0870 606 2577.
11. In deciding whether to incorporate as an LLP, you will need to consider a number of factors, including:
  - (a) tax considerations;
  - (b) the financial disclosure requirements;
  - (c) the requirement to disclose the home addresses of all members of an LLP;
  - (d) the effective governance of the practice;
  - (e) the fact that although you will not be liable for other members' negligence, they will not share liability for your negligence;
  - (f) the reaction of clients and creditors; and
  - (g) the costs of making a change (including any tax and stamp duty costs).
12. In particular, you should note the statutory financial disclosure requirements, which apply in addition to the obligation to deliver an annual accountant's report to the Solicitors Regulation Authority.
  - (a) An LLP's accounts, prepared on a true and fair basis and audited, must be filed with the Registrar of Companies so that they are available for public inspection, unless turnover is less than £1 million and the balance sheet total is less than £1.4 million.
  - (b) In the case of an LLP with an annual profit of over £200,000 these accounts must also disclose the amount of profit and remuneration of the member having the greatest profit share (that member's identity does not have to be disclosed).

Given the sensitive nature of some clients' affairs, the requirement that the home addresses of all members of an LLP are available for inspection may be a problem. In cases where this disclosure is likely to put a member or a person in the member's household at serious risk of violence or intimidation, it may be possible to obtain a confidentiality order under the Limited Liability Partnerships (Particulars of Usual Residential Address) (Confidentiality Orders) Regulations 2002. A leaflet and form are available from The Administrator, PO Box 4082, Cardiff CF14 3WE. However, by the time it becomes clear that you need an order, it may be too late – and there appears to be no mechanism to remove a home address that is already on the public register.

## How do I incorporate an LLP?

### Companies House

13. To incorporate an LLP you will need to send an Incorporation Document Form LLP2, together with the registration fee, to the Registrar of Companies. The form sets out:
  - (a) the LLP's name (see "naming the LLP" below);
  - (b) where the registered office of the LLP is to be situated (you must state either that it is "in England and Wales", or "in Wales" or "in Scotland" – see section 2(2) of the Limited Liability Partnerships Act 2000; also see "registered office" below);
  - (c) the address of the registered office (it must be in England, Wales or Scotland – see "registered office" below);
  - (d) the name, full address and date of birth of each member; and
  - (e) which of the members are to be designated members, or that all members are designated members (designated members have a continuing responsibility for filing information at Companies House).

All members must sign and date Form LLP2. A practice which is to have a large number of members may wish to confirm that Companies House will permit a duly appointed attorney to sign on behalf of the members. Form LLP2 also includes a statement of compliance. This must be signed by one of the proposed members or by a solicitor, indicating the capacity in which he or she is signing.

### The need to be a recognised body

14. A recognised body is an LLP (or company) which has been recognised under section 9 of the AJA and under the SIPR as being a suitable body to provide "professional services such as are provided by individuals practising as solicitors or lawyers of other jurisdictions".
15. The AJA and the SIPR allow solicitors and RELs to provide services to the public in England and Wales through an LLP – but the LLP must be a recognised body, because:
  - (a) by law, an LLP can only provide the services of solicitors to the public in England and Wales if it is a "recognised body"; and
  - (b) under rule 7(7) of the Solicitors' Practice Rules 1990, solicitors and/or RELs may only practise in England and Wales through an LLP if the LLP is a "recognised body".
17. The rules and principles governing solicitors' conduct apply to a recognised body as well as to the solicitors, RELs and RFLs who participate in it.
18. Sections 9 and 10 and Schedule 2 of the AJA contain the legislative framework under which a recognised body is regulated by the Solicitors Regulation Authority (the independent regulatory body of the Law Society of England and Wales). The Solicitors' Incorporated Practices Order 1991 and the Solicitors'

Incorporated Practices (Amendments) Order 2001 adapt legislation which refers to solicitors so as to cover recognised bodies. The SIPR govern the structure of a recognised body and applications for recognition, and set out the requirements specific to recognised bodies, including LLPs. They are printed in full in Section II of this booklet.

## Naming the LLP

### Statutory requirements

19. The name of an LLP must comply with Part I of the Schedule to the Limited Liability Partnerships Act 2000. In particular,
  - (a) the name of an LLP whose incorporation document prescribes a registered office "in England and Wales" or "in Scotland" must end with "LLP", "llp" or "limited liability partnership";
  - (b) the name of an LLP whose incorporation document prescribes a registered office "in Wales" must end either with one of the English language forms as above, or one of the Welsh language equivalents "*PAC*", "*pac*" or "*partneriaeth atebolrwydd cyfyngedig*".

Note that if the LLP's incorporation document prescribes a registered office "in England and Wales" it must use one of the English language forms, even if the registered office is actually in Wales.

20. Section 348 of the Companies Act 1985 (as applied by the Limited Liability Partnership Regulations 2001) requires an LLP to paint or affix its name on the outside of every office or place in which its business is carried on, in a conspicuous position and in letters reasonably legible.
21. If the LLP uses a trading name, it must also comply with the Business Names Act 1985 (as applied by the Limited Liability Partnership Regulations 2001), under which the full corporate name of the LLP, and a list of the members if there are 20 or fewer members, must be included on the notepaper and invoices.

### Registration of name

22. The name of the LLP must be registrable by the Registrar of Companies. As with a company, the Registrar will not register two LLPs with identical names. It is possible to reserve a name for an LLP (say, "Smith & Brown LLP") by registering a shelf company under that name ("Smith & Brown Ltd"). Filing the LLP's incorporation document will then have to be synchronised with a change in the name of the shelf company. To utilise this procedure you will need to contact the LLP Team at Companies House (Cardiff telephone 029 2038 0744) a few days before filing the incorporation document.

### Rules

23. The name of the LLP must comply with section 1(c) of the Solicitors' Publicity Code 2001, which states that a private practice must not use a misleading name or description. For example, it would be misleading for the LLP's name to include the word "solicitor(s)" if its membership consisted entirely of RELs and other foreign lawyers.
24. Under rule 3(3)(c) the Solicitors Regulation Authority must be satisfied that an LLP's name complies with section 1(c) of the Solicitors' Publicity Code 2001 before it can grant an application for recognition.

25. Under rule 6(2)(a) the LLP must notify the Solicitors Regulation Authority immediately if it changes its name.

### **Notepaper, etc.**

26. People dealing with an LLP need to be aware of its limited liability status and its name, and to be able to find out easily who are its members. You will need to change notepaper, bills, wall plaques, etc., to comply with the following requirements.

### **Companies Act 1985**

27. Sections 349 and 351 of the Companies Act 1985, as amended by the Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (SI 2006 no 3429) are applied to an LLP by the Limited Liability Partnership Regulations 2001.
- (a) Under section 349, the LLP must put its full corporate name on the LLP's website and on the following documents, including any electronic versions
- (i) business letters;
  - (ii) notices and other official publications;
  - (iii) bills of exchange, endorsements, cheques and orders for money or goods; and
  - (iv) the LLP's bills, invoices, receipts and credit notes.
- (b) Under section 351, the LLP must put the following particulars on its business letters and order forms, including any electronic version of such documents:
- (i) the LLP's registered number
  - (ii) the address of the LLP's registered office,
  - (iii) the fact that it is a limited liability partnership (or "*partneriaeth atebolrwydd cyfyngedig*") unless this is spelled out in full in the LLP's name; and
  - (iv) the LLP's place of registration, e.g:
    - "registered in England and Wales", "registered in England" or "registered in London" if the LLP's registered office is in England; or
    - "registered in England and Wales", "registered in Wales", "registered in Cardiff" or a Welsh equivalent if the LLP's registered office is in Wales; or
    - "registered in Scotland" or "registered in Edinburgh" if the LLP's registered office is in Scotland;

### **Business Names Act 1985**

28. If the LLP is using a trading name other than the LLP's full corporate name, section 4 of the Business Names Act 1985 (as applied by the Limited Liability Partnership Regulations 2001) requires the LLP to put the following particulars on its business letters, orders for goods and services, invoices, receipts and demands for payment:
- (a) the LLP's full corporate name;

- (b) the LLP's principal place of business; and
- (c) a list of the LLP's members (or, where there are more than 20 members, a statement that the list is open to inspection at that place).

### **Solicitors' Publicity Code**

29. Under section 2 of the Solicitors' Publicity Code 2001 the LLP's notepaper must include:
- (a) the words "regulated by the Law Society"; and
  - (b) either a list of the members (identifying them as "members") or a statement that the list is open to inspection at the office. If there are any non-solicitor members, the list (whether on the notepaper or at the office) must identify the professional qualifications of all the members in accordance with the detail in the Code.

### **Membership**

30. Before it can be incorporated and recognised as a recognised body an LLP will need to comply with both statutory requirements and rules as to its membership.

### **Statutory requirements**

31. the statutory requirements are as follows.
- (a) Section 2(1)(a) of the Limited Liability Partnerships Act 2000 requires that there must be at least two members to incorporate an LLP. The members could be, for example, an individual solicitor and a recognised body. The Solicitors Regulation Authority will not recognise an LLP with only one member.
  - (b) Section 24 of the Companies Act 1985, as applied by the Limited Liability Partnerships Regulations 2001, provides that if an LLP is left with only one member for more than six months, limitation of liability will be lost.
  - (c) Section 9 of the Administration of Justice Act 1985 has the effect of restricting the ownership and direction of a recognised body to solicitors and/or RELs, with or without other lawyers, and this is given full effect in the SIPR.
  - (d) Under section 9(1)(a) of the Limited Liability Partnerships Act 2000, Companies House must be informed within 14 days of a member joining the LLP or ceasing to be a member. (Note that rule 6(2)(c) requires the LLP to notify the Solicitors Regulation Authority immediately of any such change.)

### **Requirements in rules**

32. Under the SIPR there must be at least one solicitor or REL involved in the ownership and direction of a recognised body. A non-lawyer cannot be a member of an LLP which is a recognised body, but a member can be either an individual lawyer or a body corporate owned by lawyers.
- (a) Rule 13(1) provides that the only persons who may be members of an LLP are:
    - (i) solicitors with practising certificates;

- (ii) RELs;
  - (iii) RFLs;
  - (iv) non-registered European lawyers, as defined by rule 15(h);
  - (v) recognised bodies;
  - (vi) European corporate practices, as defined by rule 15(c).
- (b) Rule 13(3) requires that at least one member must be:
- (i) a solicitor; or
  - (ii) an REL; or
  - (iii) a company which is a recognised body with at least one director who is a solicitor or an REL; or
  - (iv) another LLP which is a recognised body with at least one member who is a solicitor or an REL.
33. A recognised body is expected to anticipate events such as a member leaving or losing the right to practise, and to take steps to avoid a breach of rule 13(3), but 14 days' grace is allowed if, following a death, the LLP would otherwise be in breach of rule 13(3).
34. Rule 13(4) requires that a new or additional member must be in place within 14 days if the last or only member who is a solicitor or an REL
- (a) is committed to prison;
  - (b) abandons the practice;
  - (c) is incapable of attending the practice because of illness, accident or age;
  - (d) becomes a patient under the Mental Health Act 1983; or
  - (e) has a condition placed on his or her practising certificate (or registration) which prohibits that person continuing in his or her role in relation to the LLP.

If rule 13(3) or (4) is breached, recognition can be revoked, so it is important to ensure that the members' agreement allows for swift action to be taken to bring a new member into the LLP in such situations.

35. Rule 2(3) provides that an LLP which is a recognised body may do reserved conveyancing or probate work only if it has at least one member who is
- (a) a solicitor,
  - (b) an REL qualified to provide that service under regulation 12 or 13 of the European Communities (Lawyer's Practice) Regulations 2000;
  - (c) a recognised body which is a company with such a person as a director; or
  - (d) a recognised body which is an LLP with such a person as a member.
36. Rule 13 of the Solicitors' Practice Rules 1990 provides that an LLP which is a recognised body must have at least one member who is "qualified to supervise" under the rule, or which is a recognised body with a director (if it is a company) or a member (if it is an LLP) who is "qualified to supervise" under the rule. For fuller information on who may be "qualified to supervise", see practice rule 13.

37. Rule 6(2)(c) requires an LLP to notify the Solicitors Regulation Authority immediately when a member joins or ceases to be a member. (Companies House must also be informed within 14 days of the change, under section 9(1)(a) of the Limited Liability Partnerships Act 2000.)

### **Registered office**

38. The Companies House Incorporation Form LLP2 requires you to state whether the registered office of an LLP is to be situated “in England and Wales”, “in Wales” or “in Scotland”.
39. Under rule 14(2), an LLP which is a recognised body must, if it is registered in England and Wales, have its registered office at a practising address in England or in Wales. Under rule 14(1), if the LLP is registered in Scotland it must have at least one practising address in England and Wales.
40. Under rule 6(2)(b) the LLP must notify the Solicitors Regulation Authority immediately of any change to its registered office or other practising addresses.

### **Compensation Fund contributions**

41. An LLP is required to pay a Compensation Fund contribution – currently £400 – when applying for recognition. This contribution covers three years, at the end of which the LLP must apply for renewal of recognition and pay a further contribution. In addition:
  - (a) solicitor members of an LLP must pay an annual Compensation Fund contribution when applying for their practising certificates. If the LLP has held or received client money, each solicitor member will have to pay the full rate of contribution rather than the reduced rate;
  - (b) REL members of an LLP must pay an annual contribution on the same basis as solicitor members; and
  - (c) if the LLP has held or received client money, RFL members must pay an annual contribution, the level of which will depend on whether the RFL is based in England and Wales or overseas.

### **Compulsory professional indemnity insurance**

#### **Qualifying insurance**

42. Before you apply to the Solicitors Regulation Authority for recognition of your LLP, you must arrange qualifying insurance for the LLP under rule 4 of the Solicitors’ Indemnity Insurance Rules (unless the LLP has one or more REL “principals” and you have obtained total or partial exemption under Appendix 3 of those rules). The compulsory cover includes not only the LLP itself, but also its members, employees and consultants.
  - (a) For an LLP, the minimum level of qualifying insurance cover required under the Solicitors’ Indemnity Insurance Rules is £3,000,000 for any one claim and the cover must be in accordance with the minimum terms and conditions set out in the rules. (Note that compulsory top-up cover for a limited liability company is no longer required because the level of qualifying insurance is set higher.)

- (b) An LLP cannot commence practice until it is a recognised body, and you will need to supply written evidence of the LLP's policy of qualifying insurance (or exemption) when applying for recognition.
- (c) If your partnership converts to an LLP and the whole of the practice is transferred to the LLP, the LLP will be a "successor practice" for the purpose of the rules, so that the LLP's qualifying insurance will cover claims arising from the previous practice of the partnership.
- (d) If your partnership is continuing in practice alongside your new LLP, the LLP will not be a "successor practice". You will have to continue the partnership's qualifying insurance as well as arranging qualifying insurance for the LLP.

You will also need to ensure that any voluntary top-up cover is transferred to the LLP (or, if you have an existing partnership which is continuing in practice, that both the partnership and the LLP have appropriate cover).

### **Overseas offices**

- 43. Offices outside England and Wales are subject to the indemnity requirements in rule 17 of the Solicitors' Overseas Practice Rules 1990, and not to the Solicitors' Indemnity Insurance Rules, and cover for overseas offices must be specifically negotiated with your insurers.

### **Solicitors' Indemnity Fund**

- 44. Indemnity cover was previously provided by the Solicitors' Indemnity Fund. Under the Solicitors' Indemnity Rules, you must inform Solicitors Indemnity Fund Limited as soon as the LLP commences practice. Similarly you must inform Solicitors Indemnity Fund Limited if your previous partnership ceases to practise as such.

### **Application for recognition**

#### **The basic procedure**

- 45. To apply to the Solicitors Regulation Authority for recognition as a recognised body, you should use Form LLP1 (available from Information Services on 0870 606 2555), which must be signed by one of the LLP's members on behalf of the LLP. Details required by the form include:
  - (a) evidence as to the LLP's qualifying insurance under the Solicitors' Indemnity Insurance Rules; and
  - (b) a declaration that the LLP complies with rule 13 of the Solicitors' Incorporated Practice Rules 2004 (as to its membership).
- 46. You must send, with the application form:
  - (a) a copy of the LLP's certificate of incorporation;
  - (b) the LLP's application fee (which covers a 3-year period); and
  - (c) the LLP's Compensation Fund contribution (which covers a 3-year period).
- 47. You should plan for the application taking up to 30 days to process before recognition is granted.

### **Fees and contributions**

48. The fee for recognition is currently £500. The LLP's Compensation Fund contribution is currently £400.

### **Discretion to refuse recognition**

49. The Solicitors Regulation Authority has discretion to refuse an application for recognition, and there is a right of appeal to the Master of the Rolls against refusal.

### **Duration of recognition**

50. Recognition lasts in the first instance for three years, and before the end of the three years you will need to apply for renewal of recognition, or confirm that you do not intend to apply for renewal.
51. Recognition automatically expires if the LLP ceases to exist or becomes insolvent.

The Solicitors Regulation Authority may revoke recognition if

- (a) no renewal application is made after three years; or
- (b) it is satisfied that recognition was granted as a result of mistake or fraud; or
- (c) the circumstances are such that, if the recognised body applied now for initial recognition, the application could not be granted.

## **Business issues on converting a partnership to an LLP**

### **Third party consents, etc.**

#### **Contracts, etc.**

52. Before converting a partnership to an LLP, it is important to consult with certain third parties, e.g. professional indemnity insurers. It is also important to identify, at an early stage in planning the conversion, any third party consents which will be required.
53. You will need to examine all your practice's business documentation, including contracts with employees and suppliers, leases, bank facilities, income tax, national insurance and VAT arrangements, pension schemes, etc., in order to see what changes will need to be made or negotiated.

#### **Appointments as executor or trustee**

54. Members of LLPs have encountered difficulties in obtaining grants of probate where a will was prepared at a time when their practice was carried on by a partnership and the testator appointed, say, "the partners for the time being" of Smith & Brown or any firm succeeding to the business of Smith & Brown". Probate judges were taking the view that although the LLP had succeeded to the business of the partnership, its members were not "partners", and the LLP was not a "firm". This difficulty should now have been removed as a result of the recent decision of Mr Justice Lightman in the case of *Edith Rogers, deceased* (2006 EWHC 753 (Ch)).

## Informing clients and third parties

### Clients

55. Where a partnership converts to an LLP, principle 3.11 in *The Guide to the Professional Conduct of Solicitors (1999)* requires that you notify clients for whom the firm is currently acting, or for whom money or documents are being held, either before the change or soon afterwards. You do not, for the purposes of principle 3.11, need to obtain clients' consent prior to incorporation, although you may wish to consult certain "key" clients for their views.
56. Paragraph 7(a)(ii) of the Solicitors' Costs Information and Client Care Code 1999 requires that the client of an LLP must be given:
  - (a) the name and status of the person dealing with the client's matter; and
  - (b) the name of the member of the LLP who is responsible for the overall supervision of the matter.

### Third parties

57. You will need to inform various legal authorities of the change from a partnership to an LLP. Steps to be taken are likely to include
  - (a) serving a notice of change in ongoing litigation;
  - (b) going on the court record in the name of the LLP in future litigation;
  - (c) informing the Legal Services Commission;
  - (d) informing the Land Registry;
  - (e) informing the Information Commissioner in order to register under the Data Protection Act 1998.

If your practice is on the panel of a mortgage lender or insurance company, you will need to advise them of the transfer of your practice to the LLP.

### Client accounts

58. It is important to remember that, under rule 14(3) of the Solicitors' Accounts Rules 1998, an LLP's client accounts have to be in the name of the LLP.
  - (a) If you are converting from a partnership to an LLP and the whole of the practice is being transferred to the LLP, you will need to transfer all money from the partnership client accounts into accounts in the name of the LLP or agree with your bankers to re-name the accounts.
  - (b) If part of the practice of your partnership is to continue, however, you will need to maintain two sets of client accounts. The partnership and the LLP cannot operate shared client accounts.

### Accountant's reports

59. If an LLP holds or receives client money or controlled trust money, it will in due course have to deliver an accountant's report to the Solicitors Regulation Authority. This obligation extends to the members of the LLP – in other words, the names of all the members as well as the name of the LLP must appear on the accountant's report. In addition, the names of any assistant or consultant

solicitor (or REL) who has held or received controlled trust money or operated a client's own account as signatory will also need to appear.

60. If the LLP is late with its accountant's report, its solicitor members will each be subject to section 12(1)(ee) and 12A(1) of the Solicitors Act 1974. As well as the inconvenience of having to give notice under section 12(4) of the Act they will each be liable for an additional practising certificate fee (currently £200). REL members of the LLP will also each be liable for an addition (currently £200) to their annual registration fee in respect of the late accountant's report.

### **Bills**

61. Section 349 of the Companies Act 1985 as amended by the Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (SI 2006 no 3429) are applied to an LLP by the Limited Liability Partnership Regulations 2001. Under section 349, the bills of an LLP must include the LLP's corporate name.
62. For an LLP to be able to sue on its bills, the bill, or a letter accompanying it, must be signed on behalf of the LLP by a member or employee authorised to do so. One way of doing this might be to sign in the form "John Smith, for and on behalf of Smith & Brown LLP". (See section 69(2)(a) of the Solicitors Act 1974 as applied by the Administration of Justice Act 1985 and the Limited Liability Partnerships Regulations 2001.)
63. Note that, if the LLP is using a trading name other than its full corporate name, the bill must include the corporate name, an address for service and a list of the members (or, if there are more than 20 members, a statement that the list is open to inspection at the LLP's principal place of business – see Notepaper, etc., above).

### **Precedents**

64. All the practice's precedents should be reviewed to ensure that appropriate references to the practice are changed to refer to the LLP. This may be particularly relevant to those precedents dealing with the appointment of members of the practice as executors or trustees (see Appointments as executor or trustee, above).

### **Members' agreement**

65. The terms of a current partnership agreement would usually form the basis of the LLP's members' agreement but it will need to be carefully reviewed and amended to take account of the incorporation, including financial arrangements for present and former partners.

## Miscellaneous

### Execution of documents

66. Under section 36 of the Companies Act 1985 (as applied by the Limited Liability Partnerships Regulations 2001), a contract may be made
- (a) by the LLP, by writing under its common seal, or
  - (b) on behalf of the LLP, by any person acting under its authority, express or implied.
67. Under section 36A of the Act, a document may be executed by the LLP
- (a) by affixing its common seal, or
  - (b) by way of a document signed by two members of the LLP and expressed to be executed by the LLP;

and if the document makes it clear on its face that it is intended to be a deed, it will have effect, upon delivery, as a deed.

### Financial services

68. An LLP which is a recognised body may provide financial services in the course of legal practice without the need for authorisation from the Financial Services Authority (FSA), provided the recognised body stays within the limitations laid down in the Solicitors' Financial Services (Scope) Rules 2001. The LLP must comply with the Solicitors' Financial Services (Conduct of Business) Rules 2001.
69. An LLP which is a recognised body cannot provide mainstream financial services, or make or approve "financial promotions", without first obtaining authorisation from the FSA. (Mainstream financial services may also be provided through a "separate business" authorised by the FSA – see rule 5 of the Solicitors' Practice Rules 1990 and the Solicitors' Separate Business Code 1994.)

### Use of the description "partner" in the context of an LLP

70. In the context of an LLP it is permitted, if desired, to refer to members of the LLP as "partners", provided the firm complies with the provisions of:
- (a) the Companies Act 1985, the Business Names Act 1985 (as amended by the Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (SI 2006 no 3429); and applied to the LLP by the Limited Liability Partnership Regulations 2001), and
  - (b) the Solicitors' Publicity Code 2001 as regards the items that must appear on the firm's notepaper, including use of the word "members" in heading up or referring to the list of members.
71. Some firms may also wish to designate some non-members of the LLP as "partners". This is potentially misleading, so if your firm wishes to go down this path care must be taken to ensure that:
- (a) no person is designated as a "partner" unless he or she:

- (i) is a member of the LLP, or a consultant or employee of the LLP with equivalent standing to a member; and
  - (ii) would be entitled under the solicitors' rules to become a member of the LLP;
- (b) appropriate explanatory wording (see below) appears on:
- (i) the firm's notepaper, faxes, e-mails, brochures and websites; and
  - (ii) any bill on which the word "partner" appears;
- (c) care is taken to distinguish between a member of the LLP and a person who is not a member but who is referred to as a "partner":
- (i) in any agreement, terms of business letter or client care letter in which the word "partner" appears;
  - (ii) when addressing any client or third party who is not in receipt of a letter, fax or e-mail; and
  - (iii) in any formal context such as an affidavit, a statement to a court, or a communication with the Legal Services Commission.
72. Appropriate explanatory wording for a firm's notepaper, faxes, e-mails, brochures, websites or bills would be to the effect that:
- "We use the word 'partner' to refer to a member of the LLP, or an employee or consultant with equivalent standing and qualifications."
73. If a firm wishes to refer to a list of "partners" as well as the statutory list of members, it is suggested that this might be done by way of some such wording as:
- "A list of the members of the LLP is displayed at the above address, together with a list of those non-members who are designated as partners."
74. The above guidance deals only with what is or is not professionally proper. It does not deal with any legal consequences for individuals or the firm if members or non-members are held out as "partners".

## **What are my next steps and where can I find further information?**

75. If you are contemplating incorporating your practice as an LLP:
- (a) It is essential to consult your professional and business advisers.
  - (b) In particular it is important to seek specialist advice as to the tax and accounting consequences – if you are converting from a partnership to an LLP there are tax pitfalls if the mechanics of the transfer are not carried out in the right way.
  - (c) If you are converting from a partnership to an LLP you should not underestimate the amount of planning which will be needed, or how long the preparatory period will need to be.

76. You would be wise to contact the LLP Team at Companies House in Cardiff (telephone 029 2038 0744) at an early stage to discuss the arrangements for registration, and especially the question of securing your choice of name. Information about LLPs is on the Companies House website:  
<http://www.companieshouse.gov.uk/>.
77. You should, at an early stage, contact the Solicitors Regulation Authority. Staff there will do their best to advise and assist you in preparing your application, and will process it as quickly as they can.
  - (a) For an application form you should contact Information Services on 0870 606 2555.
  - (b) For advice on the rules you should contact the Professional Ethics Guidance team on 0870 606 2577.
  - (c) Your application will be dealt with by the Registration Department, The Solicitors Regulation Authority, Registration Department, Ipsley Court, Berrington Close, Redditch, Worcestershire B98 0TD fax: 020 7320 5862, DX: 19114 – REDDITCH.
78. The primary legislation governing LLPs is the Limited Liability Partnerships Act 2000, available on:  
<http://www.legislation.hmso.gov.uk/acts/acts2000/00012--a.htm>.
79. Secondary legislation includes:
  - (a) the Limited Liability Partnerships Regulations 2001 (S.I. 2001 No. 1090), available on: <http://www.hmso.gov.uk/si/si2001/20011090.htm>;
  - (b) the European Communities (Lawyer's Practice) (Amendment) Regulations 2001 (S.I. 2001 No. 644), available on: <http://www.hmso.gov.uk/si/si2001/20010644.htm>;
  - (c) the Solicitors' Incorporated Practices (Amendment) Order 2001 (S.I. 2001 No. 645), available on: <http://www.hmso.gov.uk/si/si2001/20010645.htm>;
  - (d) the Limited Liability Partnerships (No 2) Regulations 2002 (S.I. 2002 No. 913), available on: <http://www.legislation.hmso.gov.uk/si/si2002/20020913.htm>.

## Section 2 – Solicitors' Incorporated Practice Rules 2004

Last amended 12 January 2007

*Rules dated 13 February 2004 made with the concurrence of the Master of the Rolls under section 9 of the Administration of Justice Act 1985 and Part II of the Solicitors Act 1974, regulating the practice of solicitors and/or registered European lawyers with or without registered foreign lawyers and/or "non-registered European lawyers", in England and Wales, or in England and Wales and elsewhere, through bodies corporate.*

### Part I – Formalities and compliance duties relating to recognised bodies

#### 1. Application of the rules

These rules apply to recognised bodies practising in England and Wales, or in England and Wales and elsewhere; to solicitors, recognised bodies, registered European lawyers and registered foreign lawyers who are directors, members or shareowners of a recognised body; to solicitors and registered European lawyers employed to work in the practice of a recognised body; and to bodies corporate wishing to obtain recognition.

#### 2. Compliance duties and scope of practice

##### *Compliance duties*

- (1) (a) A recognised body must
  - (i) comply with the principles and requirements of solicitors' professional conduct;
  - (ii) comply with these rules; and
  - (iii) so far as possible ensure that its directors, members and shareowners comply with rules 7 to 13 of these rules.
- (b) A director of a recognised body which is a company must so far as possible ensure that the body complies with these rules.
- (c) A member of a recognised body which is a limited liability partnership must take all reasonable steps to ensure that the body complies with these rules.
- (d) A director, member or shareowner of a recognised body and a person employed to work in the practice of a recognised body must not cause, instigate or connive at any breach of these rules.

*Scope of practice*

- (2) The business of a recognised body may consist only of professional services of the sort provided by individuals practising as solicitors and lawyers of other jurisdictions.

*Conveyancing and probate*

- (3) A recognised body must not undertake any work which includes a conveyancing or probate service reserved to qualified persons by the Solicitors Act 1974, unless:
- (a) if the recognised body is a company, at least one director is a solicitor with a practising certificate or a registered European lawyer qualified to provide that service under regulation 12 or 13 of the European Communities (Lawyer's Practice) Regulations 2000; and if it is a *societas Europaea* with a two-tier system at least one member of both the management organ and the supervisory organ is such a person; or
  - (b) if the recognised body is a limited liability partnership, at least one member is a solicitor with a practising certificate, a registered European lawyer qualified to provide that service under regulation 12 or 13 of the European Communities (Lawyer's Practice) Regulations 2000, or a recognised body qualified to undertake the work under this paragraph.

### **3. Applications for recognition and renewal of recognition**

*Duration of recognition*

- (1) Recognition lasts for three years, and the renewal date is the last day of any period of recognition:
- (a) The renewal date following initial recognition is the last day of the last calendar month of the three year period.
  - (b) Renewal of recognition starts from the day after the renewal date and lasts for three years.
  - (c) Even if the renewal date has passed, recognition will continue in force until it is revoked.

*Application form and fee*

- (2) (a) Applications for initial recognition and for renewal of recognition under these rules must be made on the prescribed form, and accompanied by the prescribed fee and such information and documentation as the Law Society may require.
- (b) If a recognised body wishes to continue in practice, it must send its application for renewal of recognition so as to be received by the Law Society on or before the renewal date.
- (c) If a recognised body does not wish to renew its recognition, it must notify the Law Society on or before the renewal date that it does not seek renewal of recognition.

*Discretion to grant or refuse applications*

- (3) The Society may grant the application if satisfied that the body corporate
- (a) is registered under the Companies Act 1985 or the Limited Liability Partnerships Act 2000 either in England and Wales or in Scotland, or registered outside England, Wales and Scotland as a *societas Europaea*;

- (b) complies with Part II of these rules in relation to its internal structure, direction and ownership;
  - (c) has a name that complies with section 1(c) of the Solicitors' Publicity Code; and
  - (d) complies with or is exempt from the Solicitors' Indemnity Insurance Rules as to qualifying insurance and top-up insurance.
- (4) Without prejudice to its general discretion the Society may refuse an application if:
- (a) the Society is not satisfied that a director, member or shareowner is a suitable person to be engaged in the direction or ownership of a recognised body; or
  - (b) for any other reason the Society thinks it proper in the public interest not to recognise the body.

#### *Appeals*

- (5) If the Society refuses an application for initial recognition or renewal of recognition, the applicant is entitled to receive notice in writing of the grounds for refusal, and may appeal to the Master of the Rolls under Schedule 2 paragraph 2 of the Administration of Justice Act 1985.
- (6) If the Society neither grants nor refuses recognition within three months of the date an application was received, the applicant may appeal to the Master of the Rolls under Schedule 2 paragraph 2 of the Administration of Justice Act 1985 as if the application had been refused.

### **4. The list of recognised bodies, and certificates of recognition**

#### *The list of recognised bodies*

- (1) The Law Society is responsible for keeping a list of recognised bodies, which may be kept in electronic form and must contain, for each recognised body:
  - (a) its name;
  - (b) its registered office;
  - (c) its practising addresses; and
  - (d) that it is a company limited by shares, a company limited by guarantee, an unlimited company, an overseas company registered in England and Wales, an overseas company registered in Scotland, a *societas Europaea*, or a limited liability partnership, as appropriate.
- (2) The Society must make a copy of any entry in the list available for inspection on request by any member of the public.

#### *Certificates of recognition*

- (3) Once a body is granted initial recognition or its recognition is renewed, it is entitled to receive a certificate of recognition, stating:
  - (a) that the body is recognised by the Council of the Law Society as suitable to provide legal services,
  - (b) the date from which recognition is granted or renewed and the next renewal date,

- (c) the body's registered office (or, in the case of a company or limited liability partnership incorporated in Scotland, an overseas company, or a *societas Europaea* registered outside England and Wales, its principal practising address in England and Wales), and
- (d) the information referred to in (1)(a) and (d) above.

## 5. Revocation and automatic expiry of recognition

### *Revocation of recognition*

- (1) Recognition may be revoked:
  - (a) if the renewal date stated on the last certificate of recognition has passed and the Law Society has not received an application for renewal of recognition and all required fees, information and documentation; or
  - (b) at any time, if the Society is satisfied that recognition was granted as a result of error or fraud; or
  - (c) at any time, if the Society is satisfied that the body would not be eligible to be recognised if it were at that time applying for initial recognition.

### *Automatic expiry of recognition*

- (2) Recognition will automatically expire if:
  - (a) a recognised body ceases to be registered, either:
    - (i) under Part I of the Companies Act 1985 as an unlimited company, a company limited by shares or a company limited by guarantee; or
    - (ii) under section 690A or 691 of the Companies Act 1985 as an overseas company incorporated in an Establishment Directive state; or
    - (iii) under the Limited Liability Partnerships Act 2000 as a limited liability partnership; or
    - (iv) as a *societas Europaea*; or
  - (b) a winding-up order or administration order is granted under Part II of the Insolvency Act 1986, or a resolution is passed for voluntary winding-up, or an administrative receiver is appointed.

## 6. Notification duties

- (1) A recognised body must supply any information and documentation relating to the ownership, structure, directors, members or shareowners of the recognised body as and when requested to do so by the Law Society.
- (2) A recognised body must notify the Society immediately of any change to:
  - (a) its name;
  - (b) its registered office and/or any of its practising addresses; or
  - (c) its directors, members and/or shareowners.
- (3) A recognised body must notify the Society immediately if it is an unlimited company and it is re-registered as limited under the Companies Act 1985.
- (4) If a body's recognition expires automatically under rule 5(2), the directors (if it is a company) or the members (if it is a limited liability partnership) must notify the Society immediately.

- (5) If a recognised body which is an overseas company, or a *societas Europaea* registered outside England, Wales and Scotland, is subject to an event in its country of incorporation analogous to a winding-up order or administration order under Part II of the Insolvency Act 1986, a resolution for voluntary winding-up, or the appointment of an administrative receiver, the directors must notify the Society immediately.

## Part II – Internal structure of a recognised body

### 7. Directors of a company

#### *Persons who may be directors*

- (1) A recognised body which is a company must ensure that at all times
- (a) all the directors are solicitors with practising certificates, registered European lawyers, registered foreign lawyers and/or non-registered European lawyers; and
  - (b) at least one director is a solicitor with a practising certificate or a registered European lawyer (and in the case of a *societas Europaea* with a two-tier system at least one member of both the management organ and the supervisory organ is such a person).

#### *Death of director*

- (2) If a director dies and this would put the company in breach of paragraph (1)(b) of this rule, the company must ensure that a director who is a solicitor with a practising certificate or a registered European lawyer is appointed within 14 days. If this is done the company will be deemed to have remained in compliance with paragraph (1) of this rule, and to that extent will not be liable to have its recognition revoked under rule 5(1)(c).

#### *Director incapacitated, abandoning practice, etc.*

- (3) If the company's only, or last remaining, director who is a solicitor with a practising certificate or registered European lawyer:
- (a) is committed to prison in civil or criminal proceedings;
  - (b) becomes and continues to be unable to attend to the practice of the company because of incapacity caused by illness, accident or age;
  - (c) becomes and continues to be a mental patient as defined by section 94 of the Mental Health Act 1983 or is made the subject of powers exercised under section 98 of that Act and continues to be subject to those powers;
  - (d) abandons the practice of the company; or
  - (e) is made subject to a condition on his or her practising certificate or registration which would be breached by the director continuing as director of the body;

the company must ensure that an additional or replacement director who is a solicitor with a practising certificate or a registered European lawyer is appointed within 14 days.

- (4) If the company is a *societas Europaea* with a two-tier system, paragraph (3) above applies to the only, or last remaining, member of the management organ and the only, or last remaining, member of the supervisory organ who is a solicitor with a practising certificate or registered European lawyer.

## 8. Members and shareowners of a company

### *Persons who may be members or shareowners*

- (1) A recognised body which is a company must ensure that all members and all shareowners are:
  - (a) solicitors with practising certificates;
  - (b) registered European lawyers;
  - (c) registered foreign lawyers;
  - (d) non-registered European lawyers;
  - (e) recognised bodies; and/or
  - (f) European corporate practices.
- (2)
  - (a) A recognised body which is a company with shares must have at least one shareowner who is a solicitor, a registered European lawyer, a recognised body, or a European corporate practice which is at least partly owned by a solicitor or a registered European lawyer.
  - (b) A recognised body which is a company without shares must have at least one member who is a solicitor, a registered European lawyer, a recognised body, or a European corporate practice which is at least partly owned by a solicitor or a registered European lawyer.

### *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 sub-paragraph (1) above.

### *Record of non-member shareowners*

- (4)
  - (a) A recognised body which is a company with shares must keep a record of any non-member shareowners, and retain the record for at least three years after their ownership ceases; and
  - (b) a member who holds a share as nominee for a non-member shareowner must keep the recognised body informed of all facts necessary to keep an accurate and up-to-date record.

## 9. Death of member or shareowner of a company

- (1) If a member or shareowner of a company with shares dies and is eligible to be a member or shareowner at the date of death, then, whether or not the personal representatives are themselves eligible to be members or shareowners, they may replace the deceased as members or shareowners in their capacity as personal representatives, provided that:
  - (a) no vote may be exercised by or on behalf of a personal representative (and no such vote may be accepted) unless all the personal representatives are eligible to be members or shareowners;
  - (b) no personal representative may hold or own a share in that capacity for longer than twelve months from the date of death;
  - (c) within twelve months of the death the recognised body must cancel or acquire the shares or ensure that they are held and owned by persons

eligible to be members and shareowners, but without this resulting in registered foreign lawyers being the only shareowners; and

- (d) no vote may be exercised by or on behalf of any personal representative (and no such vote may be accepted) after the twelve month period has expired.
- (2) If, following the death of a member or shareowner, a company meets the requirements in paragraph (1) of this rule, the company will be deemed to have complied with the requirements of rule 8(1) to (3) as to membership and ownership of the company, and to that extent will not be liable to have its recognition revoked under rule 5(1)(c).

## **10. Member or shareowner of a company becoming ineligible or insolvent**

### *Member or shareowner ceasing to be eligible to be a member or shareowner*

- (1) If a member or shareowner of a recognised body which is a company with shares ceases to be eligible to be a member or shareowner, or ceases to exist as a body corporate, then:
- (a) no vote may be exercised or accepted on the shares held by or on behalf of that member or shareowner;
  - (b) in the case of a member or shareowner becoming ineligible, a trustee in bankruptcy or liquidator may (whether or not eligible to be a member or shareowner) replace that member or shareowner in the capacity of trustee or liquidator for a period which must not exceed six months from the date the member or shareowner became ineligible; and
  - (c) the company must cancel or acquire the shares within six months, or within that time ensure that the shares are held and owned by persons eligible to be members and shareowners, but without this resulting in registered foreign lawyers being the only shareowners; and

if this paragraph applies and the company meets the requirements in (a) to (c) above, the company will be deemed to have complied with the requirements of rule 8(1) to (3) as to membership and ownership of the company, and to that extent will not be liable to have its recognition revoked under rule 5(1)(c).

### *Member or shareowner becoming insolvent but not ineligible*

- (2) If a member or shareowner of a recognised body which is a company with shares becomes insolvent but remains eligible to be a member or shareowner, then, whether the trustee in bankruptcy or liquidator is eligible or not, he or she may replace the deceased as member or shareowner in the capacity of trustee or liquidator, provided that:
- (a) no vote may be exercised by or on behalf of a trustee in bankruptcy or liquidator (and no such vote may be accepted) unless he or she is eligible to be a member or shareowner;
  - (b) no trustee in bankruptcy or liquidator may hold or own a share in that capacity for longer than six months from the date of the insolvency;
  - (c) within six months of the insolvency the company must cancel or acquire the shares or ensure that they are held and owned by persons eligible to be members and shareowners, but without this resulting in registered
  - (d) no vote may be exercised by or on behalf of any trustee in bankruptcy or liquidator (and no such vote may be accepted) after the six month period has expired; and

if this paragraph applies and the company meets the requirements in (a) to (d) above, the company will be deemed to have complied with the requirements of rule 8(1) to (3) as to membership and ownership of the company, and to that extent will not be liable to have its recognition revoked under rule 5(1)(c).

### **11. Mental health receiver for a members or shareowner in a company**

A receiver appointed under the Mental Health Act 1983 may be a member or shareowner in that capacity, without breach of these rules, provided that:

- (a) the patient remains eligible to be a member or shareowner; and
- (b) if the receiver is not eligible to be a member or shareowner of a company, no vote is exercised or accepted on the shares; and

if this rule applies and the company meets the requirements of the rule, the company will be deemed to have complied with the requirements of rule 8(1) to (3) as to membership and ownership of the company, and to that extent will not be liable to have its recognition revoked under rule 5(1)(c).

### **12. Proxies and corporate representatives – companies**

Only a solicitor with a practising certificate, a registered European lawyer, a registered foreign lawyer or a non-registered European lawyer may be appointed as a proxy or corporate representative for the purpose of attending and voting at meetings.

### **13. Members of a limited liability partnership**

*Persons who may be members*

- (1) A recognised body which is a limited liability partnership must ensure that all the members are:
  - (a) solicitors with practising certificates;
  - (b) registered European lawyers;
  - (c) registered foreign lawyers;
  - (d) non-registered European lawyers;
  - (e) recognised bodies; and/or
  - (f) European corporate practices.
- (2) A recognised body which is a limited liability partnership must have at least two members; but there will be no breach of this paragraph if, following the death of a member, a person within paragraph (1)(a) to (f) becomes a member within six months of the death, and to that extent the limited liability partnership will not be liable to have its recognition revoked under rule 5(1)(c).
- (3) A recognised body which is a limited liability partnership must have at least one member who is:
  - (a) a solicitor with a practising certificate;
  - (b) a registered European lawyer;
  - (c) a recognised body which is a company with a director who is a solicitor with a practising certificate or a registered European lawyer; or

- (d) a recognised body which is a limited liability partnership with a member who is a solicitor with a practising certificate or registered European lawyer;

but there will be no breach of this paragraph if, following the death of a member, a person within (a) to (d) above becomes a member within 14 days, and to that extent the limited liability partnership will not be liable to have its recognition revoked under rule 5(1)(c).

*Member incapacitated, abandoning practice, etc.*

- (4) If the last remaining solicitor or registered European lawyer within paragraph (3)(a) to (d):
  - (a) is committed to prison in civil or criminal proceedings;
  - (b) becomes and continues to be unable to attend to the practice of the body because of incapacity caused by illness, accident or age;
  - (c) becomes and continues to be a mental patient as defined by section 94 of the Mental Health Act 1983 or is made the subject of powers exercised under section 98 of that Act and continues to be subject to those powers;
  - (d) abandons the practice of the body; or
  - (e) is made subject to a condition on his or her practising certificate or registration which would be breached by continuing as a member or director, as the case may be;

the limited liability partnership must ensure that an additional or replacement solicitor or registered European lawyer within paragraph (3)(a) to (d) is in place within 14 days.

*Prohibition on creating third party interests*

- (5) A member must not create any charge or other third party interest over his or her interest in the limited liability partnership.

**14. Company's or limited liability partnership's practising address and registered office**

- (1) A recognised body must have at least one practising address in England and Wales.
- (2) A recognised body must have its registered office at a practising address in England and Wales if the recognised body is registered in England and Wales
  - (a) under Part I of the Companies Act 1985, or
  - (b) under the Limited Liability Partnerships Act 2000, or
  - (c) as a *societas Europaea*.

## Part III – Definitions, waivers, and replacement of previous rules

### 15. Definitions

- (1) The following definitions apply in these rules:
- (a) “company” means
    - (i) an unlimited company, a company limited by shares or a company limited by guarantee, registered under Part I of the Companies Act 1985; or
    - (ii) an oversea company incorporated in an Establishment Directive state and registered under section 690A or 691 of that Act; or
    - (iii) a *societas Europaea*;
  - (aa) “director” in relation to a *societas Europaea* includes:
    - (i) in a two-tier system, a member of the management organ and a member of the supervisory organ; and
    - (ii) in a one-tier system, a member of the administrative organ;
  - (b) “Establishment Directive state” means a state to which the Establishment Directive 98/5/EC applies;
  - (c) “European corporate practice” means a lawyers’ practice incorporated in or formed under the law of an Establishment Directive state which does not practise from an office in England and Wales, and is either:
    - (i) a body corporate wholly owned (whether directly or indirectly) and directed by registered European lawyers and/or non-registered European lawyers, or by such persons together with solicitors with practising certificates, registered foreign lawyers and/or barristers of England and Wales; or
    - (ii) a lawyers’ partnership with separate legal identity whose partners are all registered European lawyers and/or non-registered European lawyers, or such persons together with solicitors with practising certificates, registered foreign lawyers and/or barristers of England and Wales.
  - (d) “limited liability partnership” means a limited liability partnership formed by being incorporated under the Limited Liability Partnerships Act 2000;
  - (e) “member” in relation to a recognised body means a person who agrees to become a member of a company and whose name is entered in its register of members; or a member of a limited liability partnership;
  - (f) “eligible to be a member” and “eligible to be a member or shareowner” means a person who falls within one of the following categories:
    - (i) a solicitor with a practising certificate;
    - (ii) a registered European lawyer;
    - (iii) a registered foreign lawyer;
    - (iv) a non-registered European lawyer;
    - (v) a recognised body; or

- (vi) a European corporate practice. and "ineligible" should be construed accordingly.
  - (g) "non-member shareowner" means a person who is not a member of a company, but for whom a member of a company holds a share or shares as nominee;
  - (h) "non-registered European lawyer" means a member of a legal profession which is covered by the Establishment of Lawyers Directive 98/5/EC, but who is not:
    - (i) a solicitor, registered European lawyer or registered foreign lawyer; or
    - (ii) a barrister of England and Wales, Northern Ireland or the Irish Republic, or a Scottish advocate;and who is not based at an office in England and Wales;
  - (i) [deleted]
  - (j) "recognised body" means a body corporate for the time being recognised by the Council of the Law Society under these rules;
  - (k) "registered European lawyer" means an individual registered with the Society under regulation 17 of the European Communities (Lawyer's Practice) Regulations 2000;
  - (l) "registered foreign lawyer" means an individual registered with the Society under section 89 of the Courts and Legal Services Act 1990;
  - (m) "shareowner" means a member of a company with a share capital who holds a share on his or her own behalf, or a person for whom a share is held by a member as nominee;
  - (ma) "societas Europaea" means a European public limited liability company within the meaning of article 1 of Council Regulation 2157/2001/EC; and
  - (n) "solicitor" means a solicitor of the Supreme Court of England and Wales.
- (2) References to a mental patient, a person made the subject of emergency powers, and a receiver appointed, under the Mental Health Act 1983, include equivalents in other jurisdictions within the EU, EEA and Switzerland.
- (3) Words in the masculine or feminine include a body corporate; words in the singular include the plural; words in the plural include the singular.

## **16. Waivers**

In any particular case or cases the Council shall have power to waive in writing any of the provisions of these rules for the particular purpose or purposes expressed in the waiver, and to revoke such a waiver.

## **17. Replacement of previous rules**

These rules replace the Solicitors' Incorporated Practice Rules 2001.