

## Entity regulation policy statement

1. Part 3 of the Handbook sets out the requirements for authorisation as an entity by the BSB. This paper expands on the discretionary criteria in those rules and is the entity regulation policy statement referred to in rS99, gS20 and rS101.
2. To be authorised by the BSB as an entity, an applicant must:
  - a. Satisfy the mandatory requirements in rS83 and rS84
  - b. Be considered by the BSB to be an appropriate entity for it to regulate (rS99)
  - c. Satisfy the BSB that it will be competently managed and comply with the rules, and that its owners, managers, HOLP and HOFA meet the suitability criteria rS101)
3. If an applicant does not meet the mandatory criteria, it cannot be authorised by the BSB and its application will be refused.
4. If an applicant does meet the mandatory criteria, then the BSB will consider whether it is an appropriate entity for it to regulate. If it concludes that it is, the BSB may nevertheless refuse to authorise it if it is not satisfied that it will be adequately managed and run in compliance with the rules. This is discussed further in paragraphs below.
5. In reaching its decision on whether an entity is an appropriate one for it to regulate, the BSB must take account of its analysis of the risks posed by the applicant, the regulatory objectives and this entity regulation policy statement.

### BSB Policy Objectives

6. The Bar Standards Board (BSB) is a specialist legal services regulator. Its particular specialist focus is on the regulation of advocacy and related litigation services and expert legal advice. In designing its entity regulation regime it has analysed the legal services market and its own capacities and capabilities, in addition to the opportunities for regulation by other Approved Regulators and identified the market segment that is appropriate for BSB regulation.
7. The overall policy objectives of the BSB are that:
  - a. The market should have the opportunity to develop, with authorised persons being able to innovate in ways that are compatible with the regulatory objectives and the associated risks being managed effectively and proportionately;
  - b. As business models change, the specialist skills and expertise associated with the Bar should be preserved and standards of advocacy should be maintained, thereby safeguarding the public interest;
  - c. Individual responsibility (in particular the accountability of the individual advocate or other authorised individual to the Court and the client) should be at the heart of the regulation of advocacy and related services;
  - d. Regulatory arbitrage is minimised;
  - e. The BSB should build on its regulation of individual barristers to give entities the option of being regulated by the BSB, particularly those wanting to specialise in advocacy and litigation;
  - f. The BSB minimises the risk of regulatory failure by regulating only those entities that fit well with its capacities and capabilities, ensuring that entities and their managers consent to the jurisdiction of the BSB;
  - g. Risk assessment and management should be at the heart of the BSB's regulatory arrangements;

- h. Entities which the BSB authorises should manage their own risks well and comply with their regulatory obligations;
- i. The BSB regulatory regime is proportionate to the risks it needs to regulate.

## **BSB approach**

8. The BSB has developed its policy on what entities it would be appropriate for it to regulate in the light of these objectives. In exercising its discretion, the BSB will be sensitive to developments in the market and innovative practices that might be in clients' interests and which might differ from the type of entity described below. In such cases, the BSB will assess the risks posed by the entity in question and decide whether it is in the public interest for the BSB rather than another Approved Regulator to authorise such an entity.
9. This policy statement reflects the BSB's decision that it should be a niche regulator concentrating on those entities whose activities are similar to those traditionally undertaken by the Bar (and which the BSB therefore has experience of regulating), which do not hold client money, whose structure is simple and transparent, with work being closely overseen by authorised individuals and minimal risk of divergent interests between owners and managers. As both the BSB and those it regulates gain experience, and as the market develops, the BSB will consider whether it would be in the public interest for it to widen the scope of its entity regulation and if so it will publish a revised policy statement.
10. The BSB's risk framework (published alongside this policy statement) will be central to any decision to authorise an entity and to the BSB's approach to ongoing supervision of the entity. The BSB will assess the nature of the risks posed by an entity, taking into account its structure and governance arrangements, the kind of the services it is intending to provide, its impact on the wider legal services market and its own risk assessment and mitigation procedures.
11. The BSB would normally only authorise an entity if:
  - a. any owner<sup>1</sup> of the entity is also a manager;
  - b. the entity will not be a multi-disciplinary practice<sup>2</sup>.
12. There may be exceptional circumstances where the BSB would authorise an entity that is not able fully to satisfy the criteria in paragraph 11 but, in the BSB's judgment, poses similar risks to those posed by entities which do satisfy the criteria.
13. When assessing the risks associated with an entity, the BSB will also take other factors into account, including:
  - a. the services that the entity intends to provide and the nature and extent of any non-reserved activities;
  - b. the proposed proportion of managers to employees;
  - c. the proposed proportion of authorised individuals to non-authorised individuals;
  - d. the extent to which its managers have been and/or are going to be actively involved in advocacy and/or litigation services or related advice;
  - e. whether any persons with an ownership interest (whether material or not) are not individuals;
  - f. whether any managers are not individuals;

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<sup>1</sup> Owner as defined in the BSB Handbook as person who holds a material interest in the entity

<sup>2</sup> A multi-disciplinary practice combines the provision of reserved legal activities and non-reserved activities traditionally associated with legal professionals with other (non-legal) professional services (subject to any minor or incidental examples of other activities which are carried on in the course of supplying the main service and do not materially detract from the focus of the entity being legal)

- g. whether the entity is intending to provide high-volume, standardised legal advice or standardised legal transactional services direct to lay clients and, if so, whether this is likely to constitute a substantial or significant proportion of its practice; and
  - h. the systems that the entity will have in place to manage such services and associated risks.
14. The following factors, when present, would tend to indicate that it may be appropriate for the BSB to regulate an entity:
- a. all owners and all managers are individuals;
  - b. 50% or more of the owners and 50% or more of the managers are entitled to exercise rights of audience in the Higher Courts;
  - c. a substantial part of the services to be provided are advocacy and/or litigation services and expert legal advice;
  - d. the entity is not intending to provide high-volume, standardised legal transactional services;
  - e. 75% or more of owners and 75% or more of managers are authorised individuals<sup>3</sup>;
  - f. a substantial proportion of employees are going to be authorised individuals; and
  - g. each manager supervises only a small number of employees.
15. The following factors, when present, would tend to indicate that it may not be appropriate for the BSB to regulate an entity:
- a. not all owners and managers are individuals;
  - b. fewer than 50% of owners and fewer than 50% of managers are entitled to exercise rights of audience in the Higher Courts;
  - c. the provision of specialist advocacy and/or litigation services or other expert legal advisory services is not a significant proportion of the proposed practice;
  - d. a substantial part of the services to be provided are high-volume, standardised legal transactional services direct to lay clients;
  - e. fewer than 75% of owners and 75% of managers are authorised individuals<sup>4</sup>; and
  - f. a substantial proportion of employees will be non-authorised individuals.
16. The factors listed above are not exhaustive of the matters that may be relevant to the BSB's consideration of the appropriateness of an entity for BSB regulation. In each case, the BSB retains a discretion to grant or refuse authorisation in the light of its overall consideration of the risks posed by the entity, the regulatory objectives and the BSB's policy objectives.
17. In particular, even if the factors listed in paragraph 14 are present, the BSB may refuse authorisation if its analysis of the risks posed by the entity indicate that it may not be appropriate for BSB regulation. In making this decision it will take into account not only the extent to which the entity has assessed its own risks and put in place appropriate systems to manage those risks, but also whether the BSB itself has the necessary experience and skills to regulate the entity effectively.

## **Management and compliance**

18. Rules rS101 and rS102 set out the aspects of management, control and compliance about which the BSB must be satisfied before granting authorisation. In exercising its discretion under these rules, the BSB will consider whether the arrangements are satisfactory for the nature and type of business which the applicant intends to provide. If the BSB concludes that the minimum requirements are satisfied and that it should therefore authorise the applicant, it will take account of its conclusions about the strength of the controls and

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<sup>3</sup> Only relevant to ABSs

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management in its assessment of the risks posed by the entity and hence the future monitoring and supervision arrangements which would be appropriate.

19. In considering whether a person meets the suitability criteria despite having disclosed an event which might call that suitability into question, the BSB will have regard to when that event took place and any evidence about subsequent behaviour. The test it will normally apply is whether the person is currently suitable for the role concerned and whether it and the public can have confidence in that person in that role.