THE BSB HANDBOOK

PART III – SCOPE OF PRACTICE, AUTHORISATION AND LICENSING RULES

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A. SUMMARY AND APPLICATION OF THESE RULES

1. Section B of this Part III provides that you must not practise as a barrister or carry on any reserved legal activity unless you are authorised to do so, and explains the different capacities within which you may work if you are so authorised and any limitations on the scope of your practice. It also explains the further requirements which you must follow if you intend to work in more than one capacity. The Section applies to all BSB regulated persons, and “You” and “Your” should be construed accordingly.

2. Section C of this Part III sets out the basis upon which barristers and registered European lawyers should apply to obtain a practising certificate which shall entitle them to practise within England and Wales.

3. Section D of this Part III provides specific details about how a European lawyer can become a registered European lawyer in England and Wales, thus entitling them to apply for a practising certificate in accordance with the provisions of Section B.

4. Section E of this Part III sets out the basis upon which entities may be:

   4.1 authorised to practise as either a barrister only entity or legal disciplinary practice; or

   4.2 licensed to practise as a BSB licensed body.

5. Section F of this Part III sets out details of the ongoing compliance requirements relevant to BSB authorised bodies.
B. SCOPE OF PRACTICE

B1. No Practice without authorisation

1. You must not carry on any reserved legal activity unless you are entitled to undertake that activity under the LSA. You are not entitled to carry on any reserved legal activity, whether on your own behalf or acting as a manager or employee, unless you are either authorised or exempt in respect of that reserved activity. Where you are a manager or employee of a person who, as part of their business, supplies services to the public or a section of the public (with or without a view to profit) which consist of or include the carrying on of reserved legal activities, that person must also be entitled to carry on that reserved legal activity under the LSA.

2. You must not permit any third party who is not authorised or licensed to provide reserved legal activities on your behalf.

3. If:

3.1 you are an individual and do not hold a practising certificate; or

3.2 you are an entity and you have not been authorised or licensed to provide reserved legal activities in accordance with Section E of this Part III,

then:

(a) you may not practise as a barrister, a registered European lawyer or as a BSB authorised body (as appropriate); and

(b) you are not authorised by the Bar Council to carry on any reserved legal activity.

4. For the purposes of this Handbook, and subject to rule 7 below, you practise as a barrister, a registered European lawyer or a BSB authorised body if:

4.1 you supply legal services and in connection with the supply of such services:

(a) you hold yourself out or allow yourself to be held out as a barrister, a registered European lawyer or a BSB authorised body (as appropriate); or
(b) you carry on any reserved legal activity pursuant to authorisation from the Bar Council; or

4.2 you act as a manager of or have an ownership interest in an authorised (non-BSB) body and as such you are required by the rules of that body’s Approved Regulator to hold a practising certificate issued by or be authorised or licensed by the Bar Council (as the case may be).

5. For the purposes of this Section B of Part III any reference to the supply of legal services includes an offer to supply such services.

6. Rule 3.1 above does not apply to you if you are a pupil in the non-practising six months of pupillage if and insofar as you accept a noting brief with the permission of your pupil-supervisor, head of Chambers or HOLP.

7. If you are a barrister but do not hold a practising certificate and you supply legal services in the manner provided for in rules 8, 9 or 10 below, then you shall not, by reason of supplying those services:

7.1 be treated for the purposes of this Section B of Part III as practising as a barrister or a registered European lawyer; or

7.2 be subject to the rules in Part II of this Handbook or the rules in this Section B of Part III which apply to barristers only if they are in practice as a barrister.

8. Rule 7 above applies to you if and insofar as:

8.1 you are practising as a foreign lawyer; and

8.2 you do not:

(c) give advice on English Law; or

(d) supply legal services in connection with any proceedings or contemplated proceedings in England and Wales (other than as an expert witness on foreign law).

9. Rule 7 above applies to you if:
9.1 you are authorised by another Approved Regulator to carry on a reserved legal activity and you are currently permitted to practise by that Approved Regulator;

9.2 you hold yourself out as a barrister or a registered European lawyer (as appropriate) other than as a manager or employee of a BSB authorised body; and

9.3 before supplying legal services to any person or employer and when first dealing with any third party in the course of supplying legal services, you inform them clearly in writing that you are not practising as a barrister or a registered European lawyer.

10. Rule 7 above applies to you provided that:

10.1 you supplied legal services prior to 31 March 2012 pursuant to paragraph 206.1 or 206.2 of the 8th Edition of the Code; and

10.2 if you supply any legal services in England and Wales, you were called to the Bar before 31 July 2000; and

10.3 before 31 March in each year, and promptly after any change in the details previously supplied to the Bar Council (acting by the Bar Standards Board), you provide in writing to the Bar Council (acting by the Bar Standards Board), details of the current address(es) with telephone number(s) of the office or premises from which you do so, and:

(a) if you are employed, the name, address, telephone number and nature of the business of your employer; or

(b) if you are an employee or manager of, or you have an ownership interest in, an authorised body, the name, address, email address, telephone number and the name of the authorised body and its Approved Regulator; and

10.4 unless you only offer services to your employer or to the authorised body of which you are a manager or an employee or which you have an ownership interest in, you are (or, if you are supplying legal services to clients of your employer or authorised body of which you are an owner, manager or an
employee, your employer or such body is) currently insured in accordance with the requirements of rule 44 set out in Section D of Part II and that you comply with the requirements of rule 45 in Section E of Part II.

**B2. Provision of reserved legal activities and of legal services**

11. You may only carry on reserved legal activities or supply other legal services in accordance with this rule:

11.1 You may only carry on reserved legal activities in the following capacities:

(a) as a self-employed barrister, subject to the limitations imposed by rules 19 to 21 below;

(b) as a BSB authorised body, subject to the limitations imposed by rules 23 to 25 below;

(c) as an owner or manager of a BSB authorised body or as an employed barrister (BSB authorised body), subject to the limitations imposed by rules 27 to 29 below;

(d) as an owner, manager or employee of an authorised (non-BSB) body or as an employed barrister (authorised non-BSB body), subject to the limitations imposed by rules 31 to 32 below; or

(e) as an employed barrister (non authorised body), subject to the limitations imposed by rules 34 below; or

(f) as a registered European lawyer in any of the above capacities, in which case the equivalent limitations that would have applied if you were practising as a barrister shall apply to your practice as a registered European lawyer; and

11.2 In each case, in accordance with such further limitations as may be placed on you by this Handbook including, in particular, any requirements that may be placed on you under Sections D and E of Part II of this Handbook and/or any conditions imposed by the Bar Standards Board; and
11.3 Where you carry on *reserved legal activities* in one of the foregoing capacities so as to be subject to regulation by the *Bar Standards Board* in respect thereof, any other *legal services* you may supply in that same capacity shall be likewise subject to regulation by the *Bar Standards Board*, even if unreserved;

11.4 However, if you are a *barrister*, you may supply *legal services* that are not *reserved legal activities* as an *owner, manager or employee* of a separate *Company, partnership or LLP* [or as a sole trader] (*“a separate business”*) provided that you do not hold yourself out as a *barrister* in connection therewith and you take all reasonable steps to ensure that *clients* or potential *clients* understand that the separate *business* is not authorised or regulated by the *Bar Standard Board* and nor are your activities in respect of it so authorised or regulated.

12. You may only practise or be involved with the supply of *legal services* (whether *reserved legal activities* or otherwise) in more than one of the capacities listed in rule 11.1 after:

12.1 having obtained an amended *practising certificate* from the *Bar Standards Board* which recognises the capacities in respect of which you are intending to practise; and

12.2 having agreed with each *employer or authorised body* with which you are involved a protocol that enables you to avoid or resolve any conflict of interests or duties arising from practice and/or involvement in those capacities,

and provided always that you do not work in more than one capacity in relation to the same case or issue for the same *client* at the same time.

13. If you are a *registered European lawyer*, you may only supply *legal services* to the *public* if you have delivered to the *Bar Standards Board* a copy of the current insurance policy or the current certificate of insurance relating to the insurance required by rule 44 of Section D of Part II.

14. If you are a *registered European lawyer*, the *Bar Standards Board* may exempt you from the requirement imposed by rule 13 above:
14.1 If you wish to apply for such an exemption, you must provide to the Bar Standards Board evidence to show that you are covered by insurance taken out or a guarantee provided in accordance with the rules of your home State.

14.2 If the Bar Standards Board is satisfied that such insurance or guarantee is fully equivalent in terms of conditions and extent of cover to the cover required pursuant to rule 13, the Bar Standards Board may exempt you wholly from the requirement imposed by rule 13.

14.3 If the Bar Standards Board is satisfied that the equivalence is only partial, the Bar Standards Board may require you to arrange additional insurance or an additional guarantee to cover the elements which are not already covered by the insurance or guarantee contracted by you in accordance with the rules of your home State.

15. If you are a pupil who has completed or been exempted from the non-practising six months of pupillage, you may only supply legal services to the public or exercise any right which you have by reason of being a barrister if you have the permission of your pupil-supervisor, head of Chambers or HOLP (as appropriate).

16. If you are a barrister of less than three years’ standing, you may:

16.1 only supply legal services to the public or exercise any right of audience by virtue of authorisation by the Bar Standards Board; or

16.2 only conduct litigation by virtue of authorisation by the Bar Standards Board,

if your principal place of practice (or if you are practising in a dual capacity, each of your principal places of practice) is either:

(a) a Chambers or annex of Chambers which is also the principal place of practice of a qualified person who is readily available to provide guidance to you; or

(b) an office of an organisation of which an employee, partner, manager or director is a qualified person who is readily available to provide guidance to you.
17. In rule 16 above, the references to "years' standing" and "qualified person" mean the following:

**Years' standing**

17.1 You shall be treated as being of a particular number of years' standing if you:

(a) have been entitled to practise and have practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Bar Training Regulations) or as a person authorised by another Approved Regulator;

(b) have made such practice your primary occupation; and

(c) have been entitled to exercise a right of audience before every court in relation to all proceedings,

for a period (which need not be continuous and need not have been as a person authorised by the same Approved Regulator) of at least that number of years.

**Supply of legal services or the exercise of a right of audience – qualified person**

17.2 Where:

(a) You are a barrister exercising a right of audience in England and Wales, a person shall be a qualified person for the purpose of paragraph 16.1 if he:

(i) has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Bar Training Regulations) or as a person authorised by another Approved Regulator for a period (which need not have been as a person authorised by the same Approved Regulator) for at least six years in the previous eight years; and

(ii) for the previous two years:

(1) has made such practise his primary occupation; and
(2) has been entitled to exercise a right of audience before every court in relation to all proceedings; and

(iii) is not acting as a qualified person in relation to more than two people; and

(iv) has not been designated by the Bar Standards Board as unsuitable to be a qualified person.

(b) You are a barrister exercising a right of audience in a Member State other than the United Kingdom pursuant to the Establishment Directive, or in Scotland or Northern Ireland pursuant to the European Communities (Lawyer’s Practice) Regulations 2000, a person shall be a qualified person for the purposes of paragraph 16 if he:

(i) Has been designated by the Bar Standards Board as possessing qualifications and experience in that state or country which are equivalent to the qualifications and experience required by paragraph 16(1) and (2) above; and

(ii) Is not acting as a qualified person in relation to more than two other people; and

(iii) Has not been designated by the Bar Standards Board as unsuitable to be a qualified person.

Exercise of a right to conduct litigation – qualified person

17.3 Where:

(a) You are a barrister exercising a right to conduct litigation in England and Wales, a person shall be a qualified person for the purpose of paragraph 16.2 if he:

(i) has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Bar Training Regulations) or as a person authorised by another Approved Regulator for a period (which need not have been as a person authorised by the same
Approved Regulator) for at least six years in the previous eight years; and

(ii) has made such practice his primary occupation for the previous two years: and

(1) is authorised to conduct litigation; and

(2) is not acting as a qualified person in relation to more than two people; and

(iii) has not been designated by the Bar Standards Board as unsuitable to be a qualified person; or

(b) you are a barrister exercising a right to conduct litigation in a Member State other than the United Kingdom pursuant to the Establishment Directive, or in Scotland or Northern Ireland pursuant to the European Communities (Lawyer’s Practice) Regulations 2000, a person shall be a qualified person for the purposes of paragraph 16 if he:

(i) has been designated by the Bar Standards Board as possessing qualifications and experience in that state or country which are equivalent to the qualifications and experience required by paragraph 16(1) and (2) above; and

(ii) [is authorised within the state or country within which they practise to conduct litigation (where relevant) and]

(iii) is not acting as a qualified person in relation to more than two other people; and

(iv) has not been designated by the Bar Standards Board as unsuitable to be a qualified person.
Guidance

1. If you are a practising barrister of less than three years’ standing and you are authorised to conduct litigation, you will need to work with a qualified person who is authorised to do litigation as well as with someone who meets the criteria for being a qualified person for the purpose of providing services to the public and exercising rights of audience. This may be, but is not necessarily, the same person.

B3. Scope of Practice as a Self-Employed Barrister

18. Rules 19 to 21 below apply to you where you are acting in your capacity as a self-employed barrister, whether or not you are acting for a fee.

19. You may only supply legal services if you are appointed or instructed by the court or instructed:

19.1 by a professional client (who may be an employee of the client), provided that, if you are instructed by a foreign lawyer to provide advocacy services in relation to court proceedings in England and Wales and you are not authorised to conduct litigation yourself or you are otherwise not instructed to conduct the litigation in the particular matter:

(a) you advise the foreign lawyer to take appropriate steps to instruct a solicitor or other authorised litigator to conduct the litigation and, if requested, take reasonable steps to assist the foreign lawyer to do so;

(b) you cease to act and return your instructions if it appears to you that the foreign lawyer is not taking reasonable steps to instruct a solicitor or other authorised litigator to conduct the litigation; and

(c) you do not appear in court unless a solicitor or other authorised litigator has been instructed to conduct the litigation; or

19.2 by a licensed access client, in which case you must comply with the licensed access rules; or

19.3 by or on behalf of any other client, provided that:

(a) the matter is public access instructions and:
(i) you are entitled to provide public access work and the instructions are relevant to such entitlement; and

(ii) you have notified the Bar Standards Board that you hold yourself out as willing to accept instructions from lay clients; and

(iii) you comply with the public access rules; or

(b) the matter relates to the conduct of litigation and

(i) you have a litigation extension to your practising certificate; and

(ii) you have notified the Bar Standards Board that you hold yourself out as willing to accept instructions from lay clients.

Guidance

1. References to client in paragraph 19.3 include foreign clients.

20. You must not in the course of your practice (except in relation to foreign work performed by you at or from an office outside England and Wales which you have established or joined primarily for the purposes of carrying out that particular foreign work or foreign work in general):

20.1 undertake the management administration or general conduct of a client's affairs; or

20.2 carry on any reserved legal activities which you are not permitted to provide pursuant to the terms of your authorisation.

21. You may conduct correspondence but you must not correspond directly with any party other than your client if you are aware that that party has a solicitor or barrister representing him.

Guidance

1. If you are not authorised to conduct litigation but you are intending to conduct correspondence with other parties (in the form of letters, faxes, emails or the like) you
should only do so if:

1.1 you are satisfied that it is in the client's best interests that you do so;

1.2 you have adequate systems, experience and resources for managing appropriately such correspondence; and

1.3 you have adequate insurance in place in accordance with rule 44 of Section D of Part II which covers, amongst other things, any loss suffered by the client as a result of the conduct of the correspondence.

**B4. Scope of Practice as a BSB authorised body**

22. Rules 23 to 25 below apply to you where you are acting in your capacity as a BSB authorised body.

23. You may only supply legal services if you are appointed or instructed by the court or instructed:

23.1 by a professional client (who may be an employee of the client), provided that, if you are instructed by a foreign lawyer to provide advocacy services in relation to court proceedings in England and Wales and you are not authorised to conduct litigation yourself or you are otherwise not instructed to conduct the litigation in the particular matter:

(a) you advise the foreign lawyer to take appropriate steps to instruct a solicitor or other authorised litigator to conduct the litigation and, if requested, take reasonable steps to assist the foreign lawyer to do so;

(b) you cease to act and return your instructions if it appears to you that the foreign lawyer is not taking reasonable steps to instruct a solicitor or other authorised litigator to conduct the litigation; and

(c) you do not appear in court unless a solicitor or other authorised litigator has been instructed to conduct the litigation; or

23.2 by a licensed access client, in which case you must comply with the licensed access rules; or
23.3 by or on behalf of any other *client*, provided that:

(a) the matter is *public access instructions* and:

(i) the individual in the *BSB authorised body* with overall responsibility in respect of the matter is entitled to provide public access work and the *instructions* are relevant to such entitlement; and

(ii) you have notified the *Bar Standards Board* that you hold yourself out as willing to accept *instructions* from lay *clients*; and

(iii) you comply with the *public access rules*; or

(b) the matter relates to the *conduct of litigation* and you have been authorised or licensed to *conduct litigation* (as appropriate).

**Guidance**

1. References to *client* in paragraph 23.3 include foreign *clients*.

24. You must not:

24.1 undertake the management administration or general conduct of a lay *client's* affairs; or

24.2 carry on any *reserved legal activities* which you are not permitted to provide pursuant to the terms of your authorisation or licence (as appropriate); or

24.3 carry on any *reserved legal activities* through *managers* or *employees* who are not entitled to carry on those activities.

25. You may conduct correspondence but you must not correspond directly with any party other than your *client* if you are aware that that party has a *solicitor* or *barrister* representing him.

**Guidance**

1. If you are not authorised to *conduct litigation* but you are intending to conduct
correspondence with other parties (in the form of letters, faxes, emails or the like) you should only do so if:

1.1 you are satisfied that it is in the client’s best interests that you do so;

1.2 you have adequate systems, experience and resources for managing appropriately such correspondence; and

1.3 you have adequate insurance in place in accordance with rule 44 of Section D of Part II which covers, amongst other things, any loss suffered by the client as a result of the conduct of the correspondence.

B5. Scope of Practice as an owner or manager of a BSB authorised body or as an employed barrister (BSB authorised body)

26. Rules 27 to 29 below apply to you where you are acting in your capacity as an owner or a manager of a BSB authorised body or as an employed barrister (BSB authorised body).

27. You may only supply legal services to the following persons:

27.1 the BSB authorised body; or

27.2 any employee, director or company secretary of the BSB authorised body in a matter arising out of or relating to that person’s employment;

27.3 any client of the BSB authorised body;

27.4 if you supply legal services at a Legal Advice Centre, clients of the Legal Advice Centre; or

27.5 if you supply legal services free of charge, members of the public.

28. You must not:

28.1 undertake the management administration or general conduct of a lay client’s affairs; or

28.2 carry on any reserved legal activities which you are not entitled to provide; or
28.3 cause or permit the BSB authorised body to carry on any reserved legal activities it is not entitled to carry on or to do so through managers or employees who are not so entitled.

29. You may conduct correspondence but you must not correspond directly with any party other than your client if you are aware that that party has a solicitor or barrister representing him.

**Guidance**

1. If you are not authorised to conduct litigation but you are intending to conduct correspondence with other parties (in the form of letters, faxes, emails or the like) you should only do so if:

   1.1 you are satisfied that it is in the client’s best interests that you do so;

   1.2 you have adequate systems, experience and resources for managing appropriately such correspondence; and

   1.3 you have adequate insurance in place in accordance with rule 44 of Section D of Part II which covers, amongst other things, any loss suffered by the client as a result of the conduct of the correspondence.

**B6. Scope of Practice as an owner or manager of an authorised (non-BSB) body or as an employed barrister (authorised non-BSB body)**

30. Rules 31 to 32 below apply to you where you are acting in your capacity as an owner or a manager of an authorised (non-BSB) body or as an employed barrister (authorised non-BSB body)

31. You may only supply legal services to the following persons:

   31.1 the authorised (non-BSB) body;

   31.2 any employee, director or company secretary of the authorised (non-BSB) body in a matter arising out of or relating to that person’s employment;
31.3 any client of the authorised (non-BSB) body;

31.4 if you provide legal services at a Legal Advice Centre, clients of the Legal Advice Centre; or

31.5 if you supply legal services free of charge, members of the public.

32. You must comply with the rules of the Approved Regulator or licensing authority of the authorised (non-BSB) body.

B7. Scope of Practice as an employed barrister (non authorised body)

33. Rule 34 below applies to you where you are acting in your capacity as an employed barrister (non authorised body).

34. You may only supply legal services to the following persons:

34.1 your employer;

34.2 any employee, director or company secretary of your employer in a matter arising out of or relating to that person’s employment;

34.3 if your employer is a public authority (including the Crown or a Government department or agency or a local authority), another public authority on behalf of which your employer has made arrangements under statute or otherwise to supply any legal services or to perform any of that other public authority’s functions as agent or otherwise;

34.4 if you are employed by or in a Government department or agency, any Minister or Officer of the Crown;

34.5 if you are employed by a trade association, any individual member of the association;

34.6 if you are, or are performing the functions of, a Justices’ clerk, the Justices whom you serve;

34.7 if you are employed by the Legal Services Commission, members of the public;
34.8 if you are employed by or at a Legal Advice Centre, clients of the Legal Advice Centre;

34.9 if you supply legal services free of charge, members of the public; or

34.10 if your employer is a foreign lawyer and the legal services consist of foreign work, any client of your employer.

B8. Scope of practice of a barrister called under Regulation 78

35. If you are called to the Bar under Regulation 78 of the Bar Training Regulations (temporary membership of the Bar), you may not practise as a barrister other than to conduct the case or cases specified in the certificate referred to in Regulation 78.

B9. Legal Advice Centres

36. You may supply legal services at a Legal Advice Centre on a voluntary or part time basis and, if you do so, you will be treated for the purposes of this Handbook as if you were employed by the Legal Advice Centre.

37. If you supply legal services at a Legal Advice Centre to clients of a Legal Advice Centre in accordance with rule 36:

37.1 you must not in any circumstances receive either directly or indirectly any fee or reward for the supply of any legal services to any client of the Legal Advice Centre other than a salary paid by the Legal Advice Centre;

37.2 you must ensure that any fees in respect of legal services supplied by you to any client of the Legal Advice Centre accrue and are paid to the Legal Advice Centre; and

37.3 you must not have any financial interest in the Legal Advice Centre.

Guidance

1. You may provide legal services at a Legal Advice Centre on an unpaid basis irrespective of the capacity in which you normally work.

2. If you are a self-employed barrister, you do not need to inform the Bar Standards Board.
that you are also working for a *Legal Advice Centre*.

3. Transitional arrangements under the *LSA* allow *Legal Advice Centres* to provide *reserved legal activities* without being authorised. When this transitional period comes to an end, the rules relating to providing services at *Legal Advice Centres* will be reviewed.
C. PRACTISING CERTIFICATE RULES

C1. Eligibility for Practising Certificates

1. In this Section C, references to "you" and "your" are references to barristers and registered European lawyers who are intending to apply for authorisation to practise as a barrister or a registered European lawyer (as the case may be).

2. You are eligible for a practising certificate if:

2.1 you are a barrister or registered European lawyer and you are not currently suspended from practice and have not been disbarred; and

2.2 you meet the requirements of sub-paragraph 3.1, 3.2, 3.3 or 3.4 below; and

2.3 either:

(a) within the last 5 years either (i) you have held a practising certificate; or (ii) you have satisfactorily completed (or have been exempted from the requirement to complete) either the non-practising period of 6 months of pupillage or 12 months of pupillage; or

(b) if not, you have complied with such training requirements as may be imposed by the Bar Standards Board.

3. You are eligible for:

3.1 a full practising certificate if either:

(a) you have satisfactorily completed 12 months pupillage; or

(b) you have been exempted from the requirement to complete 12 months of pupillage; or

(c) on 30 July 2000, you were entitled to exercise full rights of audience by reason of being a barrister; or

(d) you were called to the Bar before 1 January 2002 and:
(i) you notified the Bar Council that you wished to exercise a right of audience before every court and in relation to all proceedings; and

(ii) you have complied with such training requirements as the Bar Council or the Bar Standards Board may require or you have been informed by the Bar Council or the Bar Standards Board that you do not need to comply with any such further requirements;

in each case, before 31 March 2012;

3.2 a provisional practising certificate if you have satisfactorily completed (or have been exempted from the requirement to complete) the non-practising period of 6 months of pupillage and at the time when you apply for a practising certificate you are registered as a Pupil;

3.3 a limited practising certificate if you were called to the Bar before 1 January 2002 but you are not otherwise eligible for a full practising certificate in accordance with paragraph 3.1 above; or

3.4 a registered European lawyer's practising certificate if you are a registered European lawyer.

C2. Applications for Practising Certificates

4. You may apply for a practising certificate by:

4.1 completing the application form supplied by the Bar Council (acting by the Bar Standards Board) and submitting it to the Bar Council (acting by the Bar Standards Board); and

4.2 submitting such information in support of the application as may be prescribed by the Bar Council (acting by the Bar Standards Board); and

4.3 paying (or undertaking to pay in a manner determined by the Bar Council) the appropriate practising certificate fee in the amount determined in accordance with paragraph 9 below (subject to any reduction pursuant to paragraph 8 below).

5. You may apply for a litigation extension to your practising certificate by:
5.1 where you are less than three years’ standing (as that term is defined in rule 17.1 of Section B to this Part III), confirming that your principal place of business (or if you are practising in a dual capacity, each of your principal places of practice) is either:

(a) a Chambers of annex of Chambers which is also the principal place of practice of a qualified person (as that term is defined in rule 17.3 of Section B to this Part III) who is readily available to provide guidance to you; or

(b) an office of an organisation of which an employee, partner, manager or director is a qualified person (as that term is defined in rule 17.3 of Section B to this Part III) who is readily available to provide guidance to you.

5.2 confirming that you have the relevant administrative systems in place to be able to provide legal services direct to clients and to administer the conduct of litigation; and

5.3 where you are applying for the first time, confirming that you have competent procedural knowledge to enable you to conduct litigation either by complying with such training requirements as may be imposed by the Bar Standards Board from time to time or by otherwise providing the Bar Standards Board with such other evidence or information as the Bar Standards Board may reasonably require.

6. An application will only have been made under either paragraph 4 or paragraph 5 above once the Bar Council (acting by the Bar Standards Board) has received, in respect of the relevant application, the application form in full, together with the application fee, all the information required in support of the application and confirmation from you in the form of a declaration that the information contained within, or submitted in support of, the application is full and accurate.

7. On receipt of the application, the Bar Council (acting by the Bar Standards Board) may require, from you or a third party (including, for the avoidance of doubt, any BSB authorised body), such additional information, documents or references as it considers appropriate to the consideration of your application.
8. You are personally responsible for the contents of your application and any information
submitted to the Bar Council (acting by the Bar Standards Board) by you or on your
behalf and you must not submit (or cause or permit to be submitted on your behalf)
information to the Bar Council (acting by the Bar Standards Board) which you do not
believe is full and accurate information.

9. When applying for a practising certificate you may apply to the Bar Council for a
reduction in the practising certificate fee payable by you if your gross fee income or
salary is less than such amount as the Bar Council may decide from time to time. Such
an application must be submitted by completing the form supplied for that purpose by
the Bar Standards Board.

C3. Practising Certificate Fees

10. The practising certificate fee shall be the amount or amounts prescribed in the Schedule
of Practising Certificate Fees issued by the Bar Council from time to time, and any
reference in these Rules to the "appropriate practising certificate fee" or the "practising
certificate fee payable by you" shall refer to the practising certificate fee payable by you
pursuant to that Schedule, having regard to, amongst other things:

10.1 the different annual practising certificate fees which may be prescribed by the
Bar Council for different categories of barristers, e.g. for Queen’s Counsel and
junior counsel, for barristers of different levels of seniority, and/or for barristers
practising in different capacities (i.e. self-employed barristers, employed
barristers, managers or employees of authorised bodies or barristers practising
with dual capacity);

10.2 any additional fee which may be prescribed by the Bar Council where your
application includes a request for authorisation to conduct litigation;

10.3 any reductions in the annual practising certificate fees which may be permitted by
the Bar Council in the case of practising certificates which are valid for only part
of a practising certificate year;

10.4 any discounts from the annual practising certificate fee which may be permitted
by the Bar Council in the event of payment by specified methods;
10.5 any reduction in or rebate from the annual *practising certificate fee* which may be permitted by the *Bar Council* on the grounds of low income, change of category or otherwise; and

10.6 any surcharge or surcharges to the annual *practising certificate fee* which may be prescribed by the *Bar Council* in the event of application for renewal of a *practising certificate* being made after the end of the *practising certificate year*.

11. If you have given an undertaking to pay the annual *practising certificate fee*, you must comply with that undertaking in accordance with its terms.

**C4. Issue of Practising Certificates**

12. The *Bar Council* (acting by the *Bar Standards Board*) shall not issue a *practising certificate* to a barrister or registered European lawyer:

12.1 who is not eligible for a *practising certificate*, or for a *practising certificate* of the relevant type; or

12.2 who has not applied for a *practising certificate*; or

12.3 who has not paid or not otherwise undertaken to pay in a manner determined by the *Bar Council*, the appropriate *practising certificate fee*; or

12.4 who is not insured against claims for professional negligence as provided for in rule 44 of Section D of Part II of this *Handbook*.

13. The *Bar Council* (acting by the *Bar Standards Board*) may refuse to issue a *practising certificate*, or may revoke a *practising certificate* in accordance with section C of Part V of this *Handbook*, if it is satisfied that the information submitted in support of the application for the *practising certificate* is incomplete, inaccurate or incapable of verification, or that the relevant barrister or registered European lawyer:

13.1 does not hold adequate insurance in accordance with rule 44 of Section D of Part II of this *Handbook*;

13.2 has failed and continues to fail to pay the *appropriate practising certificate fee* when due;
13.3 has not complied with any of the requirements of the Continuing Professional Development Regulations applicable to him; or

13.4 would be, or is, practising in breach of the provisions of rules 11-21 or 26-34 of Section B of this Part III of the Handbook,

14. When the Bar Council (acting by the Bar Standards Board) issues a practising certificate, it shall:

14.1 inform the relevant barrister or registered European lawyer of that fact; and

14.2 publish that fact, together with the name and practising address of the barrister and registered European lawyer and the other details specified in paragraph 15 below in the register on the Bar Standards Board's website.

15. A practising certificate shall state:

15.1 the name of the barrister or registered European lawyer (as the case may be);

15.2 the period for which the practising certificate is valid;

15.3 the reserved legal activities which the barrister or registered European lawyer (as the case may be) to whom it is issued is thereby authorised to carry on;

15.4 the capacity (or capacities) in which the barrister or registered European lawyer (as the case may be) practises; and

15.5 whether the barrister or registered European lawyer (as the case may be) is registered with the [Bar Council/Bar Standards Board] as a Public Access practitioner.

16. A practising certificate may be valid for a practising certificate year or part thereof and for one month after the end of the practising certificate year.

17. A full practising certificate shall authorise a barrister to exercise a right of audience before every court in relation to all proceedings.

18. A provisional practising certificate shall authorise a second six pupil to exercise a right of audience before every court in relation to all proceedings.
19. A limited practising certificate shall not authorise a barrister to exercise a right of audience, save that it shall authorise a barrister to exercise any right of audience which he had by reason of being a barrister and was entitled to exercise on 30 July 2000.

20. A practising certificate shall authorise a barrister to conduct litigation in relation to every court and all proceedings if the practising certificate specifies a litigation extension.

21. Every practising certificate issued to a barrister shall authorise the barrister:

21.1 to carry on:

(a) reserved instrument activities;

(b) probate activities;

(c) the administration of oaths; and

21.2 to undertake immigration work.

22. A registered European lawyer’s practising certificate shall authorise a registered European lawyer to carry on the same reserved legal activities as a full practising certificate issued to a barrister, save that:

22.1 a registered European lawyer is only authorised to exercise a right of audience or a right to conduct litigation if he acts [in conjunction with] a person authorised to practise before the court, tribunal or public authority concerned and who could lawfully exercise that right; and

22.2 a registered European lawyer is not authorised to prepare for remuneration any instrument creating or transferring an interest in land unless he has a home professional title obtained in Denmark, the Republic of Ireland, Finland, Sweden, Iceland, Liechtenstein, Norway, the Czech Republic, Cyprus, Hungary or Slovakia.

C5. Amendment and Revocation of Practising Certificates

23. You must inform the Bar Council (acting by the Bar Standards Board) as soon as reasonably practicable, and in any event within 28 days, if any of the information submitted in support of your practising certificate application form:
23.1 was incomplete or inaccurate when the application form was submitted; or

23.2 changes before the expiry of your practising certificate.

24. If you wish to:

24.1 change the capacity in which you practise (e.g. if you change from being an employed barrister or a manager or employee of a BSB authorised body or an authorised (non-BSB) body to a self-employed barrister, or vice versa, or if you commence or cease practice in a dual capacity); or

24.2 become authorised to conduct litigation or cease to be authorised to conduct litigation,

before the expiry of your practising certificate, you must:

24.3 notify the Bar Council (acting by the Bar Standards Board) of such requested amendment to your practising certificate; and

24.4 submit to the Bar Council (acting by the Bar Standards Board) such further information as the Bar Council (acting by the Bar Standards Board) may reasonably require in order for them to be able to determine whether or not to grant such proposed amendment to your practising certificate; and

24.5 within 14 days of demand by the Bar Council pay to the Bar Council the amount (if any) by which the annual practising certificate fee which would apply to you in respect of your amended practising certificate exceeds the annual practising certificate fee which you have already paid (or undertaken to pay) to the Bar Council. In the event that the revised annual practising certificate fee is less than the amount originally paid to the Bar Council (acting by the Bar Standards Board), the Bar Council (acting by the Bar Standards Board) is not under any obligation to refund any part of the annual practising certificate fee already paid although it may in its absolute discretion elect to do so in the circumstances contemplated by the Schedule of Practising Certificate Fees issued by the Bar Council from time to time.

25. The Bar Council (acting by the Bar Standards Board) may amend a practising certificate if it is satisfied that any of the information contained in the relevant application form was
inaccurate or incomplete or has changed, but may not amend a practising certificate (except in response to a request from the barrister) without first:

25.1 giving written notice to the barrister or registered European lawyer of the grounds on which the practising certificate may be amended; and

25.2 giving the barrister or registered European lawyer a reasonable opportunity to make representations.

26. The Bar Council (acting by the Bar Standards Board) shall endorse a practising certificate to reflect any qualification restriction or condition imposed on the barrister or registered European lawyer by the Bar Council (acting by the Bar Standards Board) or by a Disciplinary Tribunal, Interim Suspension or Disqualification Panel or Fitness to Practise Panel.

27. The Bar Council (acting by the Bar Standards Board):

27.1 shall revoke a practising certificate:

(a) if the barrister or registered European lawyer is disbarred or suspended from practice as a barrister or registered European lawyer whether on an interim basis under section E of Part V or otherwise under section C of Part V;

(b) if the barrister has notified the Bar Council or the Bar Standards Board that he no longer wishes to have a practising certificate; and

27.2 may revoke a practising certificate:

(a) in the circumstances set out in paragraph 13 above; or

(b) if the barrister or registered European lawyer has given an undertaking to pay the appropriate practising certificate fee and fails to comply with that undertaking in accordance with its terms,

but in either case only after:
(i) giving written notice to the relevant barrister or registered European lawyer of the grounds on which the practising certificate may be revoked; and

(ii) giving the relevant barrister or registered European lawyer a reasonable opportunity to make representations.

C6. Applications for Review

28. If you contend that the Bar Council (acting by the Bar Standards Board) has:

28.1 wrongly failed or refused to issue or amend a practising certificate; or

28.2 wrongly amended or revoked a practising certificate, pursuant to these Rules,

then you may lodge an application for review with the Qualifications Committee using the form supplied for that purpose by the Bar Standards Board. For the avoidance of doubt, this paragraph does not apply to any amendment or revocation of a practising certificate made by order of Medical or Review Panel, a Disciplinary Tribunal or the Visitors to the Inns of Court.

29. The Bar Council (acting by the Bar Standards Board) may issue a temporary practising certificate to a barrister [or registered European lawyer] who has lodged an application for review.

30. If the Qualifications Committee finds that the Bar Council (acting by the Bar Standards Board) has wrongly failed or refused to issue a practising certificate, then the Bar Council (acting by the Bar Standards Board) shall issue such practising certificate as ought to have been issued.

31. If the Qualifications Committee finds that the Bar Council (acting by the Bar Standards Board) has wrongly failed or refused to amend a practising certificate, then the Bar Council (acting by the Bar Standards Board) shall make such amendment to the practising certificate as ought to have been made.

32. If the Qualifications Committee finds that the Bar Council (acting by the Bar Standards Board) has wrongly amended a practising certificate, then the Bar Council (acting by the Bar Standards Board) shall cancel the amendment.
33. If the Qualifications Committee finds that the Bar Council (acting by the Bar Standards Board) has wrongly revoked a practising certificate, then the Bar Council (acting by the Bar Standards Board) shall re-issue the practising certificate.
D. THE REGISTRATION OF EUROPEAN LAWYERS RULES

1. If you are a *European lawyer* and wish to practise on a permanent basis in England and Wales under a *home professional title*, you may apply to the *Bar Standards Board* to be registered as a *registered European lawyer*.

2. An application for registration must be made in such form as may be prescribed by the *Bar Standards Board* and be accompanied by:

2.1 a certificate, not more than three months old at the date of receipt of the application by the *Bar Standards Board*, that you are registered with the competent authority in a *Member State* as a lawyer qualified to practise in that *Member State* under a *Member State* professional title;

2.2 a declaration that:

(a) you have not on the ground of misconduct or the commission of a criminal offence been prohibited from practising in your *Member State* and are not currently *suspended* from so practising;

(b) no *bankruptcy order* or *directors disqualification order* has been made against you and you have not entered into an individual voluntary arrangement with your creditors;

(c) you are not aware of any other circumstances relevant to your fitness to practise under your *home professional title* in England and Wales; and

(d) you are not registered with the Law Society of England and Wales, of Scotland or of Northern Ireland; and

2.3 the prescribed fee.

3. Provided it is satisfied that the application complies with the requirements of paragraph 2 of this Section D, the *Bar Standards Board* will:

3.1 register you as a *registered European lawyer*; and

3.2 so inform you and the competent authority in your *Member State* which has issued the certificate referred to in paragraph 2.1 above.
4. The Bar Standards Board will:

4.1 remove a registered European lawyer from the register:

(a) pursuant to a sentence of a Disciplinary Tribunal; or

(b) if the registered European lawyer ceases to be a European lawyer;

4.2 suspend a registered European lawyer from the register:

(a) pursuant to a sentence of either a Disciplinary Tribunal or a Summary Procedure Panel; or

(b) if the registered European lawyer’s authorisation in his home State to pursue professional activities under his home professional title is suspended; and

in each case, notify the European lawyer’s home professional body:

(c) of his removal or suspension from the register; and

(d) of any criminal conviction or bankruptcy order of which it becomes aware against a registered European lawyer.
E. ENTITY APPLICATION AND AUTHORISATION

E1. Eligibility for Authorisation to Practise as a BSB authorised body

1. In this Section E, references to "you" and "your" are references to the partnership, LLP or company which is applying for, or has applied for (in accordance with this Section E of Part III), authorisation or (if a licensable body) a licence to practise as a BSB authorised body and references in these Rules to “authorisation to practise” mean the grant by the Bar Council as Approved Regulator or licensing authority of an authorisation or a licence (as the case may be) under this section E of Part III (distinguishing between the two only where the context so requires).

2. To be eligible for authorisation to practise as a BSB authorised body, you:

2.1 must confirm that you will have in place, at all times, individuals appointed to act as a HOLP (who must also be a manager) and a HOFA of the BSB authorised body;

2.2 must confirm that you have or will have appropriate insurance arrangements in place in accordance with rule 44 of Section D of Part II of this Handbook and you must be able to provide evidence of those insurance arrangements if required to do so by the Bar Standards Board;

2.3 must confirm that, in connection with your proposed practice, you will not directly or indirectly hold client money in accordance with rule 42 of Section D of Part II of this Handbook or have someone else hold client money on your behalf other than in those circumstances permitted by rule 43 of Section D of Part II of this Handbook;

2.4 must confirm that no individual that has been appointed or will be appointed as a HOLP, HOFA, manager or employee of the BSB authorised body has been disqualified from acting as such by the Bar Standards Board or any Approved Regulator pursuant to section 99 of the LSA or otherwise as a result of its regulatory arrangements;

2.5 must confirm that you will at all times have a practising address in England or Wales;
2.6 must confirm that:

(a) if you are an LLP, you are incorporated and registered in England and Wales, Scotland or Northern Ireland under the Limited Liability Partnerships Act 2000;

(b) if you are a Company, you are:

(i) incorporated and registered in England and Wales, Scotland or Northern Ireland under Parts 1 and 2 of the Companies Act 2006; or

(ii) incorporated in an Establishment Directive state and registered as an overseas company under Part 34 of the Companies Act 2006; or

(iii) incorporated and registered in an Establishment Directive state as a societas Europaea;

2.7 without prejudice to paragraph 3 below, you have or will have at all times at least one practising barrister who is both a manager and an owner; and

2.8 must confirm that at least one manager or employee is an authorised individual in respect of each reserved legal activity which you wish to provide;

2.9 must confirm that any owner will also be a manager; and

2.10 must confirm that all persons with any ownership interest (whether material or not) and all managers will be individuals; and

2.11 must confirm that you will not be providing any services other than legal activities, 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 being legal activities; and

2.12 must confirm that you will pay annual fees as and when they become due.

3. In addition to the requirements set out at paragraph 2 above:

3.1 to be eligible for authorisation to practise as a barrister only entity:
(a) all of the managers of the partnership, LLP or company (as the case may be) must be practising barristers; and

(b) all those with a material ownership interest in the partnership, LLP or company (as the case may be) must be practise barristers;

3.2 to be eligible for authorisation to practise as a legal disciplinary practice:

(a) all of the managers of the partnership, LLP or company (as the case may be) must be BSB authorised individuals or authorised (non-BSB) individuals; and

(b) all the owners (whether or not the ownership interest is material) of the partnership, LLP or company (as the case may be) must be BSB authorised individuals or authorised (non-BSB) individuals;

3.3 to be eligible to be licensed to practise as a BSB licensed body:

(a) the body must be a licensable body, as defined by section 72 of the LSA but must also meet the eligibility requirements set out at paragraph 2 of this Section E to Part III; and

(b) all of the non-authorised owners in the partnership, LLP or company (as the case may be) must be approved by the Bar Standards Board as being able to hold such interest taking into account the relevant suitability criteria.

4. In the event that you meet the eligibility criteria set out in paragraph 2 above, you may submit an application in accordance with paragraphs 6 and 7 below and the Bar Standards Board will review that application in accordance with paragraphs 9 to 11 below to determine whether or not to authorise you or to grant you a licence (as appropriate) to practise as a BSB authorised body. In the event that the Bar Standards Board determines that you should be authorised or licensed (as appropriate) to practise as a BSB authorised body then it may either:

4.1 authorise you to practise as a barrister only entity or a legal disciplinary practice in the event that you also meet the eligibility criteria set out in paragraph 3.1 or
3.2 respectively and you have applied to be authorised as such in your relevant application form; or

4.2 license you to practise as a **BSB licensed body**, in the event that you do meet the eligibility criteria set out in paragraph 3.3 above and you have applied to be authorised as such in your relevant application form.

5. Such authorisation or licence (as appropriate) will entitle you to:

5.1 to exercise a *right of audience* before every *court* in relation to all proceedings;

5.2 to carry on:

   (a) *reserved instrument activities*;

   (b) *probate activities*;

   (c) the *administration of oaths*;

5.3 to undertake *immigration work*; and

5.4 if you have been granted a litigation extension, to *conduct litigation*.

**Guidance**

1. Insurance taken out with the **BMIF** shall be appropriate insurance for these purposes.

2. Single person entities are permitted under these arrangements. Therefore, a **barrister only entity** may (subject to any structural requirements imposed by general law for the particular type of entity) comprise just one **barrister** who is both the **owner** and **manager** of that entity.

3. These are mandatory eligibility requirements. The **Bar Standards Board** has a discretion also to take other factors into account in deciding whether an **applicant** is one which it would be appropriate for it to regulate (see paragraph 19] below).

**E2. Applications for Authorisation**

*Application to be authorised or licensed as a BSB authorised body*
6. To apply for authorisation to practise as a BSB authorised body, you must:

6.1 complete the application form supplied by the Bar Standards Board and submit it to the Bar Standards Board; and

6.2 submit such other information, documents and references in support of the application as may be required by the application form or by the Bar Standards Board from time to time; and

6.3 pay the application fee in the amount determined in accordance with paragraph 14 below.

Application for a litigation extension

7. If you would like to apply for a litigation extension, you must make this clear on your application form (where you are applying for the litigation extension at the same time as seeking an authorisation or licence to act as a BSB authorised body) or submit the relevant application form in circumstances where the application is being made subsequent to your initial application and you must provide such other information to the Bar Standards Board as it may require in order to satisfy itself that:

7.1 you have the relevant administrative systems in place to be able to provide legal services direct to clients and to administer the conduct of litigation;

7.2 you have a sufficient number of persons who are authorised to conduct litigation to provide guidance to any owners, managers or employees that may be involved in assisting in the conduct of litigation that are not themselves authorised and that you have an adequate number of qualified persons to provide guidance to any persons authorised to conduct litigation who are of less than three years' standing.

Guidance

1. Years' standing and qualified person shall be defined in accordance with rule 17.1 and 17.3 of Section B of this Part III.

Approval applications for any new HOLPs, HOFAs, owners and/or managers
8. If, following authorisation or the grant of a licence (as appropriate), a **BSB authorised body** wishes to appoint a new **HOLP, HOFA, owner or manager**, the **BSB authorised body** must:

- 8.1 notify the **Bar Standards Board** of such proposed appointment prior to such appointment being made; and

- 8.2 make an application to the **Bar Standards Board** for approval of the new **HOLP, HOFA, owner or manager** (as appropriate); and

- 8.3 pay any fee set by the **Bar Standards Board**.

**Application Process**

9. An application for authorisation and/or a litigation extension will only have been made once the **Bar Standards Board** has received the application form in full, together with the appropriate fee, all the information required in support of the application and confirmation from you in the form of a declaration that the information contained within, or submitted in support of, the application is full and accurate.

10. On receipt of the application, the **Bar Standards Board** may require, from you or a third party, such additional information, documents or references as it considers appropriate to the consideration of your application.

11. You are responsible for the contents of your application and any information submitted to the **Bar Standards Board** by you or on your behalf and you must not submit (or cause or permit to be submitted on your behalf) information to the **Bar Standards Board** which you do not believe is full and accurate information.

12. The **application fee** shall be the amount or amounts prescribed by the **Bar Standards Board** from time to time relevant to the type of **BSB authorised body** to which the application relates. A separate **application fee** will also be payable if you are applying for a litigation extension.
**Guidance**

1. Application forms and guidance notes for completion can be found on the *Bar Standard Board's* website.

2. Once you have submitted an application, you must disclose to the *Bar Standards Board* any information which you subsequently become aware of and which you would have been required to supply if it had been known by you at the time of the original application.

3. Details of the relevant *application fee* can be found on the *Bar Standards Board's* website.

**E3. Decision Process**

13. Subject to paragraphs 19 and 20 below, the *Bar Standards Board* shall make a decision in respect of each valid and complete application within the *decision period*.

14. In the event that the *Bar Standards Board* is not able to reach a decision within the *decision period*, it shall notify you of such delay and shall confirm to you the latest date by which you will have received a response to your application from the *Bar Standards Board*.

15. The *Bar Standards Board* may issue more than one notice to extend the *decision period* except that:

   15.1 any notice to extend must always be issued prior to the expiry of the *decision period* on the first occasion and prior to the expiry of any such extended *decision period* on the second and subsequent occasions; and

   15.2 no notice to extend can result in the total *decision period* exceeding more than 9 months.

16. During its consideration of your application form, the *Bar Standards Board* may identify further information or documentation which it needs in order to be able to reach its decision. If this is the case, you must provide such additional information or documentation as soon as possible after receipt of the relevant request from the *Bar Standards Board*. Any delay in providing this information shall further entitle the *Bar
Standards Board to issue an extension notice in accordance with paragraph 19 or 20 (as the case may be) or to treat the application as having been withdrawn.

E4. Issues to be Considered by the Bar Standards Board

Applications for authorisation or the grant of a licence

17. In circumstances where the mandatory conditions set out at paragraphs 2 and 3 above are met, the Bar Standards Board shall exercise its discretion as to whether to grant authorisation. In exercising this discretion, the Bar Standards Board shall consider whether the entity is one which it would be appropriate for the Bar Standards Board to regulate taking into account its analysis of the risks posed by you, the regulatory objectives of the LSA and the policy objectives of the Bar Standards Board as published from time to time.

18. In circumstances where the mandatory conditions set out at paragraphs 2 and 3 above are not met, the Bar Standards Board shall refuse to grant the authorisation or licence (as appropriate),

Guidance

1. The Bar Standards Board is a specialist regulator focussing primarily on the regulation of advocacy and litigation services. The Bar Standards Board wishes to ensure that it is an appropriate regulator of your proposed practice, and so, as part of its review of your application, it will undertake a risk assessment to consider the nature of the risks posed by you and will consider the appropriateness or otherwise of the Bar Standards Board regulating you taking into account the nature of the services which you are intending to provide and the Bar Standards Board's policy objectives. Factors that the Bar Standards Board shall take into account when undertaking this risk assessment include:

1.1 the services which you intend to provide and the nature and extent of any non-reserved activities;

1.2 the proposed proportion of managers to employees;

1.3 the extent to which your managers have been and/or are going to be actively involved in advocacy and/or litigation services or related advice;
1.4 whether you are intending to undertake legal transactional services direct to lay clients and, if so, whether this is likely to constitute a substantial or significant proportion of your practice; and

1.5 the business systems which you have or are intending to put in place to manage such services.

2. The following factors, when present, would indicate that it may be appropriate for the Bar Standards Board to regulate you:

2.1 if 50% or more of your owners and 50% or more of your managers are entitled to exercise rights of audience in the Higher Courts;

2.2 if a substantial part of the services to be provided comprise the provision of advocacy and/or litigation services or related advice;

2.3 if 75% of more of your owners and 75% or more of your managers are authorised individuals; and

2.4 if each manager supervises only a small number of employees.

3. The following factors, when present, would indicate that it may not be appropriate for the Bar Standards Board to regulate you:

3.1 if less than 50% of your owners and less than 50% of your managers are entitled to exercise rights of audience in the Higher Courts;

3.2 if a substantial part of the services to be provided comprise undertaking legal transactional matters direct to lay clients;

3.3 if the provision of advocacy and/or litigation and related advice does not comprise a significant proportion of your proposed business;

3.4 if less than 75% of your owners and 75% of your managers are authorised individuals.

4. If you meet all of the requirements of paragraph 2 above you may still be refused authorisation if the Bar Standards Board's analysis of the risks posed by you indicate that it may not be appropriate for the Bar Standards Board to regulate you. Similarly, if
you exhibit similar characteristics to those described in paragraph 3 above you may still be granted authorisation by the Bar Standards Board if the Bar Standards Board is satisfied that the risks posed by your organisation can be managed effectively and further considers that it would be consistent with the regulatory objectives of the LSA and the policy objectives of the Bar Standards Board to grant such authorisation to you.

19. Where the Bar Standards Board concludes that you are an entity which is appropriate for it to regulate in accordance with paragraph 17 and the associated guidance, the Bar Standards Board may still refuse your application for authorisation if:

19.1 it is not satisfied that your managers and owners individually meet the relevant suitability criteria applicable to managers and owners of BSB authorised bodies;

19.2 it is not satisfied that your managers and owners are suitable as a group to operate or control a practice providing services regulated by the Bar Standards Board;

19.3 if it is not satisfied that your proposed HOLP and HOFA meet the relevant suitability criteria;

19.4 it is not satisfied that your management or governance arrangements are adequate to safeguard the regulatory objectives of the LSA or the policy objectives of the Bar Standards Board;

19.5 it is not satisfied that, if the authorisation is granted, you will comply with the Bar Standards Board’s regulatory arrangements including this Handbook and any conditions imposed on the authorisation;

19.6 you have provided inaccurate or misleading information in your application or in response to any requests by the Bar Standards Board for information;

19.7 you have failed to notify the Bar Standards Board of any changes in the information provided in the application; or

19.8 you have applied for authorisation to become a barrister only entity or a legal disciplinary practice and the Bar Standards Board has concluded that it may require the intervention powers allocated to it in respect of licensed bodies under the LSA in respect of you;
19.9 for any other reason, the *Bar Standards Board* considers that it would be against the *regulatory objectives* of the *LSA* or the policy objectives of the *Bar Standards Board* to grant authorisation to you.

**Guidance**

1. In circumstances where the *Bar Standards Board* rejects your application on the basis of paragraph 19.8 above, you will have the opportunity to make the necessary adjustments to your composition and to re-apply to become a *BSB licensed body*.

**Applications for authorisation to conduct litigation**

20. If the *Bar Standards Board* is unable to satisfy itself that the *BSB authorised body* meets the requirements set out in paragraph 7 of this Section E to Part III, it can refuse to grant the litigation extension.

21. In the event that the *Bar Standards Board* refuses such application or decides to place conditions on the *BSB authorised body* as a result of such application, the *BSB authorised body* can submit an appeal in respect of such decision in accordance with the provisions of paragraph 38 of this Section E of this Part III.

**Approval applications for any new HOLPs, HOFAs, owners and/or managers**

22. The *Bar Standards Board* shall consider any approval applications for any new *HOLPs, HOFAs, owners and/or managers* and shall determine whether the relevant individual meets the *suitability criteria* relevant to such proposed appointment.

23. In the event that the *Bar Standards Board* refuses such application or decides to place conditions on the *BSB authorised body* as a result of such application, either the *BSB authorised body* or the individual concerned can submit an appeal in respect of such decision in accordance with the provisions of paragraphs 38 or 39 of this Section E of this Part III.

**E5. Suitability Criteria in respect of HOLPs, HOFAs, owners and managers**

24. The *Bar Standards Board* shall conclude that an individual is not a fit and proper person to undertake the role of a *HOLP* if:
24.1 that individual is not an *authorised individual*; or

24.2 that individual is disqualified from acting as a *HOLP* by the *Bar Standards Board* or an *Approved Regulator* pursuant to section 99 of the *LSA* or otherwise as a result of its regulatory arrangements.

25. The *Bar Standards Board* may conclude that an individual is not a fit and proper person to undertake the role of a *HOLP* if:

25.1 any of the circumstances listed in paragraph 30 below apply to the person designated as the *HOLP*; or

25.2 the *Bar Standards Board* considers that the person is not able effectively to carry out the duties imposed on a *HOLP* by section 91 of the *LSA*.

26. The *Bar Standards Board* shall conclude that an individual is not a fit and proper person to undertake the role of a *HOFA* if that individual is disqualified from acting as a *HOFA* by the *Bar Standards Board* or an *Approved Regulator* pursuant to section 99 of the *LSA* or otherwise as a result of its regulatory arrangements.

27. The *Bar Standards Board* may conclude that an individual is not a fit and proper person to undertake the role of a *HOFA* if:

27.1 any of the circumstances listed in paragraph 30 below apply to the person designated as the *HOFA*; or

27.2 the *Bar Standards Board* considers that the person is not able effectively to carry out the duties imposed on a *HOFA* by section 92 of the *LSA*.

28. In circumstances where an *owner* is also a *non-authorised individual*, the *Bar Standards Board* needs to approve that individual as an *owner*. The *Bar Standards Board* shall approve a *non-authorised individual* to be an *owner* of *BSB licensed body* if:

28.1 the *non-authorised individual* is also a *manager* and approved as such; and

28.2 the *non-authorised individual*'s holding of that interest does not compromise the *regulatory objectives*; and

28.3 the *non-authorised individual*'s holding of that interest does not compromise compliance with the duties imposed by section 176 of the *LSA* by the *licensed*
body or any authorised individuals that are to be employees or managers of that licensed body;

28.4 the non-authorised individual is otherwise a fit and proper person to hold that interest taking into account:

(a) that person's probity and financial position;

(b) whether the person is disqualified pursuant to section 100(1) of LSA or included in the list maintained by the Legal Services Board pursuant to paragraph 51 of Schedule 13 of the LSA; and

(c) that person's associates; and

(d) the suitability criteria relevant to managers and employees as set out at paragraph 30 below.

29. In circumstances where a manager is a non-authorised individual, the Bar Standards Board needs to approve that individual as a manager. The Bar Standards Board shall approve a non-authorised individual to be a manager of a BSB licensed body if the non-authorised individual is a fit and proper person to hold that interest taking into account:

(a) that person's probity;

(b) whether the person is disqualified pursuant to section 100(1) of the LSA or included in the list maintained by the Legal Services Board pursuant to paragraph 51 of Schedule 13 of the LSA; and

(c) the suitability criteria relevant to managers and employees as set out at paragraph 30 below.

30. The Bar Standards Board may reject an application if it is not satisfied that:

30.1 an individual identified in an application for authorisation or the grant of a licence as a proposed owner, manager, HOLP or HOFA of the relevant applicant; or

30.2 any individual identified as a replacement owner, manager, HOLP of HOFA,
is a fit and proper person to act as an owner, manager, HOLP or HOFA of a BSB authorised body. Reasons why the Bar Standards Board may conclude that an individual is not a fit and proper person include where the individual concerned:

30.3 has been committed to prison in civil or criminal proceedings;

30.4 has been disqualified from being a director;

30.5 has been removed from the office of charity trustee or trustee for a charity by an order within the terms of section 72(1)(d) of the Charities Act 1993;

30.6 is an undischarged bankrupt;

30.7 has been adjudged bankrupt and discharged;

30.8 has entered into an individual voluntary arrangement or a partnership voluntary arrangement under the Insolvency Act 1986;

30.9 has been a manager of an authorised body or a BSB authorised body which has entered into a voluntary arrangement under the Insolvency Act 1986;

30.10 has been a director of a company or a member of an LLP which has been the subject of a winding up order, an administration order or administrative receivership; or has entered into a voluntary arrangement under the Insolvency Act 1986; or has been otherwise wound up or put into administration in circumstances of insolvency;

30.11 lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under sections 15 to 20 or section 48 of that Act are exercisable in relation to that individual;

30.12 is the subject of outstanding judgments involving the payment of money;

30.13 is currently charged with an indictable offence, or has been convicted of an indictable offence, any dishonesty offence or any offence under the Financial Services and Markets Act 2000, the Immigration and Asylum Act 1999 or the Compensation Act 2006;
30.14 has been disqualified from being appointed to act as a HOLP or a HOFA or from being a manager or employed by a licensed body (as appropriate) by the Bar Standards Board or another Approved Regulator pursuant to its or their powers under section 99 of the LSA or otherwise as a result of its regulatory arrangements; or

30.15 has been the subject of an equivalent circumstances in another jurisdiction to those listed in paragraphs 30.3 to 30.14 above; or

30.16 has significant professional conduct actions against them; or

30.17 has been involved in other conduct which calls into question his or her honesty, integrity or respect for the law.

E6. Notification of the Authorisation Decision

31. The Bar Standards Board will notify you of its decision in writing within the decision period or by such later date as may have been notified to the applicant in accordance with paragraph 14 or 15 above. In the event that the Bar Standards Board decides to refuse to grant the application, the reasons for such refusal shall be set out.

E7. Conditions of Authorisation

32. Authorisation granted by the Bar Standards Board to a barrister only entity or a legal disciplinary practice or the terms of any licence granted by the Bar Standards Board to a BSB licensed body in accordance with this Section E of Part III must specify:

32.1 the activities which are reserved legal activities and which the BSB authorised body is authorised to carry on by virtue of the authorisation or the licence (as the case may be); and

32.2 any conditions subject to which the authorisation or the licence (as the case may be) is granted.

33. Authorisations and licences shall, in all cases, be granted subject to the condition that:

33.1 any obligation which may from time to time be imposed on you (or your managers, employees, or owners) by the Bar Standards Board is complied with; and
33.2 any other obligation imposed on you (or your managers, employees or owners) by or under the LSA or any other enactment is complied with.

34. In addition to the provisions set out at paragraph 33 above, authorisation or a licence may be granted subject to such other conditions as the Bar Standards Board considers appropriate including as to:

34.1 the *non-reserved activities* which you may or may not carry on; and/or

34.2 in the case of licensed bodies:

   (a) the nature of any interest held by a non-authorised owner provided always that the Bar Standards Board complies with its obligations under paragraph 17 of Schedule 13 to the LSA; and/or

   (b) any limitations on the shareholdings or voting controls capable of being held by non-authorised owners in accordance with paragraph 33 of Schedule 13 to the LSA.

E8. **Duration of the Authorisation/Licence granted**

35. Except where indicated otherwise in the authorisation or licence, any authorisation or licence granted in accordance with these Scope of Practice, Authorisation and Licensing Rules shall be for unlimited duration except that the authorisation or licence:

35.1 shall cease to have effect on the occurrence of any of the following:

   (a) if you have your authorisation/licence withdrawn in accordance with paragraph 37 below; or

   (b) if you obtain authorisation/licence from an Approved Regulator or licensing authority.

35.2 may cease to have effect on the occurrence of any of the following:

   (a) if you fail to provide the relevant monitoring information or fail to pay the relevant authorisation/licensing renewal fee in circumstances where the Bar Standards Board has notified you (i) that such information or payment is required within a particular timescale; and (ii) that failure to provide
such information or payment within the relevant timescale may result in your authorisation or licence being withdrawn in accordance with this paragraph 35; or

(b) if you fail to replace your HOLP/HOFA in accordance with the requirements of this *Handbook*.

**E9. Modification of an authorisation/licence**

36. The *Bar Standards Board* may modify the terms of an authorisation or licence granted by it:

36.1 if you apply to the *Bar Standards Board* for the terms of such authorisation or licence (as the case may be) to be modified; or

36.2 if such modification is required in accordance with the provisions of this *Handbook*; or

36.3 in the event of a sanction imposed by a disciplinary tribunal; or

36.4 where the *Bar Standards Board* reasonably considers that such modification is appropriate and in accordance with the *regulatory objectives* under the *LSA* or the policy objectives of the *Bar Standards Board*,

in each case, by giving notice to you in writing of the modifications which are to be made to the authorisation or licence (as the case may be) and providing an opportunity for you to make representations prior to a decision. Following the decision by the *Bar Standards Board*, you may apply for a review in accordance with 38.3 below. Such modifications take effect 28 days from the date the decision is notified to you unless an application for a review is lodged within that period and shall be made published in such a way as determined by the *Bar Standards Board* from time to time.

**E10. Revocation or suspension of an authorisation/licence**

37. The *Bar Standards Board* may:

37.1 revoke an authorisation or licence granted by it:

(a) in the event of a sanction imposed by a disciplinary tribunal; or
(b) in the event that you no longer comply with the requirements in rule 2 of section E1 of Part III or your circumstances have changed in relation to the issues considered by the Bar Standards Board in section E4 of Part III; or

(c) revocation otherwise appears appropriate taking into account the regulatory objectives of the Bar Standards Board; or]

37.2 suspend an authorisation or licence granted by it:

(a) to give it an opportunity to carry out any investigations into whether or not your authorisation or licence should be revoked in accordance with paragraph 37.1

in each case, by giving notice to you in writing of such revocation or suspension (as the case may be), such revocation or suspension to have effect from the date upon which the Bar Standards Board delivers such notice to you unless a later date is otherwise specified within the notice.

E11. Applications for Review

38. If you consider that the Bar Standards Board has (other than in relation to a decision by a disciplinary tribunal):

38.1 wrongly refused an application for authorisation or licence; or

38.2 wrongly imposed a condition on an authorisation or licence; or

38.3 wrongly modified the terms of your authorisation or licence; or

38.4 wrongly refused to modify the terms of your authorisation or licence; or

38.5 wrongly revoked or suspended your authorisation or licence; or

38.6 wrongly done any of the foregoing in relation to the litigation extension to your authorisation or licence; or

38.7 failed to provide to you notice of a decision in accordance with this section E of Part III,
then you may lodge an application for review of that decision with the Qualifications Committee using the form supplied for that purpose by the Bar Standards Board. Such application for review will only have been made once the Bar Standards Board has received the relevant fee in respect of such application for review.

39. Any individual:

39.1 designated to act as a HOLP or a HOFA; or

39.2 identified as a non-authorised interest holder, owner or manager of the applicant, that considers that the Bar Standards Board has wrongly concluded that such individual does not meet the suitability criteria relevant to their proposed position within the entity, may lodge an application for review of that decision with the Qualifications Committee using the form supplied for that purpose by the Bar Standards Board. Alternatively, you may lodge an application for review on such individual’s behalf whether or not the individual has requested that you make such an application. In either case, such application for review will only have been made once the Bar Standards Board has received the relevant fee in respect of such application for review.

40. The time period for applying for a review of the decision is 28 days from the date that the decision is notified to you.

41. If, following the completion of a review lodged under paragraph 38 or 39 of this section E of Part III, you or the relevant individual(s) (as the case may be) still consider that the Bar Standards Board has:

41.1 in the case of you and your application:

(a) wrongly refused an application for authorisation or a licence; or

(b) wrongly imposed a condition on an authorisation or a licence; or

(c) wrongly modified the terms of your authorisation or licence; or

(d) wrongly refused to modify the terms of your authorisation or licence

(e) wrongly revoked or suspended your authorisation or licence; or
(f) wrongly done any of the foregoing in relation to a litigation extension of your authorisation or licence; or

(g) failed to provide to you notice of a decision in accordance with this section E of the Scope of Practice, Authorisation and Licensing Rules; or

41.2 in the case of an individual, wrongly concluded that such individuals do not meet the suitability criteria relevant to their proposed position within the entity,

you or the relevant individual(s) to which the decision relates may appeal to the First Tier Tribunal \(^1\) against the Bar Standard Board's decision.

42. The time period for appealing against a decision to the First Tier Tribunal is 28 days from the date that the decision is notified to you.

**E12. Register**

43. The Bar Standards Board shall keep a public register containing the names and places of business of all BSB authorised bodies (together with details of the reserved legal activities which such BSB authorised bodies are able to undertake) as well as details of any bodies which have in the past been granted authorisation or obtained a licence from the Bar Standards Board but where such licence and/or authorisation is no longer current.

44. If an authorisation or licence is, at any time, suspended or made subject to conditions, this shall be noted on the register of BSB authorised bodies by the Bar Standards Board.

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\(^1\) This will require secondary legislation and confirmation that the First Tier Tribunal’s jurisdiction could be expanded to conclude such appeals in the case of barrister only entities and legal disciplinary practices.
F ONGOING COMPLIANCE WITH THE AUTHORISATION AND LICENSING REQUIREMENTS

F1. Non-compliance with the mandatory conditions

1. If, at any time and for whatever reason, you fail to meet the mandatory conditions set out in Section E of this Part III which are relevant to the type of BSB authorised body that you are, then you must notify the Bar Standards Board of your failure to comply with the mandatory conditions within seven days of your failure to comply and, at the same time, you must submit your proposals for rectifying such non-compliance which, for the avoidance of doubt, shall include your proposed timetable for such rectification. In the event that the Bar Standards Board considers that your proposals for rectification are not sufficient, the Bar Standards Board may issue a notice suspending or revoking your authorisation or licence (as appropriate) in accordance with paragraph 39 of Section E of this Part III.

Guidance

1. Examples of situations where you may become non-compliant include:

   1.1 where your last remaining barrister:

      (a) dies; or

      (b) abandons, retires or resigns from the practice; or

   1.2 where you are a barrister only entity or a legal disciplinary practice, a non-authorised individual is appointed as a manager of or otherwise acquires an ownership interest in such business, or where you are a licensable body and a non-authorised individual who is not a manager becomes an owner (for example upon inheriting the interest from a manager who dies);

   1.3 where you cease to have available at least one employee who is authorised to carry on a particular reserved activity which you are authorised to provide. Examples of situations where an individual should be considered to be unavailable to a BSB authorised body include where:

      (a) they are committed to prison;
(b) they are unable to attend to the practice because of incapacity caused by illness, accident or age;
(c) they become and continue to be a person who lacks capacity under Part 1 of the Mental Capacity Act 2005;
(d) they are made subject to a condition on their practising certificate or registration which would be breached if they continue to be an owner and/or manager of the body; or
(e) they are no longer authorised to perform the particular reserved legal activity.

1.4 you cease to have a HOLP or a HOFA appointed;

1.5 your HOLP, HOFA, any manager or owner ceases to meet the relevant suitability criteria; or

1.6 where you are a licensed body, your last remaining owner and/or manager that is a non-authorised individual dies or otherwise leaves the business.

2. Examples of proposals that you may submit in order to rectify such non-compliance include:

2.1 In the case of guidance 1.1 above, that you are seeking to appoint a different practising barrister to be an owner and/or a manager of a BSB authorised body;

2.2 In the case of guidance 1.2 above, confirmation that you will take the necessary steps to rectify your status, whether by submitting an application to the Bar Standards Board for authorisation to practise as a licensed body and/or for approval of the non-authorised individual as a manager or alternatively by ensuring that the non-authorised person shall divest themselves of their interest as soon as reasonably practicable or by seeking a licence from another licensing authority, as the case may be [but note guidance 3 below];

2.3 in the case of guidance 1.4 above, that you are seeking to appoint a replacement HOLP or HOFA (as appropriate) in accordance with the relevant procedure set out in Section E of Part III;

2.4 in the case of guidance 1.5 above, that you are taking the necessary steps to exclude the relevant person from the business and, where necessary, you are
taking steps to replace the same; and

2.5 in the case of guidance 1.6 above, you confirm whether or not you are likely to appoint a replacement non-authorised individual or, if not, whether you will be seeking authorisation from the Bar Standards Board to practise as a barrister only entity or a legal disciplinary practice (as appropriate).

3. In respect of guidance 1.2, it may be the case that a non-authorised individual obtained an ownership interest in a BSB authorised body following the death of a barrister or a non-authorised person. Similarly, a non-authorised person that has not been approved pursuant to the suitability criteria may acquire an ownership in a licensed body. In these cases, it may be the case that the BSB authorised body does not need to submit an application for authorisation to practise as a licensed body or an application for approval of such non-authorised individual (as appropriate) if the BSB authorised body instead satisfies the Bar Standards Board that it is taking steps to ensure that such non-authorised individual shall divest themselves of their interest as soon as reasonably practicable (for example, on completion of the relevant probate).

F2. Temporary emergency approvals for HOLPs and HOFA

2. If a BSB authorised body ceases to have a HOLP or HOFA whose designation has been approved by the Bar Standards Board, the BSB authorised body must immediately and in any event within seven days:

2.6 notify the Bar Standards Board;

2.7 designate another manager or employee to replace its previous HOLP or HOFA, as appropriate; and

2.8 make an application to the Bar Standards Board for temporary approval of the new HOLP or HOFA, as appropriate.

3. The Bar Standards Board may grant a temporary approval under this rule if on the face of the application and any other information immediately before the Bar Standards
Board, there is no evidence suggesting that the new HOLP or HOFA is not suitable to carry out the duties imposed on them under these rules.

4. If granted temporary approval under paragraph 3 above for its designation of a new HOLP or HOFA, the authorised body must:

4.1 designate a permanent HOLP or HOFA, as appropriate; and

4.2 submit a substantive application for approval of that designation in accordance with Section E of this Part III,

before the expiry of the temporary approval or any extension of that approval by the Bar Standards Board.