

# SRA Authorisation Rules & New Firm Authorisation Webinar

## 28 July 2020

### FAQS & Useful Guidance

#### Recorded Webinar and Slides

The recording of the webinar and the slides can be viewed on our website which can be accessed using the following link:

<https://dglegal.co.uk/training/#SRAAuthorisationRulesandNewFirmAuthorisation>

#### FAQs

**Q Does the COLP need to be a director in an ABS or can they be a self-employed consultant or an employee?**

**A** The terms in this question are slightly misleading. The SRA no longer use the term ABS, they are licensed bodies and we should refer to a manager rather than a director.

A COLP must be a manager or an employee under the definitions in the SRA's glossary:

<https://www.sra.org.uk/solicitors/standards-regulations/glossary/>

Note – The SRA have never had a COLP outsourced to an external lawyer under a contract for services. Technically it can happen by someone who owns a company and the firm contracts with that company for the person to be their COLP or COFA. They would then meet the definition of 'employee'. This has been allowed for years – it is not new, there has not been a change to the rules in that respect and it is not unusual for solicitors to use this set-up to be consultant solicitors in other firms etc. The SRA are not aware of anyone using this for the COLP or COFA role, but they could. However, if they did, the SRA would be asking questions about seniority, access to the firm's information, and ability to ensure that the firm complied with the SRA's regulations. If that person were offering that service to more than one firm, the SRA would also be asking questions about conflict, confidentiality and time management. The SRA would need to be satisfied that they could carry out the role of COLP fully and properly before they approved them as such.

It is important to understand that you cannot have COLP companies which rent out people as COLPs. The company has to be wholly owned by the same person whose services are being used. That person would then constitute an employee of the firm for the SRA regulations and would need to be recorded as such on their systems and would be subject to all the regulations that brings.

**Q Can a Sole Practitioner change to a Limited Company?**

**A** Yes. If there are any changes to the ownership or management of the firm you will require fresh authorisation and shall need to complete the FA1 application form. If there are no changes then you should apply for a change of legal entity using the FA1b form. The fee is £200.

Q In an existing recognised body (limited company) if we wish to appoint a senior colleague as a manager, what are the requirements. This specific individual has four plus years PQE and no suitability concerns. If they are deemed approved, do we still have to completed the individual approval form on mySRA.

A The requirements are listed in the SRA Authorisation of Firms Rules at:  
<https://www.sra.org.uk/solicitors/standards-regulations/authorisation-firms-rules/>

If the person is deemed approved, you would notify the SRA of the new appointment via MySRA. You do not need to complete the FA2 form in these circumstances. If they are not deemed approved, individuals would apply by submitting a completed FA2 form.

Q Does the SRA carry out any checks on those nominated for compliance officer to ensure they are suitable for the roles; just because someone says they are suitable doesn't mean they are?

A Yes, the SRA carry out various checks including reviewing their disciplinary record, and their experience. We ask for evidence on the FA2 of their seniority and whether they have sufficient access to the firm's information and records. They will need unfettered access to firm information and will need to be able to report to us without consulting the managers if they need to. The deeming is in relation to them being fit and proper by virtue of the fact that they are a solicitor, an REL, and RFL or an authorised body or they have previously been approved as a COLP, COFA, manager or owner of an authorised body and they are authorised and regulated by another approved regulator, or authorised and regulated by a regulatory body which operates as a regulatory regime recognised by the SRA as reasonably equivalent to that of an approved regulator and who is not subject to a regulatory or disciplinary investigation, or adverse finding or decision of the SRA, the tribunal or any other regulatory body.

There is a responsibility on the firm and the officer of the firm to carry out due diligence, as the managers are ultimately going to be held to be accountable if the COLP turns out not to be suitable. So, they will need to be sure before they make the declaration that the candidate is suitable, but we will also carry out our own checks.

Q Can any existing limited company become an ABS independently of its current trading activities (providing it meets the eligibility criteria) or it has to be a company specifically incorporated for the provision of legal services?

A An existing recognised body can apply to become a licensed body if the activities of the company fall under the types of activities the SRA regulates or it can apply to have a separate entity authorised as a licensed body. An authorised body must intend to deliver legal services in accordance with Rule 1. 1 of the Authorisation of firms Rules. Or, as a recognised body it is a legal services body in which all of the managers and interest holders are legally qualified and the SRA is satisfied that it is in the public interest to be authorised without that intention.

Q Why is counselling not in the list of the types of activities the SRA regulates. Such a service would be a good fit for a firm providing family law advice?

A Counselling is not an activity which the SRA regulate. It isn't done by solicitors and does not constitute legal services. There is nothing to stop a firm from referring its clients to a counsellor or suggesting that a client may wish to seek advice from a counsellor. Counselling is a specific skill which solicitors are not trained in as part of their role. It would not be in the public interest to suggest that they could provide that service, without proper training, to what would probably be vulnerable people.

Q The FA8 form must be completed if the firm carries out insurance distribution activities. Could the SRA define this please and provide examples?

A The SRA has published detailed guidance on its website:  
<https://www.sra.org.uk/solicitors/guidance/ethics-guidance/law-firms-carrying-on-insurance-distribution-activities/>

Q Is it possible for a Ltd entity to gain a financial investment from a non-lawyer who is a minority non-voting shareholder? Would this require an application to be an ABS?

A Outside investment from a non-lawyer can only be accepted if the firm first gains approval to convert to be a licensed body. It is important to note that any non-lawyer ownership, interest, or control means that a body needs to be come licensed, no matter how small that interest.

Q As a freelancer, can you employ admin staff or secretary?

A You cannot employ people in connection with the services you provide but you could engage such persons using a Contract for Services.

Q As a freelancer, can you also operate via a Limited Company?

A No, you must be self-employed and practise in your own name, and not through a trading name or service company.

Q Have the SRA had any discussions with insurers regarding indemnity insurance availability for freelancers? If so, what was their view in terms of insuring such individuals?

A Yes and many insurers offer such insurance for freelancers. The requirement is that freelancers take out and maintain indemnity insurance that provides adequate and appropriate cover in respect of the services that they provide or have provided, whether or not they comprise reserved legal activities, taking into account any alternative arrangements that they or their clients may make.

Q Can an IAAS accredited supervising senior caseworker accredited by the Law Society act as a COLP and supervisor of an ABS which only offers immigration as a regulated service?

A 8.2 of the Authorisation Rules states that:

Subject to rule 8.3, an individual who is designated under rule 8.1 must:

- (a) be a manager or employee of the authorised body;
- (b) consent to the designation;
- (c) not be disqualified from acting as a HOLP or HOFA under section 99 of the LSA; and
- (d) in the case of a COLP, be an individual who is authorised to carry on reserved legal activities by an approved regulator.

Therefore, the COLP must be a lawyer authorised by an approved regulator. See:  
<https://www.legalservicesboard.org.uk/about-us/approved-regulators>

Q We are currently trading as a sole trader practice seeking to convert to an ABS (limited company) with one solicitor and one non-solicitor - could Rachel advise which are the appropriate forms to apply?

A You will need to complete the following forms:

- 🔗 FA1 - Firm Authorisation
- 🔗 FA2 – individual approval for the non-solicitor and potentially also the solicitor unless deemed approved
- 🔗 FA8 - if you undertake financial services
- 🔗 FA10 - If your firm is subject to the money laundering regulations

Q What are the SRA requirements for COLP and COFA for a sole trader?

A In the case of a recognised sole practice or sole director the requirements are listed in the SRA Authorisation of Firms Rules at:

<https://www.sra.org.uk/solicitors/standards-regulations/authorisation-firms-rules/>

In the case of someone who is practising on their own as a freelancer the requirements are listed in the Authorisation of Individuals Regulations at 10.2(b):

<https://www.sra.org.uk/solicitors/standards-regulations/authorisation-individuals-regulations/>

Q Can a Solicitor who is currently sole director of a law firm become a co-owner and COLFA (sic) of a new licensed body law firm too?

A It is possible but you would not be deemed fit and proper to be a compliance officer and the SRA would need to be convinced that the sole director could adequately fulfil both roles.

Q If we are not covering some areas of law can we still advertise and signpost?

A Yes you can.

## How DG Legal can help

To discover more about how we can help you apply for [new firm authorisation](#), assist you with other SRA applications or [SRA compliance](#), please call 01509 214 999 or send us an [email](#).