Entities: Information on ‘how to’ and Frequently Asked Questions

Introduction
1. This ‘how to’ and FAQ document provides answers to the questions commonly received by the Bar Council in relation to the setting up and regulation of ‘entities’. It gives guidance and information in relation to entity structures, regulation and compliance.

2. This document does not include comprehensive tax advice or legal advice in relation to the selection of a particular structure. For this further tax advice please speak to your accountant or Place Campbell.

3. The information is set out to allow quick access in the form of expandable questions and answers but it is recommended that you initially read the whole document to get an overview.

4. There are a number of references to the BSB Handbook which can be found on the Bar Standards Board (BSB) website.

5. There are a number of sections of the BSB Handbook; the most relevant to this document are C=Code of Conduct, S=Scope of Practice and Q=Qualifying rules.


Disclaimer
7. The regulatory and representative functions of the Bar Council have been split. The Bar Standards Board now exercises the regulatory functions of the Bar Council, and it does so independently of the Bar Council. In particular, the BSB is responsible both for formulating the BSB Handbook (through its Standards Committee) and for dealing with conduct complaints (through its Complaints Committee). Service complaints are dealt with by the Legal Ombudsman.

8. All documents published by the Bar Council on matters of professional conduct and ethics have been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in the preparation of such documents accept any
responsibility or liability for anything done in reliance on them, and none of them comprises - or can be relied on as giving - any legal advice.

9. This document cannot be relied upon as legal or tax advice. It is intended solely as a useful how to guide for the profession.

What is an entity?
10. An entity is a business that provides legal services to the public and is regulated by an Approved Regulator to provide those legal services.

11. An entity does not have to have a separate legal personality.

12. Chambers is not an entity because it is not a business, nor is it regulated. Instead the barristers who work within Chambers are individually regulated to provide legal services.

Entities include:

Barrister-only Entities (BoEs) or Lawyer-owned Entities
- A BoE or lawyer-owned entity is a business wholly owned and managed by regulated persons i.e. barristers, solicitors, CILEx etc.

Alternative Business Structure (ABS)
- An ABS is an entity which can be wholly owned or managed by a non-lawyer or another company.
- The LSA 2007 introduced a separate regime for these entities to be licensed by a “licensing authority”. The Bar Standards Board does not currently regulate ABSs but intends to apply to the Legal Services Board to be permitted to do so and anticipates being able to accept applications in Autumn 2015. Currently only the Law Society and the Licensed Conveyancers can regulate ABSs.

Legal Disciplinary Practice (LDP)
- A LDP is a form of ABS and therefore a regulated entity that supplies legal services and is managed primarily by lawyers but it can have 25% non-lawyer ownership.

What is the background?

Legal Services Act 2007
13. The Legal Services Act 2007, Part 5, has changed the ways in which barristers can practise. Part 5 came into force in part in April 2010 and in full in April 2012. You may be aware of terms such as entity, Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS). The Legal Services Act 2007 created new legal structures that allowed non-lawyer ownership of businesses that provide legal services. An LDP has limited non-lawyer ownership and an ABS can have 100% non-
lawyer ownership. Approved Regulators can apply to become a Licensing body permitted to licence bodies as Alternative Business Structures.

What does the LSA 2007 says about Alternative Business Structures (ABS)?
14. Under the LSA 2007, an ABS is a regulated licensed body that carries on reserved legal activities and other activities. The body is regulated by an Approved Regulator, designated to licence ABSs, such as the Law Society and the Council for Licensed Conveyancers.

15. Section 72 of the LSA 2007 makes provision for those bodies which are licensable:
   (1) A body (“B”) is a licensable body if a non-authorised person:
       (a) is a manager of B, or
       (b) has an interest in B.
   (2) A body (“B”) is also a licensable body if:
       (a) another body (“A”) is a manager of B, or has an interest in B, and
       (b) non-authorised persons are entitled to exercise, or control the exercise of, at least 10% of the voting rights in A.
   (3) For the purposes of this Act, a person has an interest in a body if—
       (a) the person holds shares in the body, or
       (b) the person is entitled to exercise, or control the exercise of, voting rights in the body.

How do the changes in the Legal Services Act 2007 affect me?
Which regulator regulates which structure?
16. Of the Approved Regulators, only the Solicitors Regulation Authority\(^1\) (SRA) and the Council for Licensed Conveyors (CLC) are Licensed Authorities are permitted to regulate entities that have non-lawyer ownership.

17. The BSB is approved to regulate barrister-only and lawyer entities (i.e. lawyers with valid practising certificates).

What can the BSB regulate?
18. The BSB can regulate you as an individual practising barrister and it can now also regulate the entity through which you provide legal services to the public (provided other barristers or lawyers with practising certificates are managers or owners of the entity).

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\(^1\) The Law Society is the Approved Regulator that designates its regulatory function to the SRA.
19. Therefore you need to think about how you want to practise and whether you need to be regulated to do so.

Am I working in an entity?

20. Traditionally barristers provide legal services to the public as self-employed professionals (rS24) and operate out of chambers. Your set of chambers is not a business structure that is capable of regulation by the BSB. It is a means by which you and other barristers share the cost of the premises and resources. All legal services are provided by you as an individual, regulated barrister and not by your chambers.

21. To understand whether you are working in an entity you first have to establish how you are providing legal services to the public.

Providing legal services to the public

22. To provide legal services to the public whilst calling yourself a barrister you must hold a practising certificate issued by the BSB.

23. This applies whether you maintain your self-employed practice within chambers or operate out of an entity. To provide legal services you must be authorised to do so in addition to the authorisation of your entity.

24. Legal services include: legal advice representation and drafting or settling any statement of case, witness statement affidavit or other legal document BSB Handbook definition (124).

With a practising certificate you can carry out reserved legal activities which are:

- the exercise of a right of audience
- the conduct of litigation
- probate activities
- notarial activities
- the administration of oaths

Under the BSB Handbook you can provide legal services (including reserved legal activities) to the public in one of three ways (rS16):

rS23-24 Self-employed barrister

rS23 Rules S24 and S25 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.

rS24 You may only supply legal services if you are appointed or instructed by the court or instructed:

.1 by a professional client (who may be an employee of the client); or
.2 by a licensed access client, in which case you must comply with the licensed access rules; or
.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 are 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 are willing to accept
         instructions from lay clients

rS35-37 Managing or employed in an authorised (non-BSB) body

rS35 Rules S36 and S37 apply to you where you are acting in your capacity as a
manager of an authorised (non-BSB) body or as an employed barrister (authorised
non-BSB body).

rS36 You may only supply legal services to the following persons:
   .1 the authorised (non-BSB) body;
   .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;
   .3 any client of the authorised (non-BSB) body;
   .4 if you provide legal services at a Legal Advice Centre, clients of the Legal
      Advice Centre; or
   .5 if you supply legal services free of charge, members of the public.

rS37 You must comply with the rules of the Approved Regulator or licensing
authority of the authorised (non-BSB) body.

rS38-39 Employed in a non-authorised body

rS38 Rule S39 applies to you where you are acting in your capacity as an
employed barrister (non-authorised body).

rS39 Subject to s. 15(4) of the Legal Services Act 2007, you may only supply legal
services to the following persons:

   .1 your employer;
   .2 any employee, director or company secretary of your employer in a
      matter arising out of or relating to that person’s employment;
   .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;
   .4 if you are employed by or in a Government department or agency, any
      Minister or Officer of the Crown;
.5 if you are employed by a trade association, any individual member of the association;
.6 if you are, or are performing the functions of, a Justices’ clerk, the Justices whom you serve;
.7 if you are employed by the Legal Aid Agency, members of the public;
.8 if you are employed by or at a Legal Advice Centre, clients of the Legal Advice Centre;
.9 if you supply legal services free of charge, members of the public; or
.10 if your employer is a foreign lawyer and the legal services consist of foreign work, any client of your employer.

Do I want to set up an entity?

Objectives
25. Ask yourself what you are trying to achieve by setting up an entity, and whether an entity is the right legal arrangement. For example, you might want to ask yourself the following questions:
   • Who do you want to own and manage the business?
   • What services do you want to provide (in particular, legal services, legal and non-legal services, or activities which do not involve providing legal services at all)?
   • Do you want to share risks and profits with others?
   • What are the relative costs and other financial (including tax) consequences of forming and operating particular entities, compared with each other and with trading on your own account as a self-employed practitioner?

26. Your answers to these and other questions will dictate which structure works for you, whether the entity needs to be regulated, and (if so) by which regulator.

‘Associations’ rather than entities
27. For certain purposes, the BSB Handbook uses the term “association”. In context, this term refers only to arrangements which either do not involve an entity at all, or in which there is an entity but it does not need itself to be regulated.

28. Under definition (15) in the BSB Handbook, an association exists where:
   • BSB authorised individuals are practising as a chambers; or
   • BSB authorised persons are sharing premises and/or costs and/or using a common vehicle for obtaining or distributing work with any person other than a BSB regulated person, in a manner which does not require the association to be authorised as an entity under the Legal Services Act 2007.
29. One important consequence is that if you are practising in an association on more than a one-off basis, rC80 requires you to notify the BSB that you are in an association, and provide such details of that association as the BSB requires.

30. It may help to give an example of how this might apply in practice. Your chambers is not an entity, but will be an association: each time you renew your practising certificate, you confirm that you practice from your chambers. If you would also like a solicitor to work within Chambers providing legal services on a self-employed basis (and without becoming a barrister), then:
   - The solicitor will need personally to be authorised by the SRA if the solicitor wishes to engage in any reserved legal activities (e.g. advocacy or the conduct of litigation).
   - All members of chambers will be obliged to notify the BSB of their association with that solicitor, as well as of their membership of chambers.
   - There will, however, be no entity which will be providing legal services.

What structures can be adopted for a regulated entity?

Introduction

31. In principle, any legally-recognised structure or arrangement can be set up and operated, so long as it is lawful to carry on the intended business through such a structure or arrangement. This section contains no more than a very basic overview of those commonly adopted by professionals in England and Wales; you should obtain proper professional advice (including any necessary legal and tax advice) on these structures before deciding whether to adopt and operate any of them.

32. The traditional chambers model involves the members of chambers being self-employed practitioners, contributing towards communal running costs and expenses. In this model, there is no sharing of liability for business risks or profits. One thing that the ability now to provide legal services through regulated entities gives you is greater flexibility to share risks and profits, and to manage risks other than simply through obtaining professional insurance.

33. Entities can serve different purposes and be used in different ways. At a simple level, your chambers could simply be turned into an entity in its entirety, with all members providing their services through the entity. An arrangement of this sort would make chambers more akin in structure to a traditional firm.

34. Alternatively, an entity could be used alongside, and as an addition to, your existing chambers. A regulated entity of this sort would be able to compete fully with a solicitors’ practice and offer a full range of legal services. In addition to members of chambers being able to offer their services through the entity, the entity would itself be able to engage members of chambers in the traditional way.
35. A further alternative would be for individual members of chambers to form their own separate entities, and for those entities to become members of chambers in their own right.

**Partnership**

36. The law of partnership was codified in the Partnership Act 1890. The statutory definition of "partnership" is the relationship which exists between persons carrying on a business in common with a view to profit (section 1 of the Act). It is a matter of mixed law and fact whether a partnership exists. It will rarely be sensible to form a partnership without a detailed written contract, such as in a partnership deed.

37. Partnerships were for a considerable time the usual model for professional service firms. A partnership has no separate legal personality under the law of England and Wales: at its heart, the relationship between the partners is only of mutual agency. Property agreed to form part of the partnership business is normally held in the name of a group of partners who hold as trustees for all of the partners. If important assets which the partnership uses (e.g. the building occupied by it) are not to be owned by the partners, then the documentation governing the partnership and the basis on which the asset is to be used should make the ownership situation clear.

38. The attractiveness of a partnership has declined with the introduction of the LLP (see below), which offers the protection of limited liability and a distinct legal personality, although this is not without disadvantages (e.g. as regards financial transparency).

**Limited liability company**

39. A company is a separate legal entity. Its liability can be unlimited, limited by guarantee or, more usually, limited by shares (and what follows relates to the last of these forms of incorporation). The core document for a company, its articles of association, must be filed at Companies House (in contrast to an LLP, whose members' agreement does not need to be filed).

40. The main advantages of incorporation are the protection of limited liability and tax efficiency. Creditors will have no claim against the shareholders in excess of the amounts that have been specified in advance as due payment for their shares, so that the liability of the shareholders is in general limited to any amount unpaid on the shares they hold. Absent collateral arrangements - such as a personal guarantees, conduct which justifies "piercing the corporate veil", or a personal liability in tort - shareholders are fully protected beyond their share payment obligations. The directors are also protected from creditors where they have fulfilled their common law and statutory duties. The directors owe common law and statutory duties, many of which are of a fiduciary nature. Duties owed to the company are owed to the
company as a whole, rather than to individual shareholders (subject to the right of shareholders to pursue a derivative claim, on behalf of the company, against a director for negligence, default, breach of duty or breach of trust). Of particular relevance to professionals, employees and directors are usually protected from direct claims in professional negligence, although there are some circumstances in which they will be liable concurrently with the company for work that they have done.

41. These advantages generally come at the price of greater public transparency (and cost) in the form of requirements to prepare annual accounts and have them audited and registered and to keep the Registrar of Companies informed about changes in ownership and control (with some exemptions for small companies). The directors have an overriding obligation not to approve accounts unless they give a true and fair view of the financial position of the company.

Limited Liability Partnerships

42. Limited Liability Partnerships (LLPs) were created by the Limited Liability Partnerships Act 2000.

43. An LLP combines features of both a partnership and a limited liability company. In particular, it provides the flexibility and tax status of a partnership with the limited liability otherwise only available through a company. In contrast to a traditional partnership, the LLP is a separate legal body in its own right: so, for example, the LLP itself is responsible for any debts that it incurs, not the individual members. Members will act as it agents, so that third parties will contract with the LLP when they deal with or engage its members. However, a member will in some circumstances be concurrently liable with the LLP in respect of work where they have been personally been negligent. Members may also be exposed to potential liability for wrongful or fraudulent trading and be subject to disqualification proceedings in the same manner as a director. Although the LLP itself is liable for the full extent of its assets, the liability of its members is in effect limited to the extent that the members have contributed or agreed to contribute to those assets. There are no requirements for board or general meetings or decision making by resolution, so the LLP retains a high degree of flexibility in relation the organisational structures that can be used to run it.

44. LLPs must be registered at the Registrar of Companies. The procedure is similar to that for companies. An incorporation document is required, which has to be completed and signed by at least two persons (natural or legal persons) who will become its first members. Subsequent changes must also be notified to Companies House.

45. Members of the LLP are not required to have or publish a formal members’ agreement, but there are default provisions contained in the Limited Liability Partnerships Regulations 2001 which apply in the absence of a document. In practice
a chambers LLP will almost certainly require a bespoke agreement since the default provisions are unlikely to reflect either a desired or feasible structure for the management of the LLP. Any members’ agreement is confidential and does not need to be filed at Companies House.

46. An LLP must appoint at least two "designated members", who have statutory responsibility for certain tasks. The principal obligations are:
   a. signing the accounts and annual return and delivering them to the registrar of companies,
   b. the appointment and removal of the auditors, and
   c. the notification of membership changes (and changes to the registered office).

47. LLPs are required to provide financial information including the filing of annual accounts. Above a certain turnover threshold its annual accounts must be audited. In practice it would always be prudent for a barrister’s LLP to be audited. Once aggregate divisible profits reach a certain level, those accounts must also show the income of the highest paid member.

A “Single Person” entity

48. You may also set up as a limited company (with a sole director) or as an LLP on your own. An LLP needs two members, but you can be an individual member and a company of which you are the sole director and sole shareholder can be the other member.

ABS (non-lawyer ownership)

49. You may also set up entities with non-lawyers. An entity where a non-lawyer is a manager of the firm, or has an ownership interest in the firm, is an ABS. The principal attractions of such a structure are the ability to raise outside investment from a wider range of potential partners; the opportunity to attract non-lawyer participants on equal terms with lawyers and the potential to provide a more diverse range of legal (and other compatible) services. Only the SRA and CLC presently license ABSs.

Single Person entities

What does this mean for my practice?

50. You are now permitted to provide legal services through a company, rather than as a self-employed individual, provided that the company is regulated by the BSB. This company can be a company of which you are the sole owner.

51. When we refer to a ‘single person entity’ we mean a company which provides the services of just one person, who is also the sole owner of that company.
52. If you incorporate and then practise through a single person entity, you will be practising as ‘a manager of a BSB authorised body or an employed barrister (BSB authorised body)’ for the purposes of the BSB Handbook (Section B5).

53. BMIF has indicated that it will insure single-person entities in the same way as it currently insures self-employed barristers.

54. The BSB Handbook allows a single-person entity to be a member of, and to operate out of, a set of chambers, but whether you can do that in your current chambers will depend on whether your chambers’ constitution allows this. If your chambers’ constitution needs to be changed to allow for this, then the process required will depend on that constitution. It is a matter for chambers to decide whether to agree to this, bearing in mind the risks and benefits to chambers and the other members. The details of the resulting relationship between your entity – and you personally – and the rest of chambers is a matter for mutual agreement. Some chambers might, for example, wish you to enter into a personal guarantee or indemnity covering your entity’s liabilities to chambers.

55. The Cab-Rank Rule will apply to instructions to your entity, but your entity will be able to accept instructions in the usual way.

56. In order for you to be able to provide services through your entity directly to the public, both you and your entity will need to be authorised to do this. This is the effect of rS28.3. This rule provides that, in order for your entity to be authorised to accept instructions directly from the public, it must comply with two requirements. First, it must have notified the BSB that it is willing to accept instructions from lay clients: rS28.3.b. Second, you, as the sole manager or employee (as defined in the BSB Handbook), must be entitled to undertake public access work: rS29.3.a. In order for you to be entitled to undertake such work, you need to be able to comply with rC120.1 (subject also to rC120.2). In short, you will need to have a full practising certificate and to have undertaken the necessary public access training.

57. The public access rules do not apply directly to entities, but they provide guidance on best practice: gS7. In the case of a single person entity, you are likely in practice to have to comply with the public access rules, as there will so be little relevant difference in this context between a single person entity and a self-employed barrister.

58. Clients must be clear about who is legally responsible for their legal services, and who will actually carry out the work: rC19. In the case of a single person entity, the person legally responsible will be the entity: the person who will do the work will be you. This will need to be clear both in the terms of the contract or other terms on
which you accept instructions (rC22) and in any advertising or publicity (for example, on your chambers’ website).

59. If you are less than three years’ standing, the Bar Standards Board will not authorise you to become a single-person entity.

Who regulates what reserved legal activities and what entities?

Which regulator can authorise my entity?

60. If the owners or managers of the entity include at least one person who is not a regulated person (i.e. someone who is not another lawyer who is authorised to practice) then your entity cannot be regulated by the BSB. Currently, it could only be regulated by another regulator: please see the list below. The BSB is making a separate application for authorisation to regulate these types of entities, and is unlikely to be able to do so until late in 2015 at the earliest.

What entitles and what activities do the Regulators Regulate?

What reserved legal activities?

The BSB
- The exercise of right of audience
- The conduct of litigation
- Reserved instrument activities
- Probate activities
- The administration of oaths

The SRA
- The exercise of right of audience
- The conduct of litigation
- Reserved instrument activities
- Probate activities
- The administration of oaths

The Council of Licensed Conveyancers
- Reserved instrument activities
- Probate activities
- The administration of oaths

The Institute of Chartered Accountants of England and Wales (ICAEW)
- Probate activities

Which entities?

The BSB
- Individual barristers
- Entities owned and managed only by barristers and other authorised persons
The SRA
- All types of entity

The Council of Licensed Conveyancers
- All types of entity

The Institute of Chartered Accountants of England and Wales (ICAEW)
- All types of entity

Insurance
61. Barristers in self-employed practice in chambers will be used to organising BMIF insurance. If you become a single-person entity BMIF has indicated that it will insure single-person entities in the same way as it currently insures self-employed barristers.

62. If you decide to practise exclusively out of a regulated entity, then you will need to arrange insurance for the entity as a whole and this may be costly, depending on your practice area and turnover.

63. You should investigate the likely professional insurance costs carefully and take this into consideration when deciding whether setting up a regulated entity is right for you.

64. If you decide to register for dual practice and practise both out of a regulated entity and as a self-employed practitioner, then you will need to have BMIF insurance for your self-employed practice and a separate policy with an approved insurer to cover the practice of the entity.

65. There are minimum requirement of insurance for each regulator:
   - SRA requirements are available here.
   - For BSB requirements the current minimum level of cover per claim is £500,000

How is an entity set up?
What should I do first?
66. Talk to the regulators, they are there to help.

67. The Bar Standards Board in particular is very much looking to help any barristers looking to set up an entity and will work with you to ensure you know exactly what is required of you. Email entityregulation@barstandardsboard.org.uk or telephone 0207 092 6801 to speak to an expert in BSB entity regulation.

How long does it take?
68. It is anticipated that the process will generally take around six months.
69. There were many cases, especially in the early days of the regulators and new entities, where it took a year to two years.

70. Now most regulators have become quicker and more efficient but it will very much depend on your processes and procedures. It may also take the BSB longer to process early applications, while its systems bed down and any teething problems are identified and resolved.

71. Your chosen regulator may be able to give you a realistic time frame for your application if you contact them before applying.

What do I need to provide?

72. For full details of the application process please see the links below:

- SRA
- BSB
- CLC

What are the practical implications?

73. At the heart of the difference between conventional chambers and ‘new’ structures is an understanding of who is responsible legally for providing the legal services to the client. Although individual lawyers will remain subject to their personal obligations under the BSB Handbook, and a regulated entity will have its own obligations under the BSB Handbook, the legal relationship between individual lawyers and the client is different.

74. In a conventional chambers, all members of chambers are self-employed and provide their legal services to clients in their personal capacity. Clients are their clients alone, and they alone are responsible for all aspects of the quality of the advice and representation that they give. Members of chambers are not legally responsible for the legal services provided by other members of chambers (although they may both be responsible - for example, where there is a leader and junior(s)).

75. In the case of a regulated entity, the lawyers providing the services will do so on behalf of that entity. It is the entity that will have the contract with the client, and the entity that is obliged to provide the legal services to the client. It will also be the entity which will bear primary responsibility for claims for professional negligence (although individual lawyers may be liable in addition). It will be individuals, of course, who are actually providing services on behalf of the entity, but those individuals will be its employees, directors, members or partners, and will be acting on behalf of the entity.

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2 Please note that if the entity is a partnership formed under the law of England and Wales, the effect of this is that all of the partners are liable to the client, because a partnership does not have a separate legal personality.
76. How an entity decides to deploy the services of individuals, particularly individual lawyers, to deliver its services may be agreed between the entity and the client in each case: but in the absence of any agreement, it will be for the entity to decide this (subject to compliance with rC19). Any number of barristers who are directors, partners, members or employees of an entity may be assigned to any number of client cases, subject to each lawyer complying with his/her regulatory obligations in that regard. This flexibility in the deployment of individual lawyers may be seen as one of the advantages of an entity.

77. This alteration in legal responsibility is not limited to your relationship with clients. The entity will bear legal responsibility in other areas too: for example, employment law, health and safety, data protection, and liability to landlords and suppliers.

78. If an entity is formed, then there is also likely to be a need for greater clarification of the roles and responsibilities of identified individuals for legal compliance, and for the management of the entity’s practice, in comparison with the various ways in which many conventional chambers operate. For example, a chambers’ management committee will usually be given responsibility for various matters under the chambers’ constitution, but the degree of responsibility varies from chambers to chambers, the nature of the obligations of members of a management committee (and even their degree of authority) may be far from clear, the committee will be acting on behalf of each and every member of chambers individually, and a chambers meeting may well be required for more significant decisions and may well have the power to overrule the management committee. The duties of members to comply with decision of the management committee may also not be well defined. By way of contrast, a company’s board of directors is solely and collectively responsible for the management of the company’s business, and each director of a company owes onerous and legally-defined duties to a company. If shareholders do not like what the directors are doing, their remedy ordinarily is to pass resolutions in general meeting removing the directors and appointing new ones. Much of the day-to-day operation of that business will be delegated by the board to committees or individuals, who may be or comprise directors or employees, but the board will usually remain legally responsible for what is done on its behalf, and the directors thus need to put mechanisms in place to ensure they satisfy themselves that those delegated responsibilities are being performed properly. Individual lawyers involved in the company’s practice will owe legal duties to it, and may be required to comply with decisions of the board of directors (subject to the lawyer’s personal ethical obligations).

Can I handle client money?

79. You will need to be very clear about whether your intended practice will need to hold client money. If you think that you will need to hold client money then you will need to consider using BARCO (see below) – particularly if you intend to opt for a BSB regulated entity.
80. BSB regulated entities will not be permitted to hold client money at all, whereas regulated entities authorised by other regulators may be permitted to do so. For example, those authorised by the SRA may be permitted to do so, subject to complying with the Solicitors Account Rules.

What are the Solicitors’ Account Rules?
81. If you opt for an SRA regulated entity then you will be required to comply with the Solicitors Account Rules as well as any relevant sections of the SRA Handbook.

82. As they stand, the Solicitors Accounts rules prohibit the use of BARCO, but the SRA can consider a waiver to the rules. Any waiver will need to be informed by specific circumstances. The SRA are very open to considering any waiver application from an entity so as to enable it to use BARCO or similar services. It is recommended that you initiate discussions with the SRA initially, rather than simply making a waiver application, because early engagement with the SRA is likely to help both sides focus on the right issues in any formal application.

What about employed staff?
83. This depends upon who you are employing and what you are employing them to do.

84. In chambers, you are permitted to employ administrative and support staff. However, because the barrister is regulated in their sole capacity, employees in a chambers model are not permitted to give legal advice or take any substantive role in assisting your clients.

85. In a regulated entity your staff are permitted to take on a casework function and may, in certain circumstances and subject to appropriate qualifications and supervision, be permitted to conduct aspects of your cases on your behalf. When considering applying for entity regulation, you will need to consider carefully the extent to which your practice would benefit from this and weigh up the regulatory, supervisory and training regime that would need to be implemented to facilitate such practice.

86. You will also need to consider any additional training that will have to be given to all staff to ensure regulatory compliance. This is likely to include topics such as Money Laundering checks and the Solicitors Accounts Rules.

What are an entity’s duties regarding data protection?
87. Just as in self-employed practice, you will need to consider the Data Protection Act and ensure that your business practices and procedures comply with
data protection law. The entity will need to have its own registration, and will itself be liable to enforcement action in the event of committing breaches.

88. For more information, please visit the [ICO website](https://ico.org.uk).

**What IT systems and security do I need?**

89. IT and data security is now familiar territory for all legal practitioners and you should be taking steps to protect your, and your clients’, data, however you practise. This will include, but is not limited to, hard drive and data storage encryption, use where appropriate of secure email and encryption, and virus, spyware and malware protection.

90. If you choose to establish an entity, then the entity will bear the primary responsibility for ensuring that the entity’s legal practice is conducted in such a way as to keep all confidential information secure. If you do not have them already, then this will involve setting up centrally administered IT and data security systems, processes and policies and ensuring that all of the lawyers practising through the regulated entity comply with its policies and procedures. You will need to establish the basic systems and then put processes in place to make checks to ensure compliance by all members of your entity. If an entity is intended to run alongside chambers, then there may need to be clear arrangements in place to define roles, responsibilities and limits of authority for each of chambers and the entity. These might, for example, include a contract between the entity and chambers to provide certain administrative services to the other, in which case the terms of that contract will need to ensure that both the entity (and its lawyers) and the members of chambers are able to comply with their own ethical obligations in all respects (e.g. as regards confidentiality, conflicts and the provision of information to clients).

**Do I need a Case Management System?**

91. If you are considering practising through a regulated entity, then you will need to consider putting in place a robust system to actively manage all of the entity’s cases. As the entity (and not you as the individual barrister) is primarily responsible for the case and answerable to regulators, it will not be sufficient to allow each barrister to manage their own cases as they have done in private practice. You will need to ensure that you have systems in place to record and monitor all actions on each case centrally. You are likely to need a Compliance Officer to put in place systems for making regular (including random) checks to ensure compliance by other barristers and members of your entity. The sort of information that will be needed centrally on a Case Management System is likely to include:

- dates: case management systems can be invaluable for assisting in recording dates, although many methods are used.
- file reviews: regular file reviews should be carried out and recorded to ensure compliance with supervisory obligations.
92. The extent to which such monitoring is necessary will vary enormously, depending on the nature of the entity’s practice and the risks relating to it. Many will opt for a purpose built or off the shelf Case Management Software package, but the systems that you employ will be a matter for you.

**Should I apply to conduct litigation?**

93. If you are considering forming an entity in order to provide legal services directly to the public, then you may also wish to consider applying for authorisation for both you and your entity to conduct litigation. Private clients who are instructing an entity may not understand that your entity is unable to provide the full service that they require, so you may find it beneficial for your entity to be able to ‘go on the record’ with courts, etc.

94. Once individual barrister or lawyer members/managers within an entity are personally entitled to conduct litigation, then if you are operating out of a BSB regulated entity you must also apply for the entity to be authorised to conduct litigation.

**Will I need more accountancy services?**

95. There are likely to be increased accountancy costs associated with practising out of a regulated entity. In addition to the personal taxation position of the entity, all its owners and any directors and employees, you may need to file annual accounts for the entity with Companies House.

96. In practice, you would be wise to ensure that you engage all legal, accountancy and tax services you need in order to be confident that the entity is complying with its legal, regulatory and tax obligations. You may also need to engage any professional assistance when deciding on the right form of entity, when forming it, and when applying for necessary authorisations and seeking necessary registrations at the outset.

**How do the regulatory compliance requirements compare with self-employed practice?**

97. The regulatory compliance requirements associated with a regulated entity are likely to be more onerous than conventional self-employed practice. This is because the entity is responsible for all of its clients/cases, and those managing the regulated entity will take legal and regulatory responsibility for ensuring compliance for the whole practice. You will need to appoint key individuals to fulfil regulatory compliance functions and ensure that they have the time and support to carry out their compliance roles.
98. If you opt for an SRA regulated entity you will need to appoint the following as a minimum a:

- **Compliance Officer for Legal Practice** (COLP)
- **Compliance Officer for Financial Administration** (COFA)
- Money Laundering Officer.

**Do I need conflict procedures?**

99. Yes, you will need to think carefully about how you are going to manage conflicts. These will need to cover conflicts within the entity’s own practice, and conflicts between the entity’s practice and the practice of any individual lawyers who also practice in other ways (e.g. as self-employed practitioners). If members are practising under dual practice arrangements then you will need to prepare and comply with an appropriate protocol to ensure that any particular conflicts of interest are identified and managed (see rS16.2). Please remember that a conflict of interest arises not only where clients have conflicting interests but also where your duties to one client may conflict with those to someone else, including where a duty to one client to keep information confidential conflicts with a duty to another client to reveal that information. In contrast to a conventional set of chambers, a regulated entity must not have any such conflicts within its own client base, and therefore checks must be conducted thoroughly before any new clients are accepted.

**BARCO can help**

**What is BARCO?**

100. BARCO is an independent company (Bar Services Company Ltd), owned and operated by the Bar Council. BARCO was established to provide a unique solution for handling client money as the BSB prohibits a self-employed barrister and a BSB regulated entity from holding client money.

101. Handling client money is a very costly and risky business. BARCO is a safe and regulated alternative which will:

- Reduce infrastructure costs
- Lower the cost of indemnity insurance
- Help keep the cost of risk-focused regulation as low as possible
- Protect your reputation and that of the profession if things go wrong

102. **BARCO** is regulated by the Financial Conduct Authority (FCA) under the Payment Services Regulations 2009 (PSRs). It is also registered with HM Revenue and

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3 The BSB does not produce a template of what a protocol under rS16.2 should contain.
What does it do?

103. BARCO operates an escrow service which receives and holds funds from clients, providing a fund against which drawdowns can be made for fees, disbursements, settlements and money required in arbitration and mediation proceedings. It involves two main elements: a contractual arrangement between the client and the service provider, and the holding of money by BARCO as an independent trusted third party. The right to make drawdowns from the fund held by BARCO, and their timing, depends on the fulfilment of contractually-agreed conditions under the contract between the client and the service provider and the BARCO terms of business.

104. All funds received by BARCO remain in a segregated Client Monies Account for the term of the legal services contract. This segregated account is maintained separately from all other bank accounts of BARCO and is protected by insurance. Barclays Bank plc has been engaged to provide the segregated account.

How can I use it?

105. BARCO operates on a case by case basis and everything is done electronically so the whole process can be extremely quick. The BARCO team would be delighted to talk through the process at any time, either in person or on the telephone. Please contact them at contact.us@barco.org.uk or by phone to 020 7611 1474.

Frequently asked ethical and conduct issues.

What practising certificate do I need?

106. You will need an employed practising certificate (rS35-37) if you are practising solely through an entity. This will be so whether the entity is a ‘single-person’ entity or involved other lawyers, and even if you plan for your entity to operate through chambers. You will be seen as employed for the purposes of the BSB Handbook because of the approach and definitions adopted in the Handbook: this may not reflect your legal or tax status.

107. If you are practising both through an entity and as a self-employed practitioner, then you will need a dual-capacity practising certificate. Under this practising certificate, the BSB will treat you as employed when you are working on behalf of the entity, and as self-employed for work done in your self-employed capacity.

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4 BSB Handbook section B4, B5 and B6.
108. So far as dual-capacity practice is concerned, rS18 states that 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 S16 after:

.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
.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 your 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.

109. The BSB does not produce a template of what a protocol under rS16.2 should contain.

Does the cab rank rule apply?

110. If you work through a BSB regulated entity then the cab rank rule will continue to apply in the same way as it does for self-employed barristers.

111. It is worth noting that this differs from the usual situation for employed barristers, who are not subject to the cab rank rule. Therefore if you work through an entity regulated by the SRA or CLC then the cab rank rule will not apply to the work that you undertake through that entity. However rC28 will still apply, which obliges you not to discriminate in the acceptance of work.

Does working through an entity mean I can no longer practise in chambers?

112. No, but if you want to work in chambers and through an entity you will need to obtain a dual-capacity practising certificate: see ‘What Practising Certificate do I Need?’ above.

What is a dual-capacity practising certificate?

113. A dual-capacity practising certificate allows you to be both self-employed and employed simultaneously for regulatory purposes.

114. Please see ‘What Practising Certificate do I Need?’ above.

Can I set up as a single person entity?

115. Yes, and the BSB will regulate that entity (and you for your practice through that entity) if you do so. To find out what is required please see the BSB website.
116. You will be treated as employed for the purposes of the Handbook: see ‘What Practising Certificate do I Need?’ above.

117. You will be able to provide legal services to the public through the entity, and you will not be required to register as a public access barrister to do this.

118. You are permitted to provide legal services through your legal entity within chambers, i.e. clerks can find you work in the usual way and you can accept instructions from solicitors or clients directly. This arrangement will depend on your chambers constitution and what agreement you come to with chambers.

If I set up as a single-person entity can I still operate out of chambers?

119. Yes. You can provide legal services through your legal entity within a chambers structure, i.e. where the entity is a member of chambers.

120. If you do this, then chambers’ clerks will be able to find you work for your entity in the usual way and your entity will be able to accept instructions from solicitors or clients directly. However, it must at all times be clear to the client who is legally responsible for providing the legal services, and which individuals will actually do the work: see oC20 and rC19. If you have a single-person entity, then the person responsible for the work will be the entity, and you will be the individual who will carry it out.

121. Whether your chambers allows this sort of arrangement will depend on your chambers’ constitution and what agreement you and your entity may come to with chambers.

122. Difficulties may arise in the following areas where you have an employed barrister’s practising certificate to enable you to provide legal services through a regulated entity, but you still receive and accept instructions on a self-employed basis:
   - a lack of clarity for the client about who is responsible for, and who will be providing, their legal services
   - whether and how you arrange for fees to be billed and received through chambers
   - the role of your clerks
   - what contributions you are obliged to pay to chambers and clerks

Can my spouse/partner be an owner of my entity?

123. A spouse/partner who is an authorised person can be an owner or manager of your entity as long as you both meet the requirements of the entity’s regulator. At the moment, the BSB will regulate such an entity only if your spouse/partner is also a barrister.
124. If your spouse/partner is not an authorised person then only the SRA or CLC can regulate the entity at the moment. This may change when the BSB is authorised permission to regulate alternative business structures, which is expected in or after late 2015.

If I set up a regulated entity can it instruct members of chambers?

125. Yes. An employed barrister is a professional client for the purposes of the BSB Handbook which means that a barrister in an entity is capable of instructing any self-employed barrister.

126. This means in practice you or the entity can instruct another member of Chambers.

127. If you are a dual-capacity barrister you cannot instruct yourself from an entity in your self-employed capacity.

128. You may not pay or receive a referral fee whether you are working in chambers or a regulated entity.

Can a regulated entity recommend chambers or can chambers recommend a regulated entity?

129. Yes. You may make any recommendation that is in the best interests of your client provided that it does not amount to a referral.

130. If you make a recommendation you should inform the client of your interest in Chambers or the entity.

131. Please refer to rC81 and rC82 of the BSB Handbook:

   rC81 If you have a material commercial interest in an organisation to which you plan to refer a client, you must:
   .1 tell the client in writing about your interest in that organisation before you refer the client; and
   .2 keep a record of your referrals to any such organisation for review by the Bar Standards Board on request.

   rC82 If you have a material commercial interest in an organisation which is proposing to refer a matter to you, you must:
   .1 tell the client in writing about your interest in that organisation before you accept such instructions;
   .2 make a clear agreement with that organisation or other public statement about how relevant issues, such as conflicts of interest, will be dealt with; and
.3 keep a record of referrals received from any such organisation for review by the Bar Standards Board on reasonable request.

Do the rules for referral fees in chambers apply if I work in a regulated entity?

132. No practising barrister can pay or receive a referral fee rC10.

133. It makes no difference whether you operate out of an SRA, BSB or other regulated entity or through Chambers, referral fees are strictly prohibited.

Can I conduct litigation?

134. Conducting litigation is defined in Schedule 2 to the Legal Services Act 2007:

4 (1) The “conduct of litigation” means—

(a) the issuing of proceedings before any court in England and Wales,
(b) the commencement, prosecution and defence of such proceedings, and
(c) the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions).

(2) But the “conduct of litigation” does not include any activity within paragraphs (a) to (c) of sub-paragraph (1), in relation to any particular court or in relation to any particular proceedings, if immediately before the appointed day no restriction was placed on the persons entitled to carry on that activity.

135. The BSB cannot determine how the law is to be interpreted, but it has issued some guidance as to what it would consider falls into the definition and therefore you should refuse to do these if you are not authorised to conduct litigation:

- issuing proceedings or applications;
- acknowledging service of proceedings;
- giving your address as the address for service;
- filing documents at court or serving documents on another party; and
- issuing notices of appeal.

136. Please see the Bar Standards Board guidance on conducting litigation.

137. An entity may not engage in the conduct of litigation unless it is authorised to do so. Ordinarily, SRA regulated entities will be authorised to conduct litigation, although this will depend on the personal qualifications of the members. A BSB-authorised entity must obtain specific authorisation.
138. No matter which regulator you select, you are not automatically authorised to conduct litigation through the regulated entity, even if the entity itself is authorised to do so. Whether you are employed (working through an entity) or self-employed, you may yourself conduct litigation only if you apply to the Bar Standards Board for an extension to your practising certificate.

139. Thus, if litigation is to be conducted through an entity, then both the entity and any lawyers through whom it wishes to conduct that litigation must separately be authorised to do so.

Can I conduct correspondence?

140. Yes. Merely conducting correspondence does not in itself amount to conducting litigation. Accordingly, all barristers can conduct correspondence where it does not amount to conducting litigation rC130.

If I am authorised to conduct litigation is any entity through which I practise authorised to do so?

141. No. Both entities and individual lawyers must obtain their own authorisations to conduct litigation: If you are authorised to conduct litigation by the BSB and plan to do so through your BSB entity then you must apply to the BSB for the entity to be authorised to conduct litigation.

142. Ordinarily, SRA regulated entities will be authorised to conduct litigation, although this will depend on the personal qualifications of the members. You are only able to conduct litigation when you have the extension to your practising certificate from the BSB.

143. For more information please see ‘Conducting Litigation’ above.

Can I handle client money?

144. As a barrister, you cannot handle client money. Nor is a BSB regulated entity permitted to handle client money. However, you may make use of the Bar Council’s escrow service BARCO: see the section headed ‘BARCO can help’ above.

145. If you are regulated by the SRA you may be permitted to handle client money, subject to complying with all applicable SRA rules.

Can I carry out public access work through an entity?

146. You may carry out public access work through a BSB regulated entity if you comply with rS28:
You may only supply legal services if you are appointed or instructed by the court or instructed:
1 by a professional client (who may be an employee of the client);
2 by a licensed access client, in which case you must comply with the licensed access rules; or
3 by or on behalf of any other client, provided that:
   a at least one manager or employee is either authorised to conduct litigation or is entitled to undertake public access work; and
   b you have notified the Bar Standards Board that you are willing to accept instructions from lay clients

147. You can accept work from the public without a solicitor if one member of your BSB regulated entity is authorised to undertake public access work and the BSB have been informed of your intention to accept instructions directly from the public.

148. If you are a manager or employee of a non-BSB regulated entity, then rS28 will not apply and any work you accept from the public will not be through the public access scheme. In this instance you are an employed barrister and permitted to accept instructions from the public if you have not done the public access course.

When could conflicts of interest arise?
149. This needs to be considered in two stages. We look at conflicts for the entity. We then consider conflicts where individual lawyers are practising through more than one entity, or both through an entity and on a self-employed basis. This section can only be a guide to the sorts of conflicts of which you need to be aware: the relevant law can be complex, and its application will depend on the particular circumstances of each situation.

150. An entity will owe duties to its clients to avoid conflicts under both the general law and its regulatory code of conduct. So far as BSB-authorised entities are concerned, the types of situation in which a conflict might exist are set out in rC21.1-21.4 and the related guidance.
The term ‘conflicts’ is often used to cover different sorts of ethical difficulties. Some examples may assist:

a. There may be conflicts between interests of different clients of an entity.

b. There may be conflicts between clients of an entity and clients of a particular lawyer in that entity who works in more than one capacity (e.g. who also works as a self-employed barrister, or for two different entities).

c. There may be conflicts between the personal interests of an entity, or of an individual lawyer practising through that entity, and the interests of a client of the entity.

d. The entity will be acting (or have acted previously) for clients to whom it owes duties of confidence. It may also have entered into confidentiality obligations with people or organisations other than clients. These confidentiality obligations may prevent it from being able to act for a new client who could benefit from being told the confidential information which is known to the entity. For this purpose, it does not matter whether the interests of the various clients/parties are in conflict with each other.

In a regulated entity, it is the entity that is legally responsible for providing the legal services. Clients are clients of the entity and not of each lawyer individually. As a result, in applying the rules against conflicts for an entity, the focus is on clients of the entity, and not on the individual lawyers within the entity who may be involved in acting for them: there must not be a conflict of interest as between the entity and its clients, or between more than one client of the entity. To give a particularly stark example:

a. Different members of a conventional set of chambers (barrister A and barrister B) may act for separate clients in a case (client X and client Y) who have opposing interests without needing client consent. This is because two different people are legally responsible for providing legal services to each client – barrister A alone is responsible to client X, and barrister B alone is responsible to client Y. Both barristers individually are also entitled and obliged to keep the affairs of their respective clients confidential.

b. By way of contrast, two barristers working through or within an entity may not do this (without informed consent: see paragraphs [158] and [159] below). This is because the entity will be legally responsible for providing legal services to both client X and client Y, even if the individual lawyers who do the work for each client are different: i.e. they will both be the clients of the same person (the entity). Those in control of that entity will also be deemed to know the confidential information of both clients (see, too, paragraph [156] below).
153. Care must thus be taken to ensure that no client is accepted by the entity if there is a conflict or potential for conflict with any other client of the entity, or with the entity’s own interests.

154. It is for this reason that an entity with many lawyers is likely to encounter conflicts much more frequently than a self-employed barrister.

155. Turning to the individual lawyers involved in an entity, they will also owe duties to avoid conflicts arising for the entity. In particular, where those lawyers also practise through one or more other entities, or also on a self-employed basis, then they will also need to avoid conflicts arising between clients being assisted by their two or more practices. So, for example, if you practise both through an entity and on a self-employed basis, you will need to address potential conflicts between your personal clients and clients of the entity through which you also work. Both the individual lawyer(s) and all entities involved are likely to be responsible (legally and professionally) for any conflicts which arise.

156. Partners in a partnership, members of an LLP, directors of a company, those who are responsible for managing an entity, compliance officers of an entity, and potentially others in similar roles within an entity, are all likely to be deemed to have knowledge of every client and case within the entity. Accordingly, they must all avoid a conflict between any client that they represent in another capacity (or their personal interests) and any client of the entity, whether or not they actually do work for that client or have any actual, personal knowledge of that client’s confidential information. A similar situation could arise in relation to other employees, particularly lawyers, so it may be wise to take the approach that conflicts may arise in relation to any other employed lawyers too.

157. As will be apparent from the above, those given responsibility for identifying and avoiding conflicts for an entity, all those in positions of authority within an entity, and all lawyers providing services for or through that entity, will all need to play their part in ensuring that conflicts are identified and avoided. Any individual lawyers involved are likely to be responsible for failing to address any conflicts that arise, both in law and as a matter of professional conduct.

158. Some, but not all, conflicts can be avoided by obtaining the informed consent of all relevant persons beforehand, but the obtaining of consent may itself be fraught with difficulties (not least as regards the degree of explanation and disclosure required for consent to be “informed”, and whether and how consent can be sought without breaching confidences).
159. Information barriers within an entity may also, in some circumstances, enable a conflict relating to confidential information to be avoided (e.g. where an individual lawyer who works on a self-employed basis for a client (client A) is excluded altogether from any risk of coming into contact with an entity’s work for (and any confidential information relating to) another client (client B) whose interests conflict with those of client A); but this, too, is fraught with difficulties, and may not be legally permissible or effective, especially in a smaller entity.

160. In addition to actual or potential conflicts of the sort described above, an entity will also need to consider whether acting for particular clients or in a particular situation might give rise to an appearance of potential impropriety, and thus be contrary to the entity’s duty to the court (see, e.g., Skjevesland v Geveran Trading Co td (No.2) [2003] 1 WLR 912), even if it might otherwise be permissible.

What are my duties of confidentiality?

161. Core Duty 6, Rule C5 and Rule C15.5 of the BSB Handbook require individual barristers to preserve the confidentiality of client affairs. Such a responsibility also extends to those employed by barristers, such as clerks and members of staff.

162. In the case of a regulated entity, the entity itself will also owe those obligations, as will all of its members and staff. Similarly, arrangements will have to be in place to ensure that any outsourced function is subject to contractual arrangements which ensure confidentiality and is covered by client consent. Effective controls will be required within an entity to identify and mitigate risks of breaches of confidence. Where barristers work on a matter in two different capacities particular care will have to be taken to avoid conflicts.

163. The general nature of confidentiality obligations is the same whether the regulator is the BSB or the SRA, and the obligations are set out in their respective codes of conduct.

164. In some situations it may be important to distinguish duties of confidence from legal professional privilege (“LPP”). The latter is a right belonging to the client which cannot be overridden (although limited exceptions do exist). LPP is of two types: legal advice privilege and litigation privilege. There is not the scope here to address them in more detail: you should refer to the various specialist textbooks.

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5 The Ethics Committee of the Bar Council is developing guidance on Outsourcing which will be linked to this document.
What is the role of Head of Legal Practice (HOLP) and Head of Financial Affairs (HOFA)?

165. Generally the HOLP, HOFA has an obligation to report any serious misconduct rules although certain less serious misconduct issues can be noted in a central record.

What is the difference between a manager and owner of a regulated entity?

166. The BSB Handbook defines each:

- (136) manager has the same meaning as set out in s. 207 LSA namely:
  a) a member of an LLP;
  b) a director of a company;
  c) a partner in a partnership; or
  d) in relation to any other body, a member of its governing body

- (149) Owner means:
  a) in relation to a BSB authorised body that is a company or an LLP (or an applicant to become such a body), any person who holds a material interest in that company or LLP;
  b) in relation to a BSB authorised body that is a partnership (or an applicant to become such a body), any partner of that partnership who holds a material interest in that partnership

167. These definitions are important and you should be aware of each because if any of the ownership of your BSB entity changes then BSB must be informed.

Does it threaten my independence if I am manager of an entity with an equity interest and refer myself work as a self-employed barrister?

168. Yes it will; you cannot act as your own instructing professional client in a case. If you are a dual-capacity barrister you may not instruct yourself from your employed capacity within an entity. Another member of the entity who is a professional client can instruct you if you are dual-capacity. Please remember that under rS18.2 you must have a conflicts protocol in place for dual-capacity practice.

What do I do if my entity grows or changes during a year in which it is authorised?

169. Your entity regulator will need to be informed of any substantial changes to the make-up of your entity such as a change in ownership or management or any identified increased risk.

What needs to change in my chambers constitution to permit entity members?

170. This is very much up to chambers, but any changes should be made within the constitutional procedures for making such changes.
171. Things to consider are:

- whether chambers will permit ‘single-person’ entities to operate as members of chambers
- contribution arrangements for rent and administration, and (where appropriate) for clerks
- complaints procedures
- additional systems that may be required in chambers if the ‘single-person’ entity wishes to conduct litigation
- marketing and advertising material
- any contractual arrangements that may be needed between chambers and entities setting out roles, responsibilities charges, and expectations as to any administrative services which chambers may supply (as regards both type and performance levels).

What are the tax implications?

172. The Bar Council cannot give any tax advice and would strongly advise any individual or chambers to take specific tax advice when setting up a regulated entity.

173. The Bar Council’s service partner, Place Campbell Chartered Accountants (www.placecampbell.com) is one of a number of accountancy practices which offer specialist advice and tax planning services to chambers.

Where can I find more help?

174. The BSB entities team: 0207 092 6801 or entityregulation@barstandardsboard.org.uk

175. The Ethical Enquiries Service: 020 7611 1307 Ethics@BarCouncil.org.uk

176. You are strongly advised to take your own, independent tax advice.

177. There are a number of solicitors who specialise in regulation and can assist in steering you through the process.

178. There are also some consultancy firms who are specialising in assisting organisations to convert into an entity.

What does the terminology mean?

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<td>ABS</td>
<td>Alternative Business Structure</td>
<td>Part 5 Legal Services Act 2007</td>
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<td>Legal Disciplinary Practice</td>
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<td>BSB</td>
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<td>SRA</td>
<td>Solicitors Regulation Authority</td>
<td><a href="http://www.sra.org.uk/">www.sra.org.uk/</a></td>
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<td>HOLP</td>
<td>Head of Legal Practice</td>
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<td>HOFA</td>
<td>Head of Financial Affairs</td>
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<tr>
<td>Single Person entity</td>
<td>Bar Standards Board</td>
<td>an entity with one owner (for the avoidance of doubt that owner would also have to be a manager of the entity and would have to be a natural person who is also an authorised person under the Legal Services Act).</td>
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<tr>
<td>Association</td>
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<td>Dual-capacity</td>
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<td>Manager has the same meaning as set out in s. 207 LSA namely: a) a member of an LLP; b) a director of a company; c) a partner in a partnership; or d) in relation to any other body, a member of its governing body</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Owner</strong></th>
<th><strong>BSB Handbook</strong></th>
<th><strong>149</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Owner means: a) in relation to a BSB authorised body that is a company or an LLP (or an applicant to become such a body), any person who holds a material interest in that company or LLP; b) in relation to a BSB authorised body that is a partnership (or an applicant to become such a body), any partner of that p</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Employee</strong></th>
<th><strong>BSB Handbook</strong></th>
<th><strong>82</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Employee means: a) non-authorised individuals who are directly and indirectly employed by BSB authorised persons; and b) authorised (non-BSB) individuals who are indirectly employed by BSB authorised persons</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th><strong>Terms of authorisation</strong></th>
<th><strong>The extent to which the entity has been authorised to carry out reserved legal activity.</strong></th>
<th><strong>E7 BSB Handbook</strong></th>
</tr>
</thead>
</table>

| **BOE** | **Barrister Only Entity** | **An entity that is owned wholly by barristers and no other authorised person.** |

**Purpose:** To draw barristers’ attention to issues relating to entities and entity regulation.

**Scope of application:** All practising barristers

**Issued by:** The Bar Council

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**Last reviewed:** February 2015
Status and effect: Please see the disclaimer. This is not "guidance" for the purposes of the BSB Handbook 16.4.