



Entities: Information on 'how to' and Frequently Asked Questions

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- Scope of application:** All practising barristers and any other persons considering setting up an authorised or licensed body.
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1. Introduction

1.1. 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 structures, regulation and compliance with the BSB's Handbook.

1.2. This document does not include comprehensive tax advice or legal advice in relation to the selection of a particular structure. For assistance in either of these areas we recommend you seek external expert assistance.

1.3. There are a number of references to the BSB Handbook which can be found on the Bar Standards Board (BSB) website. There are a number of sections of the BSB Handbook; the most relevant to this document are Part 2: The Code of Conduct ("C"), Part 3: Scope of Practice, Authorisation and licensing rules ("S") and Part 4: Qualification rules ("Q"). The Handbook includes Core Duties ("CD"), Outcomes ("o"), Guidance ("g") and Rules.

2. What is an entity?

2.1. An entity is a business that is, generally, regulated by an approved regulator to provide legal services to the public. An entity does not have to have a separate legal personality. Throughout this document we use the term entity to refer to both authorised bodies (formerly known as entities) and licensed bodies (also known as Alternative Business Structures).

2.2. Chambers is not an entity because it is simply an association of members, and does not provide legal services; these are instead provided by its self-employed members, who themselves are regulated individually. A set of chambers is an 'association' for the purposes of the BSB Handbook. Further information about associations can be found at paragraph 3.6 below.

2.3. There are various types of entity including:

A. Authorised bodies

These are bodies fully owned and managed by authorised individuals (e.g. barristers and solicitors with current practising certificates).

B. Licensed Bodies (also known as Alternative Business Structures [ABSs])

An ABS is a licensed body which can be wholly owned or managed by a non-lawyer or another company. The Legal Services Act 2007 (LSA) introduced a separate regime for these entities to be licensed by a “licensing authority”. The BSB is a licensing authority along with some other regulators¹.

C. Legal Disciplinary Practice (LDP)

An 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 up to 25% non-lawyer ownership. The Solicitors Regulation Authority and the Chartered Institute of Legal Executives regulate LDPs.

D. Multi-disciplinary practices (MDPs)

An MDP is a type of ABS that provides a mixture of legal services as well as other non-legal services. Please note that the Bar Standards Board will not be licensing MDPs.²

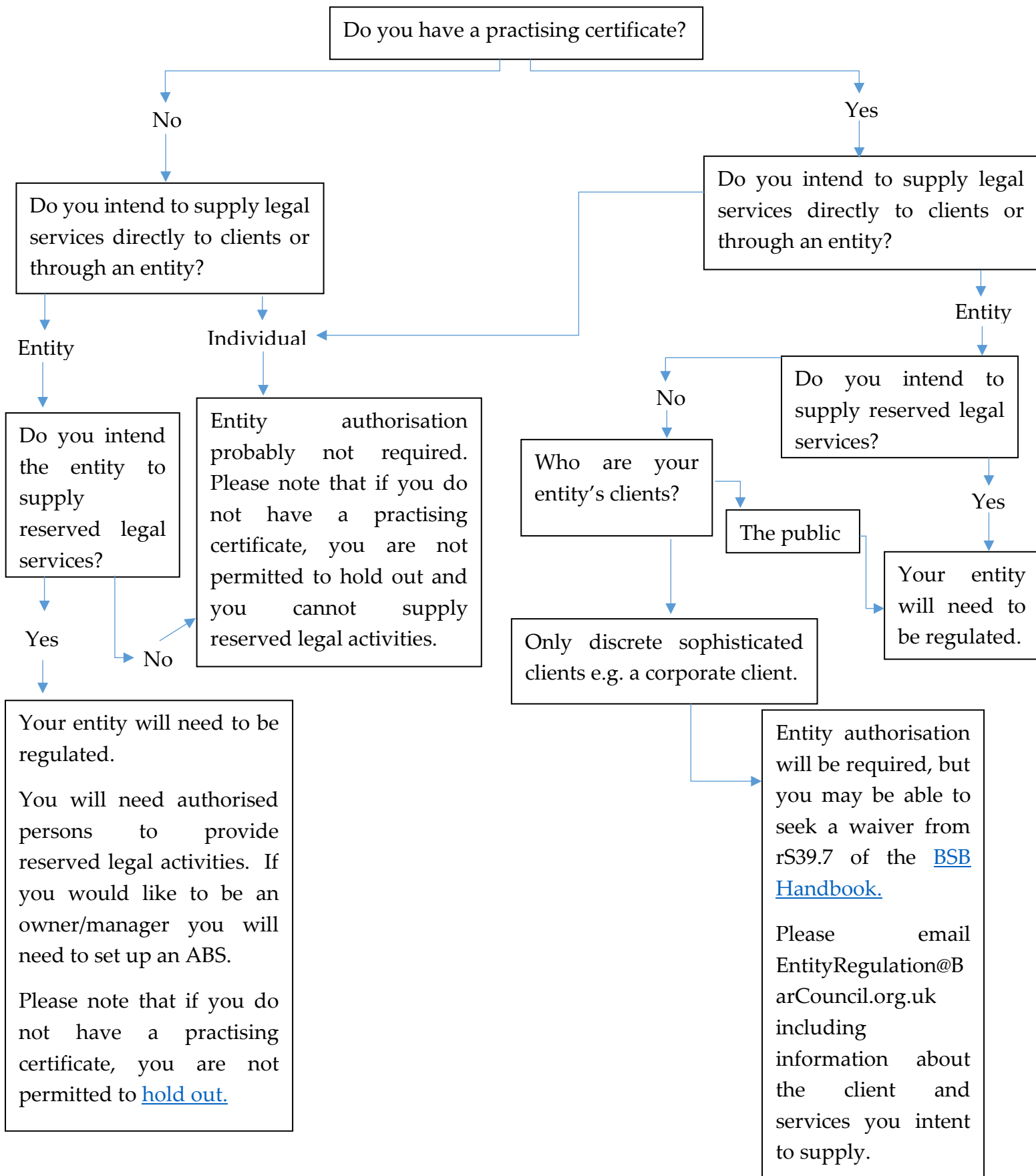
¹ For a full list of Licensing Authorities see section 5 below or the LSB’s website:

http://www.legalservicesboard.org.uk/can_we_help/approved_regulators/

² For further information about the type of entities that the Bar Standards Board regulate, please see their entity regulation policy statement:

https://www.barstandardsboard.org.uk/media/1668991/entity_regulation_policy_statement.pdf

3. Do I need to set up an entity?



3.1. You should consider carefully whether you need an entity for what you would like to do. If you wish to undertake any of the following activities, you will need to establish a regulated entity;

- You want to set up an entity with a separate legal personality **providing services** which include **any reserved legal activities**.
- You have a practising certificate and you are setting up an entity with a separate legal personality and you will **supply legal services to the public through that entity**. If the entity is unregulated, it will be a non-authorised body and therefore, you will not be permitted to supply legal services to the public through that entity (i.e. to clients of the entity): you will be restricted to providing legal services to those listed in rS39 in the BSB Handbook. The consequence of this is that in most circumstances, you will not be able to supply legal services to the public. You should treat this as applying to you whether or not you are, in legal terms, an employee of the entity (e.g. even if you are only a director without a service contract)³. In practice, you may decide that your entity needs to be regulated so that you can supply legal services to clients of the entity.

3.2. Your entity may not need to be regulated if:

- You intend to supply legal services only as an individual, self-employed barrister, rather than through the entity.
- You do not have a practising certificate and your entity does not intend to supply legal services which are reserved legal activities. You will also not be permitted to hold out as a barrister.

3.3. Alternatively, if you only intend to supply legal services through an unregulated entity to specific, sophisticated client(s) in circumstances in which the regulatory risk could be considered to be low, then you may be able to apply for a waiver of the requirements in rS39 from the Bar Standards Board. Waivers are considered on a case by case basis. You should email professionalstandards@barstandardsboard.org.uk if you have a question about such a waiver, and provide as much information as possible about the nature of your

³ This is by analogy, based on the rule (rS16) that you are only permitted to provide legal services in one of the capacities listed in rS16.

proposed practice, your intended client base and the legal services that you wish to supply.

Associations

3.4. It is possible to work with other professionals, such as solicitors or accountants, without setting up an entity that needs to be regulated. If you do so, you are likely to be working in “association” with those professionals. Under the 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.

3.5. If you intend to practise in such a way, you should look at rC79 to rC85 in the BSB Handbook. An association may arise as a result of the practical arrangements between you and other professionals (or non-professionals). Note 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.

4. Authorised body or licensed body and which regulator?

4.1. If you would like to set up an entity through which to provide legal services which will need to be a regulated entity, you should consider the following questions:

A. Who do you want to own and manage the business?

This will affect the type of structure that is most suitable for your business. If you wish to have non-lawyers involved in the running of your business, you will need to set up an ABS, licensed by a licensing authority, rather than an authorised body (which can only be owned and managed by authorised persons, e.g. barristers and solicitors).

B. What services do you want to provide (in particular; legal services, a mixture of legal and non-legal services, or no legal services at all)?

The BSB only regulates entities that supply legal services whereas the SRA will regulate multi-disciplinary practices (MDPs), i.e. those that offer a mixture of legal and non-legal services.

C. What are the relative costs of forming and operating particular entities?

The initial application and yearly re-authorisation costs will differ depending on the size of the entity and which regulator is used. BSB fees are [here](#) and Solicitors Regulatory Authority (SRA) costs are [here](#).

Insurance costs will differ depending on the structure used and activities undertaken.

You may wish to seek specialist advice on your taxation position.

5. Which regulator regulates which structure?

5.1. The BSB regulates individual barristers, authorised bodies and licensed bodies.

5.2. Under the 2007 Act, ABSs are approved and regulated by Licensing Authorities. Approved Regulators can apply to the LSB to become a Licensing Authority. There are currently six Licensing Authorities:

1. The Bar Council (through the BSB),
2. The Law Society (through the Solicitors Regulation Authority (SRA)),
3. The Council for Licensed Conveyancers,
4. The Institute of Chartered Accountants in England and Wales,
5. The Chartered Institute of Patent Attorneys (through the Intellectual Property Regulation Board), and
6. The Institute of Trade Mark Attorneys (through the Intellectual Property Regulation Board),
7. The Chartered Institute of Legal Executives (CiLEX).

6. What legal structures can be adopted for an entity?

6.1. 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 that structure or arrangement; for example, a partnership, limited liability company or limited liability partnership (LLP). This section contains no more than a very basic overview of those commonly adopted by professionals in England and Wales because 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.

Partnership

6.2. 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 a partnership deed.

6.3. 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 one of mutual agency. Property which is agreed to be part of the partnership assets is normally held in the name of a group of partners who hold it 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.

6.4. 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

6.5. 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).

6.6. Limited liability companies can be a more flexible vehicle for the retention of profits, employee ownership and succession planning. They also have a set structure for decision making, whether that be decisions of the board of directors, or voting by shareholders (holders of a specific percentage of shares have specific elements of control).

6.7. 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 guarantee

(which will be required if the company is borrowing or entering into any major financial commitment), 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 may be liable concurrently with the company for work that they have done.

6.8. 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 filed (with some exemptions for small companies) and to keep the Registrar of Companies informed about changes in ownership and control.

Limited Liability Partnerships

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

6.10. 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 registered at Companies House and 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 its agents, so that third parties will contract with the LLP when they deal with or engage its members. However, a member may in some circumstances be concurrently liable with the LLP in respect of work where the member has 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 directors. 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 – these, of course, may be matters for the agreement between

members but are not imposed – so the LLP retains a high degree of flexibility in relation to the organisational structure it may adopt.

6.11. LLPs must be registered with 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.

6.12. 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.

6.13. An LLP must appoint at least two "designated members", who have statutory responsibility for certain tasks. The principal obligations are:

- signing the accounts and annual return and delivering them to the registrar of companies,
- the appointment and removal of the auditors, and
- the notification of membership changes (and changes to the registered office).

6.14. 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.

7. A single-person authorised body

7.1. You may also set up a private limited company (with a sole director and secretary, but the latter only if the articles expressly require it) 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.

7.2. When we refer to a 'single-person authorised body' we mean a company which provides the services of just one person, who is also the sole owner of that company.

7.3. If you incorporate and practise through a single-person authorised body, you will be an 'employed barrister (BSB authorised body)' for the purposes of the BSB Handbook (Section B5).

7.4. The BSB Handbook allows a single-person authorised body 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. Certain chambers might, for example, wish you to enter into a personal guarantee or indemnity covering your entity's liabilities to chambers.

7.5. If you wish to practise through the authorised body and as a self-employed barrister outside of the authorised body, you are likely to require a dual-capacity practising certificate. 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;
- A lack of clarity for the client about which body regulates the work in the capacity you are providing it and with whom you are insured for such work.
- A lack of clarity about redress i.e. that this will be against the entity and not the employed barrister as an individual
- 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.

7.6. It is likely that for many barristers considering practising through a single-person authorised body, the difficulties identified above will mean they do not seek to retain a dual capacity certificate but you must decide what is appropriate for your own practice.

7.7. In order for you to be able to provide services through your authorised body directly to the public, both you and your authorised body will need to be authorised to do this. This is the effect of rS28.3. This rule provides that, in order for your authorised body 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.

7.8. 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 authorised body, 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 authorised body and a self-employed barrister.

7.9. 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 authorised body, the person legally responsible will be the authorised body: the person who will do the work will be you. This will need to be clear both in the terms of the contract, client care letter or other terms on which you accept instructions (rC22) and in any advertising or publicity (for example, on your chambers' website). There should be no difficulty in, for example, a client care letter identifying your other practice (e.g. self-employed in chambers) and stating for the avoidance of doubt that for all work for the client through entity 'A', the client is contracting with A which is regulated by the BSB/SRA etc.

7.10. If you are less than three years' standing, the BSB may not authorise you to become a single-person authorised body because you need to work with a qualified person in order to supply legal services to the public (rS20). However, if your authorised body is a member of chambers and there is someone available to act as your qualified person, then the BSB would consider your application.

8. Setting up an authorised body from within existing chambers

8.1. There are three options here:

- A. At a simple level, your chambers could simply be turned into an authorised body in its entirety, with all members providing their services through the authorised body. An arrangement of this sort would make chambers more akin in structure to a traditional law firm.
- B. Alternatively, an authorised body could be used alongside, and as an addition to, your existing chambers. A regulated authorised body of this sort would be able to compete fully with a solicitors' practice and offer a full range of legal services (assuming the entity has obtained an extension to conduct litigation). In addition to members of chambers being able to offer their services through the entity, the entity would itself be able to instruct members of chambers in the traditional way.
- C. A further alternative would be for individual members of chambers to form single-person authorised bodies, and for those authorised bodies to become members of chambers in their own right, provided this is permissible under the chambers' constitution.

9. Implications of providing legal services through an entity: legal responsibilities, management and compliance

9.1. At the heart of the difference between conventional chambers and entities is an understanding of who is responsible legally for providing the legal services to the client.

9.2. 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 that will bear primary responsibility for claims for professional negligence (although individual lawyers may be liable in addition)⁴. It will be individuals, of course, who are actually providing services on behalf of the entity, but those

⁴ Please note that if the entity is a partnership formed under the law of England and Wales (rather than an LLP), 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.

individuals will be its employees, directors, members or partners, and will be acting on behalf of the entity.

9.3. 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.

9.4. 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.

9.5. 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 and financial 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 decisions 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).

10. Practicalities

How do I set up an entity and how long does it take?

10.1. If you are interested in setting up a BSB-authorized or licensed body you can contact entityregulation@barstandardsboard.org.uk or telephone 0207 092 6801. The BSB have an information page about entity regulation on their website, which you can find [here](#).

10.2. Regulators are required to inform you of their decision within six months. In exceptional circumstances, this can be extended to nine months. It may well take that Applications for entities with a complex structure, particularly ABS are likely to require the extended period.

Insurance

10.3. You will need to provide the BSB with evidence you will have appropriate insurance arrangements in place at all time if you decide to set up a BSB authorized or licensed body.

10.4. BMIF currently insures single-person authorized bodies regulated by the BSB in the same way as it insures self-employed barristers. BMIF consider applications from multi-person authorized bodies regulated by the BSB (whether or not owned by barristers) on a case by case basis.

10.5. If you wish to set up an Alternative Business Structure, you will need to do your own research and find a commercial provider.

10.6. 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.

10.7. If you practise in dual capacity (both out of a regulated entity and separately, as a self-employed practitioner), then you will need to have BMIF insurance for your self-employed practice and a separate policy with BMIF or an approved insurer to cover the practice of the entity.

10.8. Each regulator has its own minimum requirements for insurance. SRA requirements are available [here](#). For BSB requirements the current minimum level of cover per claim is £500,000. For full details of BSB requirements please see [here](#).

Can I handle client money?

10.9. You will need to be very clear about whether your intended practice needs to handle client money.

10.10. All BSB-regulated entities, including BSB-authorised bodies and ABS are not permitted to handle client money. This has a number of advantages, including lower insurance premiums and reduced financial compliance obligations. Any downsides of being unable to handle client money are largely negated by using a third party Escrow account such as [BARCO](#) that can hold the client money on your behalf.⁵

10.11. 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 and the SRA Handbook.

What about employed staff?

10.12. In chambers, you are permitted to employ administrative and support staff. However, because the barristers are regulated as individuals and a set of chambers is unregulated, employees in a chambers are not permitted to give legal advice or take any substantive role in assisting clients.

10.13. 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

⁵ Please see rC73 of the BSB Handbook, which you can access here: https://www.barstandardsboard.org.uk/media/1813606/bsb_handbook_13_december_2016.pdf For further information about the restrictions surrounding the handling of client money, please see the Ethics Committee guidance note that you can access here: <http://www.barcouncil.org.uk/practice-ethics/professional-practice-and-ethics/client-money-and-payments-in-advance/>

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 a practice.

10.14. 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?

10.15. 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, a nominated Data Protection Officer, and will itself be liable to enforcement action in the event of committing breaches. The Bar Council has produced guidance for barristers on a range of IT-related practice issues. For further information, please look at our [website](#). You can also find further information and guidance on these issues on the [Information Commissioner's website](#).

What IT systems and security do I need?

10.16. 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, assessment of your use of cloud computing, and virus, spyware and malware protection.

10.17. 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 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 will 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?

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 do in their self-employed private practice. You will need to ensure that you have systems in place to record and monitor all actions on each case centrally. The nominated Compliance Officer will need to put in place systems for making regular (including random) checks to ensure compliance by other barristers and members of your entity.

10.18. The sort of information that will be needed centrally on a Case Management System is likely to include:

- Key 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.
- Costs reviews: Initial charges estimates need to be updated on a regular basis.
- Case plans: In order that each matter conducted by your entity can be run in an organised and cohesive fashion.

10.19. 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?

10.20. If you intend to supply the full range of services to clients throughout a case, then you should consider applying for a litigation extension to be accredited to do this work.

10.21. Rule S89 in the BSB Handbook makes clear that you need to have the right administrative systems and resources in place to provide legal services directly to members of the public and to administer the conduct of litigation. You must also ensure that you have a sufficient number of persons who are authorised to conduct litigation and to provide guidance to any managers or employees that may be involved in assisting in the conduct of litigation who are not themselves authorised. You should also ensure that you have an adequate number of authorised persons in place to supervise those who are less than three years' standing.

10.22. You can find further information about the conduct of litigation, guidance as to what activities fall within the remit of the conduct of litigation as well as information about how to apply for the litigation extension on the BSB website [here](#).

Will I need more accountancy services?

10.23. In addition to obtaining taxation advice about the 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 and if the entity is a company you will also need to file Corporation Tax returns.

10.24. You should take accountancy advice when deciding on the right form of entity, when forming it, and when applying for necessary authorisations at the outset (for example, your accountant will be able to assist with the financial part of a business plan which regulators will need to see). It would also be prudent 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 on an ongoing basis.

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

10.25. You will need to appoint key individuals to fulfil regulatory compliance functions and ensure that they have the time and support needed to carry out their compliance roles properly. If you opt for an BSB-regulated entity you will need to appoint the following officers as a minimum:

- Head of Legal Practice (HOLP)
- Head of Finance and Administration (HOFA)

What do I need to be aware of if I am thinking of setting up an Alternative Business Structure?

10.26. All of the guidance above applies to all types of entity including Alternative Business Structures, but additional considerations apply to an ABS.

10.27. As set out earlier in this document, an ABS is a business that has non-authorised persons as either owners or managers. You will need to ensure, in accordance with s.73 of the Legal Services Act 2007, that the Approved Regulator by whom you would like the ABS to be regulated is also designated as a Licensing Authority.

10.28. Like all other types of entity, you will need to ensure that you meet the eligibility criteria. For BSB-regulated entities, you should follow the requirements rS83 and rS84 in the [BSB Handbook](#).

10.29. In terms of the BSB rules, any non-authorised owners must meet the suitability criteria in rS108-rS110 of the Handbook. This ensures non-authorised individuals do not have ownership interests that compromise the regulatory objectives or the duties owed by other authorised persons involved in the entity. In addition, the BSB will take into account the probity and financial position of the non-authorised person(s). This will extend to taking into consideration the probity of their associates.

10.30. Associates are defined in paragraph 5 of Schedule 13 of the LSA:

5(1)For the purposes of this Schedule “associate”, in relation to a person (“A”) and—

- (a) a shareholding in a body (“S”), or
- (b) an entitlement to exercise or control the exercise of voting power in a body (“V”),

means a person listed in sub-paragraph (2).

(2)The persons are—

- (a) the spouse or civil partner of A,
- (b) a child or stepchild of A (if under 18),
- (c) the trustee of any settlement under which A has a life interest in possession (in Scotland a life interest),

- (d) an undertaking of which A is a director,
- (e) an employee of A,
- (f) a partner of A (except, where S or V is a partnership in which A is a partner, another partner in S or V),
- (g) if A is an undertaking—
 - (i) a director of A,
 - (ii) a subsidiary undertaking of A, or
 - (iii) a director or employee of such a subsidiary undertaking,
- (h) if A has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in S or V (whether or not they are interests within the meaning of section 72(3)), that other person, or
- (i) if A has with any other person an agreement or arrangement under which they undertake to act together in exercising their voting power in relation to S or V, that person.

11. Frequently asked ethical and conduct questions

Do I need conflict procedures?

11.1 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 practise 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 rS18.2⁶). Please remember that a conflict of interest arises not only where clients have conflicting interests but also 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

⁶ The Bar Council has produced a guidance note including a pro forma conflict protocol, which you can access on our website: <http://www.barcouncil.org.uk/practice-ethics/professional-practice-and-ethics/dual-capacity-practice-protocol/>

be conducted thoroughly before any new clients are accepted. This is another reason for needing a comprehensive case management system.

When could conflicts of interest arise?

11.2 This needs to be considered in two stages. We will look first at conflicts for the entity. We will then consider conflicts where individual lawyers are practising through more than one entity, or both through an entity and on a self-employed basis. However, 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.

11.3 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-authorized 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.

11.4 The term 'conflicts' is often used to cover different sorts of ethical difficulties. Some examples may assist:

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

11.5 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 [11.11] and [11.12] 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 [11.24] below).

11.6 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, or if it gives rise to the conflict regarding a client (or former client's) information which may be relevant to another client.

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

11.8 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.

11.9 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.

11.10 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.

11.11 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).

11.12 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.

11.13 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 Gevevan Trading Co Ltd (No.2) [2003] 1 WLR 912), even if it might otherwise be permissible.

Does the Cab Rank Rule apply?

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

11.57 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.

Can my partner be an owner of my entity?

11.16 A spouse/partner who is an authorised person can be an owner or manager or HOFA of your entity as long as you both meet the requirements of the entity's regulator. If your partner is not an authorised person, then your entity will need to be authorised as an ABS. If your partner is an authorised person, your entity will only need to be an authorised body.

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

11.17 Yes. An employed barrister is a professional client for the purposes of the BSB Handbook (see the definition of professional client) which means that a barrister in an entity is capable of instructing any self-employed barrister. This means that in practice you (acting on behalf of the entity) can instruct another member of Chambers. If you are a dual-capacity barrister you cannot instruct yourself from an entity in your self-employed capacity.

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

11.18 Yes. You may make any recommendation that is in the best interests of your client provided that you do not pay or receive a referral fee in accordance with rC10. If you make a recommendation you should inform the client of your interest in chambers or the entity. Rules C81 and C82 in the BSB Handbook also imposed specific requirements in relation to referrals:

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 relating to referral fees apply to me if I work in a regulated entity?

11.19 Practising barristers are prohibited from paying or receiving referral fees in accordance with rC10. Entities regulated by the BSB are prohibited from paying or receiving referral fees.

11.20 If you wish to set up an entity that is regulated by another Approved Regulator, you will need to check whether the rules of that regulator prohibit the entity from paying or receiving referral fees or not. Guidance C21 in the Handbook includes the following passage:

“If you are a BSB authorised individual who is an employee or manager of an authorised (non-BSB) body or you are an employed barrister (non-authorised body) and your approved regulator or employer (as appropriate) permits payments to which Rule C10 applies, you may make or receive such payments only in your capacity as such and as permitted by the rules of your approved regulator or employer (as appropriate). For further information on referral fees, see the guidance at C32.”

Can I carry out public access work through an entity?

11.21 You may carry out work through a BSB regulated entity only if you comply with rS28, which provides as follows:

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.

11.22 Hence 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.

11.23 If you are a manager or employee of a non-BSB regulated entity, then rS28 will not apply: rS36 and rS37 will apply instead. Except in relation to work at a Legal Advice Centre and *pro bono* work that you undertake in your personal capacity (i.e. not for clients of your employer), as permitted by rS36.4 and rS36.5, your relationship with clients will be through your employer (see rS36.1-rS36.3).

What are my duties of confidentiality?

11.24 Core Duty 6, Rule C5 and Rule C15.5 in 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.

11.25 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 that the outsourcing has client consent⁷. 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.

11.26 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.

11.27 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.

⁷ You can find further Bar Council guidance on outsourcing available here: <http://www.barcouncil.org.uk/practice-ethics/professional-practice-and-ethics/outsourcing-and-use-of-litigation-assistants/>

What is the role of Head of Legal Practice (HOLP) and Head of Finance and Administration (HOFA)?

11.30 Both HOLP and HOFA are defined in the Bar Standards Board Handbook as follows: A HOFA means an individual who has been designated as a Head of Finance and Administration by a BSB Authorised Body (as required by section E1 of Part 3 of the Handbook) and approved by the BSB in accordance with section E of Part 3; NB: This definition is not the same as the equivalent term in the Legal Services Act 2007.

A HOLP means an individual who has been designated as a Head of Legal Practice by a BSB Authorised Body (as required by section E1 of Part 3 of the Handbook) and approved by the BSB in accordance with section E of Part 3; NB: This definition is not the same as the equivalent term in the Legal Services Act 2007

11.28 Generally the HOLP and HOFA have obligations to report any serious misconduct to the regulator as soon as it becomes known to them. 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?

11.29 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

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

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

11.31 Your regulator will need to be informed of any material 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?

11.32 This is very much up to chambers, but any changes should be made within the constitutional procedures for making such changes.

11.33 Things to consider are:

- whether chambers will permit 'single-person' authorised bodies 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' authorised body 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?

11.34 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.

11.35 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.

What disciplinary powers does the BSB have with respect to my entity?

11.36 The Bar Standards Board has a statutory power of intervention (see rE431 of the Handbook that they can use, provided the intervention conditions set out in Schedule 14 of the Legal Services Act are satisfied. Please refer to the statute for further information.

11.37 In addition, the Bar Standards Board can make a divestiture (see rE344-rE346 of the Handbook) in accordance with Schedule 13 of the Legal Services Act.

I wish to set up an entity to receive payments for my work as a self-employed barrister. Is this permissible?

11.38 Yes, however the entity would need to be authorised if you intend to issue invoices and practise through the company.

11.39 It should be clear to the prospective client whether they are contracting with you as an individual or with the entity so that clients are not misled as to who is responsible for the supply and delivery of legal services in accordance with rC19.3.

Where can I find more help?

11.40 You may wish to get in contact with the BSB entities team: 0207 092 6801 or entityregulation@barstandardsboard.org.uk.

Glossary of key terms and acronyms?

Term	Meaning	Reference
ABS	Alternative Business Structure	<u>Part 5 Legal Services Act 2007</u>
LDP	Legal Disciplinary Practice	<u>Law Society</u>
MDP	Multi Disciplinary Practice	Such bodies combine the delivery of reserved legal activities with other professional services.

BMIF	The Bar Mutual Indemnity Fund	https://www.barmutual.co.uk/
BSB	Bar Standards Board	www.BarStandardsBoard.org.uk
SRA	Solicitors Regulation Authority	www.sra.org.uk/
Handbook	The BSB Handbook is the Code of Conduct for barristers issued in December 2016	https://www.barstandardsboard.org.uk/media/1813606/bsb_handbook_13_december_2016.pdf
HOLP	Head of Legal Practice	<u>Bar Standards Board</u>
HOFA	Head of Finance and Administration	<u>Bar Standards Board</u>
Single-person authorised body	<u>Bar Standards Board</u>	An authorised body 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).
Association	BSB Handbook	rC79-85
Dual-capacity	BSB Handbook	rS18
Authorised body (BSB or SRA)	A regulated business that provides legal services.	<u>Legal Services Act 2007</u>

Licensing authority	A regulator permitted to regulate ABS	<u>Part 5 Legal Services Act 2007</u>
Manager	BSB Handbook	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.
Owner	BSB Handbook	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 entity 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.
Employee	BSB Handbook	82 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.
Terms of authorisation	The extent to which the entity has been authorised to carry out reserved legal activity.	E7 BSB Handbook

Important Notice

This document has been prepared by the Bar Council to assist barristers on matters of regulation. It is not "guidance" for the purposes of the BSB Handbook I6.4, and neither the BSB nor bodies regulating information security nor the Legal Ombudsman is bound by any views or advice expressed in it. It does not comprise - and cannot be relied on as giving - legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please refer to the professional practice and ethics section of the Bar Council's website [here](#).