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**Attn:** Administrator for Regulatory Arrangements Alterations

**By email to:** [schedule4approvals@legalservicesboard.org.uk](mailto:schedule4approvals@legalservicesboard.org.uk)

15 June 2020

Dear Sir/Madam

### **Application for approval of alterations to the Law Society's regulatory arrangements**

The Society has reviewed and revised its internal governance arrangements following the introduction of the LSB's Internal Governance Rules 2019 ("IGRs").

Pursuant to Part 3 of Schedule 4 to the Legal Services Act 2007 ("the Act"), the Society is now writing to seek approval, or alternatively exemption, under the LSB's rules for applications to change regulatory arrangements in respect of certain elements of this work. We look forward to receipt of confirmation from the LSB that the application has been approved, alternatively that it meets the criteria for exemption.

This application is limited to two aspects of changes to governance arrangements being introduced by the Society, as approved regulator, to comply with the IGRs. The LSB has indicated that these changes fall within the definition of regulatory arrangements in section 21(1)(i) of the Act. The relevant changes concern:

- a. the Society's delegation of regulatory functions to the Solicitors Regulation Authority ("SRA") as required by IGR 2; and
- b. the performance of the Society's residual assurance role in respect of regulatory functions in accordance with IGR 3.

The Society is also making other changes to its governance arrangements as part of its IGR compliance, but those are not regulatory arrangements within the scope of section 21 of the Act and are not included in this application. They will however be referenced in the Society's certification of IGR compliance to be submitted to the LSB by the compliance deadline of 23 July 2020.

In preparing this application the Society has consulted the IGRs and IGR Guidance. The application also follows the suggested format set out in the IGRs. Attached to this application are:

- Annex [A] – extracts from the Society's General Regulations showing relevant amendments falling within the scope of this application (as tracked changes);
- Annex [B] – a table providing explanation for each of the changes shown in Annex [A];
- Annex [C] – Assurance Protocol between the Society and the SRA;
- Annex [D] – a table responding to questions following the LSB's Significance, Impact and Risk Framework and following recent discussion with the LSB.

## 9a. Contact details for applicant

Pieter de Waal, General Counsel [pieter.dewaal@lawsociety.org.uk and phone number 0208 049 4019] may be contacted for any enquiries relating to this application.

## 9b. Details of the proposed alterations

The Society has identified changes required to be made to its regulatory arrangements in respect of delegation and assurance functions under the IGRs.

The most significant change is that the Society and the SRA have agreed to form the SRA as a corporate entity and subsidiary of the Society.<sup>1</sup> While the nature and scope of functions being delegated to the new entity do not change significantly from the existing delegation to the SRA Board, the new delegation will mean that the Society's role as approved regulator in respect of regulatory arrangements will be delegated to a separate legal entity.

The delegation of regulatory functions to the SRA as separate and subsidiary entity is permissible under, and consistent with, the Society's statutory framework under the Act and the Solicitors Act 1974. This structure is also considered appropriate and necessary to demonstrate good practice and compliance with the IGRs - particularly the overarching duty in IGR 1 - and to ensure that arrangements with the regulatory body are placed on a sound footing consistent with the wider regulatory framework.

This is to be achieved principally through changes to the Society's General Regulations [see extracts at Annex A] to reflect that the delegation of regulatory functions will be to the SRA as a subsidiary of the Society. This delegation is consistent with the permissible scope of delegation of the Society's functions and powers under section 79 of the Solicitors Act and reflects the requirement in the IGRs for regulatory bodies and representative bodies to separate their functions as effectively as reasonably practicable, and preferably through a separate entity.

The Articles of Association for the company reflect that it will discharge delegated regulatory functions pursuant to the General Regulations and the IGRs. The Society's role as sole member of the company will be performed in compliance with the IGRs, as also recognised in the Articles.

The Society has also identified changes to be made to the performance of its residual assurance role pursuant to IGR 3:

- a. Disestablishment of the Business and Oversight Board which performed the Society's former oversight of the SRA Board.
- b. The Assurance Protocol now governs assurance arrangements between the two bodies. This is consistent with the LSB's statutory guidance on the IGRs, which expects regulatory and representative bodies to agree a protocol for assurance arrangements and procedures for making information requests and resolving potential disputes between them. The Protocol achieves this purpose and sets out the method and form of reporting by the SRA to the Society's Council, arrangements for the sharing of information by the SRA to allow the Society to discharge its assurance function, and the methods by which the Society may seek further information, clarification or detail where appropriate and justified under the IGRs.

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<sup>1</sup> The company has been formed and registered. A copy of its Articles of Association is attached for information purposes.

- c. While the Society's Audit Committee (formerly the Group Audit Committee) will perform a role in reporting to the Council in respect of the SRA's functions, the scope of its functions in relation to the SRA will be limited to:
- i. considering reports from the SRA (and from the Society's Board);
  - ii. reviewing and advising the Council on the accounts, financial statements and accounting policies of the group (of which the new SRA will remain a part) and to provide assurance that the accounts and financial statements of the group are true and fair and in conformity with the applicable accounting standards; and
  - iii. overseeing any action taken in the light of external auditors' management letters and reporting any concerns arising from the financial control environment within the group to the Council, to enable the Council to perform its residual assurance role.

The General Regulations [Annex A, GR 27] acknowledge that the Audit Committee will perform its limited role in relation to the SRA subject to the IGR and subject to the Assurance Protocol. GR 27 provides that any power that the Society may exercise under the Assurance Protocol to seek information from the SRA may be exercised by the Audit Committee, but only in respect of information within the scope of its terms of reference.

The Audit Committee will advise the Society's Board (but not the SRA's Board) on the appointment of the Society's external auditors and oversee their work. This does not extend to the appointment or oversight of the SRA's external auditors. For reasons of pragmatism, the SRA may of course choose to continue to engage the same external auditors as the Society.

These arrangements in relation to the role of the Audit Committee have been carefully considered by both the Society and the SRA and the Society considers that they are consistent with both the letter and spirit of the IGRs, including in particular IGR 10.

The new arrangements and documents are agreed and the amended General Regulations are approved by the Society's Council subject to a condition that the amendments relating to the delegation of regulatory functions to the SRA subsidiary will take effect when outstanding matters relating to tax and accounting treatment have been satisfactorily resolved and have been agreed as satisfactorily resolved between the Society's Board and the SRA Board. In the meantime, the SRA Board continues to exercise delegated regulatory functions consistent with current arrangements.

### **9c. Details of the Society's regulatory arrangements affected by the proposed alteration**

As stated above, the Society will give effect to the relevant changes through:

- a. Amendments to its General Regulations concerning:
  - i. the delegation of regulatory functions (GRs 15, 23 and 24); and
  - ii. the performance of the residual assurance role (as marked in Annex A); and
- b. An Assurance Protocol to govern residual assurance arrangements.

Key amendments to the General Regulations are:

- a. Disestablishment of the Business & Oversight Board and its operating protocol, in light of the Society's assurance role as now defined in the IGRs.
- b. Disestablishment of the SRA Board as a Board of the Council.
- c. Delegation of regulatory functions to the SRA as a separate subsidiary entity.
- d. Amendment of the SRA's terms of reference to align the NFR approval processes with IGR requirements and to confirm that the SRA has autonomy over its staff policies and remuneration.

- e. Removal of aspects of the SRA's terms of reference and general functions which are no longer considered to be consistent with the IGRs, including the requirement to notify the Society's President of rule change applications when they are submitted.
- f. Amendments to the membership, terms of reference and functions of the Audit Committee to reflect the scope of assurance permissible under the IGRs and reflected in the Articles for the SRA company and the Assurance Protocol.
- g. Disestablishment of the Group Remuneration Committee.

Key aspects of the arrangements include:

- a. The Society, the SRA and the SRA's directors are to exercise their roles subject to the General Regulations and the IGRs.
- b. The Society and the SRA shall use best endeavours to agree and adopt suitable assurance arrangements to enable the Society to fulfil its residual role under the Act and IGRs.
- c. A mutual obligation of cooperation between the Society and the SRA in the provision and receipt of assurance information;
- d. Provision for specific reports to be provided by the SRA to the Council and the Audit Committee, including their timing and frequency, consistent with the IGR statutory guidance on the type of assurance information to be provided; and
- e. Dealing with requests for further information, consistent with IGR 3. Provision is also made for the SRA to provide reasons as to why it considers any request not to be justified on reasonable grounds. In the event of any disagreement, the parties will endeavour to discuss and reach an agreement, failing which they will refer to the LSB as required under the IGR.

#### **9d. Statement of adherence to regulatory objectives**

The Society acknowledges that under section 28 of the Act an approved regulator has a duty, so far as reasonably practicable, to act in a way which is compatible with the regulatory objectives and to have regard to the better regulation principles and best regulatory practice in discharging its regulatory functions. The Society considers that the proposed alterations meet the requirements for approval under Schedule 4, Part 3 of the Act for the following reasons.

The arrangements which are the subject of this application are designed and intended to ensure compliance with the IGRs in respect of the residual regulatory functions which the Society performs as approved regulator.

The Society considers that the arrangements and governance changes are consistent with the IGRs and promote the public interest consistent with the LSB's stated aim (reflected in the IGRs) to balance (a) the interests of an approved regulator in ensuring that a regulatory body is accountable; and (b) the public interest in fair and proper regulation which is not, and is not seen to be, undermined or prejudiced by representative interests.

The Society considers that the proposed arrangements are transparent, proportionate and consistent with the IGRs. The performance of the assurance function as detailed in the arrangements and documents will ensure that the Society and the SRA remain accountable to each other and to the LSB in their respective roles as regulatory body and approved regulator in respect of the performance of regulatory functions.

The Society also believes the arrangements promote the public interest and encourage the development of an independent, strong, diverse and effective profession by creating more transparency - both for the profession and the public - about the Society and the SRA's distinctive roles and responsibilities. Enhanced separation will also improve perceptions of the independence of, and confidence in, professional regulation.

#### **9e. Statement of compliance with section 28 of the Act**

The Society considers that the proposed arrangements are compatible with section 28 of the Act and with the regulatory objectives. The scope of functions being delegated to the SRA company are substantially the same (with minor improvements) as they are under the current delegation in the General Regulations. In addition, as the Board of directors of the subsidiary company comprises the existing members of the SRA Board and the proposal is to transfer existing staff, premises and existing operations to the company, no change to the regulatory model arises from the transfer.

#### **9f. Statement of desired outcome of the changes**

The changes are being implemented in order for the Society to comply with the IGRs; to give effect to the Society's obligation as approved regulator to be assured that regulatory functions are being discharged in compliance with section 28 of the Act; and to reduce the potential for disputes about assurance and information sharing. This is consistent with the aim of the IGRs to '*enhance the separation and independence of regulatory functions within the current legislative framework*' and to '*provide more clarity to decrease the number of independence-related disputes.*'

#### **9g. Consultation statement re: other approved regulators**

The Society has consulted extensively with the SRA in developing the revised governance arrangements and has sought clarification from the LSB on its intended approach. It has also participated in LSB stakeholder events designed to identify issues arising from IGR compliance for approved regulators.

#### **9h. Intended implementation date**

See section 9b above.

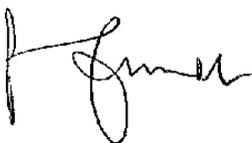
#### **9i. Consultation processes**

See section 9g above.

#### **9j. Other explanatory material (if applicable)**

Please see the Annexures attached.

Yours faithfully



Paul Tennant  
**Chief Executive**