

SCHEDULES

SCHEDULE 14

Section 89.

FOREIGN LAWYERS: PARTNERSHIPS AND RECOGNISED BODIES

PART I

REGISTRATION

General

1 In this Schedule—

“the Act of 1974” means the Solicitors Act 1974;

“controlled trust” means, in relation to a registered foreign lawyer who is a member of a multi-national partnership, a trust of which he is a sole trustee or co-trustee only with one or more of the employees or other partners of that partnership and of which he is a trustee by virtue of his being a member of that partnership;

“the Council” means the Council of the Law Society;

“the register” means the register maintained by the Society under section 89;

“registration” means registration in that register;

“the Society” means the Law Society; and

“the Tribunal” means the Solicitors Disciplinary Tribunal.

Application for registration

2 (1) An application for registration or for renewal of registration—

- (a) shall be made to the Society in such form as the Council may prescribe; and
- (b) shall be accompanied by such fee as the Council may, with the concurrence of the Master of the Rolls, prescribe.

(2) Where such an application is duly made by a foreign lawyer, the Law Society may register the applicant if it is satisfied that the legal profession of which the applicant is a member is one which is so regulated as to make it appropriate—

- (a) for solicitors to enter into multi-national partnerships with members of that profession; and
- (b) for members of that profession to be officers of recognised bodies.

(3) Any registration may be made subject to such conditions as the Society sees fit to impose.

(4) The Council may make regulations, with the concurrence of the Master of the Rolls, with respect to—

Status: This is the original version (as it was originally enacted).

- (a) the keeping of the register (including the manner in which entries are to be made, altered or removed); and
- (b) applications for registration or renewal of registration.

(5) The register may be kept by means of a computer.

Duration of registration

- 3 (1) Every registration shall have effect from the beginning of the day on which it is entered in the register.
- (2) The Council may make regulations—
- (a) prescribing the date (“the renewal date”) by which each registered foreign lawyer must apply for his registration to be renewed; and
 - (b) requiring every entry in the register to specify the renewal date applicable to that registration.
- (3) Any such regulations may—
- (a) provide different renewal dates for different categories of registered foreign lawyer or different circumstances;
 - (b) provide for the Society to specify, in the case of individual registered foreign lawyers, different renewal dates to those prescribed by the regulations;
 - (c) make such transitional, incidental and supplemental provision in connection with any provision for different renewal dates as the Council considers expedient.
- (4) Where a foreign lawyer is registered, the Society may cancel his registration if—
- (a) the renewal date for his registration has passed but he has not applied for it to be renewed; or
 - (b) he has applied to the Society for it to be cancelled.

Evidence as to registration

- 4 Any certificate purporting to be signed by an officer of the Society and stating that a particular foreign lawyer—
- (a) is, or is not, registered; or
 - (b) was registered during a period specified in the certificate,
- shall, unless the contrary is proved, be evidence of that fact and be taken to have been so signed.

PART II

REGISTERED FOREIGN LAWYERS: SUPPLEMENTARY PROVISIONS

Intervention in practices

- 5 (1) In this paragraph “the intervention powers” means the powers conferred by Part II of Schedule 1 to the Act of 1974 (intervention in solicitors' practices) as modified by this Schedule or under section 89.

Status: This is the original version (as it was originally enacted).

- (2) Subject to sub-paragraphs (3) and (4), the intervention powers shall be exercisable in relation to a person who is or has been a registered foreign lawyer and the practice of the multi-national partnership of which he is or was a member as they are exercisable in relation to a solicitor and his practice.
- (3) The intervention powers are only exercisable where—
- (a) the Council have reason to suspect dishonesty on the part of the registered foreign lawyer, or on the part of an employee of the multi-national partnership, in connection with—
 - (i) the practice of that partnership; or
 - (ii) any trust of which the registered foreign lawyer is or was a trustee by virtue of his being a member of that partnership;
 - (b) in the case of a registered foreign lawyer who has died, the Council have reason to suspect dishonesty on the part of his personal representative, in connection with—
 - (i) the practice of the multi-national partnership; or
 - (ii) any trust of which the registered foreign lawyer was a trustee by virtue of his being a member of that partnership;
 - (c) the Council are satisfied that the registered foreign lawyer has failed to comply with rules made under section 32 or 37(2)(c) of the Act of 1974;
 - (d) a bankruptcy order (as defined in paragraph 10(3)) has been made against him or he has made a composition or arrangement with his creditors;
 - (e) he has been committed to prison in any civil or criminal proceedings;
 - (f) the powers conferred by section 98 (emergency powers) or 99 (appointment of receiver) of the Mental Health Act 1983 have been exercised in respect of him;
 - (g) his name has been struck off the register or his registration has been suspended or cancelled;
 - (h) he has purported to act as a member of a multi-national partnership at a time when he was not registered;
 - (i) the Council are satisfied that he has failed to comply with any condition, subject to which he is registered, to the effect that—
 - (i) he may only be a member of a partnership which is approved by the Society; or
 - (ii) he may only be an officer of a recognised body which is so approved; or
 - (iii) he may only be such a member or such an officer.
- (4) The intervention powers shall only be exercisable under sub-paragraph (3)(c) if the Society has given the foreign lawyer notice—
- (a) that the Council are satisfied that he has failed to comply with rules specified in the notice; and
 - (b) that the intervention powers are accordingly exercisable.
- (5) The intervention powers (other than those conferred by paragraphs 5 and 10 of Part II of Schedule 1 to the Act of 1974) shall also be exercisable where—
- (a) a complaint is made to the Society that there has been undue delay on the part of a registered foreign lawyer in connection with—
 - (i) any matter in which he, or the multi-national partnership of which he is or was a member, was instructed on behalf of a client; or

Status: This is the original version (as it was originally enacted).

- (ii) any controlled trust;
 - (b) the Society by notice invites the registered foreign lawyer to give an explanation within a period (of not less than 8 days) specified in the notice;
 - (c) the registered foreign lawyer fails within that period to give an explanation which the Council regard as satisfactory; and
 - (d) the Society gives notice of the failure to the registered foreign lawyer and notice that the intervention powers are accordingly exercisable.
- (6) Where the intervention powers are exercisable in relation to a registered foreign lawyer, they shall continue to be exercisable—
- (a) at any time when his registration is suspended;
 - (b) after his name has been struck off the register or his registration has been cancelled; or
 - (c) after his death.
- (7) Part II of Schedule 1 to the Act of 1974 shall have effect in relation to the intervention powers exercisable by virtue of this Schedule, subject to—
- (a) any express modifications made under section 89; and
 - (b) any modifications necessary in the light of this paragraph.
- (8) For the purposes of this paragraph, Part II of Schedule 1 to the Act of 1974 shall be read with paragraph 4(2) of Part I of that Schedule.
- (9) The notices required to be given by this paragraph must be in writing but need not be given at the same time.

The Compensation Fund

- 6 (1) Where the Council are satisfied—
- (a) that a person has suffered or is likely to suffer loss in consequence of dishonesty on the part of a registered foreign lawyer, or of an employee of a registered foreign lawyer, in connection with the practice of the multi-national partnership of which the foreign lawyer is or was a member or in connection with any trust of which that foreign lawyer is or was a trustee by virtue of his being a member of that partnership; or
 - (b) that a person has suffered or is likely to suffer hardship in consequence of failure on the part of a registered foreign lawyer to account for money which has come to his hands in connection with the practice of the multi-national partnership of which he is or was a member, or in connection with any trust of which he is or was a trustee by virtue of his being a member of that partnership; or
 - (c) that a registered foreign lawyer has suffered or is likely to suffer loss or hardship by reason of his liability to any client of his, or of the multi-national partnership of which he is or was a member, in consequence of some act or default of any of his partners or employees in circumstances where but for the liability of that registered foreign lawyer a grant might have been made out of the Compensation Fund to some other person,
- the Society may make a grant out of the Compensation Fund for the purpose of relieving that loss or hardship.

Status: This is the original version (as it was originally enacted).

- (2) Section 36 of the Act of 1974 (Compensation Fund) shall apply with the necessary modifications in relation to grants under this paragraph as it applies in relation to grants under that section.

Contributions to the Fund

- 7 (1) On an application for registration, a foreign lawyer shall pay to the Society a contribution to the Compensation Fund (“the initial contribution”) of such amount as the Council may from time to time determine.
- (2) On each application for renewal of his registration, a registered foreign lawyer shall pay to the Society—
- (a) a contribution of such amount as the Council may from time to time determine (“the annual contribution”); and
 - (b) where it appears from his application that—
 - (i) he has, at any time during the period specified in the application, held or received clients' money in connection with a multi-national partnership of which he is, or was, a member; or
 - (ii) he is, or was at any time during that period, an officer of a recognised body which has, at any time during that period, held or received clients' money,a further contribution (“the special levy”) of such amount as the Council may from time to time determine.
- (3) The Council may make rules providing, in circumstances specified by the rules, for a foreign lawyer—
- (a) to pay a reduced initial or annual contribution or special levy; or
 - (b) not to be required to pay such a contribution or levy.
- (4) Any rules under sub-paragraph (3) shall be made with the concurrence of the Master of the Rolls.

Accountants' reports

- 8 (1) Unless the Council are satisfied that it is unnecessary for him to do so, every registered foreign lawyer shall, once in each period of twelve months ending with 31st October, deliver to the Society (whether by post or otherwise) a report signed by an accountant and containing such information as may be prescribed by rules made by the Council under section 34 of the Act of 1974 (accountants' reports).
- (2) The provisions of that section shall apply in relation to accountants' reports required by this paragraph, and registered foreign lawyers, as they apply in relation to accountants' reports required by subsection (1) of that section and solicitors.

Certification for purposes of investment business

- 9 For the purposes of enabling the Law Society to issue certificates under Part I of the Financial Services Act 1986 (regulation of investment business) to any multi-national partnership or to any recognised body managed or controlled by solicitors and one or more registered foreign lawyers—
- (a) the Society shall be taken to be the appropriate professional body for that purpose;

Status: This is the original version (as it was originally enacted).

- (b) the registered foreign lawyer concerned shall be treated—
 - (i) as if he were a member of the Society; and
 - (ii) as if he were a solicitor for the purposes of paragraph 2(3) of Schedule 3 to the Act of 1986 (requirements for recognition of professional body); and
- (c) Part I of that Act shall have effect subject to any modifications which the Secretary of State sees fit to make by order under this paragraph with a view to enabling certificates to be issued to such partnerships or such recognised bodies.

Effect of bankruptcy

- 10 (1) The registration of any foreign lawyer against whom a bankruptcy order is made shall be suspended on the making of that order.
- (2) The suspension of any registration by reason of a bankruptcy order shall terminate if the order is annulled and an office copy of the order annulling it is served on the Society.
- (3) In sub-paragraph (1), “bankruptcy order” includes any order which is not a bankruptcy order but which has the same, or a similar, effect under the law in force in any territory outside England and Wales.

Effect of disciplinary action

- 11 (1) Where a registered foreign lawyer is struck off, or suspended from practice, his registration shall be suspended.
- (2) In sub-paragraph (1) “struck off” and “suspended from practice” mean—
- (a) any action taken within the jurisdiction by reference to which the registered foreign lawyer is qualified to be registered; or
 - (b) where the registered foreign lawyer is qualified to be registered by reference to more than one jurisdiction, any action taken within any one of those jurisdictions,
- which is the equivalent, respectively, of a solicitor being struck off the roll or suspended from practice under the Act of 1974.

Re-instatement of disciplined foreign lawyer

- 12 (1) Where a person’s registration has been suspended by virtue of paragraph 11, it shall be revived—
- (a) if his right to practise in the jurisdiction in question is restored; and
 - (b) a copy of the instrument restoring his right, certified to be a true copy by an officer of the appropriate court in the jurisdiction in question, or the professional body concerned, is served on the Society.
- (2) Where a person whose registration is suspended by virtue of paragraph 11 applies to the Society for the suspension to be terminated, the Society may terminate it subject to such conditions, if any, as it thinks fit to impose.

Status: This is the original version (as it was originally enacted).

Effective date of revived registration

- 13 Where a foreign lawyer's registration is revived (whether as the result of the termination of its suspension, restoration by order of the Tribunal or for any other reason), that revival shall take effect on such date, and subject to such conditions, as the Society may direct.

Appeal against conditions or refusals

- 14 (1) Any foreign lawyer may appeal to the Master of the Rolls against—
- (a) the refusal of the Society to register him or to renew his registration;
 - (b) the refusal of the Society to terminate the suspension of his registration on an application made by him under paragraph 12;
 - (c) the failure of the Society to deal with any application by him for registration, renewal of registration or the termination (under paragraph 12(2)) of a suspension within a reasonable time; or
 - (d) any condition imposed by the Society under paragraph 2(3), 12(2) or 13.
- (2) An appeal under sub-paragraph (1)(a), (b) or (d) must be brought within the period of one month beginning with the date on which the Society notifies the applicant of its decision on his application.
- (3) On an appeal to him under this paragraph, the Master of the Rolls may make such order as he thinks fit.

Jurisdiction and powers of Disciplinary Tribunal

- 15 (1) Subject to paragraph 16, section 46 of the Act of 1974 (Solicitors Disciplinary Tribunal) shall apply, with the necessary modifications, in relation to applications and complaints made by virtue of any provision of this Schedule as it applies in relation to applications and complaints made by virtue of any provision of that Act.
- (2) Any application—
- (a) to strike the name of a foreign lawyer off the register;
 - (b) to require a registered foreign lawyer to answer allegations in an affidavit;
 - (c) to suspend the registration of a foreign lawyer for a specified or indefinite period;
 - (d) by a foreign lawyer whose name has been struck off the register by order of the Tribunal to have his name restored to the register;
 - (e) by a foreign lawyer whose registration has been suspended for an indefinite period by order of the Tribunal for the termination of that suspension,
- shall be made to the Tribunal.
- (3) Any person who alleges that a registered foreign lawyer has failed to comply with any rule made under section 31, 32, 34, or 37 of the Act of 1974 may make a complaint to the Tribunal.
- (4) On the hearing of any application or complaint made to the Tribunal with respect to a foreign lawyer, the Tribunal shall have power to make such order as it may think fit, and any such order may in particular include provision for any of the following matters—
- (a) the striking off the register of the name of the foreign lawyer to whom the application or complaint relates;

Status: This is the original version (as it was originally enacted).

- (b) the suspension of that foreign lawyer's registration indefinitely or for a specified period;
 - (c) the payment by that foreign lawyer of a penalty not exceeding £5,000, which shall be forfeit to Her Majesty;
 - (d) the termination of that foreign lawyer's unspecified period of suspension from registration;
 - (e) the restoration to the register of the name of a foreign lawyer which has been struck off the register;
 - (f) the payment by any party of costs or a contribution towards costs of such amount as the Tribunal may consider reasonable.
- (5) Any order made under subsection (4) of section 47 of the Act of 1974 varying the maximum amount of the penalty which may be imposed under subsection (2)(c) of that section may make the same variation in the corresponding amount mentioned in sub-paragraph (4)(c).

Foreign lawyers assisting the Tribunal

- 16 (1) For the purposes of section 46 of the Act of 1974 (Solicitors Disciplinary Tribunal), the Tribunal may make rules providing for it to be assisted, in dealing with any application or complaint of a kind mentioned in paragraph 15, by a member of the legal profession in the jurisdiction by reference to which the foreign lawyer is or was qualified to be registered.
- (2) Rules under sub-paragraph (1) shall not be made without the concurrence of the Master of the Rolls.
- (3) Subsection (12) of section 46 of the Act of 1974 (rules to be made by statutory instrument etc.) shall apply to rules made under this paragraph as it applies to rules made under subsection (9) of that section.

Appeals from Tribunal

- 17 (1) An Appeal from the Tribunal shall lie—
- (a) in the case of an order on an application under paragraph 15(2)(d) or (e), or the refusal of any such application, to the Master of the Rolls;
 - (b) in the case of any other order or refusal under paragraph 15, to the High Court.
- (2) The High Court and the Master of the Rolls shall have power to make such order on an appeal under this paragraph as they may think fit.
- (3) Any decision of the Master of the Rolls on an appeal under this paragraph shall be final.
- (4) The Master of the Rolls may make regulations about appeals to him under this paragraph.