

Can a Law Firm undertake an Ancillary Business?

Standards of Professional Conduct and Etiquette [Rules made by the Bar Council of India under section 49(1)(c) of the Advocates Act, 1961]:

Section VII – Section on other Employments

“47. An advocate shall not personally engage in any business; but he may be a sleeping partner in a firm doing business provided that, in the opinion of the appropriate State Bar Council, the nature of the business is not inconsistent with the dignity of the profession.”

It is a common practice to set up law firms to practice law. The question is whether Law Firms can undertake any ancillary business alongside their core operation i.e. practice of law. In the present case the business is to be undertaken in England. The Advocates Act, 1961 under which the aforesaid rule has been framed, is applicable to the whole of India.¹ However, considering that the Advocate seeking to undertake business in England is enrolled with a State Bar Council in India, opinion of the concerned State Bar Council may have relevance. Be that as it may, one thing is clear that as long as the business being undertaken by the Advocate is *not inconsistent with the dignity of the profession* and he is a *sleeping partner* (in case of Partnership), it is legal. Requiring that the Partner should not be an active Partner, implies that in case the business is carried out through the device of a Company or LLP, the Advocate should not be actively involved in these either. However, Rule 16 of the SRA Practice Framework Rules 2011 provides that a recognized body and licensed body may have, inter alia, an RFL as a partner, member or director or share-owner.

- Solicitors Regulation Authority Handbook: Version 16, published on April 1, 2016: The Handbook contains both Firm based requirements and individual requirements which need compliance. Although firms now have greater freedom in the way they offer services (e.g. outsourcing certain functions), they may not abrogate responsibility for compliance with regulatory requirements.²

Application of the Principles contained in the Handbook: The following provisions contained in the Preamble to the SRA Principles, 2011 show that the Principles apply in the Present case:

- Clause 3: Application of the SRA Principles in England and Wales-
3.1 Subject to paragraphs 3.2 to 6.1 below and any other provisions in the SRA Code of Conduct, the Principles apply to you, in relation to your activities carried out from an office in England and Wales, if you are:
(b) a solicitor, REL or RFL who is:
(iv) an owner of an authorized body or of a body which should be a recognized body but has not been recognized by the SRA, even if you undertake no work for the body's clients;
(c) an authorized body, or a body which should be a recognized body but has not been recognized by the SRA;
- Clause 5: Application of the SRA Principles outside practice-
5.1 In relation to activities which fall outside practice, whether undertaken as a lawyer or in some other business or private capacity, Principles 1, 2 and 6 apply to you if you are a solicitor, REL or RFL.

From the above two clauses it can be implied that the Principles contained in the Handbook apply in our case if the Foreign Lawyer is registered with the SRA under section 89 of the Courts and Legal Services Act 1990 and the entity of which he is the owner, is authorized and recognized by the SRA. In relation to business w.r.t activities which fall outside practice, Principles 1, 2 and 6 apply.

In the light of both, Rule 47 of the Standards of Professional Conduct and Etiquette (Rules made by BCI) and Solicitors Regulation Authority Handbook, it can be reasonably inferred that activities that fall outside practice can be legally carried out by an Advocate through an ancillary business. The Following discussion on what kind of activities carried out by solicitors and lawyers are governed by the Rules and Principles contained in the SRA Handbook, further fortifies the inference.

What kind of Ancillary business can it undertake?

¹ Section 1(2), Advocates Act, 1961

² Handbook, Solicitor Regulation Authority, Version 16, April 1, 2016, pg 3

The Merriam-Webster dictionary defines the word "ancillary" as meaning subordinate, subsidiary or supplementary. In some ways, ancillary businesses do supplement the incomes and activities of primary businesses.³

The legal industry is undergoing rapid change. Increasingly, law firms are merging into large global enterprises that often also provide ancillary services such as investment advice, consulting services, and venture capital. Simultaneously, other professional service firms including accounting firms, investment banks and consulting firms have begun to offer services that overlap with those offered by lawyers, and in some parts of the world, legal services themselves.⁴

Some of the Rules given in the SRA Handbook are relevant in this regard:

➤ SRA Practice Framework Rules 2011

Part 3: Formation and eligibility criteria for recognized bodies, recognized sole practices and licensed bodies- Services requirement for a recognized body or recognized sole practice:

13.2 The business of a recognized body or recognized sole practice may consist only of the provision of:

- (a) professional services of the sort provided by individuals practising as solicitors and/or lawyers of other jurisdictions; and
- (b) professional services of the sort provided by notaries public, but only if a notary public is a manager or employee of a recognized body; and
- (c) the following services (whether or not they are also included in paragraph (a))
 - i. alternative dispute resolution;
 - ii. financial services;
 - iii. estate agency;
 - iv. management consultancy;
 - v. company secretarial services;
 - vi. other professional and specialist support services to business including human resources, recruitment, systems support, outsourcing, transcription and translating;
 - vii. acting as a parliamentary agent;
 - viii. practising as a lawyer of another jurisdiction;
 - ix. acting as a bailiff;
 - x. accountancy services;
 - xi. education and training activities; and
 - xii. authorship, journalism and publishing.

Moreover, the 'Introduction to Specialist Services' contained in the Handbook⁵ contains Rules w.r.t:

- (a) SRA Property Selling Rules - these apply when you provide property selling services through your law firm;
- (b) SRA Financial Services (Scope) Rules and the SRA Financial Services (Conduct of Business) Rules – these apply when you are not authorized by the Financial Conduct Authority and carry on exempt regulated activities for your clients; (the Scope Rules mention some prohibited activities, basic conditions and restrictions that should be taken note of⁶). The SRA Financial Services (Scope) Rules 2001 set out the scope of the regulated activities which may be undertaken by firms which are not regulated by the FCA. These rules regulate the way in which firms carry on such exempt regulated activities.

SRA Financial Services (Conduct of Business) Rules 2001⁷ contains rules w.r.t inter alia insurance mediation activities and credit related regulated activities.

These rules are read in conjunction with the Principles contained in the Handbook.

³<http://smallbusiness.chron.com/definition-ancillary-businesses-26083.html>

⁴http://indialawjournal.com/volume1/issue_1/article_by_Hemant_Batra.html

⁵Handbook, Solicitor Regulation Authority, Version 16, April 1, 2016, pg 311

⁶Handbook, Solicitor Regulation Authority, Version 16, April 1, 2016, pg 317-22

⁷Handbook, Solicitor Regulation Authority, Version 16, April 1, 2016, pg 324

Conclusion:

From the above it can be concluded that Law Firms can undertake ancillary business which could be anything ranging from financial services to estate agency services to insurance to credit related activities, etc.

Although ancillary businesses are not illegal, they can present certain problems. For one, clients of lawyers enjoy a special relationship -- referred to as attorney-client privilege -- in which the lawyer must not repeat certain information related by the client; clients may not understand that they waive this right when receiving non-legal services from their attorney. In addition, conflict-of-interest situations may arise in which it is in the best financial interest of an attorney to recommend a course of action that is not in the best interest of the client.⁸

The SRA Handbook however, addresses this issue as well:

Prohibition on acting in conflict situations:⁹

O(3.4) You do not act if there is an own interest conflict or a significant risk of an own interest conflict;

O(3.5) You do not act if there is a client conflict, or a significant risk of a client conflict, unless the circumstances set out in Outcomes 3.6 or 3.7 apply;

Exceptions where you may act, with appropriate safeguards, where there is a client conflict:

O(3.6) Where there is a client conflict and the clients have a substantially common interest in relation to a matter or a particular aspect of it, you only act if:

- (a) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks;
- (b) all the clients have given informed consent in writing to you acting;
- (c) you are satisfied that it is reasonable for you to act for all the clients and that it is in their best interests; and
- (d) you are satisfied that the benefits to the clients of you doing so outweigh the risks;

O(3.7) Where there is a client conflict and the clients are competing for the same objective, you only act if:

- (a) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks;
- (b) the clients have confirmed in writing that they want you to act, in the knowledge that you act, or may act, for one or more other clients who are competing for the same objective;
- (c) there is no other client conflict in relation to that matter;
- (d) unless the clients specifically agree, no individual acts for, or is responsible for the supervision of work done for, more than one of the clients in that matter; and
- (e) you are satisfied that it is reasonable for you to act for all the clients and that the benefits to the clients of you doing so outweigh the risks.

Hence, ancillary business can be carried out legally by Law Firms. The same would be governed by the Principles and Rules contained in the SRA Handbook (latest being Version 16), the Legal Services Act, 2007 and Courts and Legal Services Act 1990, Taxation Statutes and the Bar Council of India Rules, to the extent that they are applicable.

⁸Supra at 3

⁹Handbook, Solicitor Regulation Authority, Version 16, April 1, 2016, pg 19