

Application by the Intellectual Property Regulation Board to become a Licensing Authority



May 2013

Background

The Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA) exercise the powers of Approved Regulators under Schedule 4 of the Legal Services Act 2007 (“the Act”). CIPA and ITMA have delegated their regulatory functions to The Intellectual Property Regulation Board (IPReg) which is therefore permitted, in accordance with Section 20(6) of the Act, to authorise Trade Mark Attorneys and Patent Attorneys to carry out reserved legal activities in respect of rights of audience, conduct of litigation, reserved instrument activities and the administration of oaths. CIPA and ITMA have a long history of registering and regulating intellectual property firms and IPReg has had designated responsibility for being the approved regulator since 1 January 2010.

Application and Scope

IPReg, under delegated authority from CIPA and ITMA, is making an application to the Legal Services Board (LSB) under Schedule 10 to the Act to become a licensing authority. This application, if granted, will allow IPReg, on behalf of CIPA and ITMA, to authorise and regulate Alternative Business Structures (ABS), as set out in Part 5 of the Act. The scope of the application is restricted to IPReg’s current reserved legal activities.

The application sets out IPReg’s proposed strategy to regulating ABS, which broadly is to harmonise its regulatory framework through a consistent approach, whether acting as an approved regulator or licensed authority. This approach will be based on assessing risk factors to enable it to provide the right level of protection for clients and the public. It wants to ensure that it draws from its experience in regulating intellectual property legal services without going beyond that experience in the types of bodies it intends to authorise and regulate as ABS. It will also establish operations that can deliver effective regulation of ABS.

In summary, its regulatory framework for all firms, including ABS, will be founded on the following:

- upholding and promoting the regulatory objectives;
- principles based regulation;

- risk based regulation;
- targeted; and
- client focussed.

The application documentation consists of the following:

The main application:

1. Contact details and introductory statement setting out why the application is being made.
2. Status of application clarifying the relationship between IPReg and CIPA and ITMA.
3. Executive Summary – capturing the main elements of the application.
4. Introduction – providing an overview of the CIPA, ITMA and IPReg
5. Regulatory arrangements for ABS – setting out a principles-based approach.
6. ABS authorisation, supervision and enforcement – targeted and risk based.
7. Governance arrangements.
8. Stakeholder engagement undertaken in preparing the application.

Supporting annexes:

Annex 1(A) Licensing Rules

- Code of Conduct
- Registered Bodies Regulations
- Disciplinary Procedure Rules
- Appeals Regulations
- Special Rules of Professional Conduct applicable to Regulated Persons conducting litigation or exercising a right of audience before the Courts

Annex 1(B): Destination Table setting out the licensing requirements in the Act against their location in IPReg's rules.

Annex 2: Summary of Responses to June 2012 Consultation

Annex 3: Summary of Progress with the General Regulatory Council

Annex 4: Section 82 Policy Statement

Annex 5: Approach to Fees

Annex 6: Multi Disciplinary Practice Working Group – Terms of Reference

Annex 7: Multi Disciplinary Practice Framework Memorandum of Understanding

Annex 8: (Draft) IPReg Assurance and Supervision Policy

Annex 9: Education Plan

Annex 10: Complaints Handling and Enforcement Policy

Annex 11: 2013 Budget

Annex 12: 2012/2013 Business Plan

Annex 13: Regulatory Independence Certificate and LSB response

Consultation

IPReg consulted on these proposals in summer 2012. A summary of consultation responses is contained in Annex 2 of the application. In addition IPReg consulted the Legal Services Consumer Panel, Office of Fair Trading, Lord Chief Justice and the General Regulatory Chamber. A summary of their responses is given in Section 8 to the application.

Timetable

Under the Act, the LSB has 12 months in which to make a decision on a licensing authority designation application (with the possibility of extending this to a maximum of 16 months). This application was received on 21 May 2013 and therefore the LSB will make a decision by 20 May 2014 (or no later than 20 September 2014 if an extension notice is issued).

The LSB has an internal target of making a decision on whether to make a recommendation to the Lord Chancellor within 6 months of the application being deemed to be complete. The actual period for a decision will however be dependent on what emerges from the detailed consideration of the application.