

CITMA

Rule Change Application

made by the

Chartered Institute of Trade Mark Attorneys

to the

Legal Services Board

Under

Part 3 of Schedule 4 to the Legal Services Act 2007

8th July 2020

Application to put in place a new Delegation Agreement to the Intellectual Property Regulation Board (IPReg) to meet the requirements of the Internal Governance Rules.



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Introduction

1. The Chartered Institute of Trade Mark Attorneys (CITMA), formally ITMA (Institute of Trade Mark Attorneys) is an Approved Regulator (AR) under Part 1 of Schedule 4 to the Legal Services Act 2007 (the Act). CITMA is Incorporated under Royal Charter (2016). Article 13 of CITMA's Royal Charter granted on 17th November, 2016, and as amended, revoked and replaced from time to time, includes provisions for the delegation of statutory regulatory powers to a third party.
2. CITMA is applying to put in place a new Delegation Agreement with the Intellectual Property Regulation Board (IPReg) in order to ensure compliance with the new Internal Governance Rules (IGR) made on the 24th June 2019, as required by the Legal Services Board (LSB) under the Act.
3. CITMA currently delegates the discharge of its regulatory functions under the Act to the Trade Mark Regulation Board (TRB) through a joint Delegation Agreement with the Chartered Institute of Patent Attorneys (CIPA) which is also an AR under the Act. The TRB operates jointly with the Patent Regulation Board (PRB) as the Intellectual Property Regulation Board (IPReg).
4. CIPA and CITMA are making separate applications to the LSB to delegate the discharge of their respective regulatory functions under the Act, to recognise the distinctions and differences between the two ARs and the two professions, whilst taking advantage of the efficiencies gained by using a single, overarching regulatory body.
5. This application has been constructed in close consultation with CIPA and IPReg, through the joint Regulatory Forum operated by the three organisations; meetings of the three Chief Executives of CIPA, CITMA and IPReg; and the Joint Executives (JEx) meetings of the Officers of CIPA and CITMA.
6. This application was approved by the Council of CITMA on 23rd June 2020.
7. The new Delegation Agreement is included at Appendix A. This Delegation Agreement has been constructed anew, as such it is not possible to provide a document tracking the changes from the current joint Delegation Agreement, which is included at Appendix B.

The new Delegation Agreement

8. There are distinctions and differences between the Patent Attorney and Trade Mark Attorney professions and CITMA takes the view that, whilst the professions are able to be regulated, by and large, by a common regulatory body, there needs to be mechanisms in place to recognise and respond to these differences. IPReg will remain a company limited by guarantee, with independent governance and control of its finances and operations.

9. The new Delegation Agreement enables the LSB to be assured that CITMA is complying with its duty under Section 30 of the Act to ensure the separation of its representative and regulatory functions. The new Delegation Agreement meets the requirement of the IGR to enhance regulatory independence as far as is reasonably practicable by:
 - i. creating and maintaining clear divisions which prevent the 'representative functions' prejudicing the 'regulatory functions' (as defined in sections 27(2) and 27(1) of the LSA);
 - ii. promoting the 'regulatory objectives' set out at section 1 of the LSA; and
 - iii. upholding the 'better regulation principles' set out at section 28(3) of the LSA.
10. The new Delegation Agreement has been constructed so as to be consistent with the IGR but, in the event that there is any conflict or future departure, the new Delegation Agreement makes it clear that the IGR will prevail
11. The new Delegation Agreement establishes the mechanisms by which CITMA will conduct its residual assurance role as the Approved Regulator, through the sharing of appropriate information by IPReg to CITMA via an Information Sharing Protocol (ISP). A copy of the ISP is attached at Annex C.
12. The new Delegation Agreement replaces, with effect from the date set out at the start of the agreement, the Delegation Agreement dated 23rd May 2012.

Impact on the Regulatory Objectives

13. CITMA considers that the new Delegation Agreement is compatible with the regulatory objectives set out in the Act.

Protecting and promoting the public interest

The new Delegation Agreement clearly and concisely sets out the delegation of the discharge of CITMA's regulatory functions under the Act to IPReg in a manner which protects and promotes the public interest.

Supporting the constitutional principle of the rule of law

CITMA does not consider that this regulatory objective is relevant to the application of a new Delegation Agreement.

Improving access to justice

CITMA does not consider that this regulatory objective is relevant to the application of a new Delegation Agreement.

Protecting and promoting the interests of consumers

The new Delegation Agreement protects the users of intellectual property legal services and enables consumers to be confident that when they use a regulated trade mark attorney there is a robust and efficient regulatory system in place.

Promoting competition in the provision of legal services

CITMA does not consider that this regulatory objective is relevant to the application of a new Delegation Agreement.

Increase the public's understanding of a citizen's legal rights and duties

CITMA does not consider that this regulatory objective is relevant to the application of a new Delegation Agreement.

Promoting and maintaining adherence to the professional principles

CITMA does not consider that this regulatory objective is relevant to the application of a new Delegation Agreement.

Alignment with the Better Regulation Principles

14. CITMA considers that the new Delegation Agreement is compatible with the regulatory objectives set out in the Act.

The Delegation Agreement takes a *proportionate* approach to the discharge of regulatory functions and regulation within the context of the IGR. The *accountability* of CITMA as the Approved Regulator and IPReg as the regulatory body is clearly defined within the Delegation Agreement. The Delegation Agreement is *consistent* with the current independence accorded to IPReg through CITMA's delegation of its regulatory functions and the manner in which trade mark attorneys are regulated. The new Delegation Agreement *targets* all trade mark attorneys operating under the Act and is *transparent* in the approach CITMA has taken to delegate its regulatory functions.

Desired outcomes and plans to monitor and assess achievement

15. The new Delegation Agreement has been drafted to ensure that CITMA delegates its regulatory functions to IPReg in compliance with the Act and under the terms of the IGR. CITMA will, in conjunction with CIPA and IPReg, monitor and assess the effectiveness of the Delegation Agreement and the discharge of regulatory functions through the information shared by IPReg in accordance with the Information Sharing Protocol and periodic review at the Regulatory Forum.

Impact on areas regulated by other Approved Regulators

16. CITMA has consulted with CIPA on the drafting of the new Delegation Agreement. There is no direct impact on any other Approved Regulators.

Consultation process

17. The Chief Executives of CIPA, CITMA and IPReg produced a draft Heads of Terms which was shared with the Councils of CITMA and CIPA and the Board of IPReg. Once the Heads of Terms were agreed, external legal counsel was instructed to prepare draft Delegation Agreements for CIPA and CITMA, incorporating the distinctions and differences of the patent attorney and trade

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mark attorney professions. In terms of CITMA's Delegation Agreement, further consultation took place with CITMA Council and the Executive Committee of CITMA, as well as further advise from counsel. CITMA took the view that wider consultation with the regulated community was not needed as there is no impact or changes to how trade mark attorneys are regulated under IPReg's regulations, rules and procedures.