

The Patent Regulation Board and the Trade Mark Regulation Board

Application for Approval of Practice Fees for 2017

Summary - Level of Practice Fees for 2017

This application is for a **zero increase** in practice fees for 2017 for all individual registrants and also for firms.

The operational budget levels are largely unchanged from 2016 except for an increase in the PR/Communications level (from £10,000 to £20,000) which has been offset by the removal of the annual budget contingency.

IPReg has only increased the practice fees twice since 2011. The first time in 2015 represented the aggregated year-on-year cost of living increase from 2011. The fees then increased again in 2016 by c3%. reflecting, largely, the increased staffing costs (albeit with savings elsewhere).

The 2016 fees matrix as submitted to the LSB for approval at the end of 2015 is again attached (**Annex 1**). The proposed 2017 fees are the same as the 2016 fees.

1. Developing the Application and Setting the Budget

The 2017 Business Plan is annexed which must be read in conjunction with our Reserves (**Annex 2 and Annex 3**).

The 2017 Budget is annexed (**Annex 4**) showing a budget figure of **£711,900, a decrease of £6,670 from the 2016 Budget of £718,570 (Annex 5)**. The layout of the 2016 Budget was altered to show the Legal Services Board's and Legal Ombudsman's levies more prominently. This layout has been carried forward into the 2017 Budget and the levies represent the indicative amounts as communicated by the LSB in June of this year. The addition of sub-totals for each operational expense category has been included in the 2017 Budget.

The Business Plan

- In June, the IPReg Governance Committee undertook a review of the draft IPReg Business Plan for 2017 (as proposed by IPReg officers) and the consequential budget.
- At the IPReg Board meeting on 14 July, the 2017 draft Business Plan and Budget, as developed and recommended by the Governance Committee, were approved by the full Board for consultation.

- The following were material in developing the 2017 Business Plan which the budget (and hence the practice fees) will support and deliver:
 - Following on from the ABS licensing and transitioning phase of 2015 and 2016, the 2017 Business Plan focuses on our Assurance Programme and identifies three key thematic reviews.
 - A strategy review in November 2015 (given impetus by the appointment of a new Chair in April 2016) has led to the development of a communications programme. The 2017 Business Plan specifically notes, however, that the activities are designed to promote awareness of the benefits of an independent and specialist legal regulator. This is not promotion of the professions. Equally promotion of the benefits of IP protection and the difference between regulated and unregulated providers is intended to benefit and empower the consumer (local and international) and should not be regarded as a “sales pitch” for the professions, although feedback to the new Chair at meetings with registrants indicate that “regulated by IPReg” as a kite mark for quality would be welcomed.
 - As in 2016, education, research and other projects are no longer separate budget line items. Instead, as these are largely discretionary spends, they are funded from the ring-fenced Reserve that was set up at the end of 2014. An example of this is the development of the “Ethics and the Code” webinar piloted in 2015 with the first three series (each 3 webinars) delivered in 2016 and free to registrants. The planned bench marking and review of the IPReg CPD Requirements identified in the 2017 Business Plan will also be financed from this reserve as specialist consultants will be commissioned to undertake this work.
 - The budget contingency of £10,000 included for each year has never been called upon and was removed.

Reserves

- The proactive Assurance Programme (with the appointment of an Assurance Officer) and also the powers of investigation granted from January 2015 has led to increased use of external legal and other advice to support these activities.
- The Board has sought to build sufficient reserves to cover these costs but out of operational surpluses. Published reports refer to the costs:

2012: £73,113

http://ipreg.org.uk/wp-content/files/2012/09/2012_Budget_v_Actual_ye_31_Dec_2012_comparison_website.pdf

2013: £50,076

<http://ipreg.org.uk/wp-content/files/2012/09/2013-Budget-v-Actual-12-me-31-December-2013-website.pdf>

2014: (no heard case) £12,644

<http://ipreg.org.uk/wp-content/files/2015/03/2014-Budget-v-Actual-Expenditure-ye-30-12-14-Website.pdf>

2015: (no heard case) £22,637

<http://ipreg.org.uk/wp-content/files/2016/07/2015-Budget-v-Actual-Expenditure-ye-31-12-15-website-Final.pdf>

- The IPReg Board has previously built up ring-fenced reserves from operating surpluses. The 2015 operating surplus was £109,593 (partially resulting from a higher than anticipated level of Licensing Application Fees) and the accumulated operating surplus was £135,013.
- The Board transferred £116,290 of the operating surplus into allocated reserves:
 - £31,290, which represented the balance of the Licensing Application Fees after deduction of any associated external legal costs, was set aside to create a reserve aimed at furthering Practice Development.
 - £10,000 which represented the unspent 2015 Budget contingency was set aside to fund diversity supporting initiatives aimed at promoting our regulatory objective of a diverse profession.
 - A further £75,000 was set aside to cover Assurance, Disciplinary and Litigation Activities. The Reserve is now at £150,000.
- £44,255 of the Projects Reserve (£50,000) will be utilised to fund research into the Patent Examination “Infringement and Validity (FD4/P6) being undertaken externally by Middlesex University under the guidance of a working party led by IPReg but including the Patent Examination Board and members of the profession.
- The General Contingency Reserve remains unaltered at £225,000 and this reflects 6 months of operation (see last point in the Contingencies Section below).

The Board’s rationale to building up both general contingency and project related reserves reflects its commitment to ensure that operational risks or unexpected costs can be met by reserves and to finance one off projects whilst ensuring that the practice fee levels remain stable from year to year. As a consequence, the impact of the 2017 Business Plan on the 2017 Budget over the 2016 Budget has been minimised.

Contingencies

- In previous years IPReg has provided for a small operational contingency in the budget. This has not been called on in the 6 years of operation to date and the 2017 Budget has now removed this budget line.
- IPReg collects the practice fees via our online database (IPReg Pro) since 2014. Each year a small contingency of £10,000 in respect of practice fee support (IPReg Pro) has been provided to cover transaction fees for “Worldpay”, support for fee collection and the production of the Statutory Registers.
- In 2010 IPReg determined that over a period of four years it would build a general contingency reserve of £100,000 against wind up and significant unexpected costs.

This was increased to £175,000 in 2014 to reflect additional office and staff costs. The IPReg Board undertook the same exercise at the end of 2014 and the general contingency was increased again and is now £225,000 (see the relevant point in the earlier Reserves section). This contingency represents c6months of operation.

Differential between practice fee categories

- The Board determined to maintain the current differential between the various fee paying categories.
- The fee for attorneys in private practice will remain at £193 compared favorably to Solicitors' fees (£290).

Projected Income

- The consultation confirmed that the estimated practice fee income for 2017 is £750,000.
- IPReg has undertaken in the 2017 Consultation to monitor the growth in attorney numbers over 2017/18 in terms of the impact on income.

2. Consultation Process

- Irrespective of the intention to hold the fees at the same level, the Board determined that the Business Plan would be subject to consultation to ensure transparency.
- On 9 August, the CEOs of both CIPA and ITMA were given 24 hours' notice of the consultation. On 10 August, an email titled "IPReg 2017 Business Plan, Budget and Practice Fees" was sent to all registrants directing them to the "Consultations" section on the IPReg website – link noted below:

<http://ipreg.org.uk/public/about-us/consultations/2017-business-plan-budget-and-practice-fees/>

(Annex 6 contains the email as circulated and the material as published).

- The Consultation specifically noted the points raised in the "Setting the Budget" section above i.e. the Reserves, General Contingency policy and staffing levels.
- IPReg received only 3 responses to the consultation:
 - From ITMA
 - From CIPA
 - From a sole practitioner operating through a registered body

Both CIPA and ITMA were supportive of the proposed assurance activities in IPReg's 2017 Business Plan. Both CIPA and ITMA welcomed the proposed zero increase in practice fees. The sole practitioner's response indicated that he thought the consultation was in respect of an increase in practice fees.

All three responses were provided to Board members as part of the Board Agenda papers for the Board meeting on 6 October. At that meeting the Board determined no

adjustment was necessary to either the Business Plan or the Budget and the practice fee level would remain as in 2016.

3. Finances and further clarification

- At 30 September 2016, income is £768K. IPReg's income is predominantly from PCF income at £760K with the balance represented by Manager/Owner Registrations, Licensed Body application fees, Litigation certificates and bank interest earned. It should be noted that IPReg's practice fee collection is substantially finished and any additional income will arise from registrant admissions and/or entity fees in this month.
- The projected practice fee income for 2016 was based on estimates made in April to June of 2015. As indicated during the PCF application process last year, it was difficult to predict the numbers of firms that would require transitioning or the additional new entities that would seek registration. Earlier this year IPReg circulated a guidance note for Sole Practitioners on the Provision of Reserved Legal Activities and this resulted in further incorporations and/or registrations which we could not quantify accurately when setting the budget.
- The projected practice fee income for 2017 was based on estimates made in April to June of this year. As mentioned in the point above, there has been more income than anticipated in 2016 and it is likely that the 2017 practice fee income will be at the very least at the same level as 2016.
- A copy of the draft 2016 Budget v Actual expenditure report as at 30 September (**Annex 7**) and the Balance Sheet at the same date (**Annex 8**) are annexed.
- (By way of background) the total income figure for 2015 can be verified by reference to the IPReg audited accounts (see point 6).
- In January 2016 we posted the 2016 Budget on the website and the 2017 Budget will be posted at the start of 2017.

4. Permitted Purposes - Allocation of Income

- In 2016 all income has been applied and in 2017 all income will be applied solely for the permitted purposes. The budgets/comparisons, which are provided, evidence that the expenditure principally comprises:
 - the levy to the LSB and for LeO.
 - the salaries of the now five part-time members of staff and one full-time member of staff.
 - the remuneration and expenses of the Chair and Board members.
 - accommodation and other office costs.
 - provision for education and research projects.
- A new Chair was appointed this year in April following the previous Chairman's retirement. One professional Board Member was due to retire in March, but both CIPA and ITMA agreed to extend his appointment to September thereby deferring the appointment of a Board Member to October. This was done for the purpose of offering stability and to allow the new Chair to be part of the interview panel for the new Board Member. The Budget line for the recruitment of both was £10,000 but was

supported by a ring-fenced Reserve of £50K brought forward from 2015. The cost of the Chair's recruitment was spread over 2015 and 2016 and amounted to approximately £28K.

- The 2017 Budget also includes a provision of £10,000 for the replacement of Board Members and will be supported by the Reserve.
- The 2016 budget (£718,570), the expenditure for 2016 as at 30 September and the proposed 2017 budget (£711,970) in pie chart form are attached (**Annex 9,10 & 11**).

5. Regulatory Functions

Administration of the data for the Registers

As advised in the 2013 application, the shared services between IPReg and CIPA and ITMA, respectively, ceased in 2014. This is the third year that IPReg, via "IPReg Pro" online accounts, managed the collection of practice fees and the administration of the Registers.

Sources of Income

All income is derived from the practice fees charged by IPReg to registered attorneys and entities. Since January 2010 IPReg has received no financial assistance from CIPA and ITMA. IPReg is financially independent.

6. Clarity and Transparency

The Annual Report (**Annex 6**) was included as the 2017 Consultation documentation.

<http://ipreg.org.uk/public/about-us/annual-report/annual-report-201516/>

Links to our finance section on the website are noted within the report.

The IPReg audited financial statements for the year ended 31 December 2015 (**Annex 12**) confirms income and identifies separately the contingency sums held by IPReg.

7. Regulatory and Diversity Impact Assessments

Fees Matrix

As described in the 2012 application, the fees matrix is structured to ensure that UK registered attorneys and attorneys who are solely European registered attorneys (operating in the UK) and other professionals (lawyers) regulated by us, are substantially paying the same practice fees to IPReg.

For example::

UK RPA/RTA – individual fee of £193 plus the entity pays £63 for each UK attorney in its employ – total £256.

EPA/ETA – entity pays fees of £255 for each other lawyer in its employ.

Is there an adverse impact on particular sectors of the Community?

IPReg's comments, made in its 2012 application, continue to apply. There are no new issues.

IPReg remains satisfied that the matrix is robust and currently fair and understood. As indicated, IPReg will (but in due course) undertake a separate consultation on a possible change of the practice fee matrix for entities to one based on turnover.

Special Bodies

IPReg does not regulate any special bodies and has not, therefore, been required to consider any departure from the general practice fees rules for any one special body or groups of special bodies.

Regulatory Objectives and Better Regulatory Principles

The 2017 Business Plan is aligned with the regulatory objectives as follows:

Regulatory and Policy: the activities comprising the Assurance Programme/Research into unregulated providers/Consumer Engagement/Diversity deliver:

- Consumer protection
- Adherence to the professional principles
- Promotion of a diverse profession

Education: addressing issues raised by the QAA in relation to the Patent Examination/benchmarking and reviewing CPD delivers:

- A strong and effective legal profession
- Adherence to the professional principles

Communications: "promote awareness of IPReg" delivers:

- Consumer protection (consumer knowledge and choice)
- A strong and effective profession

8. Consultation with non-commercial bodies and the Consumer Panel

IPReg has not consulted with non-commercial bodies. Intellectual Property legal services are specialist services and are not provided by non-commercial bodies such as Law Centres.

The work is primarily "business to business" with only a very small number of individual inventor-clients.

That having been said all the financial information is available on the IPReg website including its management accounts, annual budget and accounts and business plans. IPReg is entirely transparent regarding its finances and financial management.

IPReg is content for the Legal Services Board to consult with the Consumer Panel to the extent this is considered necessary or appropriate.

Conclusion

We believe that the 2017 Business Plan can be implemented without any increase in practice fees for registrants and firms.

Our submission to the LSB for approval of the 2017 fees structure reflects our continuing strategic view to maintain a “lean” approach to the provision of a well-focused regulatory capability.

We respectfully request approval of the above proposals.

Karen Duxbury – Chief Finance Officer

Ann Wright – Chief Executive

Annexed Documents

Developing the application/Setting the Budget

- 1 2016/2017 Fees Matrix
- 2 2017 Business Plan
- 3 Reserves at 1 January 2016
- 4 2017 Budget
- 5 2016 Budget
- 6 Consultation Documents
- 7 Draft 2016 Budget v Actual Expenditure as at 30 September 2016
- 8 Balance Sheet as at 30 September 2016

Permitted Purposes - Allocation of Income

- 9 Pie chart showing the allocation of the 2016 Budget
- 10 Pie chart showing 2016 expenditure as at 30 September 2016
- 11 Pie chart showing the allocation of the proposed 2017 budget

Clarity and Transparency

- 12 IPReg Financial Statements as at 31 December 2015