

The Patent Regulation Board and the Trade Mark Regulation Board

Application for Approval of Practice Fees for 2018

Summary - Level of Practice Fees for 2018

This application is for a **zero increase** in practice fees for 2018 for all individual registrants as well as registered firms. This will be the second year running that we have not increased the practice fees.

Additionally, we are proposing that from 2019 onwards, any increases in practice fees are expected to be limited to no more than RPI, in the normal course of events. However, we will seek opportunities for savings and reductions during 2018 (if possible).

IPReg has only increased the practice fees twice since 2011. In both cases this was due to the need for additional staffing levels required to support the regulation of ABS.

The 2016 fees matrix as submitted to the LSB for approval at the end of 2015 is again attached (**Annex 1**). The proposed 2018 fees are the same as the 2016 and 2017 fees.

1. Developing the Application and Setting the Budget

The 2018 Budget (**Annex 2**) and the draft 2018 Business Plan as consulted on (**Annex 3a**) are attached.

Background to setting the Budget and Business Plan

Over the last twelve months, IPReg has undergone a period of change. The Chair left at the end of October 2016 after only 6 months in office and Steve Gregory, Lay Board Member, has undertaken the role of acting Chair since then.

In early 2017, Ann Wright (former CEO) resigned after 8 years of steering IPReg's systems and processes. The Board took this opportunity to assess the CEO's current and future workload and the need to offer stability at the executive level. In view of the increasing number of registrants as well as the size of regulatory workload, the decision was made to strengthen and increase the resilience of the new executive team with an appointment of two part-time senior executives: a new CEO and a new role – Head of Registration. The newly appointed Head of Registration has a background of regulatory compliance and will undertake specific responsibilities for the maintenance of the Registers and the associated compliance, assurance, admission and disciplinary reviews.

The 2018 Budget has been annexed (**Annex 2**) and shows an increase in budgeted operational expenditure £713,100 in comparison with the 2017 Budget £654,700 (**Annex 4**) due to increased staff costs because of the executive staff level restructure. It is worth noting that other budget lines have been kept at the same level as in 2017, except where reductions have been considered appropriate for those budget lines where ring-fenced reserves (**Annex 5**) are in place. As suggested by the LSB in its letter of 8 November 2016 approving the 2017 PCF, the Board has considered whether to reduce the level of reserves. It decided that it would be prudent to maintain them at the current levels to ensure that IPReg is able to respond appropriately to events as they occur during the coming year (for example changes required as a consequence of the General Data Protection Regulation and/or changes needed to ensure the effective operation and maintenance of the Registers). The Board will keep its reserves policy under review.

The recruitment of a new Chair has been delayed until 2018 and the recruitment costs for this will be met from a ring-fenced Reserve.

The Board intends that the new executive staff and the new Chair, will work closely with the Board to develop the strategic direction for the coming years. As a consequence, the 2018 Business Plan has limited the number of new initiatives for 2018 and is very much focused on ensuring that IPReg's core regulatory activities are carried out as effectively and efficiently as possible.

The revised 2018 Business Plan (*Annex 3b*)

As noted above, IPReg has sought to identify and limit the key initiatives for 2018 and all the proposed activities can be supported by the budget and the practice fees. The draft Business Plan has been amended considerably to take into account feedback obtained during the consultation process, views expressed by the LSB about the operation of the Registers and the Board's re-consideration of its 2018 priorities.

Key aspects of the revised 2018 Business Plan are:

- The Regulatory and Policy Programme includes:
 - a review of IPReg's internal policies and procedures to ensure consistency with best regulatory practice. This will also include reviewing and updating the current Assurance Policy and available data to ensure that IPReg can target its future thematic reviews on areas that represent the greatest risk to consumers;
 - consideration of how the effectiveness of the maintenance and operation of the Registers could be improved and changes that may be needed to comply with the GDPR and other statutory requirements;
 - continuing to work (with the other legal regulators) on implementing the recommendations made by the CMA.
 - the ongoing potential implications of Brexit (taking care to ensure that our work takes into account that of CIPA and CITMA).
- As in 2017, Education, Training and Qualifications activity are to be funded from the ring-fenced Projects Reserve set up in 2014.

- The Communications strategy (i.e. activities are designed to promote awareness of the benefits to consumers and the profession of an independent and specialist legal regulator) will be reviewed on the appointment of a new Chair.

Reserves (*Annex 5*)

The Board considers it prudent to maintain the reserves at current levels and to set aside reserves out of operational surpluses where possible. This rationale reflects the Board's commitment to ensure that operational risks or unexpected costs can be met by the Reserves. This will ensure that the practice fee levels are not adversely affected from year to year.

- The Board transferred £50,000 of the 2016 Operating Surplus into allocated Reserves:
 - £20,000 to fund diversity supporting initiatives aimed at promoting our regulatory objective of a diverse profession.
 - £30,000 of committed funds, payable in 2018 and beyond, for the implementation of recommendations arising from CMA Legal Services Market Study Report on the delivery of legal services (e.g. improving the Legal Choices website and exploring the feasibility of a single digital register).
- The proactive Assurance Programme 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.

As shown in the published reports for disciplinary costs (*see in particular the significant costs incurred in 2012 and 2013 in Annex 6*), there is a need to have a suitable reserve in place to cover such costs in the event of a single large case or a number of cases (the cost in 2012 & 2013 represented the costs attributable to two cases). The spend for the 9 months to 30 September is £39,775 (*see Annex 8*).

It is anticipated that the regulatory legal background of the new Head of Registration, together with those of the existing regulatory staff members, will result in a reduction on the reliance on external legal advisors and should help reduce these costs.

- There will not be a "draw down" on the Projects Reserve of £50,000 to meet the costs of the Patent Examination "Infringement and Validity" FD4/P6 research as notified in last year's PCF Application. These costs have been met from operating surpluses in 2016 and 2017.
- The General Contingency Reserve remains unaltered at £225,000 (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, unexpected costs or the finance of one off projects, can be met by reserves. This will provide stability to the level of practice fees year on year. This, along with the increase in registrants, has meant that despite an increase in staff levels, the impact of the increased staffing costs can be managed within the existing fee structure.

Contingencies

- IPReg has collected 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 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. Together with other ring-fenced Reserves, there are sufficient Reserves in place to cover c6months operation in the case of a wind up.

Differential between practice fee categories

- The Board has decided to maintain the current differential between the various fee paying categories. We may, however, review the weightings applied as part of our consultation on the 2019 practice fees.
- The fee for attorneys in private practice will remain at £193.

Projected Income

- The consultation confirmed that the practice fee income at 31 July 2017 was £777,362. It also confirmed that additional practice fee income arising from new admissions to the Registers in the remainder of 2017 would not be significant.
- This level of income is sufficient to cover the increased operational costs and the total budget of £771,800.
- IPReg will continue to monitor the numbers of attorneys over 2018 and will try to establish the likely impact of Brexit on them.

2. Consultation Process and development of the Business Plan during this period

- In accordance with best practice, the Board decided to consult on its proposal to hold the fees at the same level as 2017. The draft Business Plan was also subject to consultation.
- On 10 August 2017, in accordance with our usual practice, the CEOs of both CIPA and CITMA were given 24 hours’ notice of the consultation. On 11 August 2017, an email entitled “IPReg 2018 Business Plan, Budget and Practice Fees” was sent to all registrants directing them to the “Consultations” section on the IPReg website – link noted on the next page:

<https://ipreg.org.uk/2018-business-plan-budget-and-practice-fees/>

(Annex 7 contains the email as circulated and consultation page. Supporting documentation to the Consultation page are either referenced to the Annex in this application or a copy is included).

- The Consultation specifically noted the points raised in the section above on the “Background to setting the Budget and Business Plan” i.e. the Reserves, General Contingency policy and staffing levels.
- During the consultation period, the new CEO through internal reviews, identified potential new initiatives for next year. The CEO also met with the CEOs of CIPA and CITMA at the end of August and discussed potential initiatives for 2018 including how to improve the operation of the Registers. The changes made to the Business Plan have taken into account the responses from the Institutes.
- IPReg received 3 responses to the consultation:
 - From CIPA
 - From CITMA
 - IP Inclusive

CIPA’s response:

- welcomed the proposal not to increase fees in 2018 but noted that we should be able to reduce fees given the level of Reserves.
- queried the level of increase in staff costs and called for a reduction by cost efficiencies elsewhere.
- Business Plan – wanted this to more accurately reflect priorities such as reviewing Rules and operational practices.

After its response, CIPA issued a press statement calling for a 10% reduction in practice fees and that funding the CEO and Head of Registration posts should be done through efficiency savings rather than the budget surplus.

CITMA’s response:

- noted the increase in budgeted operational costs and hoped that the reorganisation would result in efficiency savings and reduced costs elsewhere.
- supported the proposal for no increase in fees and hoped that there will be a reduction in fees in future years.
- Business Plan – agreed it was sensible to limit new initiatives. Also, encouraged IPReg to review core activities, consulting where appropriate.

IP Inclusive’s comments were on the proposal to consult on any proposed changes to our CPD Requirements (as noted on the draft Business Plan) and asked that IPReg take due account of the impact on diversity and inclusivity on the patent and trade mark professions.

The Board Meeting on 28 September 2017, included a paper identifying the revisions to the Business Plan for 2018 made as a result of internal reviews, comments from the LSB on the operation of the Registers and responses to the consultation. The Board decided that:

- There would be no adjustment to the 2018 Budget and the level of Practice Fees and noted that there may be a draw on Reserves to cover the costs of some of the new workstreams.
- The 2018 Business Plan has been updated to clearly identify the new workstreams (**Annex 3b – Revised Business Plan**).

3. Finances and further clarification

- At 30 September 2017, income is £791K. IPReg's income is predominantly from PCF income at £784K 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 closed with the exception of admission fees from registrant admissions and/or entity registration fees in October. Admission fees from 1 November to the end of the year are waived.
- Practice fee income for 2018 is expected to be, at the very least, the same level as 2017.
- A copy of the draft 2017 Budget v Actual expenditure report as at 30 September 2017 (**Annex 8**) and the Balance Sheet at the same date (**Annex 9**) are annexed.
- The total income figure for 2016 can be verified by reference to the IPReg audited accounts (see point 6).
- In January 2017 we posted the 2017 Budget on the website and the 2018 Budget will be posted at the start of 2018.

4. Permitted Purposes - Allocation of Income

- In 2017 all income has been applied and in 2018 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 six part-time members of staff and one full-time member of staff (2018: 7 part-time members of staff)
 - the remuneration and expenses of the Chair and Board members.
 - accommodation and other office costs.
 - provision for education and research projects.
- The appointment of a new Chair has been delayed to 2018 and the costs of recruitment will be supported by some of the ring-fenced Reserve of £50,000.

- The 2018 Budget also includes a provision of £5,000 for the replacement of Board Members; any further costs will be supported by the Reserve.
- The 2017 budget (£711,900), the expenditure for 2017 as at 30 September 2017 and the proposed 2018 budget (£771,800) in pie chart form are attached (**Annex 10, 11 & 12**).

5. Regulatory Functions

Administration of the data for the Registers

The shared services between IPReg and CIPA and CITMA, respectively, ceased in 2014. IPReg, via “IPReg Pro” online accounts, has managed the collection of practice fees and the administration of the Registers since then.

Sources of Income

Most income is derived from the practice fees charged by IPReg to registered attorneys and entities with some very limited additional income from (for example) application fees from ABS. Since January 2010 IPReg has received no financial assistance from CIPA and CITMA. IPReg is financially independent; no practising fees go to CIPA or CITMA.

6. Clarity and Transparency

The Annual Report was published at the same time as the 2018 Consultation documentation (**Annex 7**).

<https://ipreg.org.uk/public/about-us/annual-report/annual-report-20162017/>

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 13**) confirms income and identifies separately the contingency sums held by IPReg.

7. Regulatory and Diversity Impact Assessments

Fees Matrix

As in previous years, 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 it employs.

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 (in due course) undertake a separate consultation on a possible change of the practice fee matrix for entities to one based on turnover. However, there are a number of factors to take into account in doing so, not least the complexity of working out an appropriate level of entity fee and the potential impact of Brexit. It therefore appears unlikely that this work will be able to be done before 2019 (i.e. to inform the 2020 fee consultation).

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 2018 Business Plan is aligned with the regulatory objectives as follows:

Regulatory and Policy: the activities comprising the Assurance Programme/Consumer Engagement/Brexit/Diversity support the regulatory objectives of:

- Protecting and promoting the interest of consumers;
- Promoting competition in the provision of legal services;
- Promoting and maintaining adherence to the professional principles;
- Encouraging an independent, strong, diverse and effective legal profession.

Education: benchmarking and reviewing CPD and competency training and accreditation of Examination Agencies delivers:

- an independent, strong, diverse and effective legal profession
- promoting and maintaining adherence to the professional principles

Communications: “promote awareness of IPReg” delivers:

- Protecting and promoting the interest of consumers through increasing consumer knowledge and choice
- An independent, strong, diverse and effective profession

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

IPReg received a response to its consultation from IP Inclusive on its proposals on CPD. No response was received from the Consumer Panel. However, 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. We are happy to attend a meeting with the Consumer Panel if that would be helpful.

Conclusion

We believe that the 2018 Business Plan can be implemented without any increase in practice fees for registrants and firms.

Our submission to the LSB for approval of the 2018 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

Fran Gillon – Chief Executive

Annexed Documents

Developing the application/Setting the Budget

- 1 2017/2018 Fees Matrix
- 2 2018 Budget
- 3a Draft 2018 Business Plan
- 3b Revised 2018 Business Plan
- 4 2017 Budget
- 5 Reserves at 1 January 2017
- 6 Assurance, Disciplinary & Legal Costs
- 7 Consultation Papers
- 8 Draft 2017 Budget v Actual Expenditure as at 30 September 2017
- 9 Balance Sheet as at 30 September 2017

Permitted Purposes - Allocation of Income

- 10 Pie chart showing the allocation of the 2017 Budget
- 11 Pie chart showing 2017 expenditure as at 30 September 2017
- 12 Pie chart showing the allocation of the proposed 2018 budget

Clarity and Transparency

- 13 IPReg Financial Statements as at 31 December 2016