

8 August 2011

To: IPReg Entity Registrants

Dear Colleagues

## **Alternative Business Structures – Schedule 5 Legal Services Act 2007**

Over the last year or so you will have been aware that the issue of Alternative Business Structures (ABS) has been the subject of a great deal of consideration.

The issues have been complex and involve:

- the regulatory objective set out in the Legal Services Act of “promoting competition in the provision of services” – Section 1 (1)(e);
- the “switching on” of the ABS regulations under Schedule 5 which is intended in October this year;
- the transitional provisions which, for a short period, will allow those entities which are ABS to remain registered with IPReg under Section 209 and Schedule 22;
- the ‘switching off’ of those transitional provisions, which will require ABS firms to be regulated by a designated licensing authority under the formal ABS provisions (and, in the absence of any action by IPReg, almost certainly the Solicitors Regulation Authority - SRA - will be the only available licensing authority);
- consideration of what should happen to the regulation of ABS firms when the transitional arrangements are switched off, given that IPReg would continue to regulate the individuals employed in those firms; and
- the ability of non-ABS firms to change their financial structure at some point in the future and the regulatory consequences.

The list goes on! CIPA and ITMA (as the statutory regulators) have worked with IPReg on deciding whether an application should be made for Licensing Authority status.

The key steps in this process have been:

- In June last year we invited the LSB to speak to the community about ABS. IPReg published a summary in the Journals. The presentation material was put on our website.

- IPReg issued a preliminary questionnaire in 2010 and a further survey was undertaken by the Institutes earlier this year.
- A working party was formed headed by Keith Hodkinson of Marks and Clerks (not ABS) and Graham Murnane of Murgitroyd (ABS-like). Ann Wright and I were also part of that group.
- Meetings were held with the LSB, the SRA and the Council of Licensed Conveyancers - CLC
- A paper was produced and published in the CIPA Journal. This is attached.
- We have spoken about the ABS regime at each of our presentations to individual firms.

Apart from the policy aspects which I have briefly outlined above, there was the important issue of the cost of mounting the application.

In order to inform the decision of principle, it was necessary to have a clear estimate of how much such an application was likely to cost. In this I would like to record my appreciation of the cooperation of the Council of Licensed Conveyancers, who, having pursued their application, have shared with us financial details and offered very helpful advice.

The help given by the CLC and the expertise offered by Keith Hodkinson and Graham Murnane, allowed us all to consider the issue of principle in a financial context and decide whether a decision to proceed was affordable. Clearly a decision on the 'policy merits' could only be supported if it was also capable of being funded.

All three parties (CIPA, ITMA and IPReg) consider that it is both correct in principle and affordable to proceed with the application and I now set out the financial details and the rationale for the decision the Patent Regulation Board and the Trade Mark Regulation Board have made.

#### **How much will it cost? Who should pay? How should those costs be apportioned?**

I attach a Financial Framework which has agreed by the IPReg Boards and in principle by CIPA and ITMA, subject to formal ratification by their Councils.

#### **How much?**

We estimate that the cost of making the application, including fees to the LSB and professional fees in preparing the application will be in the region of £160k. We have worked hard on keeping this estimate down (for example we propose to lodge one application to cover patent and trade mark entities rather than a separate application for each)

## **Who should pay?**

Given that we are concerned with entity regulation, it has been decided that the costs should fall on entities and not individual registrants. We looked carefully at whether all entities should pay or whether only those who are currently ABS. It was regarded as inappropriate for a small number of entities to be so closely linked to the financing of their regulator. It was also decided that the financial burden should be spread over the entity group (some 173 firms) because all entities potentially can benefit from ABS structures. Both IPReg and CIPA and ITMA are also making a contribution to the budget.

## **How should the budget be apportioned?**

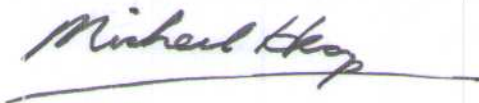
In order to ensure progress during the 2011 calendar year IPReg will provide £30,000 and will look to the Institutes to provide £15,000 each early next year.

The balance is to be collected over two years (2012 and 2013) by an increase in the entity fee. We looked at an increase based on turnover, but rejected this as it might involve confidential information and quite a lot of work. We considered the current methodology involved in the entity fee scheme and regarded that as robust in terms of financing a one off project. Under the current scheme the amount paid is based on the number professionals (partners and employees), which is itself a proxy for size.

By increasing the entity fee by 50% we will be able to raise the balance across the 173 entities in a way which we hope will not be over-burdensome

In this letter I have tried to set out the thinking in relation to an important matter which has a strategic bearing on IP as we look at the future. I hope that you find this information useful.

Yours sincerely

A handwritten signature in black ink that reads "Michael Heap". The signature is written in a cursive style and is underlined with a single horizontal line.

**Michael Heap**  
Chairman