

Licensing Authority Application

(May 2013)

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Annexes

These are all self contained documents and are being sent separately

Annex 1 Rules and Destination Table

Annex 1 (A) Licensing Rules:

- Code of Conduct
- IPReg Registered Bodies Regulations (plus specimen registration certificate)
- IPReg Disciplinary Procedure Rules
- IPReg Appeals Regulations
- IPReg 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

Annex 2 Summary of Responses to June 2012 Consultation

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- 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 Strategy
- Annex 11 2013 Budget
- Annex 12 2012/2013 Business Plan
- Annex 13 Regulatory Independence Certificate and LSB response

1 Contact details and introductory statement

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The Intellectual Property Regulation Board is the independent regulatory body of the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys.

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Introductory Statement by IPReg Chair and Chief Executive

On behalf of the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys, IPReg has pleasure in submitting this licensing authority application.

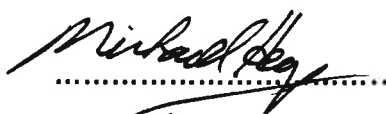
In submitting this application we demonstrate our long-standing support of the opening up of the legal services market and the opportunities for greater competition that it brings. Indeed, intellectual property (IP) law firms have led the way in external ownership.

IPReg (and its predecessors) have a strong track record in the regulation of IP legal services – a sector of the legal services market that has proved to be conducted to high standards with a strong regard for the needs of its clients, and as such comparatively low risk for those clients. In addition, trade mark and patent attorneys have not been prevented from having external management and ownership (although such management and ownership was limited to 25 per cent). IPReg therefore already has experience of authorising and regulating ABS-like bodies.

We offer a principles-based approach to regulation that balances the consumer interest with the broader public interest and is proportionate to our assessment of the risks posed by IP legal work.

We believe that it is in the public interest that the regulation of a highly specialised area within legal services is conducted by those with specialist knowledge of that sector, who will now benefit from the opportunities for greater dialogue and harmonisation of approaches that the creation of the Legal Services Board (LSB) has brought. In developing our approach to the regulation of alternative business structures (ABS), IPReg has, therefore, sought to focus on what we know best; IP legal services. For those ABS seeking to conduct IP legal work¹, IPReg offers a robust but proportionate regulatory approach, and for their clients and the broader public we will provide an appropriate level of protection. As a regulator of ABS, we are not seeking to go beyond our skill base as a specialist in the regulation of intellectual property practitioners. This would be both inadvisable and also unnecessary.

Of course, regulation is not simply a matter of regulatory arrangements but also of quality staff and robust operations. In submitting this application we are confident that IPReg will have made the necessary operational changes ahead of the projected date of designation.



Michael Heap (Chairman)



Ann Wright (Chief Executive)

¹ See section 6 of this application for an explanation of the IP legal work that we intend to authorise and those bodies that will be eligible to apply for authorisation.

2 Status of application

The Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Agents (ITMA) exercise the powers of Approved Regulators (as defined by section 20 of the Legal Services Act 2007 (LSA)), having been designated as such in Part 1 of Schedule 4 to the LSA.

The regulatory functions of CIPA and ITMA are delegated to the Patent Regulation Board and the Trade Mark Regulation Board, working together as the Intellectual Property Regulation Board (IPReg).

By an agreement dated 23 May 2012, CIPA, ITMA and IPReg agreed that CIPA and ITMA would jointly make an application to become licensing authorities for ABS intending to practise in the intellectual property field (together with such ancillary activities as appeared appropriate). CIPA and ITMA further agreed that the regulatory functions arising from CIPA and ITMA becoming a licensing authority would be delegated to the Patent Regulation Board and the Trade Mark Regulation Board, working together as IPReg.

Both CIPA and ITMA have approved this application, which is made by IPReg on their behalf. In this application, IPReg is referred to as “the applicant”.

Under delegation from CIPA and ITMA, IPReg is entitled to authorise, pursuant to Section 12 LSA, the following reserved legal activities:

- the exercise of a right of audience;
- the conduct of litigation;
- reserved instrument activities;
- the administration of oaths.

3 Executive summary

This document contains IPReg’s application to the Legal Services Board to be designated as a Licensing Authority (LA) under the LSA.

Structure of application

The structure of the application, by reference to the LSB’s requirements, is as follows:

Section of application		Section of LSA
1	Contact details and introductory statement	
2	Status of application	Schedule 10, paragraph 1(4) (a)
3	Executive summary	
4	Introduction	
5	Regulatory arrangements for ABS – a principles-based approach	Schedule 10, paragraphs 1(4)(b) and (c) Schedule 10, paragraph 11(2)(a)
6	ABS authorisation, supervision and enforcement – targeted and risk-based	Schedule 10, paragraph 1(4)(c) Schedule 10, paragraph 11(2)(d)
7	Governance arrangements	Schedule 10, paragraph 11(2)(c) Schedule 10, paragraph 11(3)
8	Stakeholder engagement	Schedule 10, paragraph 4(2) Schedule 10, paragraph 5(2) Schedule 10, paragraph 7(3)

9	Timetable for operational change	Schedule 10, paragraph 11(2)(d)
	Annex 1 – Rules and Destination table	Schedule 10, paragraph 1(4)(b) Schedule 10, paragraph 11(2)(a)
	Annex 2 – Summary of responses to June 2012 consultation	Schedule 10, paragraph 11(2)(a)
	Annex 3 – Summary of progress with the General Regulatory Council	Schedule 10, paragraph 3
	Annex 4 – Section 82 policy statement	Section 82(1)
	Annex 5 - Approach to fees	Schedule 1, paragraph 1(4)(b)
	Annex 6 – Multi Disciplinary Practice Working Group Terms of Reference	Sections 52-54 LSA
	Annex 7 – Multi Disciplinary Practice Framework Memorandum of Association	Sections 52-54 LSA
	Annex 8 – (Draft) IPReg Assurance and Supervision Policy	Schedule 10, paragraph 11(2)(d)
	Annex 9 – Education Plan	Schedule 10, paragraph 11(2)(d)
	Annex 10 – Complaints Handling and Enforcement Strategy	Schedule 10, paragraph 11(2)(d)
	Annex 11 – 2013 Budget	Schedule 10, paragraph 11(2)(d)
	Annex 12 – 2012/2013 Business Plan	Schedule 10, paragraph 11(2)(d)
	Annex 13 – Regulatory Independence Certificate and LSB response	Schedule 10, paragraph 11(3)

The regulatory requirements for bodies regulated by IPReg are contained in the:

- Code of Conduct;
- IPReg Registered Bodies Regulations (plus specimen registration certificate);
- IPReg Disciplinary Procedure Rules;
- IPReg Appeals Regulations;

- IPReg Special Rules of Professional Conduct applicable to Regulated Persons conducting litigation or exercising a right of audience before the Courts.

These are attached at **Annex 1**, together with a destination table detailing how our rules comply with the requirements of the LSA.

Approach to regulating ABS

Our approach to regulating alternative business structures (ABS, i.e., bodies licensed under section 72 LSA) has been harmonised as much as possible with our approach for existing registrants. This is because we believe that any differentiation must be capable of being justified either on the basis of statutory requirements or by virtue of the risks posed by each type of firm and, at the present time, we believe there is limited substantive evidence that the overall risk profile of ABS of the kind that we intend to authorise and regulate differs significantly from that of traditional firms. Should evidence of additional risks emerge over time, they will inform our policy going forward.

Our approach for all firms, including ABS, is to:

- uphold and promote the regulatory objectives;
- be principles-based;
- be risk-based;
- be targeted;
- be client-focused.

Uphold and promote the regulatory objectives

The regulatory objectives are set out in section 1 of the Legal Services Act (LSA) and promotion of these objectives has been fundamental to the development of IPReg's regulatory arrangements and its approach to the exercising of its powers as a licensing authority. In particular, we seek to:

- improve access to justice through the facilitation of new forms of business – we set no barriers to different types of business model, funding structures or external ownership and will require firms to set out how their application impacts access to justice;
- protect and promote the interests of consumers – our principles-based Code of Conduct, in particular, focuses on the essential requirements for the treatment of clients;
- promote competition in the provision of services – we have built in to our approach to authorisation consideration of competition and we have assessed the competition law implications of our regulatory regime in developing a regime that applies to all types of firm. Intellectual property law firms registered with IPReg compete with:

- firms of solicitors who employ patent and trade mark attorneys regulated by the Solicitors Regulation Authority; and
- Intellectual Property law firms authorized by regulators in other countries, eg, other European states.

Our research suggests that the majority of firms offer similar services to commercial clients, ie, there is no significant difference between the activities of firm by reference to the size of the firm.

The relevant markets are:

- The United Kingdom intellectual property law market;
- The intellectual property law market in other jurisdictions, since UK IP law firms compete with such firms. This is in part driven by the nature of the work and the need for clients to protect their intellectual property around the world, and in part driven by the fact that it is possible to gain qualifications entitling individuals to practise in multiple jurisdictions.

Our concern, therefore, was to ensure that firms registered with/licensed by IPReg would not be at a competitive disadvantage either within the UK nor on the international stage either by virtue of our regulatory arrangements or as a result of our approach to authorization. We are confident that we have achieved this objective.

- encourage an independent, strong, diverse and effective legal profession – we will actively monitor diversity amongst firms and take action where we consider firms to be acting in a manner that discriminates against any group; our Code encourages promotion of diversity; and we will take supervisory/enforcement action where we consider that any firm or individual is bringing the profession into disrepute; and
- promote and maintain adherence to professional principles – this is the essence of our Code of Conduct.

Principles-based

We are strongly committed to a principles-based (but not light-touch) approach. We believe that having a set of regulatory requirements which focuses on the essentials and avoids unnecessary detail is the most effective way to ensure that legal services are provided to the right standard and with integrity. Our view is that detailed rules tend to lead firms and individuals to focus on minutiae and lose sight of the professional principles outlined in the LSA. Moreover, the lack of detail facilitates innovation in the delivery of legal services - since we do not attempt to impose a “one-size-fits-all” set of rules - without jeopardising vital protections. We also believe that unnecessary detail creates a regulatory regime that cannot be capable of flexing as the market changes, and has greater potential to conflict with that of other regulators.

Risk-based

Broadly, the regulatory objectives in section 1 LSA can be put at risk by:

- a) the firms that IPReg authorises and regulates;
- b) IPReg's own operations and decisions;
- c) economic and other external conditions or influences that affect the way that the legal services market functions.

With reference to a), our approach has been developed on the basis of evidence received from the current regulated community, and discussions with key stakeholders. We are confident, therefore, that we understand the risks to the regulatory objectives set out in section 1 LSA posed by:

- intellectual property legal services;
- the business structures permitted under our rules;
- the typical client base of an intellectual property firm;

and that our regulatory approach effectively mitigates those risks.

In addition, both CIPA and ITMA have a long history of regulating the conduct of patent and trade mark attorneys². IPReg draws, therefore, on many years of experience of regulating intellectual property attorneys in assessing the risks to the regulatory objectives posed by IP legal work³.

Our view is that IP legal work is lower risk than other areas of legal work. We say this because of:

- the (historically) low level of complaints and claims against IP law firms;
- the relatively small amount of client money (other than payments on account of disbursements) held by firms; and
- the general sophistication of the client base (see below).

Although the risk profile of IP law firms may change as the market develops and with the advent of ABS, we believe that the above factors are likely to hold true, particularly because we will not seek to authorise ABS that will conduct activities which necessitate the holding of large sums of client money (e.g. conveyancing, probate and matrimonial work⁴).

² See section 4 "Introduction".

³ See section 6, subsection "Authorisation" for an explanation of those bodies that will be eligible to apply for authorisation.

⁴ See again section 6, subsection "Authorisation" for an explanation of those bodies that will be eligible to apply for authorisation.

We have addressed our own operational risk by establishing robust procedures with appropriate oversight from the Board, and we will monitor economic and market changes to identify emerging risks and determine how we should respond to these in our authorisation, risk assessment and supervision of firms.

Targeted

IPReg recognises that the authorisation and regulation of ABS presents significant new challenges and will necessitate:

- access to additional skills;
- an increase in staff;
- changes to its operations.

Section 6 sets out IPReg's planning for changes to its operations and structures to support the authorisation, supervision and (where necessary) disciplining of ABS. We are confident that these operations and structures will be in place before designation. Our understanding of the risks will enable us to target our resources to areas of genuine need. This not only helps us to streamline our operations but also to be cost-effective.

Client-focused

The emphasis of our regulatory regime is very much on achieving the right outcomes for clients; in ensuring that work is conducted to the right standard by those with appropriate qualifications; in requiring the best interests of the clients to be at the forefront of the delivery of legal services; and in ensuring that, should a client suffer any form of loss, they will be protected either through professional indemnity insurance or by the compensation arrangements that IPReg is putting in place and to which all firms must contribute.

In developing our regulatory arrangements, and ensuring that those arrangements are appropriate and proportionate, we have had regard to the client base of current IP law firms and those that we expect to authorise and regulate in the future. Our experience and research demonstrate that by far the majority of clients are commercial organisations and only a limited number are private clients or charities. We have also sought to assess the needs of this client base by understanding the breakdown of clients (size, geographical location, etc.) amongst firms and the nature of services offered to them.

This focus on the client is also present in our operations – from the consideration of the implications for clients of authorising a firm, through the assessment of risks to clients as the firm is supervised and, should it prove necessary, the decision to take enforcement action in the event that clients are prejudiced through the actions of a firm, its employees and managers. Moreover, we will not simply be considering the specific impact on clients of a firm,

but also the broader impact on consumers of legal services – including the impact on access to justice – of the activities of those whom we regulate.

Competition and equality and diversity

One of the key benefits of a principles-based approach is that, by avoiding prescriptive rules that set out how firms must operate, we facilitate innovation and competition. Similarly, our policy has been to be non-restrictive in our licensing rules in terms of ownership structures, hence we set no limit on external (non-lawyer) management or ownership. Having said that, IPReg's licensing rules do restrict the types of work that a firm intending to be authorised by IPReg can conduct and there are good reasons for this, most notably:

- our strong belief that IPReg should leverage its expertise in the IP legal field⁵ and not seek to authorise firms intending to provide legal services beyond our expertise;
- the existence of other licensing authorities such as the SRA, that could authorise firms seeking to provide a broader range of legal services.

We do not believe, therefore, that these restrictions on work types will significantly impact competition within the IP legal market and, to the extent that they do so, this is justifiable in the public interest.

With regard to equality and diversity, in parallel with this licensing authority application, IPReg has undertaken a significant diversity awareness raising exercise including a presentation held on 14 November 2012, commissioned articles and surveys. We see the widening of the market as creating new opportunities for achieving greater diversity in the legal services market through innovative business models, and for individuals to explore new ways of working together to provide IP legal services.

Summary

In summary, in creating our regulatory approach to ABS we set ourselves a number of objectives, each of which we believe we are in a position to achieve, based on the work conducted to date and our plans going forward:

- to establish a single regulatory regime for all types of firm, including ABS; one that is principles and risk-based, providing the right level of protection for clients and the broader public;
- to leverage our experience in regulating IP legal services and not go beyond that in terms of the types of body that we intend to authorise and regulate as ABS;

⁵ See again section 6, subsection "Authorisation" for an explanation of those bodies that will be eligible to apply for authorisation.

- to facilitate the transition of existing registrants to ABS status by authorising such firms in accordance with our new authorisation process, to an agreed deadline of spring 2014;
- to establish operations capable of delivering robust, cost-effective, risk-based and outcomes-focused regulation for all firms at the point of designation as a licensing authority;
- to embody, within our regulatory regime and regulatory functions (authorisation, supervision and enforcement), the better regulatory principles.

This application sets out in detail in the following pages how these objectives have been, and will be, achieved.

4 Introduction

The Chartered Institute of Patent Attorneys (CIPA) was founded in 1882 and was granted its Royal Charter in 1891.

By various enabling statutes, and ultimately the Copyright Designs and Patent Act 1988 (CDPA), CIPA was authorised to maintain the register of patent attorneys (then patent agents) and make regulations regarding the carrying on of patent attorney work by patent attorneys.

The Institute of Trade Mark Attorneys (ITMA) was founded in 1934.

Equally, by various enabling statutes, and ultimately by the Trade Marks Act 1994 (TMA), ITMA was authorised to maintain the register of trade mark attorneys (then trade mark agents) and make regulations regarding the carrying on of trade mark attorney work by trade mark attorneys.

The relevant enabling sections of the CDPA and the TMA were incorporated into, and amended by, sections 184 and 185 of the Legal Services Act 2007.

CIPA and ITMA are named in Schedule 4 to the LSA as Approved Regulators.

Thus, both CIPA and ITMA have a long history of registering and regulating IP law firms. Since its creation in 2009, IPReg has drawn on that experience and expertise in the development of its regulatory arrangements. Moreover, the low level of complaints⁶ and claims against IP law firms both under the regulation of CIPA and ITMA, and since the creation of IPReg, provide evidence of a strong track record of proportionate, risk based regulation in the public interest. This provides a strong foundation and a credible basis for IPReg being designated as a licensing authority for ABS.

⁶ See section 5, “Complaint handling”.

5 Regulatory arrangements for ABS – a principles-based approach

Annex 1 sets out the proposed licensing rules for ABS together with a destination table detailing where the LSA requirements for licensing rules can be located in the IPReg rules.

IPReg's regulatory regime consists of:

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

Amendments to these rules, with the exception of the Special Rules of Professional Conduct applicable to Regulated Persons conducting litigation or exercising a right of audience before the Courts, were consulted on in the period 15 June to 17 September 2012. The results of the consultation, together with our response, were published in November 2012. A summary of consultation responses is attached as **Annex 2**. Consequential amendments will be made to the application provisions of the Special Rules of Professional Conduct applicable to Regulated Persons conducting litigation or exercising a right of audience before the Courts in due course and prior to designation.

In this section we set out how the regulatory regime that we have developed addresses the issues set out below, and how these, in combination, provide IPReg with a robust set of regulatory arrangements that meet the requirements of the LSA, and the expectations of the LSB, without unnecessarily hindering the development of new business models.

Qualification regulations

The IPReg Registered Bodies Regulations set out IPReg's requirements in relation to the authorisation of firms. These include:

- our approach to authorising new firms to conduct reserved and non-reserved legal activities;
- the general conditions applicable to all firms and circumstances in which other conditions may be imposed;
- requirements for the approval of owners, the Head of Legal Practice (HoLP) and the Head of Finance and Administration (HoFA) and managers;

- provisions relating to the licence to be issued to authorised firms.

All those requiring approval (proposed material interest holders, HoLPs and HoFAs and managers) will be subject to a test to assess their fitness and propriety, details of which are set out in Regulation 14 of the IPReg Registered Bodies Regulations. This test incorporates the requirements of the LSA and is already used by IPReg to approve managers. The approval of role holders is a key stage in the authorisation of new firms. The fit and proper test requests information relating to these individuals' personal circumstances, profession, work history and other professional interests, in addition to information concerning their regulatory history (if any). Information received will be verified (as appropriate) and applicants will be required to make a statutory declaration confirming the truth of the information that they provide. IPReg may use one or more third parties to conduct additional checks, depending on cost effectiveness and numbers, and is currently in dialogue with service providers. In the year running up to the licensing of ABS we will make a final decision based on our assessment of numbers.

Head of Legal Practice and Head of Finance and Administration

Sections 91 and 92 of the LSA set out the duties of the HoLP and HoFA within an ABS. We see these individuals as critical to ensuring that firms have the necessary systems and controls to manage risks and to meet IPReg's regulatory requirements. We take the view that the HoLP is particularly important and thus require that the role holder is a manager in the ABS.

When considering an individual for approval as a HoLP or HoFA we will apply the fit and proper test referred to above. We will take into account the following:

- eligibility to hold the role by reference to the criteria set out in the Regulations;
- any issues highlighted through the fit and proper test or the verification of information provided;
- the ability of the individual to fulfil the role given, e.g., their work history and qualifications, their seniority within the applicant firm and other responsibilities, and taking into account the specified responsibilities of each role.

Clear policy towards mainstream and other 'lawyer-like' services

IPReg does not restrict firms and managers from having interests in other firms providing non-reserved legal services, regardless of whether the other firm is authorised or not. We believe that consumers should be able to choose the type of legal services provider they want, provided that such choices are made on an informed basis.

To date, we have only dealt with managers of existing firms holding interests in other authorised firms, although this may change as the legal services market continues to evolve.

Access to justice

Each ABS applicant will be required to explain how their application will impact access to justice in the legal services market. Of course, it is unlikely that one firm, of itself, could significantly impact access to justice, but as part of the authorisation process we will consider the explanation provided as part of the overall merits of the application. We will assess:

- any potential negative impact on access to justice from the authorisation of the firm, taking into account the current state of the market;
- any benefits to access to justice that might flow from authorising the firm.

When future ABS licensees apply to IPReg we will scrutinise applications to assure ourselves that the ABS will not adversely affect access to justice in its broadest sense and not just access to newly-constituted legal services.

In considering access to justice, we have had regard to the LSB's definition:

“the acting out of the rule of law in particular or individual circumstances. The tools to achieve that outcome range from informing the public about their rights, through routine transactional legal services and personalised advice, through to action before tribunals and courts”.

We will assess firms by reference to the extent to which licensing them will have a negative or neutral effect in relation to each of these criteria, although we consider it unlikely that a single firm will have a significant adverse impact on access to justice.

We do not consider that it will be appropriate at the point of licensing to consider “positive” aspects of access to justice, given that our overall policy decisions make clear the positive impact of ABS.

Annex 4 sets out how, in the exercise of our regulatory functions, we act in a way that is compatible with the regulatory objectives and most appropriate for meeting those objectives in accordance with section 82 of the LSA.

Regulation of conduct

IPReg's Code of Conduct is principles based and IPReg endeavours, wherever possible, not to prescribe detailed rules. This is primarily because we believe that detailed rules can have the effect of diverting attention from the principles that should underpin the provision of legal services. In addition, the low level of complaints received and claims made against patent and trade mark attorneys bears out our view that these services are generally provided to a high standard and in a manner which is in the best interests of clients.

The Code sets out 14 key principles. Those individuals and firms who are regulated by IPReg must:

- act with due skill and care and only within their own competence;
- act with integrity, putting their clients' interests foremost;
- work in a timely manner with proper regard for standards of professional service and client care;
- not act in situations of conflict;
- keep client and former client matters confidential;
- work with other lawyers in a professional manner;
- ensure fees are justifiable and ensure that arrangements for liens are transparent;
- manage their professional finances appropriately, ensuring that client monies are kept separately;
- ensure a complaints procedure is in place;
- act in the interests of justice;
- not unfairly or unlawfully discriminate against any person;
- ensure personal continuing professional development;
- maintain professional indemnity insurance;
- ensure publicity is fair, honest, accurate and not misleading.

Non-mandatory guidance helps firms to understand the expectations of IPReg in relation to each of the above principles.

The Code of Conduct applies to all those involved in activities regulated by IPReg: the firms, their managers and employees. The Code also applies to in-house lawyers providing services to their employers, except the provisions relating to professional indemnity insurance and complaint handling.

Indemnity arrangements

In accordance with our overall approach, IPReg intends to impose on all firms, including ABS the same obligations for professional indemnity insurance (PII) and fidelity insurance as set out in the Code (as amended).

Firms will not be limited in their choice of professional indemnity insurer, provided the insurance meets IPReg's requirements set out in the Code in particular coverage in cases of dishonesty (except where all partners/other managers are dishonest – see compensation arrangements below).

Under IPReg's principles-based approach, the level of PII maintained is to be set by the firm itself. The Code contains guidance regarding the minimum level of cover to be maintained by the firm, but our strong belief is that the onus must be on the firm to assess its activities and determine an appropriate level of cover. Should we determine, as part of our consideration of an application for authorisation, that the intended level of cover for a firm is below that which we would expect, given its client base and the nature of its work, we would discuss this with the applicant and if necessary would require amendments to the level of cover as a condition of authorisation. As part of the annual reporting requirements for firms, firms must certify that they have insurance and the level of cover, which is the means by which we assess compliance with the Code. We would take action as part of our supervision of a firm, should we consider the firm to be under-insured at any point in time.

Currently, most firms are insured by PAMIA, which is a mutual insurer. We have consulted PAMIA on the terms and conditions of their insurance, in order to assess whether their insurance would be capable of covering:

- firms in the event of dishonesty by one or more managers (excluding cases where all managers are dishonest, which would be covered by our compensation arrangements);
- firms with external ownership (PAMIA already admitting firms with more than 50% external ownership subject to internal approvals).

PAMIA have changed the terms and conditions of their insurance to address (i) and, with regard to (ii), have confirmed that under the present terms and conditions such firms could be covered, albeit that insurance of such firms would require approval by their Board. In the event that such approval was not forthcoming, a firm would be able to obtain insurance on the open market.

Compensation arrangements

In considering the proposals set out in this next section it is critical that it is understood that attorney firms do and will undertake intellectual property legal services. They do not and will not undertake activities which might be associated with risks of dishonesty by managers such as sales and purchases of land, mortgage work and the administration of the estates of deceased persons.

IPReg's current and proposed rules make clear that IPReg will not accept any firm wishing to offer these legal services.

It would, therefore, be completely inappropriate to make assumptions about the level of risk and corresponding necessary level of compensation based on the level of risk and corresponding cover for solicitors who might, in a multi-disciplinary practice, undertake both such activities and intellectual property legal services.

Our current approach to compensation arrangements is to purchase an insurance policy held by IPReg to cover dishonesty and failure to account. At this time we do not consider it appropriate, based on our understanding of the level of risk, to establish a new compensation fund.

This insurance will be a “last resort” policy applicable when there is no “last” remaining partner able to make a claim on the PII cover; clients will be able to apply for a grant from IPReg in the event that the firm’s PII does not cover the loss.

To the extent that this is a risk, such risk must lie with very small firms. It is difficult to envisage a circumstance where all partners of a firm jointly steal or misappropriate a client account simply holding funds on account of disbursements.

IPReg will define the terms of this insurance, policy to ensure that the level of cover is an exact match with the cover expressed in IPReg’s rules. Cover (and the premium) will therefore be based on:

- IPReg’s rules;
- the value of the periodical fees;
- coverage of all firm types (ABS and non-ABS);
- the compulsory nature of the insurance;
- the geographical spread - assumption is all firms are in UK
- the size of registered firms;
- the anticipated value of client monies handled;
- the fact that firms will be required to have professional indemnity insurance that provides cover in the event of the dishonesty of partners/directors.

In summary:

- all firms will be required to contribute to the cost of the compensation arrangements (the fee calculation has yet to be determined);
- all grants are at the discretion of IPReg (based on the terms of the insurance) and subject to a cap of £25,000 per claimant;
- all applications for grants must be made in the form and within the time period prescribed by IPReg;
- only clients and former clients will be entitled to make claims;

- for the purposes of the compensation arrangements, “clients” means individuals and micro, small and medium-sized enterprises defined in accordance with the European Union definition⁷. For the avoidance of doubt, this definition includes charities.

We have determined the level of the £25,000 per claimant cap by reference to the level of per-client holding of client money (largely on account of disbursements) and therefore the potential loss to each client. In general terms, we believe that for clients of the type that will be eligible claimants, the amount of client money held is likely to peak at £25,000, the average holding being in the region of £10,000-£15,000. As noted above this average level of holding of client money is due to the nature of intellectual property legal work (related to patents, designs and registered trade marks).

Section 6 of this report explains that IPReg will not accept applications from firms that intend to conduct legal work that would involve large holdings of client money, e.g., conveyancing, matrimonial, probate, etc. work.

See **Annex 5** for an explanation of the fees for our compensation arrangements.

Complaint handling

Historically, levels of complaints against IPReg registered entities have been low. For example:

- IPReg (CIPA and ITMA) was not required to contribute to the cost of setting up the Legal Ombudsman (LeO), given the very low levels of second tier complaints;
- information received from 176 registrants showed that, in the 6 months from July to December 2011, the total number of first tier complaints received (as opposed to complaints upheld) by the firms was 241. As this works out at about two complaints per firm we consider that this is not an indicator of significant risk ;
- In 2011, LeO accepted 11 cases for resolution of which 10 were determined and 1 was pending as at 31 December. Of these cases:
 - 5 were informally resolved;
 - 2 dismissed;
 - 2 not within jurisdiction or out of time;
 - 1 where the complainant failed to respond to LeO;
- In 2012, 10 second tier complaints were received by LeO. Of these 9 were concluded and 1 was pending at the end of the year. Of the 9 concluded:
 - 2 where LeO’s decision was rejected by the complainant;
 - 1 where LeO dismissed the complaint;

⁷ See Article 2 of the Annex to Commission Recommendation 2003/361/EC.

- 1 was resolved informally;
- 1 was withdrawn and 4 were made out of time.

The number of complaints referred to LeO in respect of attorneys represents c 0.13% of the total number of complaints. We consider the level of second tier complaints, when set against the figure for first instance complaints, indicates that complainants are receiving a fair hearing and appropriate redress at the first instance.

Having said that, IPReg takes very seriously the right of clients to complain and to have their complaint handled fairly. The Code of Conduct requires firms to:

- have an established procedure for dealing with complaints and for details of that procedure to be made available to clients;
- notify all clients of the right to complain to LeO at the conclusion of the complaint process, the timeframe for doing so and full details of how to contact the LeO.
- keep records of all complaints received and the outcomes of their complaints procedures in respect of such complaints.

IPReg closely monitors statistics received from LeO to identify any emerging trends, although current referrals to LeO are very low and because of that there have been no discernible trends, other than costs being the prominent issue. IPReg has a Memorandum of Understanding in place with LeO that supports these arrangements and will continue to do so in respect of existing firms and ABS. At this stage it is too early to tell how the advent of ABS will influence levels of complaints, if at all.

With regard to complaints about IPReg itself made by stakeholders, where they relate to decisions concerning the authorisation and regulation of ABS, these will be handled independently, i.e., by persons who were not involved in making the relevant decision.

Resolution of regulatory conflicts (including those provisions as applied by section 103 of the LSA)

IPReg addresses the issue of regulatory conflicts in the following ways:

- Code of Conduct – Rule 21 provides that: “To avoid regulatory conflict as defined in sections 52 - 54 of the Legal Services Act 2007, the appropriate Regulation Boards may waive in writing the provisions of these Rules in any particular case or cases where the professional activities of a regulated person are fully regulated by another professional regulator.”
- The IPReg Disciplinary Procedure Rules contain conflict resolution provisions in respect of complaints made against IPReg-regulated persons where they are acting in the capacity of a person regulated by another approved regulator or another professional regulator (e.g., an SRA recognised sole practitioner). In the former case, the complaint will be referred to

the relevant approved regulator and IPReg's investigation will be suspended; in the latter case IPReg's investigation may be suspended, dependent on the circumstances⁸.

- With regard to multi-disciplinary practices, IPReg is not generally seeking to authorise bodies that are conducting other non-IP legal work (see section 6 of this application). Having said that, IPReg is a member of the multi-disciplinary practice (MDP) Working Group that exists to manage regulatory overlaps that may be evident within the workings of some MDPs. The members of this Group have signed a Framework Memorandum of Understanding (FMoU) to provide the basis for the coordinated regulation of ABS providing services regulated by different regulators. The signatories are:
 - Approved Regulators as defined in the LSA;
 - Licensing Authorities as defined in the LSA; and
 - other regulators or professional bodies not falling within either of the above but which oversee the conduct of their members or other persons within their jurisdiction and who, for the purposes of the memorandum, are involved with licensing bodies.

The FMoU is a high-level statement of key issues relating to the regulation of multi-disciplinary practices, including the sharing of information, joint supervision and investigation, and the protection of client money. It will be further supported by the bilateral MoUs that we have with individual regulators sitting under the overarching FMoU. The supporting MoUs between IPReg and other licensing authorities and approved regulators are being developed pursuant to sections 52 and 54 of the LSA.⁹

The terms of reference and membership of the Multi Disciplinary Practice Working Group is shown at **Annex 6** and the Multi Disciplinary Practice Framework Memorandum of Understanding is shown at **Annex 7**.

Internal appeals and the appointment of an appellate body

IPReg has an internal appeals procedure which is set out in the IPReg Appeals Regulations. The Appeals Regulations make provision for internal appeals to be made from a regulatory decision of IPReg.

Where the LSA provides a statutory right of appeal, in respect of decisions relating to ABS (both firms and individuals), the external appeal will be to the General Regulatory Council

⁸ See Rules 8.7 and 8.8 of the Disciplinary Procedure Rules.

⁹ Section 52 provides that where a conflict arises between the regulatory arrangements of an entity regulator and an individual regulator, the entity requirement prevails over the individual requirement. Section 54 of the LSA establishes the requirement that conflicts arising between an Approved Regulator and another type of regulator within MDPs must be resolved via provisions to prevent or resolve conflicts, and to prevent unnecessary duplication.

(GRC), and indeed our intention is that in the future appeals in respect of both types of firm (i.e. ABS and non-ABS) will be to the GRC¹⁰.

We believe that it should be an objective that all appeals should be heard by one appellate body. Moreover, it is in the interests of the legal services market as a whole – and for ABS in particular – that the appellate body in respect of IPReg’s decisions should be the same as for the ABS licensed by the CLC. However, at the present time, the LSB have advised that there is no statutory basis for all appeals from decisions of IPReg - as an approved regulator and licensing authority – to be heard by the same appellate body. As a consequence, and post last year’s consultation, we have had to adjust the IPReg Appeals Regulations to provide an alternate appeal process for non-ABS.

Annex 3 contains a summary of the discussions with the General Regulatory Council in relation to appeals from the decisions of IPReg in relation to ABS.

Arrangements for existing firms that are licensable bodies

IPReg has a number of firms that are licensable and will require authorisation as a licensed body (ABS) at the end of the transitional period set out in Schedule 5, paragraph 3 LSA. IPReg intends to require all such firms to be authorised under its new authorisation procedures, since we believe that although we can take account of information already held about the firm, it is important that we are provided with full details about the firm, its managers and owners, prior to licensing them as an ABS and approving the managers, owners holding a material interest and the HoLP and HoFA.

We have been in communication with firms over the past 18 months to identify levels of licensable bodies and explain our proposals and to educate them regarding the need to be licensed. Based on current figures, we anticipate that the number of existing registrants that will be licensable will not be significantly more than 40, of which 9 are large or medium sized and the balance being “sole practitioner” type practices with spouse or other partner.

Provision of Services Regulations 2009

We have assessed the consistency of our approach to regulation with the Provision of Services Regulations 2009¹¹, in particular with Regulation 14, which sets out requirements regarding authorisation processes for those looking to provide service activities. We believe that the approach to authorisation we set out in our regulatory arrangements meets the requirements

¹⁰ We have discussed with the Legal Services Board the possibility of extending the remit of the GRC to non-ABS. As this would involve a change in legislation, IPReg is prepared to proceed on the basis that the GRC is the appellate body for ABS, whilst continuing to discuss our proposals for non-ABS in the hope that this would be possible in the future.

¹¹ SI 2009/2999.

of the Regulations, and is consistent with ensuring that the legal service providers we authorise are also fit and proper providers of such services.

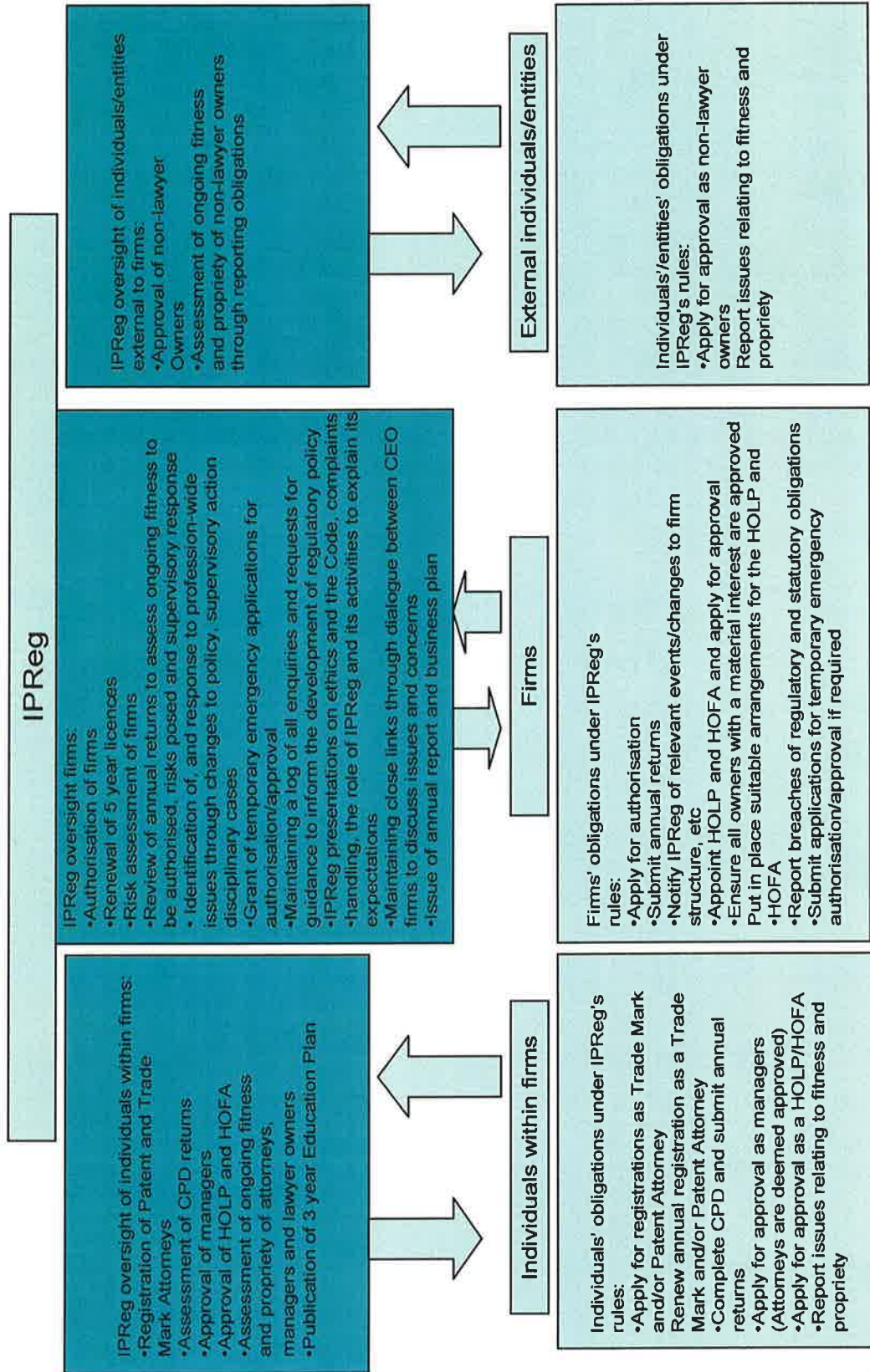
6 ABS authorisation, supervision and enforcement – targeted and risk-based

Authorisation, supervision and enforcement action

IPReg's approach to the authorisation and supervision of firms, and the taking of enforcement action, is focused on promoting the regulatory objectives and mitigating risks to those objectives. Building on our experience of registering and regulating providers of intellectual property legal services, we have strengthened our approach to authorisation and supervision and developed an enforcement strategy that aims at creating a credible deterrent to non-compliance. Our new approach is set out below and we believe it is one that is sufficiently robust to protect clients and the public generally, whilst maintaining the necessary flexibility to react to changes in the market place (for example, new approaches to offering legal services, and the emergence of new risks due to a changing economic climate).

IPReg's oversight of firms through our regulatory processes, and our expectations of firms in terms of applications and ongoing reporting, is summarised overleaf:

IPReg



Risk assessment

In considering our approach to authorisation and supervision, we drew on IPReg's own experience of registering 184 firms over the past 4 years, and that of CIPA and ITMA, together with research conducted by IPReg amongst existing firms. From this, we developed a risk assessment tool. It is this tool that will enable us to determine:

- whether to authorise a firm and approve individuals to hold certain roles within a firm;
- what conditions, if any, should be imposed - at the point of authorisation or subsequently – on either, or both, of the firm and role holders;
- how we will supervise the firm, and in particular the level of involvement required by our assessment of the risks;
- the appropriate regulatory response to issues identified through our supervisory activity.

The risk assessment will not only be used, however, at the individual firm level. It will also be used to identify and mitigate sectoral or industry-wide risks and to respond to them through our supervisory activity.

Based on current information, we believe that the key categories of risks to the regulatory objectives are:

1. Business model risk;
2. Governance and operational risk;
3. Competence/fitness and propriety.

Firms' exposure to market risk will be assessed in terms of their business model. However, neither firms nor IPReg can control the impact on firms of, for example, an economic downturn (although firms should seek to stress test their business model). Neither does, nor should, IPReg seek to prevent firms from failing because that is a feature of a competitive market. Our concern rather is with the protection of clients and the broader public interest in such circumstances.

Our consultation in June 2012 contained a fourth category of risk: financial risk. This is now captured under categories 1. and 2.

Our analysis of risk will inform our licensing rules going forward. This will work both ways; we may, for example, determine that we have overstated the impact or probability of a particular risk, which may lead to a relaxation of our rules. On the other hand, we may consider that the impact or probability of a risk is greater than previously anticipated, which could lead to the introduction of new rules or requirements in the Code, or a tightening of existing requirements, although we find it hard to envisage the circumstances in which IPReg would depart from its principles-based approach.

Finally, as with any other risk model, our risk model is not static; it is intended to be reviewed on an annual basis, enabling us to respond quickly to change our policy, our assessment of firms and individuals during the authorisation process, and our supervision of firms.

Specific risks associated with ABS and how these have influenced our regulatory approach

Observations

It is not possible to predict with certainty to what extent the legal services market will change as a result of the introduction of ABS, although new business models are beginning to emerge. The number of ABS licensed by the Solicitors Regulation Authority and the Council for Licensed Conveyancers is still relatively small, meaning that caution should be exercised when attempting to identify trends. Drawing on the information publicly available, it seems that a significant percentage of ABS currently licensed were previously firms of solicitors/licensed conveyancers, who have either external management or wish to take advantage of new funding opportunities such as private equity or a public offering. In addition, new firms are entering the market, such as Co-operative Legal Services and some of those firms are, either within the same entity, or with other entities in the same group, offering multiple services to clients.

IPReg has been regulating bodies that are licensable as ABS for the last 3 years and we ourselves have identified no discernible difference in terms of the overall risk profile of such firms, as compared with traditional IP firms. Self evidently, the main difference between these and other firms is external ownership, which brings the potential for tension between the interests of clients and the external owners. We do not believe that risks associated with the differences between these and other firms have crystallised.

Research

We have also conducted research amongst our existing registrants regarding potential numbers of firms requiring authorisation as a licensed body. For the moment, we anticipate that it is these firms, rather than new market entrants, from whom we are most likely to receive applications for authorization in the first 12-24 months post-designation. (Our assessment is that in the region of 40 firms may need to seek authorisation as a licensed body prior to the end of the transitional period.)

In addition, by virtue of the limitation that IPReg puts on the nature of the work to be conducted by firms that it will license (see section 6 of this application), we do not expect that there will be any significant difference in the risk profile of new ABS applicants in connection with the work types of the firm (although there may be variations in the client base and the manner in which new applicants go to market, e.g., through new distribution channels).

Whether dealing with existing firms applying for authorisation as a licensed body, or new applicants, we therefore assess the specific risks in respect of ABS to be related to:

- the influence of non-lawyer managers on the way in which the firm is run and the standards of service to clients;
- risks associated with external funding (again, in terms of the influence on the manner in which the firm is run but also in terms of the source of funding and ensuring that firms are not used, e.g., to launder money);
- risks associated with innovative business models.

As stated above, neither of the first two of these risks is unfamiliar to IPReg, since firms are already permitted to have up to 25 per cent external management and ownership or were previously entitled to practise under the protected titles of registered patent attorney or registered trade mark attorney. The issue is, therefore, one of degree, since in the future IPReg will not restrict the level of non-lawyer managers and neither will it limit external ownership. In any event, we do not presume that such influence will be negative; there may be significant benefits to be gained from non-lawyer involvement in firms and we believe that the value of, for example, non-executive directors with experience of other markets, has been demonstrated.

All of the above leads us to conclude that the regulatory arrangements for ABS and non-ABS should be harmonized to the fullest extent possible.

In relation to the specific risks applying to ABS that we have identified, IPReg will seek to mitigate risks in the following ways:

- consideration of application - during the application process we will approve proposed holders of a material interest (applying the test in Schedule 13 of the LSA) in the applicant firm. As part of this approval process we will consider the fitness of the individuals/entities to hold such an interest in a provider of legal services. In addition, we will investigate sources of funding, particularly in cases of complex structures, where actual source of funding may need to be traced through nominee shareholders, etc.
- licence conditions – at the point when we decide whether or not to authorise the firm, we may impose licence conditions enabling us to monitor the firm more closely, e.g., through additional reporting requirements;
- management of IPReg's operational risks – we will constantly monitor the numbers of applications and ability of IPReg consider those applications, in terms of resource levels. We will put in place outsourcing arrangements and contingency plans, enabling IPReg to use third parties with flexible capacity, for elements of the authorisation process, should this prove necessary. We have already made financial provision for these costs.

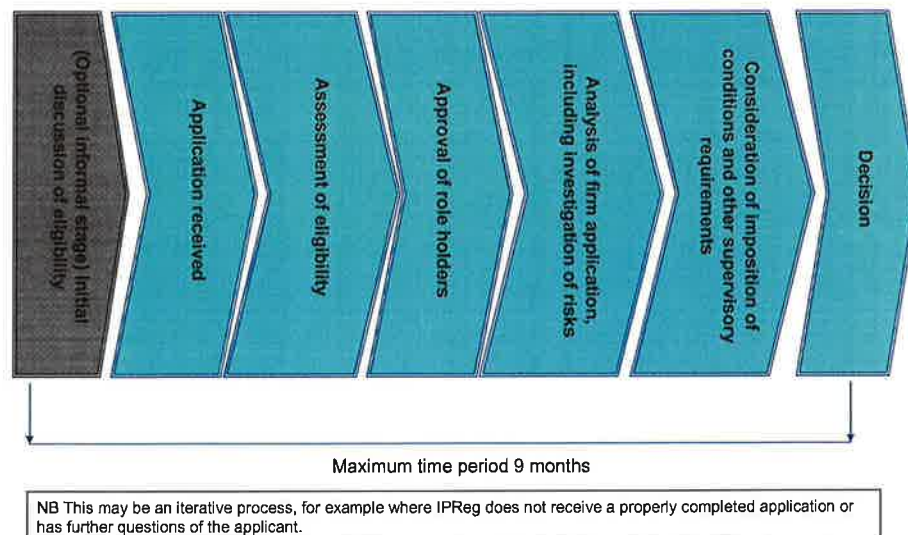
Authorisation

Guidance

IPReg's website will provide guidance and the relevant forms for applicants to enable them to submit a complete application.

Approach

The process for authorising a firm is set out below.



From the diagram it will be seen that the key steps in the process are:

1. (Optional informal stage) Initial discussion of eligibility

Regulation 3 of the IPReg Registered Bodies Regulations states that:

“IPReg will not register a body if IPReg is not satisfied that IPReg has suitable regulatory arrangements in place to regulate that body in accordance with IPReg’s statutory duties and the regulatory objectives. For the avoidance of doubt, and without limiting the generality of the foregoing sentence, IPReg will not register a body which undertakes (to whatever extent) any of the following activities:

- *criminal law;*
- *family or matrimonial law;*

- *conveyancing other than conveyancing (ie, the transfer) of intellectual property rights ;*
 - *real estate related legal services;*
 - *probate and the drafting of wills;*
 - *immigration law; or*
- any related services.”*

We consider this provision as key to our approach to becoming a licensing authority, since it is the means by which IPReg will ensure that it only licenses and regulates bodies within the scope of IPReg’s regulatory expertise. Prior to making an application for authorisation, bodies will be able, pursuant to Regulation 3.2, to request the opinion of IPReg as to whether IPReg has suitable regulatory arrangements to register the body. This will ensure that applicants can avoid making applications in circumstances in which we would not consider them eligible to be authorised by IPReg, by virtue of IPReg’s regulatory arrangements.

In addition, Annex A to the Regulations sets out the eligibility criteria for authorisation. Again, this can be explored with IPReg informally, prior to submission of a formal application.

2. Receipt of application from firm

Our application for authorisation will request information of the following types from the applicant. These are based on the requirements of the LSA and the information that we will require to risk assess the firm:

- Areas of intended practice;
- Business model (client types, sources of work, distribution channels, onward referrals, links to other businesses, etc);
- Financial data (financial projections over a three year period, sources of capital and other funding);
- Management and ownership details (details of managers, owners (material interest holders); ultimate beneficial owners);
- HoLP and HoFA details (to enable approval, information concerning suitability of arrangements to enable HoLPs and HoFAs to fulfil their responsibilities);
- Systems and controls (details of controls to protect client money, handle conflicts of interest, manage risk, etc)
- Professional indemnity insurance (details of insurer and level of cover).

With regard to information concerning business models and financial data, this will be requested to enable IPReg to assess risk and determine whether there are any concerns regarding the source of funds in order to prevent money laundering. Our aim is not to stress test business models (that is for the applicant) but rather to be satisfied that clients will be protected, should the firm run into financial difficulties. In cases where an application has been made by an ineligible body, the application will be returned, and in cases where the application is materially incomplete the application will be returned with a request for the additional information. In all other cases, where a cogent application has been received, the application fee will be charged and the formal authorisation process (and therefore statutory time period) will begin.

In order to assist applicants – and rather than adopt a “one size fits all” approach – IPReg has provided a facility whereby applicants can seek an initial view on their application (see above). IPReg will then give an indication of whether the matter is straightforward – in which case we will aim to make a decision within 3 months from the date on which the application was deemed complete (as set out in Regulation 2 of the Registration Regulations) or complex, in which case we will aim to come to a decision within 6 months.

3. Analysis of eligibility

As stated above, IPReg has eligibility criteria; both the suitability of IPReg’s regulatory arrangements, and the types of work to be undertaken by the firm, will form the basis of IPReg’s consideration of eligibility to be authorised.

The formal analysis of eligibility will be the first stage of our assessment of the application. In the event that IPReg determines that the applicant is not eligible to be authorised by IPReg, the application will be declined. However, we will discuss concerns with applicant firms in advance of declining.

4. Approval of owners with a material interest, managers and the HoLP and HoFA.

In section 5 of this application we explain the criteria by reference to which the fitness and propriety of owners, managers and HoLPs and HoFAs will be assessed. We take the view that the assessment of individuals/firms seeking approval to act in these capacities precedes the consideration of matters related to the body, since together the owners, managers and HoLPs and HoFAs will be running and funding the firm. In the case of owners, the assessment applies to all those proposing to hold a material interest in the firm (including by association, as set out in Schedule 13 to the LSA).

5. Analysis of firm application, including investigation of risks.

Consideration of the merits of the firm's application, taking into account the findings from stage 3, will enable us to determine whether the firm meets our criteria for registration (Regulation 5 of the Registered Bodies Regulations sets out the circumstances in which applications may be refused). Using the information provided by the firm – together with such additional information as we require - we will consider:

- the business model of the firm – how it intends to go to market and the viability and sustainability of the model¹²;
- the governance of the firm – how it will be run, by whom, and the extent to which those seeking to run the firm will seek to deliver the right outcomes for clients;
- the activities of the firm – whether the body will seek to conduct its activities in a manner that is consistent with the regulatory objectives;
- the systems and controls in place, e.g., to manage conflicts of interests and segregate client money and whether these will be sufficiently robust;
- any other public interest issues specific to the application.

6. Consideration of imposition of conditions and other supervisory requirements.

We may consider that the body should be authorised subject to the imposition of particular conditions, dependent on our assessment of the risks to the regulatory objectives, by applying our risk model. Examples of conditions may be additional reporting requirements for a fixed period and restrictions on referrals from connected parties, where we do not consider such referrals to be in the public interest. In addition to licence conditions, we will consider any specific supervisory arrangements that should be put in place.

¹² See our comments under “Receipt of application from firm” above. We are not undertaking a commercial assessment of the firm but rather using this information to assess risk at a high level.

7. Decision on authorisation

We intend to process applications within the statutory standard limit of six months from the date that the application is assessed to be complete and made by a licensable body. For straightforward cases, however, our intention is to make decisions within 3 months. In addition, all decisions on existing registrants requiring authorisation as an ABS will be made before the end of the transitional period granted to such firms in the LSA.

Objectives

Our objectives for authorisation are:

- Proportionality – we will approach each application for authorisation with the intention of ensuring that it is treated in a proportionate manner, both in terms of the level of information required to be submitted and in terms of assessing what, if any, constraints should be imposed on the firm, its managers and owners, in the form of conditions, should the body be authorised;
- Transparency – we will deal with applicants openly, identifying concerns and seeking to resolve them with the applicant;
- Efficiency – in determining our approach to authorisation we have sought to maximise our resources. Where we do not have the internal skills or resources to conduct elements of the authorisation process we will outsource those activities, under appropriate management and supervision from IPReg;
- Timeliness – authorisation of some firms will be lengthy and complex, due to their business model and ownership structure. We will keep applicants informed of the progress of applications;
- Fairness – at all times we will ensure that applicants are dealt with fairly, and have opportunities to respond to our concerns;
- Consistency – IPReg will check for consistency, and quality assure, all of its decisions. In terms of the authorisation process, and given the significance of the risk assessment tool in helping us to decide whether to authorise the firm and/or impose conditions, where anomalies are identified in the risk assessment of one applicant compared to others of a similar size, complexity, etc, these will be discussed with the Chief Executive for final moderation before making a decision on the basis of that risk assessment;
- Promotion of the regulatory objectives – our approach to authorisation is intended to facilitate entry into the market of new business structures, which ultimately should lead to improved access to justice and greater competition. The interests of consumers will be protected and promoted, and the extent to which applicants are likely to adhere to the professional principles will be assessed as part of the authorisation process, in particular through our analysis of risks and the proportionate imposition of licence conditions. Any

negative indicators relating to diversity will be addressed with applicants during the authorisation process and actively monitored post-authorisation.

- Supporting the rule of law is fundamental to everything that IPReg does, both in the manner in which it conducts its own activities and in its authorisation of firms. Finally, we have assessed the overall impact of our approach to risk assessment, authorisation and supervision to ensure that there is no potential negative impact through the introduction of new process on access to justice. We are satisfied that this is the case. The promotion of the regulatory objectives in the exercise of IPReg's regulatory functions is set out in more detail in the policy statement at **Annex 4**.

Authorisation fees

IPReg fees comprise two elements:

- fees for becoming authorised;
- periodic fees for being regulated by IPReg.

Details of our approach to fees are set out in **Annex 5**.

We are not proposing to introduce differential fees for different types of ABS because there is no information to suggest that such an approach is either necessary or proportionate. In general terms, IPReg is confident that it can deliver significantly lower fees than the fees payable should firms have to become licensed by the Solicitors Regulation Authority (SRA) or the Council for Licensed Conveyancers (CLC). We say this having undertaken a detailed analysis of the fees of both the SRA and the CLC. IPReg does not accept any economies of scale arguments in this regard.

Licence

We are aware of the LSB's view that ABS licences should be *"...unlimited in duration, subject to a requirement to report relevant changes, satisfactory performance of regulatory requirements and an annual broadly cost-effective licence fee."*

Having consulted on proposals for a five year licence, we have concluded that a more risk-based approach would be to grant unlimited licences, subject to the firm providing annual information and paying the periodic regulatory fee. On authorisation, as part of our risk assessment of firms, we will specify that the applicant firm will be subject to an in-depth review at a specified date, either 3 or 5 years after the date of authorisation. Of course, should information come to light in advance of the specified date that would justify further investigation into the firm, we would take appropriate action.

IPReg Assurance Programme

Approach for firms

IPReg's approach to assurance is risk-based.

During the authorisation process, all applicants will be risk assessed on the basis of IPReg's risk model. In addition, we will have considered any specific supervisory arrangements that should be put in place, and in particular the date for our post-authorisation in-depth.

We do not anticipate that the overall number of registered firms will increase significantly through new entrants into this specialist market.

We do, however, anticipate immediate applications for authorisation, from the 9 large/medium registered firms who we have identified are ABS "like".

Of the remaining approximately 30 firms, who may fall within the ABS criteria, IPReg believes that many small/"sole" practitioner firms are likely to elect to cease to be ABS. In any event, from the information we already hold, these firms will certainly come within the "straight forward category" and we will have the necessary resources to deal with these applications within the agreed timescales.

The risk assessment and categorisation of applicant firms will determine what level of assurance and /or supervision is relevant to the firm and (if required) the nature of the supervision. For low and medium risk firms the assurance will consist largely of a review of the annual information provided by the firm, and any additional matters reported by the firm either due to events within the firm, complaints information or specific information requested by IPReg.

High risk firms will be subject to increased proactive supervision, involving increased levels of reporting and periodic visits and meetings. Where we are confident that firms are managing their risks effectively, we may reduce the level of supervision and, where this is not the case, it may be increased.

In terms of risks to individual clients, our experience suggests that, generally, individual consumers and small charities use smaller firms whereas commercial clients use all sizes of firm and our approach to supervision, and, therefore, our resource plan will take account of this.

Supervisory tools that we may use include:

- visits to firms, including thematic work;
- imposition of licence conditions, including additional reporting requirements;
- questionnaires/other research amongst the regulatory community/clients.

In addition, we will have a rolling programme of in-depth reviews of all firms.

The IPReg Board has approved an Assurance and Supervision Policy. External solicitors have been instructed to review the incorporation of this policy into the overall IPReg regulatory framework.

IPReg is intending to appoint an officer with experience elsewhere of this type of work (see below) to implement this new aspect of regulation and the policy will be finalised by the Board (and published) after final review by this appointee.

Our (draft) Assurance and Supervision Policy is attached as **Annex 8**.

Approach for individuals

With regard to the training of individuals, IPReg has a three year Education Plan to safeguard the competence of individuals and therefore protect the public. IPReg's Education Plan is attached as **Annex 9**.

Enforcement

IPReg is non-prescriptive in its view of changes to IP business models, provided that the public are sufficiently protected; we recognise that a key element of our activity is to allow and indeed encourage innovation and economic progress. In determining whether a matter should be the subject of investigation and enforcement, we will only take such action where other regulatory opportunities have been exhausted and there is a clear case for public protection. IPReg's intended approach to enforcement is published on IPReg's website and is attached at **Annex 10**.

Preparation to become a licensing authority

Resources

As part of our planning to become a licensing authority, IPReg has assessed the level - and competence - of staff required to authorise and regulate ABS. In addition, in June-September 2012, IPReg undertook research amongst the regulated community to deepen our understanding of them. As part of this process, we gained a better understanding of the likely numbers of licensable bodies amongst our existing registrants who will need to be authorised as ABS.

We already have:

- demonstrated expertise in IP legal services with reference to regulating the reserved legal activities of the exercise of a right of audience; the conduct of litigation; reserved instrument activities; and the administration of oaths.
- experience of authorising firms – in particular of assessing different business models and forms of funding;
- experience of approving non-lawyer managers and their impact on the governance of the firm;
- a track record in authorising firms that have external ownership;
- committees and structures in place for enforcing our regulatory requirements and dealing with appeals against our decisions.

The main issues for IPReg have therefore been to understand the types of potential applicants for authorisation in terms of their business structure as against our experience of such structures; and the increased level of activity that will flow from being a licensing authority, both in the short term from the point of designation – as existing registrants transition to ABS - and in the longer term - as new applicants seek to enter the market. With regard to experience, over the last three years IPReg has been regulating firms that are licensable bodies (in terms of external management and ownership), for example an AIM-listed company. Our need, therefore, is to build on that experience, rather than start from scratch.

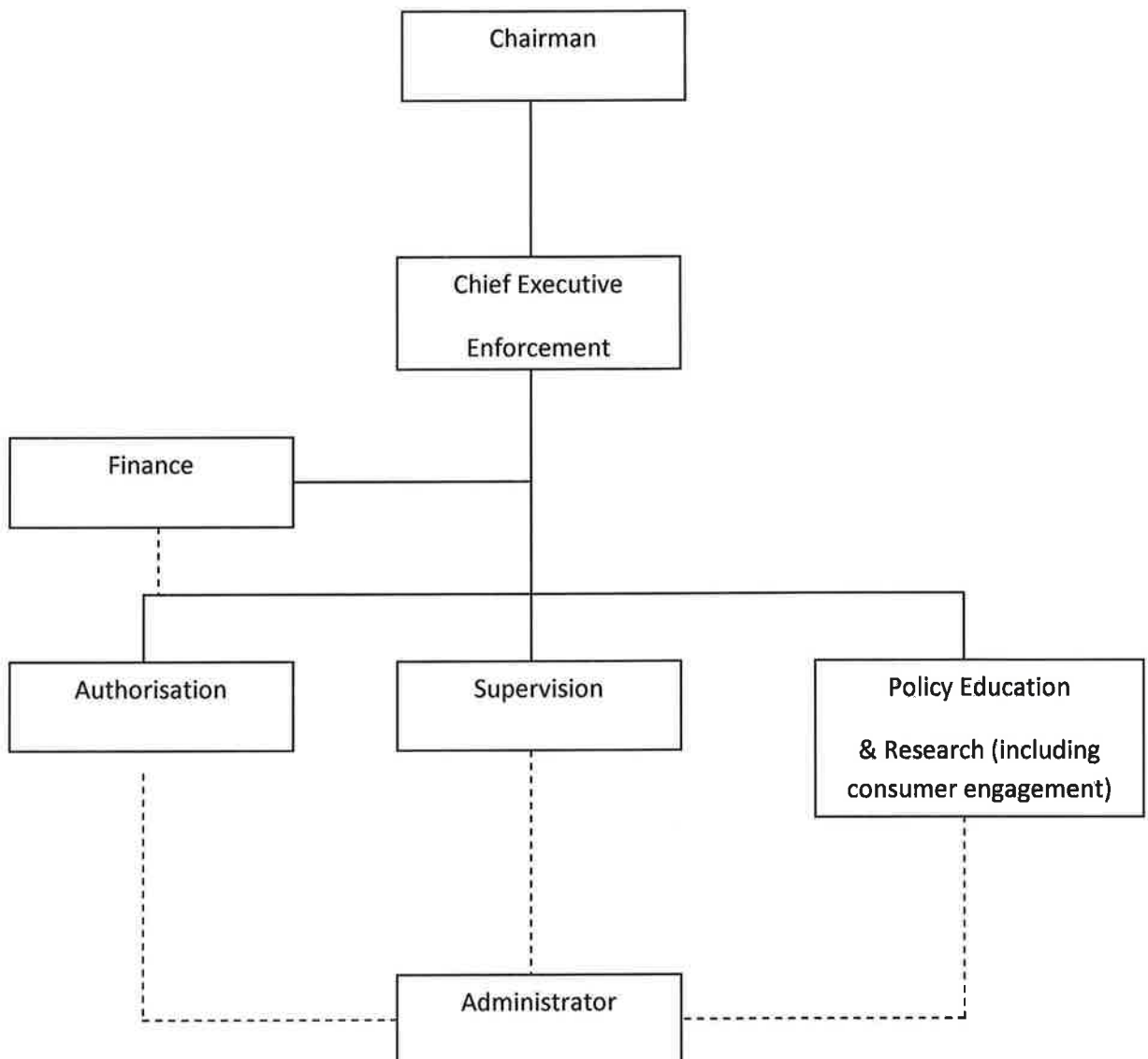
In relation to the level of resources, IPReg has, in the planning stage of our preparation to become a licensing authority, used appropriately qualified consultants.

The next stage is to operationalise the new regulatory arrangements. Based on our experience and research, together with other information (such as annual practice fee returns enabling us to assess the size of firms), we are now in a position to estimate the likely increase in resources that will be required to authorise, supervise and enforce against ABS. We intend to address resource gaps (both in terms of headcount and skills) through:

- the recruitment of additional staff;
- the use of external legal and financial advice. IPReg has already established relationships with a number of law firms who advise, for example, on disciplinary cases. As required, we will continue to use these resources. We consider it unlikely that external financial advice will be required (e.g., in cases where the source of external funding needs to be investigated);
- outsourcing, where necessary and justifiable, certain activities. Based on current estimates of licensable bodies, we do not intend to outsource significant levels of work but will use external providers where justified on the basis of risk.

Overall, we consider a flexible resources model, including the use of contract staff/outsourcing to handle peaks in workloads to be the most cost effective model.

Our proposed new organisation model is set out below:



Staffing

Our assessment is that we will require three new appointments, namely an Authorisation Officer, a Regulatory Supervisor and a Policy Officer.

Appointees will, however, be expected to work flexibly when required. For example, we would particularly expect the Authorisation Officer to support the Regulatory Supervisor.

Even with the planned increase in staff resources, we will still be small enough to identify training needs at the individual level (i.e., all training will be bespoke to the role undertaken by the individual and the experience of that individual).

Financing of regulatory activity

IPReg's budgeting process is entirely independent. IPReg determines, for each financial year, those activities that it intends to conduct and the likely resources it will require to do so. Our budget, and consequently our fees, is set on this basis. In other words, we are not reliant on any form of grant from CIPA and ITMA.

IPReg has already provided £50,000 in the 2013 Budget to met initial restructuring costs and to this has now added an additional £50,000 from the 2012 operational surplus.

A copy of the 2013 Budget incorporating reserved income brought forward is attached as **Annex 11**.

Business planning

Our business planning for designation as a licensing authority has been as follows:

- we have recently published our Business Plan for 2012/13 in which we make provision for changes to our operations to enable IPReg to license ABS;
- whilst we consider having a formal staff retention policy to be disproportionate for such a small staff, we intend to retain staff through appropriate remuneration and mentoring;
- we intend to retain our principles-based approach to regulation but expand our operations to enable greater investigation of applications for authorisation and more proactive supervision. The required changes to our operations have been assessed and will be implemented within 6 months of the date of this application. We intend to report progress to the LSB on our operational changes;

- IPReg does not have a formal risk management strategy but rather assesses its risks on a project by project basis, subject to monitoring by its Board, and consideration of operational risk is built in to everything we do. Risks associated with IPReg being designated as a licensing authority have been considered at each stage of the process, from consideration of the merits of an application through to submission of this application. Our planned changes to IPReg's operations, together with the implementation of IPReg's risk assessment of firms, will facilitate IPReg's own operational, regulatory and legal risk management;
- contingency planning – IPReg's IT systems are backed-up to cloud on a daily basis, enabling retrieval of records in the event of a systems failure. In terms of staffing, should the Chief Executive Officer be indisposed, the Chairman and Chief Financial Officer would ensure the immediate continuation of business and would put in train the appointment of an interim CEO, supported by members of the Board.

IPReg's Business Plan for the year 2012/2013 is attached to this application as **Annex 12**.

Progress to date

Our work to date has focused on the development of our regulatory arrangements. In the next twelve months we will be focusing on assessing and recruiting the required level of staff resources to authorise the expected numbers of ABS, based on our research, and putting in place the necessary operational changes to implement the approach to authorisation, supervision and enforcement set out in this application. Operation changes commenced at the start of 2013. The key stages are:

Recruit additional staff

- IPReg intends to make a permanent appointment of a Regulatory Supervisor within the next 3 months.
- IPReg will also make a permanent appointment of an Authorisation Officer at least 4 - 6 months prior to the anticipated date of licensing authority designation in order to ensure adequate time for training.
- IPReg expects the salary and other costs of the Authorisation Officer to be met by the fees paid for authorisations and generally not to have a significant impact on the general practising fees¹³.
- IPReg has the necessary resource also to make a permanent appointment of a Policy Officer in 2013 although currently this post has been filled by consultants working on specific

¹³ See Annex 5.

projects. For example, IPReg appointed a consultant in November 2012 specifically in relation to the LETR.

Determine whether new premises are required in the light of expected numbers of applicants

- In terms of office accommodation, IPReg has advised ITMA (its landlord) to its intention to move to larger offices. IPReg has already investigated in considerable detail the availability and cost of flexible serviced accommodation in the Strand/ Holborn area and is satisfied that suitable offices will be available when required to accommodate the increased number of staff.

Identify potential outsourced services providers and determine whether and to what extent to use them

- At present, we do not consider this will be necessary, but we may use such service providers in specific cases. However, on a contingency basis we are identifying potential service providers.

Agree amendments to operations final including revisions to application forms, etc

- This is Scheduled for quarter 3 2013.

Implement restructuring

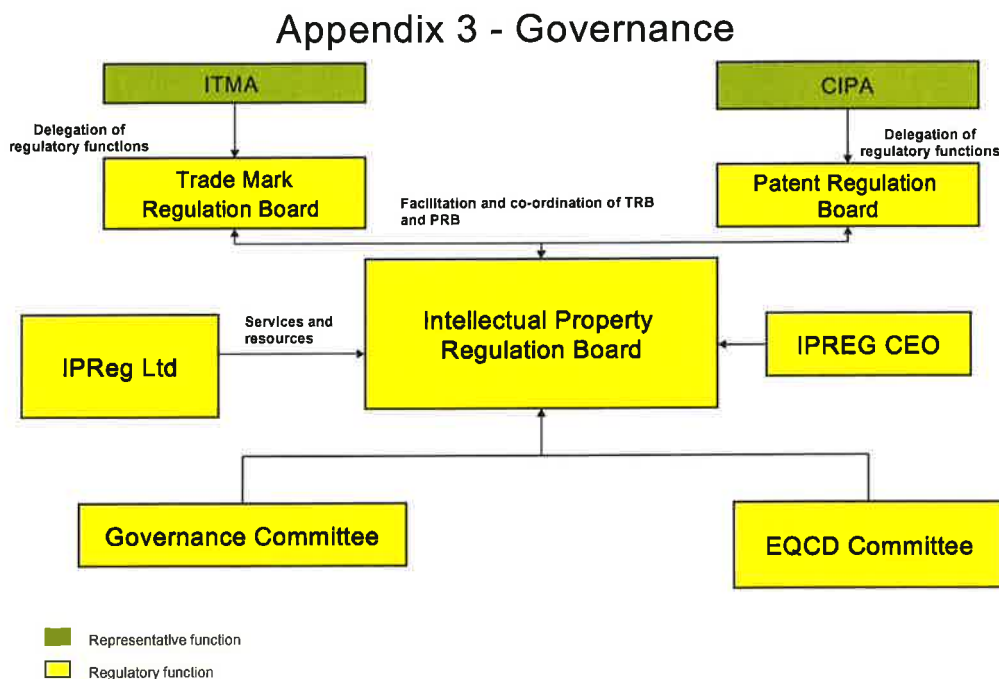
- This will take place during quarters 2-4 2013
 - commence licensing activity.

7 Governance arrangements

Key to the successful operation of IPReg as a licensing authority is the governance arrangements that we have in place to ensure:

- a clear division of the regulatory and representative functions; and
- effective oversight through our Board and Committee structure.

The governance arrangements for IPReg are set out diagrammatically below:



Note:

In addition to the arrangements illustrated above, CIPA, ITMA and IPReg have a non-governing "AR Forum". The AR Forum consists of the presidents of CIPA and ITMA and two non-council members of the profession together with the Chairman of IPReg and the chairman of the IPReg Governance Committee. The purpose of the Forum is, so far as possible, to separate the approved regulator functions from the representational role of CIPA and ITMA.

Division of regulatory and representative functions

In order to ensure separation of the regulatory function from the representative function of the two Institutes, CIPA formed the Patent Regulation Board and ITMA the Trade Mark Regulation Board and each Institute delegated its regulatory function to the two independent regulatory boards who work together as IPReg.

Delegation from the Institutes was by way of a single Delegation Agreement dated 9th December 2009 which agreement was then revised and a new agreement signed on 23rd May 2012.

By separate agreement, also dated 23rd May 2012, the two Institutes delegated to the PRB and the TRB the conduct of the licensing authority application and, on designation, the functions of the Licensing Authority.

A 2012 Regulatory Independence Certificate in respect of IPReg, and the response of the Legal Services Board, are attached as **Annex 13**.

IPReg Board and Committee structure

The Intellectual Property Regulation Board is the “working title” of the Patent Regulation Board and the Trade Mark Regulation Board.

The Patent Regulation Board consists of 4 lay members and 3 patent attorneys.

The Trade Mark Regulation Board consists of 4 lay members (the same lay persons serve on both boards) and 3 trade mark attorneys.

Whilst Board meetings are held concurrently each Board makes independent resolutions.

The Chairman is non-voting.

IPReg has two non-executive committees. The Governance Committee consists of a lay Chairman and one each patent and trade mark attorney. The Education Qualification Conduct and Disciplinary Committee comprises the remaining 7 board members (i.e. 3 lay and 2 each patent and trade mark attorney).

All matters are remitted to the relevant board for approval and it is through these boards that the work of IPReg is overseen and subject to appropriate challenge.

8 Stakeholder engagement

In anticipation of submitting this licensing authority application we approached (separately from the formal consultation on the proposed new rules):

1. the Legal Services Consumer Panel (LSCP);
2. Office of Fair Trading (OFT);
3. Lord Chief Justice (LCJ);
4. the Legal Ombudsman; and
5. the General Regulatory Chamber.

Feedback from the mandatory consultees (1-3 above) has been as follows:

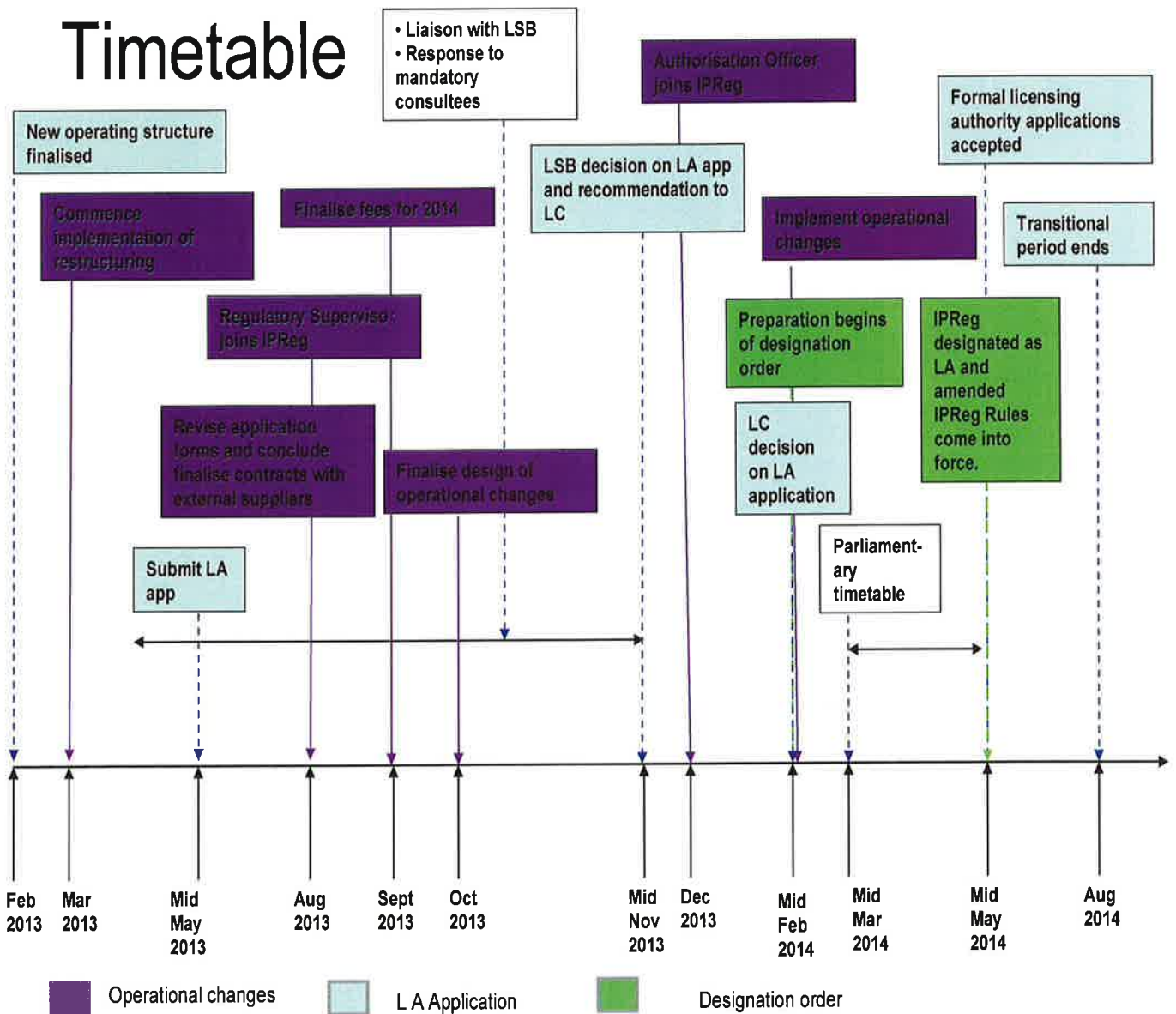
1. **LSCP** – broadly supportive of IPReg’s approach to regulatory arrangements. No comments of substance in connection with ABS, except in relation to:
 - The per claimant limit under the compensation arrangements (suggests increase to £50,000). IPReg does not agree with this proposal given the client base of firms and our knowledge of the level of client money held by firms.
 - The inclusion of small charities within the definition of claimants under the compensation arrangements. Our arrangements reflect this proposal.
2. **OFT** – no substantive comments on the proposed regulatory arrangements. The OFT awaits submission of the formal application.
3. **LCJ** – primary concern is with the quality and professionalism of law firms. The LCJ awaits submission of the formal application.

In terms of discussions with consumer groups, in view of the fact that the majority of clients of IP firms are businesses, issues relating to provision of legal services to private clients, e.g., vulnerable clients, are unlikely to be a material factor. This means that our engagement with consumer groups has been limited to explaining the nature of IP work.

All of these discussions have helped to shape and inform this application and the supporting documents.

9 Timetable for operational change

Timetable



ANNEXES

Annex 1 – Rules and Destination Table

(This is a self-contained document and is being sent separately)

Annex 2 – Summary of Responses to June 2012 Consultation

(This is a self-contained document and is being sent separately)

Annex 3 – Summary of Progress with the General Regulatory Council

(This is a self-contained document and is being sent separately)

Annex 4 - Section 82 Policy Statement

(This is a self-contained document and is being sent separately)

Annex 5 – Approach to Fees

(This is a self-contained document and is being sent separately)

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

(This is a self-contained document and is being sent separately)

Annex 7 – Multi-Disciplinary Practice Framework Memorandum of Understanding

(This is a self-contained document and is being sent separately)

Annex 8 – Supervision Policy

(This is a self-contained document and is being sent separately)

Annex 9 – Education Plan

(This is a self-contained document and is being sent separately)

Annex 10 – Complaints Handling and Enforcement Strategy

(This is a self-contained document and is being sent separately)

Annex 11 – 2013 Budget

(This is a self-contained document and is being sent separately)

Annex 12 – 2012/2013 Business Plan

(This is a self-contained document and is being sent separately)

Annex 13 – Regulatory Independence Certificate and LSB Response

(This is a self-contained document and is being sent separately)