

# IPReg

**Consultation Paper**

**Changes to compensation arrangements**

**This consultation closes at 5pm on 2 September 2021**

## Summary

1. IPReg is consulting on changes that it needs to make to its compensation arrangements. These are the regulations that we have put in place to protect individual consumers and small businesses in the event that they are the victim of negligence, fraud or other dishonesty on the part of a regulated person. It is a statutory requirement that we have in place appropriate compensation arrangements.<sup>1</sup> IPReg's [Compensation Arrangements Rules 2015](#) allow it to provide compensation arrangements either by an insurance policy or by setting up a fund.<sup>2</sup>
2. For the past six years, these compensation arrangements have been provided by an insurance policy underwritten by Royal Sun Alliance (RSA). The annual premium for the policy (as set out in IPReg's budget each year) is ~£25k + Insurance Premium Tax and this is paid from practising fees; a broker fee is also payable. No claim has ever been made under the policy.
3. On 21 May, IPReg was notified by RSA that it would not renew the policy when it ended on 30 June. RSA initially granted a 60 day extension to 31 August and has subsequently agreed to provide a further extension to 30 October.
4. Our insurance broker has not been able to find another insurer who is willing to provide a similar policy. IPReg has therefore decided to establish a compensation fund and we have obtained actuarial advice (**Annex A**) on the appropriate size of that fund and the limits that should be applied to grants made from it based on an interim risk model. The advice is that:
  - a. An interim compensation fund should be established which would remain in place until at least the end of 2023 of:

	<b>Current arrangements</b>	<b>Actuary recommendation</b>	<b>IPReg proposal</b>
<b>Individual limit</b>	£22,500 per claim + £2,500 excess <sup>3</sup>	£25,000 per claimant	£25,000 per claimant
<b>Firm aggregate</b>	£225,000 per practitioner	£100,000 per firm	£100,000 per firm
<b>Total fund</b>	£2.5m	£100,000	£100,000

The "total fund" requirement recommended by the actuary applies from Day 1 of Year 1 for 12 month interim scheme. At the beginning of Year 2, an additional ~£30,000 will be required. Our aim is to ensure the new arrangements provide sufficient protection to consumers in the most efficient way possible. We are proposing to keep the existing maximum per claim of £25,000 to provide

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<sup>1</sup> Legal Services Act (LSA) s83(5)(e)

<sup>2</sup> Rule 2.1

<sup>3</sup> Under the insurance policy only the excess was payable by IPReg. Under the proposed scheme, IPReg would pay the whole grant from the compensation fund.

continuing consumer protection at the same level as now. Our proposal allows us to do this within our existing budget and is not therefore expected to lead to an increase in fees for those we regulate.

- b. Implementation of a data/evidence gathering exercise. This would inform an actuarial review by the end of Year 2 to determine if any release of funds back to our reserves is possible/prudent.
5. In addition to recommendations on the size of the fund and the limit on claims, our actuary has advised us that:
- a. As this proposal is based on an initial risk model to design and fund an interim scheme, simplicity and transparency are key factors to take into account;
  - b. Without an insurance policy, existing benefit levels are not affordable given that IPReg's annual fee income is ~£1m;
  - c. The existing limits per firm and per year seem excessive given the risk profile of the IP regulated sector. The new proposed limits per firm and per year are more realistic for a reasonably pessimistic, but not worst case, scenario;
  - d. The recommendation of £100,000 as the minimum required for the fund gives it short term viability and enables flexibility to run it for the longer term without making changes if subsequent, more detailed risk modelling supports that approach.

This consultation closes at 5pm on 2 September 2021. We appreciate that this is a relatively short consultation timeframe but the urgency of the situation means that we need to get new arrangements in place as soon as possible.

Please send your response to: [info@ipreg.org.uk](mailto:info@ipreg.org.uk)  
If your response is confidential, please make that clear.

## Background

### *Statutory and regulatory requirements*

6. The Legal Services Act 2007 (LSA) defines “compensation arrangements” as:

*arrangements to provide for grants or other payments for the purposes of relieving or mitigating losses or hardship suffered by persons in consequence of:*

*(a) negligence or fraud or other dishonesty on the part of any persons whom the body has authorised to carry on activities which constitute a reserved legal activity, or of employees of theirs, in connection with their activities as such authorised persons; and*

*(b) failure, on the part of regulated persons, to account for money received by them in connection with their activities as such regulated persons.*<sup>4</sup>

7. All firms regulated by IPReg are required to have professional indemnity insurance (PII). Although PII will cover firms in the event of fraud, dishonesty or failure to account by one or more managers (or employees) it does not cover events where all managers are dishonest. That type of event is covered by compensation arrangements.
8. IPReg’s Guidance in its [Rules of Conduct](#) advises registrants that the amount of client money held at any one time should “not exceed £250,000”.<sup>5</sup> If the amount of client money held exceeds this amount (in aggregate) additional compensation arrangements that have been approved by IPReg must be put in place.

### *IPReg’s approach to compensation arrangements*

9. Since being designated as a Licensing Authority for Alternative Business Structures (firms owned and managed by non-lawyers) in March 2014, IPReg has provided compensation arrangements by purchasing an insurance policy. IPReg’s [Licensing Authority application](#) stated<sup>6</sup> that:

*“At this time we do not consider it appropriate, based on our understanding of the level of risk, to establish a new compensation fund. The 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.”*

10. The application went on to state that all firms would be required to contribute to the cost of the compensation arrangements and that grants (which would be at IPReg’s

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<sup>4</sup> LSA s21(2)

<sup>5</sup> Paragraph 11.1

<sup>6</sup> Page 21

discretion) would be capped at £25,000 per claimant. In addition, only individuals and micro, small and medium-sized enterprises (including charities) would be eligible to claim. The size of the cap was determined:

*“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.”*

and that:

*“the average holding [was] in the region of £10,000 - £15,000”.*

11. The insurance policy (which is renewed annually) has always been provided by RSA. For the policy year 2020-21, the premium was £25,000 + IPT (£3,000); a broker fee is also payable.
12. Under the terms of this policy – which have remained largely unchanged since 2015 – the maximum payments are:
  - a. £22,500 per claim
  - b. £225,000 in the aggregate per practitioner
  - c. £2,500,000 in the aggregate for the policy year

Excess: £2,500 per claim (payable by IPReg)

13. Grants made under the policy are at IPReg’s discretion and the requirements that must be met by someone applying for a grant are set out in the [Compensation Arrangements Rules 2015](#).<sup>7</sup>
14. No claim has ever been made on the policy. IPReg is not aware of any events that are likely to lead to a claim in the compensation fund in the near future.
15. On 21 May 2021, IPReg was informed through its broker that RSA would not offer terms for renewal of the policy when it expired on 30 June 2021. This decision was for commercial reasons unrelated to IPReg or its claims experience. RSA subsequently agreed to extend the policy by 60 days to 31 August 2021 and has now granted a further extension to 30 October 2021.

#### *Alternative approaches*

16. Since being told that RSA would not renew the policy IPReg has been considering alternatives. We have engaged an actuary to advise on the most efficient approach and have also taken legal advice. Given the very short notice to put new arrangements in place, we want to avoid taking a course of action now that embeds inefficient compensation arrangements going forward. Our aim is to ensure that the new arrangements provide sufficient protection to consumers in the most efficient way

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<sup>7</sup> Rule 7

possible. We have also allowed flexibility to refine our arrangements for the medium to long term in light of further information we plan to obtain in relation to client money which may impact on our risk model. For instance, we are aware in particular that there are “fin tech” options such as regulated third party managed accounts which avoid the need to hold client money which were not available in 2015 when the current arrangements were introduced.

17. We therefore consider that a two-stage approach is the best way to establish for the short and medium term targeted and proportionate solutions. This document therefore proposes:

a. Stage 1: To establish a compensation fund, financed from practising fees (as now) of £100,000. This is based on an interim risk model developed by our actuary (**Annex A**). We propose that this is kept in place until at least the end of 2023 when new regulatory arrangements are likely to be in place following the conclusion of the current Review. We consider that this timescale is proportionate in order that:

- IPReg can conduct further work to refine its risk model;
- We can provide certainty over the next two years for consumers and registrants about the level of consumer protection;
- We avoid multiple, overlapping consultations (e.g. on the new regulatory arrangements and on changes to the compensation fund).

Initially, the fund would be financed by using the money that IPReg would otherwise have paid for its insurance policy. In the unlikely event that a claim arises soon after the fund is established, if there were insufficient money in the fund to provide grants for allowed claims, IPReg is likely to fund the additional requirement from its reserves. We do not therefore at this stage expect this to lead to an increase in fees for those we regulate;

b. Stage 2: Further work to establish the most efficient approach for the medium term (i.e. after 2023). This will require information from registrant firms and sole traders about (for example) the amount of client money they hold, the reasons for holding client money, whether there should be a requirement to report to IPReg the amount of client money held and whether regulated third party managed accounts could be used.

#### *Proposed changes to regulatory arrangements<sup>8</sup>*

18. Proposed amendments to our Compensation Arrangements Rules to give effect to the interim arrangements are set out in **Annex B**. In addition, we will be publishing Guidance

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<sup>8</sup> There may also be consequential changes to the drafting.

in due course which sets out our approach to considering applications for grants from the compensation fund.

19. We are proposing to change the Compensation Arrangements Rules as follows:

*Drafting/consistency*

- a. "Compensation arrangements"
  - Removing the requirement for claimants to prove "hardship". This is a difficult concept to assess/quantify and will make IPReg's approach more consistent with that of other regulators;
  - Removing references to "fraud or other" dishonesty since all fraud is dishonest;
  - Adding "Sole Practitioners or their employees" to the definition; it is not clear why this was omitted from the current Rules;
  - Making clear that the compensation fund is a fund of last resort by adding "or otherwise recoverable from another source";
- b. Rule 2.2(a) - removing references to "fraud or other" dishonesty since all fraud is dishonest;
- c. Rule 2.2(a)(iii) – adding "or former Sole Practitioner" to make our approach consistent with other business structures. It is not clear why this was omitted from the current Rules.

*Actuarial/legal adviser recommendations*

- d. Rule 4.2 – giving IPReg a power to publish Guidance about the factors it will take into account in exercising its discretion to award a grant from the compensation fund;
- e. Rule 6.2 – delete details of evidence that must be provided by an applicant. We propose to include this in Guidance.

*De-risking the fund*

- f. Rule 5 – delete references to who is eligible to claim. The current scope of potential claimants is extremely wide (it includes enterprises employing up to 250 people with an annual turnover of up to 50 million euros) and, if retained, would expose the compensation fund to an unacceptable level of risk. We therefore need this change to de-risk the fund while it is self-insured. We propose to include in Guidance that the fund will normally only consider claims

from individual consumers. However, we may consider claims from micro-enterprises (i.e. businesses that employ fewer than 10 people and have a turnover of less than £2m) in exceptional circumstances;

- g. Consequential change to the Definitions: removing the reference to micro, small and medium-sized enterprises.

20. We are also proposing to change our [Registered Bodies Regulations 2015](#) to remove the duplication with the Compensation Arrangements Rules (**Annex C**) :

- a. Delete Regulation 19: IPReg's Compensation Arrangements;
- b. Change references to "Regulation 19" in paragraphs 7.1 and 7.2 to references to the "Compensation Arrangements Rules";
- c. Delete Annex B: Compensation Arrangements.

21. Any changes to our medium to long term approach will be subject to further consultation and will align with IPReg's broader Review of regulatory arrangements.

#### *Funding the compensation fund*

22. Our interim risk model indicates that the actions of larger firms are much less likely to lead to an event that could trigger a claim on the compensation fund. Nevertheless, IPReg considers that there is a strong case to maintain funding of those arrangements (at least in the interim) by all registrants. We consider that a cross-subsidy (i.e. funding which is not necessarily directly targeted at those most likely to trigger a claim) is consistent with the actuarial recommendation that the ideal features of an interim self-insured grant scheme are simplicity and transparency while further work is carried out to develop a longer-term solution. The proposed approach also directly supports the regulatory objectives of: protecting and promoting the public interest, improving access to justice, protecting and promoting the interests of consumers and promoting competition in the provision of legal services.

#### **Consultation questions**

- a. What are your views on IPReg's proposal to establish a compensation fund?
- b. What are your views on the proposed limits of the fund?
- c. What are your views on the proposal that this interim arrangement should remain in place until at least the end of 2023?
- d. Do you have any views on to our proposal to include in Guidance that the fund will prioritise individual claimants and will only compensate entities in exceptional circumstances?

- e. Do you consider that there are any diversity issues that we need to take into account?
- f. Do you have any comments on the proposed drafting changes?
- g. Are there any other matters that you would like to bring to our attention?

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Fran Gillon  
Chief Executive  
Intellectual Property Regulation Board (IPReg)  
20 Little Britain  
London EC1A 7DH

Dear Fran

### **Proposed Interim Compensation Scheme: Scheme Design & Initial Funding**

Thank you for asking me to provide a public opinion in the above matter for your consultation document.

#### Scope of Instructions

The scope of my instructions was as follows:

1. Collate all available risk data into an Initial Risk Model
2. Review available comparator data/Schemes etc, commenting on comparability

And hence advise on:

- **What your minimum viable fund should be for an Interim Scheme (and the design of that Scheme)**

#### Work Carried Out

I have reviewed the Scheme Rules, summarised Firm data, published comparator claims data (and Compensation Fund Fee Structures) for similar Schemes and the most recent insurance premium quote (and policy wording) for the current Scheme. I then independently constructed a financial model of the expected claims experience of the Interim Scheme based on my experience of similar Schemes and extensive knowledge of insurers' pricing methods.

I understand the following key constraints apply to claims made under both the current and Interim Schemes:

- **Key Rule: grants only made if funds available**
- **Key Eligibility: claimant must have incurred loss, due to attorney dishonesty, no other means of redress, in hardship**

#### Interim Scheme: Suggested Design

- In the absence of insurance, the Interim Scheme needs to cap claims for claimants and the Fund, suggested design:

• **Per Claim: £25k / Per Firm: £100k / Per Year: £100k (currently: same per claim, much higher per Practitioner/Firm/year)**

- Same Rules and Eligibility Criteria to apply
- Minimum Viable Fund: £100k

#### Significant Uncertainties

In forming my opinion, I have considered significant uncertainties arising from the following particular matters:

- **IPReg's own claims experience:** No claims to date; implied insurer pricing is c£5k (i.e. minimal) claims pa
- **Comparator data (SRA):**
  - **IPReg is 'tiny' compared to comparator data:** <2% of SRA solicitors (150,000: IPReg: c3,000, mostly large Firms)
  - **IPReg does not carry out high risk (client-money) work:** eg P&C (probate & conveyancing)
  - **IPReg's existing grant limits are small:** SRA max per claim £2m, IPReg : £25k (<1%)
- **IPReg's risk is therefore unique:**
  - Very low exposure (c3000 attorneys pa), mostly in low-risk work (for client money), mostly larger firms
  - Baseline standard to act honestly, serious consequences otherwise: intervention (personal costs)/disciplinary action/removal from register
  - Since IPReg inception (2010): No compensation fund claims, no Firm interventions, no liquidated Firms
  - Very low claim frequency, modest claim severity (size), very short potential interim Scheme life
  - Very high barriers for claimant: eg incurred loss, due to dishonesty, no other means of redress, hardship
  - Risk profile/exposures in small schemes can change drastically year-on-year (new large Firms authorised), but:
    - Very stable registrant portfolio over several years, low 'churn' rate, high compliance rate

#### Overall Opinion

In my opinion, given the significant uncertainties, the Interim Scheme, associated Initial Fund, Risk Model and associated Contributions are expected to be viable and meet all claims in full over the next 24m, in all but the most extreme scenarios, meeting the overall current Scheme philosophy at an affordable cost.

Without insurance, existing benefit levels are not affordable to a Regulator with c£1m annual income

The minimum viable Initial Fund (£100k) has been set at a level to meet all claims in full in a reasonable, but not catastrophic (worst case) stress-test. This builds an initial contingency fund, which could be released over time as more data is collected / any claims emerge etc. eg following further actuarial advice. It also:

- not only gives short-term viability but also enables longer-term operation, if needed, with minimal change/effort
- is easy to explain (without complex/spurious statistics) as 'a reasonably bad year' (eg 1 major Firm Intervention: multiple claimants)
- is conservative, and consistent with published high-level SRA data, implied insurer pricing and other Regulators' Funds
- meets public perception (public interest/claimant security) that 'fully funded for N max claims'

Given the expected claim lifetime of 6-12m (from notification to payment), it would be acceptable for claimant security to 'underwrite' (eg via usable reserves) to £100k max annual cost with secured funds. Given the unique, very small and relatively low risk profile, it is perfectly possible to have 0 claims by the end of the 24m interim period (as per past experience over last c10 years), and indeed, this seems a likely outcome, given that there is nothing 'in the pipeline' and IPReg knows its Registrants well.

Yours sincerely

*John Birkenhead*

3 Aug 2021

## **IPReg Compensation Arrangements Rules 2015**

**(Regulations of the Patent Regulation Board of the Chartered Institute of Patent Attorneys and the Trade Mark Regulation Board of the Institute of Trade Mark Attorneys (working jointly as the Intellectual Property Regulation Board) regarding claims under their compensation arrangements)**

## Preamble:

The Patent Regulation Board of the Chartered Institute of Patent Attorneys and the Trade Mark Regulation Board of the Institute of Trade Mark Attorneys working jointly as the Intellectual Property Regulation Board (IPReg) now make the following provisions under:

- (i) Part 5 of, and Schedule 11 to, the Legal Services Act 2007;
- (ii) an Order made under section 69 of the Legal Services Act 2007, S.I. 2014 No. 3238.

*These Regulations make provision as to:*

- *the establishment of appropriate compensation arrangements by the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys;*
- *the procedures for, and the circumstances in which, claims may be made under those compensation arrangements of the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys.*

## Rule 1 – Interpretation

1. In these Rules, unless otherwise provided:

“ABS” means a Licensed Body;

“Applicant” means a person applying for a Discretionary Grant;

“Authorised Insurer” means a person who:

- (a) has permission under Part 4A of FSMA to effect or carry out contracts of insurance of a relevant class;
- (b) carries on an insurance market activity, within the meaning of section 316(3) of FSMA;
- (c) is an EEA authorised body of the kind mentioned in paragraph 5(d) of Schedule 3 to FSMA, and which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance of a relevant class; or
- (d) does not fall within paragraph (a), (b), or (c) and who may lawfully effect or carry out contracts of insurance of a relevant class in a member state other than the United Kingdom

where “relevant class” has the meaning set out in section 87(1B) of the Act and provided that this definition must be read with section 22 of FSMA, any relevant order under that section and Schedule 2 to FSMA

“Corporate work” means professional work undertaken by an employed regulated person acting solely as an agent on behalf of:

- (a) their employer;
- (b) a company or organisation controlled by their employer or in which their employer has a substantial measure of control;
- (c) a company in the same group as their employer;
- (d) a company which controls their employer;
- (e) an employee (including a director or a company secretary) of a company or organisation under (a) to (d) above, where the matter relates or arises out of the work of that company or organisation; or
- (f) another person with whom a person under (a) to (e) above has a common interest;

“Compensation Arrangements” means an insurance policy or a compensation fund under which grants may be made to compensate for losses ~~or hardship~~ suffered by persons in consequence of ~~fraud or other~~ dishonesty, ~~or a failure to account for money~~ by a Registered Body or its employees or Managers, or a Sole Practitioner or their employees to the extent that such losses are not covered by professional indemnity insurance or otherwise recoverable from another source;

“Discretionary Grant” means a Discretionary Grant made by IPReg under Rule 4;

“FSMA” means the Financial Services and Markets Act 2000;

“the Fund” means an IPReg Compensation Fund established under Rule 3; and

“in private practice” means undertaking professional work which is not solely Corporate Work;

“IPReg” means the Patent Regulation Board of the Chartered Institute of Patent Attorneys and the Trade Mark Regulation Board of the Institute of Trade Mark Attorneys working jointly as the Intellectual Property Regulation Board;

“Licensed body” means a Registered Body licensed under Part 5 of the 2007 Act.

~~“Micro, small and medium-sized enterprises” has the same meaning as in Article 2 of the Annex to Commission Recommendation 2003/361/EC;~~

“Patent Attorney Register” in respect of Registered persons other than ABS, means the Register kept under section 275 of the Copyright Designs and Patents Act 1988 as amended and, in respect of ABS, is part of IPReg’s Register of licensed bodies for the purpose of section 87 of the 2007 Act;

“the Register” means the combined register kept by IPReg comprising, as sub-registers, the Patent Attorney Register and the Trade Mark Attorney Register and, in respect of ABS, is IPReg’s Register of licensed bodies for the purpose of section 87 of the 2007 Act;

“Registered Body” means a body (corporate or unincorporated) entered in the Patent Attorney Register and/or the Trade Mark Attorney Register, and:

- (a) a body which is an ABS and is entered in the Register, becomes upon that entry, a Licensed Body under the 2007 Act; and
- (b) “Registration” and “Registered” shall be construed accordingly and shall mean, in respect of ABS, “licensing” and “being licensed” for the purpose of the 2007 Act;

“Registered Person” means:

- (a) a patent attorney on the Patent Attorney Register;
- (b) a trade mark attorney on the Trade Mark Attorney Register;

“Sole Practitioner” means a Registered Person who is practising as a sole principal in private practice;

“Trade Mark Attorney Register” in respect of Registered persons other than ABS, means the Register kept under section 83 of the Trade Marks Act 1995 as amended, and in respect of ABS, is part of IPReg’s Register of licensed bodies for the purpose of section 87 of the 2007 Act;

“the 2007 Act” means the Legal Services Act 2007.

## **Rule 2 – Compensation Arrangements**

- 2.1 IPReg will establish and maintain Compensation Arrangements which shall be applied to the payment of Discretionary Grants and for the other purposes provided for under these Rules. Such Compensation Arrangements may take the form either of:
  - (a) a compensation fund or funds; or

- (b) one or more policies of insurance with Authorised Insurers.
- 2.2 The Compensation Arrangements made under Rule 2.1 provide for grants or other payments for the purposes of relieving or mitigating losses ~~or hardship~~ suffered by persons in consequence of:-
- (a) ~~fraud or other~~ dishonesty on the part of:
- (i) a Registered Body or former Registered Body in connection with the body's activities as a Registered Body, or
  - (ii) a manager or employee (or former manager or employee) of a Registered Body or former Registered Body in connection with the body's activities as a Registered Body;
  - (iii) a Sole Practitioner or former Sole Practitioner in connection with the Sole Practitioner's activities as a Registered Person;
  - (iv) an employee (or former employee) of a Sole Practitioner or former Sole Practitioner in connection with the Sole Practitioner's activities as a Registered Person;
- (b) fraudulent or dishonest failure on the part of any person referred to in subparagraph (a)(i) to (iv) to account for money received by them in connection with the Registered Body's activities as a Registered Body or the Sole Practitioner's activities as a Registered Person.
- 2.3 Every:
- (a) Registered Body; and
  - (b) Sole Practitioner
- shall make contributions to the Compensation Arrangements. The rate, amount and payment arrangements for those contributions shall be such as IPReg may from time to time prescribe.
- 2.4 Any contribution in accordance with Rule 2.3 is recoverable by IPReg as a debt due from the relevant person.

### **Rule 3 - Management of the Fund**

- 3.1 In the event that the Compensation Arrangements established pursuant to Rule 2.1 shall take the form of a compensation fund, the Fund shall be managed by IPReg, which may:
- (a) hold and distribute any monies raised for the purposes of the Fund;
  - (b) invest the Fund in any investments in which trustees may invest under section 3 of the Trustee Act 2000 (general power of investment);
  - (c) insure in relation to the Fund, and pay premiums in respect of such insurance from the Fund, for such purposes and on such terms as it considers appropriate;
  - (d) borrow for the purposes of the Fund, pay interest on any money so borrowed, repay any money so borrowed and use investments which form part of the Fund as security for such borrowing; and

(e) use the Fund to pay any other costs, charges or expenses incurred by in establishing and administering the Fund.

3.2 The payments which may be made under Rule 3.1(e) include any expenditure, including the payment of any award of costs or damages, incurred by IPReg, their employees or agents as a result of proceedings against any of them for any good faith act or omission in the exercise or purported exercise of powers under these Rules.

#### Rule 4 - Discretionary Grants

4.1 Any Discretionary Grant shall be made in the absolute discretion of IPReg and no person shall have a right to such a grant which is enforceable at law.

~~4.2 IPReg may set out in guidance the factors it will take into account in exercising its discretion.~~

#### ~~Rule 5 — Eligible Applicants~~

~~5.1 — Applications for Discretionary Grants may only be made by:~~

~~(a) — current and former individual clients, and~~

~~(b) — micro, small and medium-sized enterprises who are or were clients~~

~~of a Registered Body or a Sole Practitioner or a former Registered Body or Sole Practitioner.~~

#### Rule 6 – Applications

6.1 An application for a Discretionary Grant shall be made:

(a) in such form as IPReg may from time to time prescribe; and

(b) not more than one year after the Applicant first knew, or with reasonable diligence should have known, about the misappropriation or failure to account.

~~6.2 An Applicant must provide evidence to satisfy IPReg that, in consequence of any of the matters referred to in Rule 2.2, the Applicant has suffered or is likely to suffer loss and hardship.~~

6.3 The Applicant has the burden of proving an application and must provide IPReg with such documents or other information as it may require in respect of that claim.

6.4 Failure to provide documents or other information or to co-operate with IPReg may be taken into account when determining the merits of a claim.

#### Rule 7 - Other remedies and subrogation

7.1 A Discretionary Grant may be refused in respect of all or any part of a loss that is:

- (a) an insured risk; or
  - (b) a risk that would have been insured if professional indemnity insurance had been in place as required by Rule 17 of the IPReg Code of Conduct; or
  - (c) capable of being made good by any other means.
- 7.2 Before deciding whether to make a Discretionary Grant, IPReg will require an Applicant to:
- (a) pursue any civil remedy against the Registered Body or Sole Practitioner who is the subject of the application to the extent that it is reasonably practicable to do so;
  - (b) commence insolvency proceedings against that Registered Body or Sole Practitioner (if they have not already been commenced) where possible;
  - (c) make a formal complaint to the Police or other agency against that Registered Body or Sole Practitioner; and
  - (d) assist in the taking of any action against that Registered Body or Sole Practitioner to the extent that it is reasonably practicable to do so.
- 7.3 If a Discretionary Grant is made, any rights or remedies of the recipient shall be subrogated to IPReg and, if required by IPReg (whether before or after the making of the grant), the Applicant shall:
- (a) prove in any insolvency or winding-up of the Registered Body or Sole Practitioner;
  - (b) sue for recovery of the loss in the name of the Applicant but on behalf of IPReg; and
  - (c) comply with any other reasonable requirement for the purpose of giving effect to IPReg's rights.

#### **Rule 8 - Grant Limits**

- 8.1 A Discretionary Grant may not exceed £25,000.

#### **Rule 9 - Refusal of an application**

- 9.1 If an application for a Discretionary Grant is refused, whether in whole or part, IPReg will inform the Applicant in writing of its decision and the reasons for that decision within 28 days of the date of the decision.

#### **Rule 10 – Commencement**

- 10.1 These regulations apply from 1 January 2015

## **IPReg Registered Bodies Regulations 2015**

**(Regulations of the Patent Regulation Board of the Chartered Institute of Patent Attorneys and the Trade Mark Regulation Board of the Institute of Trade Mark Attorneys (working jointly as the Intellectual Property Regulation Board) regarding the Registration of partnerships and bodies corporate)**

The Patent Regulation Board of the Chartered Institute of Patent Attorneys and the Trade Mark Regulation Board of the Institute of Trade Mark Attorneys working jointly as the Intellectual Property Regulation Board (IPReg) now make the following provisions under:

- (i) section 275A of the Copyright, Designs and Patents Act 1988;
- (ii) section 83A of the Trade Marks Act 1994; and
- (iii) Part 5 and Schedule 11 of the Legal Services Act 2007.

*These Regulations make provision as to:*

- *the procedures for, and the circumstances in which, bodies may be registered, i.e. entered into the Patent Attorney Register and/or the Trade Mark Attorney Register, and where they are alternative business structures, licensed under the Legal Services Act 2007;*
- *the duration of registration and the circumstances in which registration will expire or may be revoked or suspended;*
- *the circumstances in which IPReg will need to approve persons to be managers or owners of a body registered by it, and the procedure for the grant of such approvals as well as the circumstances in which such approvals may be withdrawn;*
- *the procedure for IPReg's approval of individuals to fill the role of Head of Legal Practice ("HoLP") or Head of Finance and Administration ("HoFA") of a Registered Body and for the withdrawal of such approvals in certain circumstances;*
- *the form and manner of applications relating to the Registration of a body, the approval of managers, owners, HoLP and HoFA, and other rules applying to registered bodies, their owners, managers and employees;*
- *the general terms and conditions subject to which every registration is granted and the circumstances in which a body's registration may be made subject to further conditions;*
- *appeals relating to the registration of a body, conditions on registration or approvals; and*
- *the names and designations to be used by registered bodies and the information to be published on IPReg's register.*

## **PART 1 – GENERAL PROVISIONS**

### **Regulation 1 – Interpretation**

In these regulations:

"ABS" means a licensable body as defined in section 72 of the 2007 Act;

"Authorised Person(s)" means a person within section 111(2) of the 2007 Act and "Non- Authorised Person(s)" and "Authorised" should be construed accordingly;

"the Commencement Date" means 1 January 2015;

“HoFA” means a Head of Finance and Administration within the meaning of Paragraph 13(2) of Schedule 11 to the 2007 Act;

“HoLP” means a Head of Legal Practice within the meaning of Paragraph 11(2) of Schedule 11 to the 2007 Act;

“IPReg” means the Patent Regulation Board of the Chartered Institute of Patent Attorneys and the Trade Mark Regulation Board of the Institute of Trade Mark Attorneys working jointly as the Intellectual Property Regulation Board;

“Manager” in relation to a body has the same meaning as in section 207 of the 2007 Act;

“Micro, small and medium-sized enterprises” has the same meaning as in Article 2 of the Annex to Commission Recommendation 2003/361/EC;

“Owner” means a person who has a material interest in a body, phrases “person” and “material interest” having the same meaning as in Schedule 13 of the 2007 Act, save that, in relation to a partnership, a person has a material interest in the partnership if he is a partner;

“Patent Attorney Register” means (together) in respect of Registered persons other than ABS, the Register kept under section 275 of the Copyright Designs and Patents Act 1988 as amended, and in respect of ABS, is part of IPReg’s Register of licensed bodies for the purpose of section 87 of the 2007 Act;

“the Register” means the combined register kept by IPReg comprising, as sub-registers, the Patent Attorney Register and the Trade Mark Attorney Register;

“Registered European Lawyer” means a lawyer regulated by the Solicitors Regulation Authority or the Bar Standards Board under that title;

“Registered Foreign Lawyer” and “exempt European lawyer” mean lawyers regulated by the Solicitors Regulation Authority under those titles;

“Registered Body” means a body (corporate or unincorporated) entered (or where clear in the context, applying to be entered) in the Patent Attorney Register and/or the Trade Mark Attorney Register, and:

- (a) a body which is an ABS and is entered in the Register, becomes upon that entry, a licensed body under the 2007 Act;
- (b) “Registration” and “Registered” shall be construed accordingly and shall mean, in respect of ABS, “licensing” and “being licensed” for the purpose of the 2007 Act; and
- (c) for the avoidance of doubt, references to “Registration” and “Register” in these regulations are to initial registration and any renewal of registration;

“Regulatory Arrangements” has the meaning given to it by section 21 of the 2007 Act;

“the Regulatory Objectives” are those set out in section 1 of the 2007 Act;

“Reserved Legal Activity” has the same meaning as in section 12 of the 2007 Act;

“the Rules of Conduct” means IPReg’s Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and Other Regulated Persons and the Special Rules of Professional Conduct applicable to Regulated Persons conducting litigation or exercising a right of audience before the Courts;

“Trade Mark Attorney Register” means (together) in respect of Registered persons other than ABS, the Register kept under section 83 of the Trade Marks Act 1994 as amended, and in respect of ABS, is part of IPReg’s Register of licensed bodies for the purpose of section 87 of the 2007 Act; and

“the 2007 Act” means the Legal Services Act 2007.

## **Regulation 2 – Form, Timing and Fees of Applications**

2.1 All applications made to IPReg, under these regulations or otherwise, in respect of a Registered Body, a body applying to be Registered, or a body’s Managers, Owners or employees, including its HoLP or HoFA, must comprise:

- (a) the prescribed form, correctly completed;
- (b) the correct fee or fees for the application, as determined from time to time by IPReg;
- (c) such additional information, documents and references as may be specified by IPReg; and
- (d) any additional information or documentation which IPReg may reasonably require.

2.2 It is not necessary to submit all documents, information and payments simultaneously, but an application will only have been made once IPReg has received all of the documentation, information and payments comprising that application.

## **PART 2 – REGISTRATION AND CONDITIONS**

### **Regulation 3 – Registration by IPReg**

3.1 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:

- (a) criminal law;
- (b) family or matrimonial law;
- (c) conveyancing other than conveyancing of intellectual property rights;
- (d) real estate related legal services;
- (e) probate and the drafting of wills;
- (f) immigration law;

- (g) personal injury litigation, including medical negligence;
  - (h) administrative law, except in so far as it relates to intellectual property; or any related services.
- 3.2 A body may, before making an application for Registration, request the opinion of IPReg on whether IPReg has suitable Regulatory Arrangements to Register that body. An opinion provided under this regulation does not amount to a refusal or grant of an application for Registration and shall not in any way prejudice IPReg’s determination of any such application.
- 3.3 For the purpose of regulation 3.1, “suitable Regulatory Arrangements” has the same meaning as in Paragraph 7 of Schedule 12 to the 2007 Act save that the term “licensable body” in that Paragraph shall be read as including non-ABS.

## **Regulation 4 – Determination**

- 4.1 Subject to regulations 4.2 and 4.3, IPReg may only grant an application for Registration if it is satisfied that the applicant body is a partnership, LLP or company which meets the eligibility criteria set out in Annex A.
- 4.2 IPReg may refuse an application for Registration if:
- (a) it is not satisfied under regulation 3 that it has suitable Regulatory Arrangements to Register the body;
  - (b) it is not satisfied that the body’s Managers or Owners are suitable, as a group, to operate or control a business providing regulated legal services;
  - (c) it is not satisfied that, if Registered, the body will conduct its activities in a way that is consistent with the Regulatory Objectives;
  - (d) the body has provided inadequate or misleading information; or
  - (e) for any other reason, IPReg reasonably considers that it would be against the public interest to grant Registration.
- 4.3 In reaching a decision under this regulation, IPReg may take into account:
- (a) any conduct on the part of a Manager or Owner of the applicant body which calls into question their honesty, integrity or respect for the processes of law;
  - (b) any failure or refusal to disclose, or attempt to conceal, a matter in relation to the application;
  - (c) the extent to which the Managers and Owners of the applicant body, taken together, have sufficient skills and knowledge to run and manage a business which provides the legal and ancillary services which are the subject of the application; and
  - (d) any other information which IPReg reasonably considers appropriate to take into account.

- 4.4 In reaching a decision under this regulation, IPReg will take into account, so far as is reasonably practicable, the Regulatory Objectives, including the objective of improving access to justice, and will determine applications in a way which is most appropriate for the purpose of meeting those objectives.

### Regulation 5 – Decision Period and Notification

- 5.1 Subject to regulation 5.2, before the end of the period of 6 months beginning with the day on which any application for Registration is received (the “decision period”), IPReg must:
- (a) decide the application;
  - (b) notify the applicant body of its decision; and
  - (c) if it decides to refuse the application, set out in the notice the reasons for the refusal.
- 5.2 IPReg may, on one or more occasions, give the applicant body a notice extending the decision period (an “extension notice”), but:
- (a) an extension notice may only be given before the time when the decision period would end but for the extension notice;
  - (b) the total decision period must not exceed 9 months; and
  - (c) an extension notice must set out the reasons for the extension.

### Regulation 6 – Form and Effect of Registration

- 6.1 A body which is eligible for Registration in the Patent Attorney Register and in the Trade Mark Attorney Register shall be Registered in both Registers unless IPReg receives an express request from the body that Registration should be limited to only one of the Registers.
- 6.2 The entry of an ABS in the Patent Attorney Register and/or the Trade Mark Attorney Register constitutes the grant of a licence under the 2007 Act.
- 6.3 A Registration under these regulations, including for the avoidance of doubt a licence under the 2007 Act, will be granted in the terms set out in the specimen Registration certificate at Annex C subject to any amendments made and any further conditions imposed by IPReg.

### Regulation 7 – Terms and Conditions of Registration

- 7.1 Every Registration granted under these regulations is subject to:
- (a) the payment, on the date of the grant of Registration, of such contribution to the compensation scheme maintained under ~~regulation 19~~ [the Compensation Arrangements Rules](#) as required by IPReg;
  - (b) the obligations in regulation 7.2;
  - (c) the general terms and conditions set out in the specimen Registration certificate at Annex C, subject to any amendments made by IPReg; and
  - (d) any further conditions imposed by IPReg under regulation 7.3.

7.2 Every Registered Body must:

- (a) by the prescribed date each year:
  - (i) submit a self-assessment return in the prescribed form;
  - (ii) pay the Registration fee set by IPReg for that body;
  - (iii) pay such contribution to the compensation scheme maintained under [the Compensation Arrangements Rules regulation 19](#) as required by IPReg;
- (b) submit any additional information or self-assessment returns required by IPReg; and
- (c) as soon as reasonably practicable, inform IPReg of any change in its circumstances which renders or may render the body non-compliant with the eligibility criteria in Annex A, or which does or may give rise to a material breach by the body, its Managers, Owners or employees (including its HoLP and HoFA), of these regulations, a term or condition of the body's Registration or any other obligations imposed by IPReg's Regulatory Arrangements, including the Rules of Conduct.

7.3 IPReg may impose one or more further conditions on a Registered Body's Registration:

- (a) when granting Registration;
- (b) when granting approval of an Owner, Manager, HoLP or HoFA under Part 4 of these regulations, including the temporary approval of a HoLP or HoFA under regulation 15.7;
- (c) when deciding whether to withdraw an approval under regulation 15.9;
- (d) when granting temporary emergency Registration under regulation 21; or
- (e) at any other time.

7.4 IPReg may impose a condition under regulation 7.3 where it considers:

- (a) that:
  - (i) the condition would limit, restrict, halt or prevent an activity on the part of the body, or of a Manager, an employee (including, for the avoidance of doubt, the HoLP or HoFA) or an Owner of the body, which is putting or is likely to put at risk the interests of clients, third parties or the public;
  - (ii) the condition would limit the activities of a Manager or an employee of the body who is considered unsuitable to undertake a particular activity, either at all or save as specified in the condition;
  - (iii) the condition would limit, halt or prevent a risk to clients, third parties or the public arising from a business agreement or association which the body has or is likely to enter into, or a business practice which the body has or is likely to adopt;

- (iv) the condition is necessary where, in relation to a Registered Body, a relevant insolvency event as defined in Paragraph 1(3) of Schedule 14 to the 2007 Act has occurred but the event has not triggered the expiry of Registration under regulation 9.2;
- (v) the condition is necessary to facilitate closer monitoring by IPReg of compliance by a Registered Body, its Managers, Owners, HoLP or HoFA, with IPReg's Regulatory Arrangements, including these regulations and the terms and conditions of the body's Registration;
- (vi) imposing the condition will require the body concerned to take specified steps conducive to the carrying on of an efficient practice by that body; or
- (vii) the condition is necessary in any other case, having regard to IPReg's statutory duties and the Regulatory Objectives;

and

- (b) that it is in the public interest to impose the condition.

7.5 A condition imposed under this regulation takes effect from the date on which it is imposed unless a later date is specified by IPReg.

## **Regulation 8 – Modification of Terms and Conditions**

8.1 Subject to the provisions of the 2007 Act, IPReg may, at any time and by giving written notice to the Registered Body, modify any terms or conditions of a Registration:

- (a) on the application of the Registered Body; or
- (b) without such an application being made.

8.2 IPReg shall have regard to:

- (a) the criteria in regulation 7.4, when deciding whether to modify a condition of Registration; and
- (b) the Regulatory Objectives, when deciding whether to modify a term of Registration.

8.3 Any modification will have effect from the date of the notice given under regulation 8.1 or such later time as may be specified in the notice.

## **PART 3 – DURATION OF REGISTRATION, RENEWAL, SUSPENSION AND REVOCATION**

### **Regulation 9 – Duration, Expiry and Renewal of Registration**

9.1 A body's Registration takes effect from the date of the Registration certificate, and continues in force until it expires or ceases to have effect in accordance with regulation 9.2 or 9.3, or it is revoked or suspended under regulation 10.

9.2 A body's Registration will automatically expire:

- (a) in accordance with the conditions of the Registration if they provide for expiry; or
- (b) if the body is wound up or for any other reason ceases to exist;

whichever is the earliest.

9.3 A licence granted by IPReg to an ABS ceases to have effect upon the issuing of a licence to that ABS by another licensing authority.

### **Regulation 10 – Suspension or Revocation of Registration**

10.1 IPReg may suspend or revoke a body's Registration, if:

- (a) Registration was granted as a result of error or fraud;
- (b) the body's application for Registration would be refused under regulation 4 if it were at that time applying for Registration;
- (c) the body has breached one or more terms or conditions of its Registration including any of the obligations imposed by regulation 7.2 above;
- (d) the body has a temporary emergency Registration but has not, within the initial 28 day period or any extension of that period, commenced a substantive application for Registration;
- (e) a Non-Authorised Person is an Owner of the Registered Body in breach of these regulations and/or Schedule 13 of the 2007 Act;
- (f) a Non-Authorised Person who is subject to the duty in section 90 of the 2007 Act fails to comply with that duty;
- (g) the body, or a Manager, an Owner or an employee of the body (including, for the avoidance of doubt, the HoLP or HoFA), fails to comply with the duties imposed by IPReg or under any enactment including section 176 of the 2007 Act;
- (h) the body has ceased to practise;
- (i) an approved regulator (as defined in the 2007 Act) other than IPReg has authorised the body;
- (j) IPReg has received an application by the body to revoke its Registration and is satisfied that revocation would not present a risk to clients, to the protection of client money, or to any investigative process; or
- (k) for any other reason, it would be against the Regulatory Objectives for the body's Registration to continue.

10.2 (a) Subject to regulation 22, IPReg may suspend or revoke the licence of a Registered Body which is an ABS, if that body ceases to be an ABS.

- (b) Unless its Registration has expired or is suspended or revoked by IPReg, a body whose licence is suspended or revoked under regulation 10.2(a) will remain on the Register, and will, from the date of the suspension or revocation, be Registered under the Copyright, Designs and Patents Act 1988 and/or the Trade Marks Act 1994 as applicable.
- 10.3 (a) Subject to (b) below, suspension or revocation takes effect on expiry of the notice period under regulation 18.2(a) or on such later date as may be stated in the notice;
- (b) If an appeal, either under regulation 17 of these regulations or under rules 19 and 20 of the IPReg Disciplinary Procedure Rules, is made before the revocation takes effect, the revocation is suspended pending determination or discontinuance of the appeal, unless in the opinion of IPReg the proceedings on that appeal have been unduly protracted by the appellant or are unlikely to be successful.
- (c) A suspension remains in force until the matter giving rise to the suspension has been rectified or otherwise resolved to the satisfaction of IPReg.

## **PART 4 – OWNERS, MANAGERS, HOLP AND HOFA**

### **Regulation 11 – Managers**

- 11.1 No person may be a Manager of a Registered Body unless that person has been approved by IPReg under these regulations.
- 11.2 Any person appearing on the Patent Attorney Register and/or the Trade Mark Attorney Register shall be deemed approved as a Manager.

### **Regulation 12 – Non-authorized Owners**

- 12.1 A Non-Authorised Person may not be an Owner of a Registered Body unless that person has been approved by IPReg to be an Owner in accordance with these regulations and Schedule 13 of the 2007 Act.

### **Regulation 13 – HoLP and HoFA**

- 13.1 The HoLP of a Registered Body must be an individual who:
- (a) is a Manager of the body;
- (b) is a Registered patent attorney, a Registered trade mark attorney, a lawyer of England and Wales, a Registered European Lawyer, a Registered Foreign Lawyer or an exempt European lawyer; and
- (c) has been designated by the Registered Body to be its HoLP and that designation has been approved by IPReg under these regulations.

- 13.2 For the purpose of regulation 13.1(c), a designation of an individual as HoLP has effect only while the individual:
- (a) consents to the designation;
  - (b) is an Authorised Person in relation to one or more of the Reserved Legal Activities for which the Registered Body is authorised; and
  - (b) is not disqualified under the 2007 Act from acting as HoLP.
- 13.3 The HoLP of a Registered Body must:
- (a) take all reasonable steps to ensure compliance with the terms and conditions of the body's Registration (except any obligations relating to accounts and money- handling), and with the duties imposed by sections 90 and 176 of the 2007 Act; and
  - (b) as soon as reasonably practicable, report to IPReg any failure so to comply.
- 13.4 The HoFA of a Registered Body must be an individual who:
- (a) is a Manager or an employee of the Registered Body;
  - (b) is suitably qualified to fulfil the role of HoFA; and
  - (c) has been designated by the Registered Body to be its HoFA and that designation has been approved by IPReg under these regulations.
- 13.5 For the purpose of regulation 13.4(c), a designation of an individual as HoFA has effect only while the individual:
- (a) consents to the designation; and
  - (b) is not disqualified under the 2007 Act from acting as HoFA.
- 13.6 The HoFA of a Registered Body must:
- (c) take all reasonable steps to ensure compliance with any obligations relating to accounts and money-handling imposed by IPReg in the Rules of Conduct or under the terms and conditions of the body's Registration; and
  - (d) as soon as reasonably practicable, report to IPReg any failure so to comply.
- 13.7 Provided that the approval criteria and other requirements are met, nothing in these regulations shall prevent an individual from concurrently acting as the HoLP and HoFA of a Registered Body.

#### **Regulation 14 – Approval of Owners, Managers, HoLP and HoFA**

- 14.1 IPReg may not approve a person to be a Manager, an Owner, HoLP or HoFA of a Registered Body, if IPReg is not satisfied that the person concerned is suitable to be involved in the provision of legal services, and to exercise influence over the conduct of the Registered Body because:

- (a) the person or any Registered Body or other entity of which that person has previously been a Manager, an Owner or an employee, has been:
  - (i) notified in writing by IPReg that it does not regard as satisfactory an explanation given at IPReg's request; or
  - (ii) made the subject of disciplinary sanction by, or refused Registration with, or authorisation by, another approved regulator, professional or regulatory tribunal, or regulatory authority, whether in England and Wales or elsewhere, in respect of a matter involving the person concerned;
- (b) the person concerned:
  - (i) has been disqualified from being a company director;
  - (ii) has been disqualified from being a Manager, an Owner, HoLP or HoFA under the 2007 Act;
  - (iii) has been removed from the office of trustee for a charity by an order within the terms of section 72(1)(d) of the Charities Act 1993;
  - (iv) is an undischarged bankrupt;
  - (v) has been adjudged bankrupt and discharged;
  - (vi) has entered into a voluntary arrangement or a partnership voluntary arrangement under the Insolvency Act 1986;
  - (vii) has been a Manager of a company, LLP or other body which has been the subject of a winding up order, an administration order or administrative receivership or which has entered into a voluntary arrangement under the Insolvency Act 1986 or has otherwise been wound up or put into administration in circumstances of insolvency;
  - (viii) lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under sections 15 to 20 or section 48 of that Act are exercisable in relation to that person;
  - (ix) is the subject of outstanding judgments involving the payment of money;
  - (x) has been committed to prison in criminal proceedings;
  - (xi) is currently charged with an indictable offence, or has been convicted of an indictable offence or any offence under the 2007 Act, the Solicitors Act 1974, the Financial Services and Markets Act 2000, the Immigration and Asylum Act 1999 or the Compensation Act 2006;
  - (xii) has been the subject of an order under section 43 of the Solicitors Act 1974;
  - (xiii) has been the subject of an equivalent circumstance in another jurisdiction to those listed in (i) to (xii); or

- (xiv) has been involved in other conduct which calls into question their honesty, integrity or respect for the processes of law;
- (xv) has committed an offence under the Companies Act 2006;
- (xvi) in the case of an application for approval as an Owner, HOLP or HOFA of an ABS, the person has a previous conviction which is now spent for a criminal offence relating to bankruptcy, IVAs or other circumstances of insolvency;
- (xvii) where the person is a corporate person/entity, it:
  - (a) has been the subject of a winding up order, an administration order or administrative receivership or which has entered into a voluntary arrangement under the Insolvency Act 1986 or has otherwise been wound up or put into administration in circumstances of insolvency; or
  - (b) other matters that call its fitness and propriety into question are disclosed or come to light;
  - (c) the Registered Body or the person concerned fails to disclose, refuses to disclose or seeks to conceal any matter within (a) or (b) above in relation to the approval application.

14.2 IPReg may not approve a person to be an Owner of a Registered Body unless it is satisfied that in addition to the criteria in regulation 14.1, the requirements in Paragraph 6 of Schedule 13 to the 2007 Act are met.

14.3 IPReg may not approve an individual's designation as HoLP or HoFA of a Registered Body unless IPReg is satisfied that the individual meets the requirements set out in regulation 13 and is in a position of sufficient responsibility to fulfil the duties of HoLP or HoFA (as applicable) in relation to the Registered Body.

### **Regulation 15 – Approval process**

15.1 The approval process for Owners is that set out in Schedule 13 of the 2007 Act and not governed by regulation 15.

15.2 An application for the approval of a Manager, HoLP or HoFA must be made by the Registered Body concerned and may be made:

- (a) in advance of an application for Registration;
- (b) when applying for Registration; or
- (c) at any time after Registration has been granted.

15.3 Where the Registered Body applies for approval following the grant of Registration, it must not allow the person concerned to become a Manager, HoLP or HoFA (as applicable) until it has received written notice that the person has been approved.

15.4 (a) It is for the Registered Body to demonstrate that the person concerned meets the criteria for approval.

- (b) The Registered Body must co-operate, and secure the co-operation of the person concerned, to assist IPReg to obtain all information and documentation necessary to determine the application.
  - (c) The person concerned must confirm in writing on the face of the application that the information supplied about them is correct and complete.
- 15.5 IPReg's decision to approve or refuse approval must be notified in writing to the Registered Body and, separately, to the person concerned.
- 15.6 Approval takes effect from the date of the decision unless otherwise stated, and continues until:
  - (a) the approved person is disqualified from being a Manager, HoLP or HoFA (as applicable) of a Registered body;
  - (b) the approval is withdrawn; or
  - (c) the person ceases to hold the approved position in the Registered Body who applied for the approval.
- 15.7 (a) IPReg may grant a temporary approval of a designation as HoLP or HoFA where due to an unforeseen event, a Registered Body ceases to have a designated and approved HoLP or HoFA and within seven days:
  - (i) informs IPReg of that fact;
  - (ii) designates a suitable person to replace the previous HoLP or HoFA; and
  - (iii) makes an application for the temporary approval of that person.
- (b) Subject to regulation 15.9 below, a temporary approval shall be valid for 28 days or such other period as specified by IPReg.
- 15.8 IPReg may at any time request an approved person or the Registered Body concerned to provide it with such information or documentation as it considers necessary to satisfy IPReg that the approved person continues to meet the criteria for approval.
- 15.9 (a) IPReg may withdraw an approval, including a temporary approval, if:
  - (i) it is not satisfied that an approved person continues to meet the criteria for approval;
  - (ii) information or documentation is not promptly supplied in response to a request made under regulation 15.8;
  - (iii) IPReg is satisfied that the approved person has breached a duty imposed on them under IPReg's Regulatory Arrangements or any enactments;
- (b) Subject to (c) below, withdrawal of approval takes effect on expiry of the notice period under regulation 18.2 or such later date as may be stated in the notice.

- (c) If an appeal is made before the withdrawal of approval takes effect, the withdrawal is suspended pending the determination or discontinuance of the appeal, unless in the opinion of IPReg the proceedings on that appeal have been unduly protracted by the appellant or are unlikely to be successful.
- (d) Where withdrawal of approval relates to a director of a company, IPReg may set separate dates for that person ceasing to be a director and disposing of any shares that they hold.

## **PART 5 – RECONSIDERATION AND APPEALS**

### **Regulation 16 – Reconsideration**

16.1 IPReg may reconsider or rescind a decision made under these regulations when it appears that IPReg:

- (a) was materially misled;
- (b) failed to take proper account of material facts or evidence;
- (c) took into account immaterial facts or evidence;
- (d) made a material error of law;
- (e) made a decision which was otherwise irrational or procedurally unfair;
- (f) made a decision which was otherwise ultra vires; or
- (g) failed to give sufficient reasons.

### **Regulation 17 – Appeals**

17.1 A person who is the subject of a decision by IPReg under these regulations may appeal the decision by invoking the appeal procedure set out in the IPReg Appeals Rules, within the time limits specified therein.

## **PART 6 – MISCELLANEOUS PROVISIONS**

### **Regulation 18 – Notification of decisions by IPReg**

18.1 IPReg shall notify its reasons in writing when it:

- (a) refuses any application under these regulations;
- (b) grants the application subject to one or more conditions; or
- (c) refuses a permission required under a condition on a body's Registration.

- 18.2 IPReg will give 28 days' written notice, with reasons:
- (a) to the Registered Body concerned, when IPReg decides to impose a condition on the body's Registration or to suspend or revoke the body's Registration;
  - (b) to the body and the person concerned, when IPReg decides to withdraw its approval of a Manager, HoLP or HoFA, under regulation 15.9.
- 18.3 Except in respect of a suspension or revocation, IPReg may shorten or dispense with the 28 day period under 18.2 if it considers it appropriate to do so.

#### **Regulation 19 – IPReg's compensation arrangements**

- ~~19.1 (a) IPReg will maintain such compensation arrangements as it, from time to time, considers appropriate, having regard to its statutory duties and the public interest.~~
- ~~(b) Subject to (a) and any variations or further rules or arrangements made by IPReg, the principal terms of its current compensation scheme are set out in Annex B.~~

#### **Regulation 20 – Waivers**

- 20.1 Subject to any legal restrictions on its ability to do so, IPReg may, in respect of a body or type of bodies, waive any provision in these regulations and any terms or conditions of Registration, and may revoke such a waiver at any time.

#### **Regulation 21 – Temporary Emergency Registration following a Partnership split**

- 21.1 If a partnership split brings into being a new partnership which is not a Registered Body:
- (a) the partners of the new partnership must notify IPReg of that fact within 7 days; and
  - (b) temporary emergency Registration may be granted, subject to regulations 21.2 to 21.4 below, so as to enable the new partnership to lawfully practise for a limited period.
- 21.2 An application for temporary emergency Registration may be made by telephone, provided that details given by telephone are confirmed in writing on the same day, and must be made (or confirmed) at the earliest possible opportunity on the prescribed form and accompanied by all information and documentation that IPReg may reasonably require.
- 21.3 IPReg may grant an application for temporary emergency Registration if it is satisfied that:
- (a) the partners could not reasonably have commenced an application for Registration in advance of the change; and
  - (b) the partnership appears to comply with the eligibility criteria set out in Annex A.
- 21.4 Temporary emergency Registration:
- (a) will be granted for 28 days unless a different period is specified by IPReg;
  - (b) may be extended in response to a reasonable request by the applicant body;

- (c) will be extended pending determination of a substantive application for Registration commenced during the currency of the temporary emergency Registration;
- (d) cannot prejudice IPReg's discretion to refuse a substantive application for the Registration of the body under regulation 4; and
- (e) in exceptional circumstances and for reasonable cause, may be revoked with immediate effect.

### **Regulation 22 – Unforeseen temporary breaches**

If due to an unforeseen event:

- (a) a Registered Body which is an ABS ceases to be an ABS;
- (b) a Registered Body no longer complies with the eligibility criteria set out in Paragraphs 1 and 2 of Annex A; or
- (c) a Registered Body which is a partnership ceases to be a body because it has fewer than two members;

but IPReg is informed of that fact within seven days of the event first occurring, and within 28 days of the event first occurring or such other period as may be specified by IPReg, the Registered Body returns to being an ABS, compliant with the eligibility criteria, or a body (as applicable), then the body will be deemed to have remained so during the said period and to that extent, will not be liable to have its licence or Registration revoked or suspended.

### **Regulation 23 – Special bodies**

- 23.1 IPReg does not accept applications for any order to be made by it under section 106 of the 2007 Act.

### **Regulation 24 – Transitional provisions**

- 24.1 Except where it is an ABS, a body which was Registered by IPReg before the Commencement Date will be deemed to be Registered under these regulations and is not required to:
- (a) re-apply for Registration whilst its existing Registration remains effective; or
  - (b) comply with any requirements in these regulations relating to HoLP and HoFA until after the expiry of a 6 month notice, which notice shall be given no earlier than 1<sup>st</sup> January 2015.
- 24.2 Any Manager of a Registered Body who was approved by IPReg before the Commencement Date shall be deemed to have been approved under these regulations and the approval shall remain effective subject to any terms and conditions of the approval and these regulations.

- 24.3 Applications for Registration, approval of a person to be a Manager, or temporary emergency Registration, made before the Commencement Date but not decided by then, will be determined under these regulations.

### **Regulation 25 – Name and designation of a Registered Body**

- 25.1 A body corporate will be Registered under its corporate name.
- 25.2 An unincorporated body must elect to have a name under which it is to be Registered.

### **Regulation 26 – The Register**

- 26.1 IPReg shall keep a Register comprising of two sub-Registers, being the Patent Attorney Register and the Trade Mark Attorney Register.
- 26.2 The Register shall contain, for each Registered Body (as relevant), the following information:
- (a) the name, and trading name if different, under which the body is Registered;
  - (b) the body's Registered address and practising address(es);
  - (c) the date on which Registration was granted;
  - (d) in the case of an ABS, that the body is licensed under the 2007 Act;
  - (e) whether the body's Registration has been suspended or revoked and the date on which suspension or revocation took place;
  - (f) any enforcement action taken against the body or any of its Owners or employees (except administrative fines);
  - (g) any previous names of the body;
  - (h) all company Registration numbers, charity numbers or equivalent as relevant;
  - (i) the names of the body's HoLP and HoFA;
  - (j) the authorising regulatory body of the HoLP;
  - (k) the Reserved Legal Activities that the body is authorised to undertake; and
  - (l) any other information that IPReg considers appropriate to include.
- 26.3 (a) The Register may be kept in electronic form and made available on IPReg's website.
- (b) Entries in the Register shall be available for inspection by any member of the public.

### **Regulation 27 – Commencement**

- 27.1 These regulations apply from the Commencement Date. They replace the Patent Attorney and Trade Mark Attorney Registered Bodies Regulations which from the Commencement Date cease to have effect.

## ANNEX A – ELIGIBILITY CRITERIA FOR REGISTRATION

A partnership, LLP or company (“body”) may be entered in the Patent Attorney Register and/or the Trade Mark Attorney Register if it meets all of the criteria in (1) to (6) below.

(1) (a) In the case of a body applying to be entered in the Patent Attorney Register, the body undertakes as its primary activity legal services relating to any of the development and protection, and management and exploitation of patents and registered designs (alone or in combination with the legal services described in 1(b) below), including but not limited to the business of acting as agent for others for the purpose of:

- (i) applying for or obtaining patents and registered designs, in the United Kingdom or elsewhere; and/or
- (ii) conducting proceedings before the Comptroller General of Patents, Designs and Trade Marks relating to applications for, or otherwise in connection with, patents and registered designs;

together with the provision of any other legal services ancillary to the legal services described above;

(b) In the case of a body applying to be entered in the Trade Mark Attorney Register, the body undertakes as its primary activity legal services relating to any of the development and protection, and management and exploitation of trade marks and registered designs (alone or in combination with the legal services described in 1(a) above), including but not limited to the business of acting as agent for others for the purpose of:

- (i) applying for or obtaining the registration of trade marks and registered designs, in the United Kingdom or elsewhere; and/or
- (ii) conducting proceedings before the Comptroller General of Patents, Designs and Trade Marks relating to applications for, or otherwise in connection with, the registration of trade marks and registered designs;

together with the provision of any other legal services ancillary to the legal services described above.

(2) The body carries on non-legal activities and provides non-legal services that are ancillary to 1(a) and/or (b) above and only concern or relate to the creation, development, maintenance, exploitation or otherwise of intellectual property and activities ancillary thereto.

- (3) (a) In the case of a partnership:
  - (i) which applies to be entered in the Patent Attorney Register, at least one of the partners is a person (ABS or other) who is on the Patent Attorney Register.
  - (ii) which applies to be entered in the Trade Mark Attorney Register, at least one of the partners is a person (ABS or other) who is on the Trade Mark Attorney Register.
- (b) In the case of an LLP or company:
  - (i) which applies to be entered in the Patent Attorney Register, at least one of the Managers is a person (ABS or other) who is on the Patent Attorney Register.
  - (ii) which applies to be entered in the Trade Mark Attorney Register, at least one of the Managers is a person (ABS or other) who is on the Trade Mark Attorney Register.
- (4) The body:
  - (i) In the case of an ABS, has a practising address (as defined in Para 15, Schedule 11 of the 2007 Act) in England and Wales and, in all other cases, the United Kingdom; and
  - (ii) In the case of an ABS, is domiciled, or has a real and effective industrial or commercial establishment, in England and Wales and, in all other cases, the United Kingdom.
- (5) All non-authorised Managers of the body have been approved under Part 4 of these regulations.
- (6) In the case of an ABS, all non-authorised Owners of the body have been approved under Part 4 of these regulations and Schedule 13 of the 2007 Act.
- (7) The body confirms that it will abide by IPReg's Regulatory Arrangements, including the Rules of Conduct, and with the terms and conditions of its Registration.
- (8) IPReg is satisfied that if Registered, the body will be in compliance with the terms and conditions of its Registration.

**ANNEX B — COMPENSATION ARRANGEMENTS**

Subject to regulation 19, the principal terms of IPReg's compensation scheme are as follows:

- (1) — IPReg will maintain a compensation fund under which grants may be made to compensate for losses or hardship suffered by persons in consequence of fraud or other dishonesty, or a fraudulent or dishonest failure to account for money by a Registered Body or its employees and Managers, to the extent that such losses are not covered or required to be covered by professional indemnity insurance.
- (2) — Registered bodies shall contribute to the costs of the scheme, through annual contributions required under regulations 7.1(a) and 7.2(a)(iii).
- (3) — Only:
  - (a) — current and former individual clients; and
  - (b) — micro, small and medium-sized enterprises who are or were clients,of the Registered Body will be entitled to benefit from the arrangements.
- (4) — All grants will be made at the sole discretion of IPReg and subject to a cap of £25,000 per claimant.
- (5) — All applications for grants must be made in the form and within the time period prescribed by IPReg.

## ANNEX C – SPECIMEN REGISTRATION CERTIFICATE

## Registration Certificate

This certificate is issued by the Intellectual Property Regulation Board [under delegation from the Chartered Institute of Patent Attorneys/Institute of TradeMark Attorneys] under section [84 of the Legal Services Act 2007] [83 of the Trade Marks Act 1994] [and] [275 of the Copyright, Designs and Patents Act 1988]

To: [name of firm] IPReg registration number [xxxxxxxxxx]

Trading as: [delete if trading name is the same]

Registered Office [delete if not applicable]: [insert details]

Main practising address: [insert details]

### Registration

[name of firm] is registered by the [Trade Mark Regulation Board] [and] [Patent Regulation Board] to undertake the following reserved legal activities:

1. the exercise of a right of audience;
2. the conduct of litigation;
3. reserved instrument activities;
4. the administration of oaths.

Pursuant to the IPReg Registered Bodies Regulations 2015 this firm is regulated by the [Trade Mark Regulation Board] [and] [Patent Regulation Board] in respect of:

- (a) the carrying on of the reserved legal activities stated above;
- (b) any other reserved or non-reserved legal activities which fall within section 12 of the Legal Services Act 2007; and
- (c) any other activities which are subject to conditions imposed [under Part 5 of the Legal Services Act 2007] and as set out in this certificate.

This registration is granted from [date] and shall continue until it shall expire, cease to have effect in accordance with regulation 9, or shall be revoked or suspended in accordance with regulation 10, of the IPReg Registered Bodies Regulations 2015.

A detailed review of [Firm] will take place on the [date – three or five years from the date of registration at IPReg’s discretion].

**(electronic signature)**

**Ann Wright**

**Chief Executive**

**This registration is subject to the following terms and conditions:**

[Firm] shall comply with:

- the general conditions listed in the Annex to this licence; [and
- the following additional conditions [list any additional conditions that may be imposed on the body].

Unless otherwise indicated, all terms in the conditions must be construed in accordance with the IPReg Registered Bodies Regulations and the IPReg Disciplinary Procedure Rules.