

## Intellectual Property Regulation Board

(on behalf of the Patent Regulation Board and the Trade Mark Regulation Board)

### Proposed Application for Designation as a Licensing Authority (ABS)

#### Summary of Consultation Responses

IPReg has reviewed the individual responses to the consultation carried out over the summer of 2012. The individual responses are available for review but IPReg has prepared this summary response to identify more easily the key themes and IPReg's approach to the issues raised.

**Number of responses:** 15

#### Respondents

The responses were received from:

- 1 regulatory body (ILEX Professional Standards);
- CIPA and ITMA (joint response);
- 2 trade bodies (the IP Federation and FICPI-UK);
- The Legal Services Consumer Panel;
- 9 firms (two of which are connected and we therefore took their comments together); and
- PAMIA.

In addition to the formal consultation responses, CIPA held a live webcast on the consultation jointly with ITMA, with attendants in person and via the internet. The webcast was very well attended; 485 unique IP addresses logged on, 95% of which remained connected for the whole of the session. The feedback received from the webcast has been treated as a response to the consultation.

#### Consultation questions and responses

##### 1 Do you agree with our principles-based approach?

The LSCP welcomed "the thrust of the proposals". The main issue that concerned respondents was the single approach for all firms. ILEX Professional Standards, Murgitroyd and Mewburn and Ellis (with some caveats) all supported the single approach (CIPA and ITMA did not comment although they had, of course, seen and accepted the proposed consultation paper). Five respondents (Atkinson Wheller, FICPI-UK, Bob Ackroyd, Alistair Hindle and Kilburn & Strode) all objected to the single approach. The remainder did not comment. The main reasons given for the objection to a single approach were:

- the potential impact on competition with other international firms/unregulated firms;
- the costs associated with the new provisions (particularly the HOLP and HOFA);
- whether there would be any benefit to clients in terms of additional protection.

The objections were to be expected and none appeared to have identified the transitional provisions which are aimed at reducing the burden on existing registrants.

There was also some concern expressed about the breadth of the consultation coupled with the pace of change. IPReg appreciates the concerns of firms and had originally intended to conduct two consultations; the first on matters of principle and the second on changes to the rules. The LSB took the view that one consultation would suffice.

## 2 Do you have any comments on the proposed amendments to the Code?

### (a) Client money

The LSCP and ILEX were strongly in favour of a requirement to segregate client money. Other consultees (e.g., Collier IP and Murgitroyd) had no objection in principle, but Murgitroyd objected to disbursements being classed as client money. Atkinson Wheller and Kilburn & Strode were against the proposal and Swindell & Pearson questioned whether it would be effective.

“We note that firms will be subject to new rules requiring them to hold client money in separate accounts. The Panel considers this to be very positive.” LSCP

“We strongly disagree with the proposal that a rule is introduced that requires firms to segregate client money in relation to intellectual property work from the attorney’s money by setting up separate bank accounts for the two types of money.” Kilburn & Strode

“It seems that the requirement for segregation of client money can be circumvented, at least in some situations, by using VAT invoices at the appropriate time. We therefore question if these aspects of the amendments will be effective, and thus whether this aspect of the amendments is proportionate to the risk.” Swindell & Pearson

### (b) HOLP and HOFA

The LSCP, ILEX Professional Standards, Murgitroyd and Collier IP all supported HOLPs and HOFAs for existing registrants. However, the LSCP did not agree with the transitional period (this may have been due to a misunderstanding about to whom the transitional period would apply; it will only apply to existing registrants) and Murgitroyd resisted any differentiation between the requirements for existing registrants and ABS. CIPA and ITMA were silent on the matter. Mewburn Ellis were against the introduction of HOLPs and HOFAs for existing registrants, as were Kilburn & Strode.

Murgitroyd objected to the pre approval of the HOLP and HOFA but again this is a LSA requirement for ABSs. Collier IP felt that there was no necessity for the HOLP to be a manager.

“IPReg’s proposal in relation to annual returns, licences HOLP and HOFA, compensation arrangements and fees in the consultation paper appear sound.” ILEX Professional Standards

“We cannot see that the requirement for these new roles will benefit the consumer and may in fact achieve the opposite.” Mewburn Ellis

“It is unacceptable that there is a transitional period for non-ABS – this is entirely at odds with the principle of a level playing field for all.” Murgitroyd

(c) **Jurisdiction**

Murgitroyd and Alistair Hindle & Associates commented on the requirement to have a practising address in England and Wales, and whether a practising address in Scotland would suffice. This is a LSA requirement for partnerships and unincorporated bodies (incorporated bodies must have a registered office in England and Wales) and, in any event, the jurisdiction of IPReg is dependent on the firm practising law in England and Wales.

“It is not clear what the difference between having a practising address and a real and effective industrial or commercial establishment would be. We have wondered whether the domicile requirement might be met by having a registered address in England & Wales.”  
Alistair Hindle & Associates

(d) **Professional indemnity insurance**

There was strong (although not universal) support for PAMIA as a matter of principle and the statement that registrants should “urge” PAMIA to change its insurance coverage to include “last man standing” and to cover firms having less than 51% attorney-owned equity. PAMIA has confirmed that it would amend the terms of its policy and that it did already have provision to cover firms having less than 51% attorney-owned equity, subject to board-level approval.

“We are insured by PAMIA and are happy with the service we received. We are concerned that your regulations will mean that PAMIA are focused to insurance business structures that they perceive to be risky, leading to an increase in premium for all of us.” Atkinson Wheller

“PAMIA clearly has its own commercial strategy, but it may help IPREG to know that appropriate PI cover is available from other reputable insurances. The freedom to seek insurance on the open market is important and we would urge IPReg not to place any constraints in this regard.” Collier IP

### 3 Do you have any comments on our proposed approach to levels of external ownership and management and restrictions on work types?

#### (a) Pre-approval of owners (those intending to hold a material interest)

Murgitroyd objected to the pre-approval of those intending to hold a material interest in a firm in respect of FTSE and AIM listed entities, since they felt this was impractical. This is a LSA requirement.

#### (b) Levels of external ownership

There was general support for unrestricted external ownership and management. However, Kilburn & Strode strongly objected.

“The right to have up to 100% external ownership is supported.” LSCP

“IPReg proposes not to set any restrictions on external ownership of ABS; it will not place any restriction on the level of external management or location of external owners. Such an approach reflects the spirit of the Legal Services Act 2007, to open up the legal services market.” ILEX Professional Standards

“Kilburn & Strode has grave concerns as to 100% external ownership of a Firm by non-qualified individuals or entities. Decisions made by shareholders (for example only a 50% vote required to remove a director) who don’t understand the profession can have dire consequences and, without the presence of stakeholders, decisions are sometimes taken that are not in the Firm’s or the clients’ best interests.” Kilburn & Strode

#### (c) Managers

Collier IP felt that the definition of “manager” is too narrow for some ABS. The definition is that contained in the LSA and therefore should be retained.

### 4 Do you have any comments on the proposed amendments to the registration regulations? Do you have any view regarding the best approach to determine the fee scales? Is turnover and appropriate benchmark?

#### (a) Compensation arrangements

The LSCP, Murgitroyd, Mewburn Ellis, and ILEX Professional Standards all agreed with the introduction of compensation arrangements for all firms. Atkinson Wheller disagreed. CIPA and ITMA were silent on the matter. FICPI were against on the grounds that there was no need and the cost placed and additional burden on firms.

The LSCP felt that compensation arrangements were “unduly restrictive” in relation to the limit of £50,000 per claimant and that “small charities” should be included within the definition of clients eligible to make a claim under the compensation arrangements.

(b) **Fees**

For those that expressed a view, there was general agreement with a turnover-based approach, so long as it was net of disbursements and was not disproportionately burdensome.

**5 Do you have any comments on the proposed amendments to the disciplinary rules?**

There was very little comment on these amendments.

“The proposed amendments seem reasonable in principle. Of course, it remains to be seen how they work out in practice and we look forward to being able to comment subsequently regarding future proposals in that regard.” Murgitroyd

“Not for ABS; otherwise unnecessary.” Bob Ackroyd

**Additional points:**

**Section 15 LSA**

The IP Federation sought an assurance from IPREF that it is not intending to include companies employing in-house attorneys within the ABS regulation. It is not possible to give such an assurance, since this would be a question of interpretation of section 15 LSA based on individual circumstances and the LSB has previously indicated that it is not minded to seek an order of the Lord Chancellor clarifying the meaning of section 15.