

IPReg CIPA and ITMA Event

Presentation by the Legal Services Board on Alternative Business Structures

Questions Raised and LSB Answers

- 1. Q - LSB's desire is for a level playing field between ABS and non-ABS, but there are key tests for ABS (eg on fitness to own and requirements for a Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA)) that are more onerous than those for non-ABS.**

A - It is true that there are requirements set out in the Legal Services Act (LSA) that apply only to ABS. Where this is the case we have tried to ensure that these are implemented in a pragmatic way. So, for example, we have said that we consider that the qualifications and experience of a HoLP are, broadly, matters for the ABS to decide rather than the regulator.

Where tests do currently exist (such as a requirement for criminal records checks, or disclosure of being declared bankrupt), they should not be any more onerous for ABS than for non-ABS. There may be some aspects of ABS regulation that Approved Regulators (ARs) consider should be copied across into non-ABS regulation. In such cases we would expect the AR to have evidence to justify any additional requirements.

- 2. Q - ABS may raise issues about legal professional privilege for intellectual property attorneys. In the current framework, for an MDP privilege rests with the entity. Are there similar protections for ABS. This is particular an issue for those firms that deal with the USA.**

A - Legal professional privilege is covered in LSA s190. However we recognise that this is an important issue and we will work with IPReg, CIPA and ITMA to identify whether there are gaps/differences and how these could be addressed.

- 3. Q - Complaints – these are currently in single figures, indicating that intellectual property attorneys deal well with complaints.**

A - LSB understands that these are the complaints that have been referred to either CIPA or ITMA after being dealt with at the first tier. We have recently issued guidance to ARs about first tier complaint handling, including a requirement to provide information to consumers about how to progress their complaint to the new Legal Ombudsman. We expect ARs to ensure that those they regulate comply with all relevant requirements on complaint handling.

4. Q - Will the change in regulating for outcomes be able to deal appropriately with different ABS structures – for example a sole practitioner whose spouse is a shareholder, compared to a large corporation?

A - For both ABS and non-ABS, in order to implement outcomes regulation successfully, ARs/LAs will have to adopt a risk based approach. This would mean that the AR/LA would be aware of the risks posed by a sole practitioner compared to a large corporation and would adapt a proportionate approach to each one.

5. IPReg as a possible Licensing Authority for ABS: -

- **IPReg may not have the resources to be able to check fully the owners of a complex corporate structure**

- LSB anticipates that there will be some types of ABS that a LA is not competent to regulate. Although the LSB can become a LA we hope that we will not need to. If it appears that IPReg is not going to be a LA, there would need to be discussions between it and existing LAs to see which one appeared competent to regulate intellectual property attorneys and whether any changes needed to be made to regulatory arrangements. Alternatively it may be possible to set up outsourcing arrangements to carry out the required checks

- LSB would expect LAs to put the onus to provide sufficient information on the ABS licence applicant, although there would need to be some checks carried out to ensure that the information was correct

- licence application fees can be structured so that they are cost reflective – so those whose applications required substantial resources to check would pay more than those with straightforward applications

- **Can there be a joint application from CIPA/ITMA to avoid the need to pay two application fees, since regulation will be carried out by IPReg?**

LSB will check the application rules

- **Will the costs of regulating ABS be borne by ABS or smeared across all those regulated?**

This is for the AR/LA to decide. As a general principle, it is preferable for costs to be able to be allocated as accurately and transparently as possible.

- **Currently IPReg does not have sufficient information to be able to assess the likely demand for ABS licences from those it regulates or new entrants.**

We understand that IPReg has started to gather information about the entities it regulates. This should help it to assess which are likely to need and ABS licence.

6. Q - If a TMA/PA LLP is owned by a limited company provides services to it, but the reserved activity is only provided by the LLP, is the limited company an ABS?

A - Who the licensee is will always depend on the precise circumstances. But even if the limited company is not the licensee (and the LLP is), the owners of the limited company would need to pass a fit and proper person test.

7. There will be a wide range of ABS – what are the boundaries of regulation?

We agree that this is an important issue. The SRA is facilitating a working group that includes all the ARs as well as other regulatory bodies such as the FSA and the accountancy bodies to discuss how to deal with regulatory overlaps in the least burdensome way possible. The LSB will also be looking more widely at where regulation now bites and whether it provides appropriate levels of consumer protection.

8. Question for IPReg – it would be very helpful for some guidance about where the reserved legal activities are actually carried out by intellectual property attorneys.

Legal Services Board
9th June 2010