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Caveats, disclaimers, etc…..

There are grey areas in the LSA 2007 …….

- This is not legal advice from CIPA or the speakers
- Conflicting advice from solicitors consulted
- IPReg form is not a guarantee either!
- No real guidance on the IPReg website
- Sometimes the SRA website might help you if you are uncertain

…… And we may have misread the Act

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Preliminary words

Get this in proportion ….. but take it seriously

- Criminal offence to trade is not being registered or licensed when you should be
- IPReg have indicated a willingness to investigate and discipline firms they believe are ABS and should have applied to be licensed
- PAMIA terms of cover do not extend to the costs of disciplinary proceedings not involving payment to compensation to clients
- Many firms are ABS but may not realise it

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Introduction – the rules and the timescales

- Registration v Licensing
- Legal Services Act 2007
- IPReg Registered Bodies Regulation 2015
- When the rules came in - January 1st 2015
- Transitional provisions for existing and new ABS s.18 LSA
- Timescales for examination – 6 months with possible 3 months extension
- Conditions may be imposed

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Are you an licensable entity?

- Two ways to find out if IPReg thinks you are licensable

  Read the LSA 2007 (5 hours) but one part in particular: s11(2)

  Read the IPReg form as an exercise (15 minutes)

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Definitions

Note the definitions which are not necessarily intuitive ……

- Owners
- Managers
- Authorised person
- Approved person
- Head of legal practice (=COLP in SRA)
- Head of financial affairs (=COFA in SRA)

…..and lots of smaller definitions about associated persons

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What is a licensable body?

- (1) A body (“B”) is a licensable body if a non-authorised person:
  (a) is a manager of B, or
  (b) has an interest in B
- (2) A body (“B”) is also a licensable body if another body (“A”) is a manager of B, or has an interest in B, and:
  non-authorised persons are entitled to exercise, or control the exercise of, at least 10% of the voting rights in A
- (3) For the purposes of this Act, a person has an interest in a body if:
  (a) the person holds shares in the body, or
  (b) the person is entitled to exercise, or control the exercise of, voting rights in the body.

BUT…..

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What is a licensable body?

- Not just proprietary or purely legal interests…….
- (4) A body may be licensable by virtue of both subs (1) and subs (2).
- (5) For the purposes of this Act, a non-authorised person has an indirect interest in a licensable body if the body is licensable by virtue of subsection (2) and the non-authorised person is entitled to exercise, or control the exercise of, voting rights in A [for example by contract or trust]

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Some practical points

- Ticking and crossing the IPReg boxes mostly gives an easy answer
- Some in-house departments may be ABS if hived off as separate divisions or businesses servicing group businesses
- Even if a corporate (and non-corporate) owner is itself made up entirely of authorised persons it will still need to be authorised as an owner and the firm will be licensable
- Even if the shareholding is very small and the shareholding gives no material influence you will need to be licensed
- If the shareholding is very small and the shareholding gives no material influence you may not need to get the persons approved or fill in the full profile forms – though IPReg may take a different view on this.
- Details of associated/coordinated/parent businesses have to be given

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Who needs to be authorised?

- Manager of a licensed body
- Owner of a licensed body
- Manager of a corporate manager of a licensed body
- Owner of a corporate owner of a licensed body
- HOLP of a licensed body/new registered body
- HOFA of a licensed body/new registered body

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Who is non-authorised? (LSA 2007 schedule 13)

- Anyone who is not RPA, RTMA, Solicitor, Barrister, CILEX, “Registered foreign lawyer” regulated by one of the authorised regulators so -
- EPAs unless also RPA or RTMA (NB in particular for industry positions)
- Professional representative before OHIM unless also RPA or RTMA
- Barristers or solicitors not with a current practising certificate
- Foreign patent and TM attorneys e.g. Irish attorneys not also UK registered

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Authorisation of individuals

If you answer yes to ANY of the following ("Material influence)…….

- Does a non-authorised owner or manager…..
- Hold at least 10% of the shares in your business or a parent undertaking
- Exercise significant influence in your business or a parent undertaking as a result of their shareholding
- Exercise or control of 10% of the voting rights in your business or a parent undertaking
- Exercise significant influence in your business or a parent undertaking as a result of their exercise or control of voting rights in the business or parent undertaking

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Authorisation of individuals

- Have the ability to impose directions on the operating of financial policies of the business or the parent undertaking including by articles or contract
- Have unqualified right to appoint or remove a majority of directors of the business or parent undertaking
- Have any right to veto or otherwise exercise a dominant influence, passive or active in voting in your business or parent undertaking

…..apply to be licensed AND provide an individual application for approval of every such person

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How do you apply?

- Fill in the forms, attach the supporting information and evidence
- Send a cheque – we are told that the cheque won't be cashed until the outcome is known!
- Transitional firms to be given priority processing (apparently)?
- IPReg Licensing officer is Rachel Greensides – but she only works part time (Mon,Tue,Thu)

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Information to be provided

Surprisingly it does not seem you need to send in your partnership or Ltd Co agreement, unlike the SRA, but instead you need to draw up governance structure and ownership structure charts – which may be harder or more time consuming!

Ownership structure will require details and shares of:

- owners of business
- parent business
- beneficial owners e.g. under a trust and
- certain “associates” of any persons or bodies identified (This means a spouse/civil partner/child/stepchild/director/employee/person having an agreement to buy shares)

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Supporting evidence

- There is much less risk self-assessment in the IPReg forms than in the SRA forms
- But you **do** need quite a few documents …..

  Business plan (including budget?)

  Latest audited accounts

  Written terms of business

  Complaints handling procedure

  Anti-Money laundering policy (remember this is risk based, so not like a bank)

  Number of PI claims made against you and claims paid out by you or your insurers

  Conflict of interest procedure

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Supporting evidence

Client account if taking client money on account – see latest modified guidance

Insurance cover details

Privilege and confidential information staff training procedure

Proof of training procedures to ensure compliance with code of conduct

Information on key outsourcing agreements

Details of sources of external funding

History of insolvency etc. of any managers / owners or their previous firms

Full details of all professional staff including non-qualified fee earners

Details of coordination or unified management with other businesses

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Money Laundering Policies

- This is always a risk based assessment. Checks are proportionate to risk
- [*You do not have to make enquiries into every source of funding from other parties. However, you must always be alert to warning signs and in some cases you will need to get more information. In some circumstances, cleared funds will be essential for transactions and clients may want to provide cash to meet a completion deadline. Assess the risk in these cases and ask questions if necessary*…..]
- While face-to-face contact with clients is not usually necessary, an excessively obstructive or secretive client may be a cause for concern.
- Instructions that are unusual in themselves, or that are unusual for your firm or your client, may give rise to a cause for concern.

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Money Laundering Policies

- Instructions outside your firm's usual area of expertise.

  e.g. Changing instructions

  a client deposits funds into your client account but then ends the transaction for no apparent reason
  a client tells you that funds are coming from one source and at the last minute the source changes
  a client unexpectedly asks you to send money received into your client account back to its source, to the client or to a third party

  e.g. Unusual instructions

  disputes which are settled too easily as this may indicate sham litigation
  loss-making transactions where the loss is avoidable
  dealing with money where you suspect that it is being transferred to avoid the attention of a liquidator or administrator
  settlements paid in cash, or paid directly between parties
  complex or unusually large transactions by the standards of the client
  unusual patterns of transactions which have no apparent economic purpose

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Client Accounts Policies

- We should not provide a banking service for their clients, holding their money longer than strictly necessary…..
- Don't accept cash payments above a certain limit either at your office or into your bank account…..
- Avoid disclosing your client account details as far as possible and make it clear that electronic transfer of funds is expected…..
- Accounts staff should monitor whether funds received from clients are from credible sources.

[*For example, it is reasonable for monies to be received from a company if your client is a director of that company and has the authority to use company money for the transaction. However, if funding is from a source other than your client, you may need to make further enquiries, especially if the client has not told you what they intend to do with the funds before depositing them into your account. If you decide to accept funds from a third party, perhaps because time is short, ask how and why the third party is helping with the funding*….]

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Client Accounts Policies

- If you need to provide your account details, ask the client where the funds will be coming from.
- Discourage clients from passing the details on to third parties and ask them to use the account details only for previously agreed purposes….

See more at:

http://www.lawsociety.org.uk/support-services/advice/practice-notes/aml/money-laundering-warning-signs

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HOLP and HOFA

- Training and suitability information must be provided EVEN if authorised e.g. Registered Patent or TM attorney
- Assistance and resource must be specified - means of fulfilling responsibilities
- Fuller details and regulators of non-authorised managers in role e.g. ICAEW etc
- Additional checks will be untaken as to these persons' suitability

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How much does it cost?

- There is a simple ready reckoner for the firms to complete – starts at £121
- In round numbers it is equal to one years practice fee for the entity
- Thereafter changes will cost money – e.g. registering even a new authorised person = £200

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How to apply?

- Where to get the forms – email IPReg, they are not on the website
- The form is not the end of the story
- Further information may be requested by IPReg
- The application gives permission for IPReg to make extensive enquiries about you and about people associated with you

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Our experience so far…..

- The forms themselves are not in most cases that hard to complete
- You don’t need a solicitor or other adviser to fill them in for you

The large firm’s issues - plc, LLP

The small firm issues – LLP, Ltd

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Practical advice

- Full disclosure is essential. Don’t hide anything
- If in doubt put it in and expect IPReg to decipher what else is needed
- You are at least partially protected from consequences while your application is under examination and you may have the chance to change things if required to do so: better to notify than take the risk even if you think you are not licensable – you will get your money back (we think)
- Filling in the forms honestly at least gives you some mitigating arguments if you get it wrong

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Where can you get help?

- SRA help guidelines can be helpful but can also be “false friends”
- JBPC has some template documents for those without policies terms of business etc
- If you have a problem with IPReg’s communications or requirements contact CIPA/ITMA JBPC

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Summary

- It's not as bad as you may think – IPReg have gone "lite" compared with SRA
- Much of what it asks for is required/sensible for any firm even if not ABS

But it is a pain!

- It's the price of the privileges we enjoy under the Legal Services Act 2007
- Much will come for non ABS firms too
- The alternative is not to conduct reserved legal activities and join the unregulated community

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Here goes…..

- Thank you …..

…..wish us luck!