

SCHEDULES

SCHEDULE 4

Article 16(1)

ITMA as an approved regulator: regulatory arrangements

Part 1

Disciplinary arrangements

Disciplinary arrangements: financial penalties

1.—(1) In the circumstances specified in regulations made under sub-paragraph (4), ITMA may impose on a registered person or a regulated person in accordance with those regulations a penalty which is of such amount as ITMA considers appropriate.

(2) The amount of any penalty imposed under sub-paragraph (1) must not exceed—

- (a) in the case of a penalty imposed on a registered person who is an individual, £5 million;
- (b) in the case of a penalty imposed on a regulated person, £5 million;
- (c) in the case of a penalty imposed on an ITMA-registered body, £25 million.

(3) A penalty under sub-paragraph (1) is payable to ITMA.

(4) For the purpose of giving effect to sub-paragraph (1), ITMA must make regulations as to—

- (a) the acts and omissions in respect of which ITMA may impose penalties under sub-paragraph (1);
- (b) the criteria and procedure to be applied by ITMA in determining whether to impose a penalty and the amount of any penalty; and
- (c) arrangements for payment, including the time within which any penalty is to be paid.

2.—(1) If the whole or any part of a penalty under paragraph 1 is not paid by the time by which, in accordance with regulations made under that paragraph, it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838(1) (judgment debts to carry interest).

(2) If the whole or any part of a penalty under paragraph 1 has not been paid by the time by which, in accordance with regulations made under that paragraph, it is required to be paid, and—

- (a) no appeal relating to the penalty has been made in accordance with regulations made under section 83A(2)(i) of the 1994 Act during the period within which such an appeal can be made; or
- (b) an appeal has been made under any such provision and determined or withdrawn,

ITMA may recover the unpaid balance and any interest which is outstanding as a debt due to ITMA from the person on whom the penalty was imposed.

(1) 1838 c.110 (1 & 2 Vict). Section 17 was amended by the Statute Law Revision (No 2) Act 1888 c.57, the Civil Procedure Acts Repeal Act 1879 c.59 and by SI 1993/564 and SI 1998/2940.

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(3) ITMA must pay into the Consolidated Fund any sum received by it as a penalty under paragraph 1 or as interest on such a penalty under this paragraph.

Disciplinary arrangements: disqualification

3.—(1) ITMA may, in accordance with regulations made under sub-paragraph (6), make an order disqualifying a person from one or more of the activities mentioned in sub-paragraph (2) if—

- (a) the disqualification condition is satisfied in relation to that person; and
- (b) ITMA is satisfied that it is undesirable for that person to engage in that activity or those activities.

(2) The activities are—

- (a) acting as Head of Legal Practice of any ITMA-registered body;
- (b) acting as Head of Finance and Administration of any ITMA-registered body;
- (c) being a manager of any ITMA-registered body; and
- (d) being employed by any registered person.

(3) The disqualification condition is satisfied in relation to a person if that person (intentionally or through neglect)—

- (a) breaches a relevant duty to which that person is subject;
- (b) causes or substantially contributes to, a significant breach, by the ITMA-registered body by whom that person is employed, of the requirements of trade mark attorney regulations or regulations made by ITMA under this Order; or
- (c) causes, or substantially contributes to, a significant breach by the regulated person by whom that person is employed.

(4) The relevant duties are—

- (a) the duties imposed on a Head of Legal Practice by paragraphs 2(9) or (11) of Schedule 3;
- (b) the duties imposed on a Head of Finance and Administration by paragraph 5(8) of Schedule 3; and
- (c) the duties imposed by section 176(1) of the 2007 Act on registered persons or regulated persons.

(5) ITMA must keep a list of all persons disqualified under this paragraph.

(6) For the purpose of giving effect to sub-paragraph (1), ITMA must make regulations as to the criteria and procedure to be applied by ITMA in determining whether a person should be disqualified under this paragraph.

(7) Regulations made under sub-paragraph (6) must make provision—

- (a) for a review by ITMA of a determination by ITMA that a person should be disqualified;
- (b) as to the criteria and procedure to be applied by ITMA in determining whether a person's disqualification should cease to be in force; and
- (c) requiring ITMA to notify the Board of any determination by ITMA that a person should be disqualified, of the results of a review of that determination and of any decision by ITMA that a person's disqualification should cease to be in force.

Disqualified employees

4. ITMA must make regulations which provide that an ITMA-registered body may not employ a person who, by virtue of a disqualification under a provision specified in paragraph 2(5) of Schedule 3, is disqualified from being a manager or employee of—

- (a) a registered person as defined in paragraph 14 of this Schedule;
- (b) a registered person as defined in paragraph 14 of Schedule 2; or
- (c) a licensed body.

Power to require registered persons to provide information and documents

5.—(1) ITMA must make regulations which provide that ITMA may by notice require a registered person to—

- (a) provide information, or information of a description, specified in the notice; or
- (b) produce documents, or documents of a description, specified in the notice,

for the purpose of enabling ITMA to ascertain whether the requirements of trade mark attorney regulations or regulations made by ITMA under this Order are being, or have been complied with.

(2) Regulations made by ITMA for the purposes of sub-paragraph (1) must make the provision in sub-paragraphs (3) to (6).

(3) A notice given to a person by virtue of sub-paragraph (1)—

- (a) may specify the manner and form in which any information is to be provided or documents are to be produced;
- (b) must specify the period within which information is to be provided or documents are to be produced; and
- (c) may require the information to be provided, or the document to be produced, to ITMA or to a person specified in the notice.

(4) ITMA may pay to any registered person (or a representative of a registered person) such reasonable costs as may be incurred by that person in complying with a notice referred to in sub-paragraph (1).

(5) ITMA or a person specified in a notice by virtue of regulations made under sub-paragraph (3) may take copies of or extracts from a document produced pursuant to a notice.

(6) Where a registered person (or a representative of a registered person) refuses or otherwise fails to comply with a notice given to that person under sub-paragraph (1), that person must give ITMA a notice to that effect stating the reason why that person does not comply.

6. If a registered person refuses or otherwise fails to comply with a notice given to the person by virtue of paragraph 5(1), ITMA may apply to the High Court for an order requiring the person to comply with the notice or with such directions for the like purpose as may be contained in the order.

Power to require payment of investigation costs

7.—(1) In this paragraph—

“disciplinary measure”, in relation to a relevant person, includes an arrangement where—

- (a) the relevant person gives to ITMA an undertaking to do or not to do (or to cease doing) anything specified in the undertaking; and
- (b) any breach of that undertaking is liable to result in the imposition by ITMA of one or more other disciplinary measures on that relevant person by virtue of paragraph 8;

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“relevant person” means a registered person or a regulated person.

(2) Where—

- (a) ITMA imposes a disciplinary measure on a relevant person in respect of any act or omission by the person or for which the person is responsible; and
- (b) the measure is imposed following an investigation conducted by ITMA,

ITMA may, in accordance with regulations made under sub-paragraph (3), also require the relevant person to pay an amount to ITMA in respect of the whole or any part of the costs incurred by ITMA in conducting the investigation.

(3) For the purpose of giving effect to sub-paragraph (2), ITMA must make regulations which make provision—

- (a) as to the criteria and procedure to be applied by ITMA in determining—
 - (i) whether to require a relevant person to pay an amount under sub-paragraph (2); and
 - (ii) the amount of any such payment;
- (b) as to the arrangements for payment, including the time within which the payment is to be made; and
- (c) for appeals to be made to the First-tier Tribunal against any decision made by ITMA under this paragraph.

(4) If the whole or part of any payment required under sub-paragraph (2) is unpaid at the time by which it is required to be paid, ITMA may recover the unpaid balance as a debt due to it from the relevant person.

Discipline: notice, warning or reprimand

8.—(1) ITMA may issue a notice, warning or reprimand in respect of any breach of the requirements of trade mark attorney regulations or regulations made by ITMA under this Order, and cause this to be noted against a registered person’s entry in the register of trade mark attorneys kept under section 83 of the 1994 Act (register of trade mark attorneys)**(2)**.

(2) ITMA may, if it considers it appropriate to do so in any particular case, communicate to the public that it has issued a notice, warning or reprimand to a registered person under sub-paragraph (1).

(3) For the purpose of giving effect to sub-paragraph (1), ITMA must make regulations which make provision as to—

- (a) the breaches of the requirements of patent attorney regulations or regulations made by ITMA under this Order in respect of which ITMA may issue a notice, warning or reprimand under sub-paragraph (1);
- (b) the criteria and procedure to be applied by ITMA in determining whether to issue any such notice, warning or reprimand; and
- (c) the form that any such notice, warning or reprimand may take and the process by which it may be issued.

(2) 1994 c.26.

Part 2

Indemnification and Compensation Arrangements

Power to make indemnification arrangements and compensation arrangements

9.—(1) ITMA may make indemnification arrangements and compensation arrangements which apply in relation to registered persons and regulated persons by—

- (a) establishing and maintaining one or more funds;
- (b) taking out and maintaining insurance with authorised insurers; or
- (c) requiring registered persons, or registered persons of any specific description, to take out and maintain insurance with authorised insurers.

(2) For the purpose of giving effect to sub-paragraph (1), ITMA may make regulations which authorise or require it to make particular arrangements and such regulations may, among other things, include provision—

- (a) requiring registered persons, or registered persons of a description specified by the regulations, to pay amounts specified by the regulations to any fund which is maintained by virtue of sub-paragraph (1)(a);
- (b) requiring registered persons, or registered persons of a description specified by the regulations, to make payments towards the premium payable on any insurance policy which is maintained by virtue of sub-paragraph (1)(b);
- (c) prescribing the conditions which an insurance policy must satisfy for the purposes of sub-paragraph (1)(c);
- (d) as to the investment of any money that forms part of a fund which is maintained by virtue of sub-paragraph (1)(a) and otherwise as to the management, administration, insurance or protection of any such fund;
- (e) as to the circumstances in which a grant or other payment may or may not be made under the compensation arrangements;
- (f) as to the procedure for making and determining claims under the arrangements; and
- (g) as to the minimum and maximum amounts payable in respect of any claim or claim of a description specified by the regulations.

Power to make indemnification and compensation arrangements for both registered persons and licensed bodies

10.—(1) The powers to make indemnification arrangements or compensation arrangements which are conferred on ITMA by virtue of paragraph 9(1) and (2) may be exercised so that the arrangements apply also in relation to—

- (a) a licensed body or a body which has been but no longer is a licensed body in connection with the body's activities as a licensed body; and
- (b) managers and employees of licensed bodies in connection with the activities of those licensed bodies.

(2) Regulations made by ITMA under paragraph 9(2) may also include provision for the purpose of giving effect to sub-paragraph (1) which requires licensed bodies, or licensed bodies of any specific description to—

- (a) pay specified amounts to a fund which is maintained by virtue of paragraph 9(1)(a); and

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- (b) make payments towards the premium payable on any insurance policy which is maintained by virtue of paragraph 9(1)(b).
- (3) Anything permitted by virtue of this paragraph in relation to a fund or an insurance policy may be done irrespective of the persons or bodies who contributed the money.
- (4) In this paragraph and paragraph 11, “licensed body” means a body which holds a licence in force under Part 5 of the 2007 Act which is granted by ITMA.

Power to make joint indemnification and compensation arrangements with CIPA

11.—(1) If ITMA and CIPA are satisfied that it would be appropriate for them to act jointly in establishing and maintaining indemnification arrangements or compensation arrangements, the powers which are conferred on ITMA by virtue of paragraphs 9(1) and (2) and 10(1) and (2) may each be exercised so as to create a single set of arrangements which apply to—

- (a) both registered persons and regulated persons as defined in paragraph 14 of this Schedule and registered persons and regulated persons as defined in paragraph 14 of Schedule 2; or
- (b) both persons within paragraph 10(1)(a) or (b) of this Schedule and persons within 10(1) (a) or (b) of Schedule 2; or
- (c) both persons within paragraph (a) and persons within paragraph (b).

(2) Where indemnification arrangements or compensation arrangements made by virtue of this paragraph require any registered person (as defined in paragraph 14 of this Schedule) or licensed body to make contributions to the same fund or towards the same insurance policy, anything that may be done in relation to the fund or the insurance policy may be done irrespective of the persons or bodies who contributed the money.

Part 3

Powers of intervention

Powers of intervention

12.—(1) Subject to the modifications set out in sub-paragraphs (2) to (4), Schedule 14 to the 2007 Act (licensing authority’s powers of intervention) applies in relation to—

- (a) ITMA acting in its capacity as an approved regulator (other than in its role, if any, as a licensing authority);
- (b) registered persons; and
- (c) managers or employees of registered persons,

as it applies in relation to a licensing authority, the licensed bodies for which it is the licensing authority and the managers and employees of such licensed bodies.

(2) References in Schedule 14 to the 2007 Act to—

- (a) a licensing authority or the relevant licensing authority are to be read as references to ITMA;
- (b) a licensed body are to be read as references to a registered person;
- (c) an employee of a licensed body are to be read as references to an employee of a registered person;
- (d) a manager of a licensed body are to be read as references to a manager of a ITMA-registered body;

- (e) the terms of a licensed body's licence are to be read as references to the requirements to be met by a registered person in order to be an authorised person;
 - (f) the revocation of a licensed body's licence are to be read as references to the cancellation of a registered person's authorisation;
 - (g) the suspension of a licensed body's licence are to be read as references to the suspension of a registered person's authorisation; and
 - (h) a licensed body's licence expiring without being renewed or replaced are to be read as references to a registered person's authorisation ceasing to have effect without being renewed.
- (3) Paragraph 1 of Schedule 14 has effect as if—
- (a) after sub-paragraph (2)(e) there were inserted—
 - “(ea) that the registered person is an individual who is practising as a sole practitioner and one or more of the following apply—
 - (i) the individual has been committed to prison in any civil or criminal proceedings;
 - (ii) ITMA is satisfied that the individual has been incapacitated by illness, accident or age to such an extent as to be unable to attend to the individual's practice;
 - (iii) the individual lacks capacity (within the meaning of the Mental Capacity Act 2005(3)) to act as a registered person and powers under sections 15 to 20 or 48 of that Act (general powers of the court, interim orders and directions) are exercisable in relation to the individual;
 - (iv) ITMA is satisfied that the individual has abandoned the individual's practice as a registered person;
 - (v) the individual has made a composition or arrangement with his creditors;
 - (vi) any power conferred by this Schedule has been exercised in connection with suspected dishonesty on the part of the individual by virtue of paragraph (d) and the individual has practised as a sole practitioner within the period of 18 months beginning with the date on which the power was so exercised.
 - (eb) that the registered person was an individual who has died and who, before or at the time of their death, was practising as a sole practitioner and one or more of the following apply—
 - (i) ITMA is satisfied that there has been undue delay on the part of the individual's personal representatives in connection with the individual's practice or any trust of which the individual acting as a registered person was a trustee;
 - (ii) ITMA has reason to suspect dishonesty on the part of the individual or the individual's personal representatives in connection with the individual's business or any trust of which the individual acting as a registered person was a trustee.”
 - (b) for sub-paragraph (3) there were substituted—
 - “(3) For the purposes of sub-paragraph (2) a relevant insolvency event occurs in relation to a registered person if,—

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- (a) in the case of a registered person who is an individual, the person has been adjudged bankrupt or has made a composition or arrangement with the person’s creditors in England or Wales; or
- (b) in the case of a registered person who is a ITMA-registered body in England or Wales—
 - (i) a resolution for a voluntary winding-up of the body is passed without a declaration of solvency under section 89 of the Insolvency Act 1986⁽⁴⁾ (statutory declaration of solvency);
 - (ii) the body enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act⁽⁵⁾ (administration);
 - (iii) an administrative receiver within the meaning of section 251 of that Act⁽⁶⁾ (interpretation) is appointed;
 - (iv) a meeting of creditors is held in relation to the body under section 95 of that Act (effect of company insolvency);
 - (v) an order for the winding up of the body is made; or
 - (vi) a compromise or arrangement between the body and its creditors (or a class of them) is in force.
- (c) in the case of a registered person who is a ITMA-registered body, established outside the jurisdiction of England and Wales, the body is—
 - (i) subject to an event in its country or, as the case may be, territory of incorporation that corresponds to an event as set out in sub-paragraphs (b) (i) to (v); or
 - (ii) subject to an event that corresponds to an event as set out in sub-paragraph (b)(vi).”;
- (c) for sub-paragraphs (5) and (6) there were substituted—
 - “(5) Where this Schedule applies in relation to a registered person by virtue of sub-paragraph (1)(a) it continues to apply—
 - (a) in the case of a registered person who is an individual—
 - (i) after the individual’s death (and for these purposes, the Schedule is to be treated as applying to a personal representative of the individual as it would apply to a registered person);
 - (ii) after the individual’s name has been removed from the register or the individual’s registration has otherwise ceased to have effect;
 - (b) in the case of a ITMA-registered body, after the body’s name has been removed from the register or the body’s registration has otherwise ceased to have effect.
 - (6) For the purposes of this Schedule “registered person” includes—
 - (a) a person whose registration is suspended;
 - (b) a person to whom this Schedule continues to apply by virtue of sub-paragraph (5);
 - (c) except in this paragraph, a person whose name has been removed from the register or whose registration has otherwise ceased to have effect.”.

⁽⁴⁾ 1986 c.45. To which there are amendments not relevant to this Order.

⁽⁵⁾ Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c.40). To which there are amendments not relevant to this Order.

⁽⁶⁾ Amended by S.I.s 1986/1924, 2009/864 and 2010/18.

(4) Paragraph 18 of Schedule 14 has effect as if in sub-paragraph (2) there were inserted before paragraph (a)—

“(za) if the registered person is an individual who is or was a partner in a partnership, any of the individual’s partners or former partners;”.

Part 4

Treatment of Money

13. ITMA must make regulations which make provision as to the treatment of money (including money held on trust) which is received, held or dealt with for clients, or other persons, by registered persons or regulated persons, and as to the keeping by such persons of accounts in respect of such money.

Part 5

Interpretation

14.—(1) In this Schedule—

“registered person” means—

- (a) an individual who is both registered and authorised by ITMA acting in its capacity as an approved regulator; or
- (b) an ITMA-registered body;

“regulated person” means a person who is not a registered person but is a manager or employee of a body which is a registered person;

“trade mark attorney regulations” means regulations which apply to registered persons and which are made by ITMA acting in its capacity as an approved regulator under either—

- (a) section 83A of the 1994 Act; or
- (b) this Order.

(2) In relation to an ITMA-registered body, references in this Schedule to a regulated person include the Head of Legal Practice and the Head of Finance and Administration of that body.

(3) Regulations under this Schedule may—

- (a) make provision generally or subject to exceptions or only in relation to specified cases;
- (b) make different provision for different cases or circumstances or for different purposes.