



ANNEX 2

SUMMARY OF PROPOSED FUNCTIONS ROLES AND PROCESSES

INTRODUCTION

1. This document sets out the process for authorising and monitoring entities seeking to be licensed and regulated by IPS.
2. Once authorised, entities and the individuals employed by them will be expected to abide by and adhere to the IPS Code of Conduct and any associated rules and guidance developed by IPS.
3. The application entities will need to make to become regulated by IPS will include an application for approved individuals to act in management roles and the roles of HoLP (Head of Legal Practice) and HoFA (Head of Finance and Administration).

AUTHORISATION - SUMMARY OF NEW APPLICATION PROCESS

4. The purpose of the Authorisation function is to ensure that individuals and entities applying to be authorised by IPS are fit to be authorised by IPS. It is also key to ensuring that the risks posed by an entity applying to be authorised by IPS are understood at the outset. The application of the Risk Framework at **Annex 1** will guide IPS as to what action to take in response to each risk.
5. A summary of the proposed authorisation process is set out below:
6. Receive Application Form: to be available to entities (prospective authorised bodies) on the IPS website and in hard copy from the IPS Risk Unit (IRU). The application form will ask for information about the entity, its structure, the processes and procedures it will have in place and the activities it seeks to undertake. The application will be supplemented with additional applications for the approval of individual managers and the HoLP and HoFA.

7. Initial Application Risk Assessment: Once the application is received a member of the IRU will assess the application using the IPS Risk Framework in order to determine whether to authorise the entity if the entity has demonstrated through its application that it has effective risk management procedures in place, and if the probability and impact of any potential risks are deemed low enough to grant authorisation without an Advanced Risk Assessment (Application Visit).
8. Supporting Documents: In the case of new entities a Business Plan including budgeting information will be required. The entity will also be required to consent to third party checks including CRB checks on the HoLP and HoFA and any other personnel involved in managing the entity. If the entity has applied for (or has existing) indemnity insurance then copies of the insurance documents including the application for insurance will be obtained. The entity will also be asked to submit a Risk Management Plan which sets out the entity's approach to risk management including how it will manage and review risk going forward.
9. Application Consideration Period: IPS has 3 months to consider the application from its date of receipt. IPS may contact the entity within this period to seek more information in support of the application. The application consideration period can be extended but such an extension should not exceed 6 months from the date of the original application. The application will not progress unless the information requested by IPS is received. If the information is not received within 3 months of the original application (or within the agreed extension period) then the application will have been deemed to have lapsed and a fresh application will be required.
10. Application Visit: Once the initial application has been reviewed IPS may then schedule an application visit. The scope of a visit will match the complexity of the entity.
11. If the entity has more than one location IPS will normally visit the main office in England or Wales from which the entity conducts or seeks to conduct legal services, although details of each application visit will be agreed with the entity on a case by case basis. IPS will usually only authorise entities with a base in England and/or Wales. However, if the entity is based overseas or has its main base of operations overseas IPS will need to examine the risks of authorisation and ongoing monitoring more carefully.
12. The visit will test the validity of the information provided on the application and the accuracy of the subsequent Basic Risk Assessment, and will result in one of the following outcomes:
13. Authorisation Granted: If the application visit verifies that the application for authorisation is accurate including that the entity has the necessary personnel, systems and procedures in place to manage risk effectively, authorisation will be granted and the entity will receive notice of this within 28 days.

14. Conditional Authorisation: If there are risks that require action that IPS believes the entity would be able to deal with within 3 months of the date of the application visit the entity will receive a Conditional Authorisation. The condition will be that the entity will put in place an action plan to manage and mitigate risk to the satisfaction of IPS. The entity must agree to provide evidence that the required improvements will have been made within this timescale. The entity will have received a report outlining the areas of risk that require action. The report will be provided within 28 days of the application visit. Once the appropriate action has been undertaken to the satisfaction of IPS then the entity will be granted unconditional authorisation. If the required action is not taken IPS will explore what steps to take next.
15. Authorisation Rejected: Where the assessment of the entity shows that it presents risks which cannot be managed or are unacceptable to IPS the applicant will receive a report within 28 days of the application visit, (or within 28 days of the end of the 3 month conditional authorisation period above), with an Authorisation Rejection Notice. The Notice will include a report giving reasons why the application has been rejected. The entity will have the right to appeal to IPS within 14 days of the rejection notice.
16. Appeals Process: Where an entity wishes to exercise their right to appeal they must set out the grounds for appeal in writing. The appeal will first be considered by the IPS Operational Risk Board (ORB). A representative of the entity will be given the opportunity to attend the Appeal hearing and make further representations. If the appeal is rejected the entity will receive confirmation within 7 days of the appeal hearing. If the appeal is upheld the entity will receive a Conditional Authorisation After Appeal Notice (see below) with the condition being that the entity will address all of the concerns to the authorisation expressed by IPS within 3 months of the appeal date. If evidence of this is not provided by the entity within this timescale the authorisation will be cancelled.
17. Conditional Authorisation After Appeal: As part of the Conditional Authorisation After Appeal process the entity will agree to a further IPS inspection visit within 12 months of the appeal being upheld. Full authorisation will be granted after the 12 month visit if all the conditions have been rectified. If not then a further Conditional Authorisation will be granted or authorisation will be revoked, and the steps outlined above regarding Conditional Authorisation and Authorisation Rejection will be followed where applicable.
18. License Revocation: If IPS receives any intelligence that the authorised entity has breached the terms of its authorisation either from the entity itself or from any other source, including complaints, IPS reserves the right to undertake further investigations. If such breaches are proved then the entity may have its license revoked, although it will be entitled to appeal against revocation by going through the appeals process mentioned previously.

AUTHORISATION - SUMMARY OF EXISTING ENTITY APPLICATION PROCESS

19. The application process for existing entities, including those formerly regulated by another legal services regulator, will be the same as that for new entities, although the entity will be required to consent to IPS approaching its previous regulator(s) to verify any information supplied.
20. The entity will be required to provide a Business Plan plus annual accounts for the last 3 years (or the accounts since commencement of operation if less than 3 years) and details of any indemnity insurance claims. Copies of previous and existing indemnity insurance documents will also be required.

KEY ROLES - HEAD OF LEGAL PRACTICE (HoLP) & HEAD OF FINANCE AND ADMINISTRATION (HoFA)

21. All entities authorised by IPS must have a person designated as HoLP and HoFA. The roles must be undertaken by individual(s) of sufficient seniority and in a position of sufficient responsibility to fulfil the roles. The HoLP must also be a lawyer of England and Wales. The HoLP must take all reasonable steps to ensure compliance with the terms and conditions of the entity's authorisation and IPS regulatory requirements except any obligations imposed under IPS Accounts Rules which are the responsibility of the HoFA.
22. The HoLP is the authorised person required to ensure compliance with any statutory obligations of the body, its managers, employees or interest holders in relation to the body's carrying on of authorised activities, and to record any compliance failures and make such records available to IPS upon request.
23. Compliance failures will need to be recorded by the HoLP in a Risk Register which must be submitted as part of the authorised body's annual return. If the compliance failure is 'material' then this failure must be reported to IPS as soon as reasonably practicable. In considering whether a failure is 'material' and therefore reportable, the HoLP or HoFA, as appropriate, will need to take account of various factors, such as the detriment or risk of detriment to clients, the extent of any risk of loss of confidence in the firm or in the provision of legal services, the scale of the issue, and the overall impact on the firm its clients and third parties.

UPDATING AUTHORISED BODY INFORMATION

24. The HoLP (or an appointed deputy if the HoLP is not available) will primarily be responsible for notifying IPS of any changes that may affect the organisation's authorisation. Changes will include, but will not be limited to, changes in the

management team, change in the organisation (merger/takeover) and long term absence of key staff.

25. The HoLP will be required to update IPS of any changes before any change occurs, in a specified period to be determined by IPS. If the change was one that was not anticipated then the HoLP will have 28 days after the change has occurred to inform IPS of the change.

RISK MANAGEMENT PLAN AND ANNUAL RETURN

26. At each anniversary of the grant of the original application the entity will be required to make an annual return and pay an annual regulatory fee to IPS. The Annual Return will include the Risk Register which will record all compliance failures that have occurred at the entity within the last year, and the action taken or to be taken (if any) to remedy risk or prevent the recorded risks from re-occurring.
27. Accounting information will need to be provided in the form of an annual Accountants Report which will be signed by the entity's qualified reporting accountant. The format of the Accountants Report will be decided upon by IPS.

MONITORING, INVESTIGATION AND ENFORCEMENT

28. In addition to its work in authorising entities the IPS Risk Unit (IRU) will be responsible for undertaking all day to day risk activity from Authorisation to ongoing Monitoring. IRU will also be responsible for undertaking further Investigation and taking Enforcement action against those entities where material risk events have or are likely to occur.
29. After the Authorisation stage authorised entities will be responsible for ensuring that they take responsibility for managing risk effectively in their own organisation. IPS will however conduct 'spot check' monitoring visits on a proportion of entities to ensure that they have been meeting their risk management and compliance obligations in practice.
30. The level of monitoring required will vary according to the risk posed by the entity. IPS will aim to monitor lower risk entities using a combination of desk-based assessment and on-site visits.
31. Monitoring of larger entities may also take the form of relationship management where the entity will have a dedicated IPS contact where the level of engagement and support provided may be more frequent.
32. If intelligence on an authorised body is received from any source that indicates that material (serious) or potentially material risks have or are likely to occur IPS

may need to conduct a detailed investigation. In certain circumstances an intervention may be necessary to ensure that the interests of clients are protected.

GOVERNANCE

33. IPS will manage the functions through a proposed Governance Framework containing the following functions:

The IPS Risk Unit (IRU)

34. The IRU will perform day to day risk operations including the roles of Authorisation, Monitoring, Investigation and Enforcement. This will encompass conducting Basic and Advanced Risk Assessments on entities, preparing analyses for the ORB and SRB functions shown below, and advising the ORB on the use of the Risk Framework.

The (ORB) Operation Risk Board

35. The ORB will be responsible for oversight of entity regulation and risk management. The ORB will also be responsible for ensuring that the IPS Risk Framework continues to operate effectively in terms of its consistency and ability to adapt to external market developments such as emerging markets, new legislation, and new types of business structures.

36. Representatives of the ORB will review individual cases to quality assure the work of IRU staff and make decisions regarding the application of sanctions and corrective action enforcements.

The Strategic Risk Board (SRB)

37. The SRB will define the IPS risk strategy using the information it receives from the ORB.

38. The SRB will assess Risk Framework application data and assess scoring thresholds to determine the focus for IPS entity regulation. The SRB will also continually review Risk Operations to improve the Framework and application of the Risk Strategy.