

## Accompanying Note to 11 January 2024 SGM Notice:

The purpose of this Note is first, to ensure members are aware of and understand that this Special General Meeting will not include a vote on the matters raised in the attached Notice that relate to the discharge and in particular the delegation of CILEX's regulatory functions, as members are not permitted to influence CILEX's decision-making in this regard. Second, this Note sets out to explain in detail the legal framework that accounts for this.

On the basis that the overall aim and therefore net impact of the proposed amendments contained within the proposed resolutions attached to the SGM request are with regard to the delegation of CILEX's regulatory function, if any such amendments were to be put to an SGM or any action taken further to the passing of the resolutions, this would lead to CILEX acting contrary to the Legal Services Act 2007 (LSA) and the Internal Governance Rules (IGR). CILEX, as a body subject to public law, cannot take action that it knows to be unlawful.

As members will be aware, this legislative framework was introduced in 2007 to ensure the independence between the decisions and actions of approved regulators in relation to their representative functions and regulatory functions. This is a critical plank of the regulation of legal services which must be driven by the public interest and not be influenced by representative interests. Whilst members' have important rights further to the constitution, these are subject to, or put differently, have to align with the overarching public interest legal framework in which CILEX is bound to operate.

The power of delegation of its regulatory functions (including the decision whether to exercise it) is itself a function that an approved regulator has under or in relation to its regulatory arrangements or in connection with the making or alternation of those arrangements, such that it is a regulatory function as defined in s. 27(1) of the LSA 2007. This aligns with the carve-out from the definition of regulatory functions in the IGR, which provide that regulatory functions has the meaning given in s. 27(1) of the LSA 2007 "except for functions relating to the arrangements for delegation of regulatory functions to a regulatory body and assurance of compliance with Section 28 of the Act, in accordance with Rule 2". Representative functions are defined in s. 27(2) of the LSA 2007 as "any functions the approved regulator has in connection with the representation, or promotion, of the interests of persons regulated by it".

It follows that:

- CILEX's overarching duty under Rule 1(1) of the IGR to ensure that the exercise of its regulatory functions is not prejudiced by its representative functions applies to the decision whether or not to re-delegate its regulatory functions.
- CILEX's obligation under Rule 1(2) of the IGR to have arrangements in place to separate its regulatory functions from its representative functions, and to maintain the independence of its regulatory functions, as effectively as is reasonably practicable and consistent with s. 28 of the LSA 2007 is engaged by a proposal to amend CILEX's internal arrangements for taking any decision on re-delegation.
- In taking any decision on re-delegation, CILEX must comply with s. 28 of the LSA 2007, including acting so far as reasonably practicable in a way which is compatible with the regulatory objectives and in way which CILEX considers is most appropriate for the purposes of meeting those objectives.

Holding a member vote on whether to re-delegate CILEX's regulatory functions would contravene section 28 of LSA and Rule 1 of the IGR. CILEX could not ensure strictly that in voting on any proposed re-delegation CILEX members were not acting further to the promotion of their own interests as CILEX members, as opposed to considerations solely relating to how most appropriately to discharge CILEX's regulatory objectives under section 28 of the LSA 2007. Indeed Resolution Two provides that the member vote on re-delegation will be "*in relation to whether re-delegation of regulation is in the public and member interest*". Putting the resolutions in relation to re-delegation forward would put CILEX in breach of its obligation under Rule 1(2) of the IGR, in that they would undermine CILEX's arrangements to separate its regulatory from its representative functions and maintain the independence of its regulatory functions. CILEX has to be able to demonstrate that any decision on re-delegation has not been influenced by representative considerations (in a way which would be undermined if matters were put to a member vote).