

Regulatory Independence Certification

On behalf of The Institute of Legal Executives, an approved regulator designated under section 20 and Schedule 4 of the Legal Services Act 2007, we jointly certify that we have in place arrangements that comply with the requirements of the Internal Governance Rules 2009 and that in particular:

- (1) observe and respect the principle that structures or persons with representative functions must not exert, or be permitted to exert, undue influence or control over the performance of regulatory functions, or any person(s) discharging those functions;
- (2) ensure that persons involved in the exercise of our regulatory functions are, in that capacity, able to make representations to, be consulted by and enter into communications with any person(s) including but not limited to the Legal Services Board, the Consumer Panel, the OLC and other Approved Regulators;
- (3) ensure that the exercise of our regulatory functions is not prejudiced by our representative functions or interests;
- (4) ensure that the exercise of our regulatory functions is, so far as reasonably practicable, independent of our representative functions;
- (5) ensure that such steps are taken as are reasonably practicable to ensure the provision of such resources as are reasonably required for or in connection with the exercise of our regulatory functions; and
- (6) ensure that persons involved in the exercise of our regulatory functions are able to notify the Legal Services Board where they consider that their independence or effectiveness is being prejudiced.

Signed:

The Institute of Legal Executives



President



Chief Executive

ILEX Professional Standards Ltd



Chair



Chief Executive

Principle 1: Governance

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Specific questions for answer by AAR.
<p>A. Each AAR must delegate responsibility for performing all regulatory functions to a body or bodies without any representative functions.</p>	<p>No arrangements have changed since the last submission</p>	<p>N/A</p>	<p>No specific questions</p>
<p>B. The regulatory body or, if more than one, each of the regulatory bodies, must be governed by a board or equivalent structure</p>	<p>No arrangements have changed since the last submission</p>	<p>N/A</p>	
<p>C. In appointing persons to regulatory boards, AARs must ensure that:</p> <ul style="list-style-type: none"> • a majority of members of the regulatory board are lay persons; and • the selection and appointment of a chair is not restricted by virtue of any legal qualification that person may or may not hold, or have held. 	<p>No arrangements have changed since the last submission</p>	<p>N/A</p>	

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
An AAR should take all reasonable steps to agree arrangements made under these Rules with the regulatory body or, as the case may be, the regulatory bodies.	No arrangements have changed since the last submission
<p>If an AAR wishes otherwise than through its regulatory body/bodies to offer guidance to its members or more widely on regulatory matters, it should:</p> <ul style="list-style-type: none"> • ensure that it does not contradict or add material new requirements to any rules or guidance made by the regulatory body/bodies; and • consult with the regulatory body/bodies when developing that guidance 	No arrangements have changed since the last submission

The Principle	Explanation of any other arrangements in place that bare on the principle and in particular how those arrangements comply with the principle
Nothing in an Applicable Approved Regulator's (AAR's) arrangements should impair the independence or effectiveness of the performance of its regulatory functions	No arrangements have changed since the last submission

Principle 2: Appointments etc

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Specific questions for answer by AAR.
<p>A. All appointments to a regulatory board must be made on the basis of selection on merit following open and fair competition, with no element of election or nomination by any particular sector or interest groups.</p>	<p>New dismissal arrangements have been introduced.</p>	<p>See attached Protocols at Annexe 4.</p>	<p>1) Please provide an update your dismissal arrangements for IPS board members and confirm whether these arrangements now require LSB concurrence?</p> <p>ILEX: Included in our Protocols, concurrence from LSB now required.</p>
<p>B. The selection of persons so appointed must itself respect the principle of regulatory independence and the principles relating to “appointments etc” set out in the Schedule.</p>	<p>No arrangements have changed since the last submission</p>	<p>N/A</p>	
<p>C. Decisions in respect of the remuneration, appraisal, reappointment and discipline of persons appointed to regulatory</p>	<p>No arrangements have changed since the last submission</p>	<p>N/A</p>	

boards must respect the principle of regulatory independence and the principles relating to “appointments etc” set out in the Schedule.			
D. Except insofar as an AAR would be, or would reasonably be considered likely to be, exposed to any material legal liability (other than to pay wages, salaries etc) as a consequence of the delay required to obtain the concurrence of the Board, no person appointed to a regulatory board must be dismissed except with the concurrence of the Board.	No arrangements have changed since the last submission	N/A	
E. No person appointed to and serving on a regulatory board must also be responsible for any representative function(s).	No arrangements have changed since the last submission	N/A	

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
If regulatory boards do not lead on managing the appointments process, it should have a very strong involvement at all stages.	No arrangements have changed since the last submission
Best practice for public appointments should be taken into account. In particular, account should be taken of the Code of the Commissioner of Public Appointments insofar as relevant.	No arrangements have changed since the last submission
Appointment panels or equivalent should be established following the guidance set out in the Board's letter of 2 December 2008 ¹ .	No arrangements have changed since the last submission
The chair of the regulatory board (or an alternate) should always form part of that panel, unless the panel is established to select the chair (in which case another member of the regulatory board should participate).	No arrangements have changed since the last submission
The appointments process should be conducted with regard to the desirability of securing a diverse board with a broad	No arrangements have changed since the last submission

¹ See: <http://www.justice.gov.uk/news/docs/legal-services-board-open-letter-021208.pdf>

<p>range of skills. The framework applied at Schedule 1 paragraph 3 of the Act serves as a useful template.</p>	
<ul style="list-style-type: none"> • Remuneration – decisions in respect of regulatory board pay and conditions should be made having regard to best practice and in any event should not be controlled wholly or mainly by persons responsible for representative functions; • Appraisals – while persons with representative functions may be consulted about regulatory board members’ appraisal, they should not be involved formally in agreeing the outcome, or future objectives; • Reappointments – decisions should be guided by objective appraisals and the desirability of ensuring a balance between regular turnover <u>and</u> continuity. 	<p>No arrangements have changed since the last submission</p>
<p>While the LSB accepts that there may be <u>exceptional</u> reasons which justify immediate dismissal without concurrence having first been obtained, it would expect</p>	<p>No arrangements have changed since the last submission</p>

<p>a full explanation if such circumstances were ever to arise. An AAR should accordingly be prepared to justify why it could not comply with the relevant Rule.</p>	
<p>Where an AAR proposes to discipline one or more member(s) of a regulatory board, where such discipline is short of dismissal, the Board should be consulted privately in advance of the action being taken, and the AAR should consider any representations the Board may chose to make.</p>	<p>No arrangements have changed since the last submission</p>
<p>Where possible, a person appointed should not have been responsible for any representative functions immediately prior to appointment. The longer the gap between holding responsibility for representative functions and taking up regulatory functions, the more likely it is that the principle of regulatory independence will be observed.</p>	<p>No arrangements have changed since the last submission</p>
<p>Codes of conduct or equivalent for board members should highlight the importance of observing and respecting the regulatory objectives and the principles of better regulation, rather than operating to represent any one or more sectoral</p>	<p>No arrangements have changed since the last submission</p>

<p>interests.</p> <p>Codes should also highlight the importance of respecting the principle of regulatory independence, as underlined by the provisions of sections 29 and 30 of the Act.</p>	
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The Principle	Explanation of any other arrangements in place that bare on the principle and in particular how those arrangements comply with the principle
<p>(1) Processes in place for regulatory board members' appointments, reappointments, appraisals and discipline must be demonstrably free of undue influence from persons with representative functions.</p> <p>(2) All persons appointed to regulatory boards must respect the duty to comply with the requirements of the Legal Services Act 2007.</p>	<p>No arrangements have changed since the last submission</p>

Principle 3: Strategy and Resources etc

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Specific questions for answer by AAR.
<p>A. Defining and implementing a strategy should include:</p> <ul style="list-style-type: none"> • access to the financial and other resources reasonably required to meet the strategy it has adopted; • effective control over the management of those resources; and • the freedom to govern all internal processes and procedures. 	<p>No arrangements have changed since the last submission</p>	<p>N/A</p>	<p>2) Has an assessment been made regarding the performance, quality and timeliness of services received by IPS from ILEX? What was the process and outcome and is there a timeline for the adoption of any recommendations? If not, how do you judge and monitor performance of the services and whether the quality of service impacts on effective regulation of legal executives?</p> <p>ILEX: Yes, a performance assessment took place in accordance with Section 9 of the SLA. The Head of Corporate Affairs met with each SLA Manager to review performance, quality and timeliness, as detailed in the SLA Schedules. The Head of Corporate Affairs had pre-requested feedback from IPS on each of the service areas, so that this could also be discussed with each SLA Manager. There were minor changes to the SLA, mainly in respect of timescales for service delivery. These were requested by IPS and have been agreed by the SLA Manager and are now in operation. The new SLA has been approved by the IPS Board and ILEX Council.</p>
<p>B. The regulatory body (or each of the regulatory bodies) must have the power to do anything within its allocated budget calculated to facilitate, or incidental or conducive to, the carrying out of its functions.</p>	<p>No arrangements have changed since the last submission</p>	<p>N/A</p>	<p>3) Have there been any occasions where the IPS's access to shared services has fallen below required standards? How have these issues been resolved?</p> <p>ILEX: No.</p> <p>4) Please detail the process by which decisions are</p>

			<p>taken to seek extensions to ILEX's regulatory powers and what factors are taken into account? How are the issues of regulatory resources and capacity considered in such decisions? Which decision making bodies are involved in the decision to make an application?</p> <p>ILEX: ILEX recently decided to pursue extension to its regulatory powers; agreeing that IPS would make an applications on ILEX's behalf to become a licensing authority. The decision process was relatively detailed. Initially IPS set up an ABS Working Party which was set up to determine in consultation with ILEX, the benefits and risks of ILEX becoming a licensing authority. The working party undertook a substantial amount of research and scoping work. It produced a proposal paper and project plan identifying the likely expenditure needed for developing and running the scheme and presented it to the ILEX Council and IPS Board for consideration, recommending that ILEX ask IPS to make an application on its behalf to become a licensing authority. The recommendation went initially to the IPS Board and was then agreed by ILEX Council. The recommendation was subsequently confirmed by the IPS Board.</p>
<p>C. Insofar as provision of resources is concerned, arrangements must provide for transparent and fair budget approval mechanisms.</p>	<p>No arrangements have changed since the last submission</p>	<p>N/A</p>	
<p>D. Insofar as provision of any non-financial resources is concerned (for example, services from a common corporate service provider, or staff), arrangements must provide for transparent and fair dispute resolution mechanisms.</p>	<p>No arrangements have changed since the last submission</p>	<p>N/A</p>	

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
<p>The Act requires separation of regulatory and representative functions. Absent of corporate management structures that are robustly and demonstrably separated from</p>	<p>No arrangements have changed since the last submission</p>

<p>the control of persons with representative functions, these Rules are likely to require a high degree of delegation to regulatory bodies in respect of the control of strategy and resourcing.</p>	
<p>What is or is not a regulatory function is determined in accordance with the Act. Subject to the Act, whether something is 'regulatory' should be for each regulatory body to determine, in close consultation with respective AARs.</p>	<p>No arrangements have changed since the last submission</p>
<p>Where members of staff are employed by an AAR to discharge regulatory functions under the delegated remit of a regulatory body, the position of the AAR as legal employer should be recognised in the arrangements made under these rules. However, in complying with these Rules, those arrangements should make clear how decisions with respect to the management and control of such members of staff are to be exercised. The presumption under such arrangements should be – subject only to being exposed to unreasonable liability (such as in</p>	<p>No arrangements have changed since the last submission</p>

<p>creating a pension scheme) – that an AAR should always agree a reasonable request from its regulatory body. While an AAR has a right of veto, therefore, it also carries a responsibility to justify that decision in light of the principle of regulatory independence. The Board may from time to time issue further illustrative guidance on these issues under Rule 11 of these Rules.</p>	
<p>Each regulatory body should act reasonably when defining and implementing its strategy, and should in particular have regard to the provisions of Section 28 of the Act. It should also have due regard to the position of the AAR and in particular to any responsibilities or liabilities it may have as AAR.</p>	<p>No arrangements have changed since the last submission</p>
<p>Each regulatory body should act reasonably when exercising its functions in accordance with this Rule, and should in particular have regard to the provisions of Section 28 of the Act. It should also have due regard to the position of the AAR and in particular to any responsibilities or liabilities it may have as AAR.</p>	<p>No arrangements have changed since the last submission</p>
<p>The process established by the AAR</p>	<p>No arrangements have changed since the last submission</p>

<p>should provide appropriate checks and balances between it and the regulatory body (or bodies) so as to ensure value for money and observe the wider requirements of the Act, without impairing the independence or effectiveness of the regulatory body (or bodies).</p>	
<p>Subject only to the formal budgetary approval process and the operation of its dispute resolution mechanism(s) , an AAR's arrangements should not prevent those performing regulatory functions, where they believe their independence and/or effectiveness is compromised or prejudiced, from obtaining required services otherwise than through the AAR.</p>	<p>No arrangements have changed since the last submission</p>
<p>AARs and regulatory bodies should be particularly careful to ensure that, in respect of public and/or consumer-facing services (including media relations and marketing-type activities), the principle of regulatory independence should be seen to be met, as well as being met.</p>	<p>No arrangements have changed since the last submission</p>
<p>When considering whether arrangements meet the required standards, the Board will consider factors such as:</p>	<p>No arrangements have changed since the last submission</p>

<ul style="list-style-type: none"> • evidence that the provision of services to the regulatory body (or bodies) is not subordinate to the provision of services to any other part of the AAR; • provision being made for service level agreements agreed between respective parties; and • transparent, fair and effective dispute resolution mechanisms being in place. 	
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The Principle	Explanation of any other arrangements in place that bare on the principle and in particular how those arrangements comply with the principle
<p>Subject only to the oversight permitted under Part 4 of this Schedule, persons performing regulatory functions must have the freedom to define a strategy for the performance of those functions and work to implement that strategy independently of representative control or undue influence.</p>	<p>No arrangements have changed since the last submission</p>

Principle 4: Oversight etc

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Specific questions for answer by AAR.
<p>A. Arrangements in place must be transparent and proportionate.</p>	<p>No arrangements have changed since the last submission</p>	<p>N/A</p>	<p>5) How are the views of ILEX taken into account when completing appraisals of the IPS's staff (and vice versa where appropriate)?</p>
<p>B. Arrangements in place must prohibit intervention, or the making of directions, in respect of the management or performance of regulatory functions unless with the concurrence of the Board.</p>	<p>No arrangements have changed since the last submission</p>	<p>N/A</p>	<p>ILEX: Other than for the Chair and Chief Executive of IPS, no ILEX views are taken into account when completing the appraisals of IPS staff or vice versa. Both the Chief Executive and Chair of IPS have a 360 review, which forms one part of their appraisal. Comments are invited from the ILEX Chief Executive and one or two ILEX Council Members for this part of the appraisal.</p> <p>Each SLA Manager at ILEX has specific mention of their responsibilities in relation to delivering the SLA included in their job description. A review of the job description is included in the appraisal process.</p> <p>6) How have the processes for oversight of the regulatory arm by the approved regulator worked over the last year, including information requests such as the sharing and publication of board papers at the appropriate time?</p> <p>ILEX: The processes have worked very well. The Chief Executive of IPS submits reports for noting to each Council meeting and the IPS Chair attends ILEX Council meetings. Conversely, the ILEX President attends IPS Board meetings. The publication of IPS Board reports to Council is always for noting, unless specific papers are presented requesting additional resources from ILEX to</p>

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LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
<p>In making its arrangements, an AAR should balance its ultimate responsibility for the discharge of regulatory functions with its responsibilities to ensure separation of regulatory and representative functions.</p>	<p>No arrangements have changed since the last submission</p>
<p>In considering proportionality, AARs should consider the risk of Board intervention. Note the Board’s policy statement on compliance and enforcement powers, and in particular the Board’s intention to use its most interventionist powers only when other measures (including informal measures) have failed.</p>	<p>No arrangements have changed since the last submission</p>
<p>In determining whether to give concurrence, the Board will consider the extent to which the process leading to the proposed intervention or directions complies with the principle of regulatory independence.</p>	<p>No arrangements have changed since the last submission</p>

The Principle	Explanation of any other arrangements in place that bare on the principle and in particular how those arrangements comply with the principle
<p>Oversight and monitoring by the AAR (which is ultimately responsible and accountable for the discharge of its regulatory functions) of persons performing its regulatory functions must not impair the independence or effectiveness of the performance of those functions.</p>	<p>No arrangements have changed since the last submission</p>

General Evaluation

The Approved Regulator

The Protocols and Service Level Agreements have proved fit for purpose, only requiring very minor modification. They continue to provide an excellent basis for ILEX and IPS to work together in a consistent manner, without undermining independence, regulation in the public interest or transparency.

The Regulatory Body

The Protocols and Service Level Agreements have proved fit for purpose, only requiring very minor modification. They continue to provide an excellent basis for IPS and ILEX to work together in a consistent manner, without undermining independence, regulation in the public interest or transparency.