

Regulatory Independence Certification

On behalf of Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys, both approved regulators 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:

Applicable Approved Regulator

_____ and _____

[President/equivalent]

[Chief Executive/equivalent]

Applicable Approved Regulator

_____ and _____

[President/equivalent]

[Chief Executive/equivalent]

Regulatory board

_____ and _____

[President/equivalent]

[Chief Executive/equivalent]

Principle 1: Governance

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>All parties have identified that the current Delegation Agreement requires amendment to reflect the changes made by IPReg since the last certificate. The amendment of the Delegation Agreement will be undertaken through the new AR Forum.</p>	<p>A new “AR Forum” has been established and had its first meeting in March.</p> <p>The forum consists of the Chairman of IPReg and the Lay Chairman of the IPReg Governance Committee, the Presidents of CIPA and of ITMA and one each patent and trade mark attorney not sitting on the Council of CIPA or ITMA.</p>	<p>IPREG’s progress to achieving a lay majority</p> <p>David Bream was appointed on 31st March 2011 as the fourth lay member of the PRB and the TRB for a term of two years.</p> <p>The Board had identified a need to have representation from consumers of intellectual property legal services.</p> <p>The advertisement for the post was sent to all registrants with a request that they forward the advertisement to their clients.</p> <p>The advertisement was also posted on the IPO website (as well as the websites of CIPA, ITMA and IPReg)</p> <p>Mr Bream was contacted by a registrant working at D Young & Co (a company registered with IPReg).</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 change</p>		<p>Four strong candidates were identified out 6 applications (the other 2 not meeting the primary criteria) and all four were interviewed by a panel chaired by Daniel Keenan (Lay Chair of the Governance Committee) plus the Chairman of the Board and one professional member. The decision was unanimous</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 	<p>Michael Heap is not, in accordance with the LSBs interpretation, a lay person, and the</p>	<p>See comments</p>	<p>The interview was “observed” by one of the two non Council representatives of the new AR Forum (see above). The observer left before the discussion and decision on the appointment.</p>

<p>regulatory board are lay persons; and</p> <ul style="list-style-type: none"> 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>intention remains that, on his retirement, he will be replaced by a lay person.</p>		<p>The operation of the various committees that sit below the regulatory boards</p> <p>The three committees have been reduced to two – namely Governance and EQCD (Education Qualification Conduct and Disciplinary – a review of this new EQCD committee structure will take place in July).</p> <p>The agenda and minutes of the two committees make it clear that the committees only make recommendations to the Boards and the recommendations are discussed and approved at the full board meetings (specimen documents attached).</p> <p>The board minutes are published on the IPReg website (specimen attached) and this procedure is, therefore, clear to the registrants.</p> <p>The EQCD Committee consists of 3 lay members and 2 each of the patent and trade mark attorney members.</p> <p>The Governance Committee consists of one each of the lay and patent and trade mark attorney members.</p> <p>No voting takes place at the meetings of either committee – if the members of the committees do not agree then the discussion is continued at the next meeting of the full boards.</p>
---	--	--	---

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
<p>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.</p>	<p><i>The provisions of the Delegation Agreement currently do not reflect the constitution (or appointments process). The intention is that the Agreement be amended when IPReg formulate proposed amendments to reflect the agreed practice.</i></p>
<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 	<p><i>The Institutes' Joint Business Practice Committee have prepared and are continuing to prepare notes on "common practice" in order to assist members on matters relating to practice. These notes avoid direct statements on conduct rules. They provide an indication on what is regarded as common practice amongst attorneys. An example is on handling conflict questions on client inception. IPReg have been invited to consult or comment and have indicated that they do not wish to be involved, nor do they propose to consult or comment on these notes.</i></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>Nothing in an Applicable Approved Regulator's (AAR's) arrangements should impair the independence or effectiveness of the performance of its regulatory functions</p>	<p>See above</p>

Principle 2: Appointments etc

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>See specific response</p>	<p>See specific response</p>	<p>Have you codified the arrangements for regulatory board appointments? If so what are the new arrangements? How have these worked over the year?</p> <p>The arrangements for the appointment of board members have been agreed by the PRB and the TRB although the existing Delegation Agreement remains to be varied to reflect that (see above comments regarding the AR Forum).</p> <p>However, in advance of the formal variation of the Delegation Agreement, the 2011 appointment of both the additional lay member and the two professional members adopted the agreed and identical procedure:</p> <ol style="list-style-type: none"> 1) The advertisement was sent to all registrants (and also posted on the websites of IPReg and CIPA and ITMA) 2) Anyone who was serving or had in the last 12 months served on the Council of CIPA or ITMA were not eligible to apply. 3) Applications were scored against the criteria specified in the advertisement by the Chairman and one lay member. 4) One Trade Mark member retired early and did not re-stand. The patent member who was due to retire stood for re-election and underwent the
<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>See specific response</p>	<p>See specific response</p>	
<p>C. Decisions in respect of the remuneration, appraisal, reappointment and discipline of persons appointed to regulatory boards must respect the principle of regulatory independence and the principles relating to</p>	<p>See specific response</p>	<p>See specific response</p>	

<p>“appointments etc” set out in the Schedule.</p>			<p>full formal process.</p> <p>5) Applications by the professional members were scored by the Chairman and one lay member.</p> <p>6) The current patent board member and the next strongest candidate were interviewed. The current patent board member was selected. Two trade mark applicants were interviewed and one selected.</p> <p>7) The interview was conducted by a panel of two lay and one professional member and the Chairman of IPRreg and was observed by the same non Council member of the AR Forum who had observed the lay interview.</p>
<p>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.</p>	<p>No change</p>	<p>No change</p>	
<p>E. No person appointed to and serving on a regulatory board must also be responsible for any representative function(s).</p>	<p>See specific response</p>	<p>See specific response</p>	

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.	<i>The appointments process has been entirely run by the regulatory arms.</i>
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.	<i>The process for appointment of the lay member was "fast track" in that it did not advertise in the public press but given the specific remit of the candidate (consumer of intellectual property services) wider publicity was unnecessary except if the process adopted (as described above) had had no or limited take up when a wider advertising campaign would have been undertaken.</i>
Appointment panels or equivalent should be established following the guidance set out in the Board's letter of 2 December 2008 ¹ .	<i>See above</i>
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).	<i>See above</i>
The appointments process should be	<i>See above</i>

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

<p>conducted with regard to the desirability of securing a diverse board with a broad 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><i>This issue has not yet arisen.</i></p> <p><i>IPReg have received guidance from the LSB and is finalising its proposed appraisal process. Once agreed by the PRB and TRB (meeting on 19th May) the process will be published.</i></p> <p><i>It is proposed, subject to board approval, that:</i></p> <ul style="list-style-type: none"> - <i>for new and future appointees the appraisal will take the form of one review meeting between the member and the Chairman one year into the usual 3 year term of appointment;</i> - <i>current board members will be appraised if they have two or more years remaining of their term of appointment and;</i> - <i>the Chairman will be appraised by two lay members after the first year and (if the appointment is for more than 3 years) again after the third year of their appointment.</i> <p><i>Soundings outside the Board will not be taken except in relation to the Chairman where soundings of the members of the AR Forum will be sought.</i></p>
<p>While the LSB accepts that there may be <u>exceptional</u> reasons which justify</p>	<p><i>No change</i></p>

<p>immediate dismissal without concurrence having first been obtained, it would expect 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><i>No change</i></p>
<p>Where possible, a person appointed should not have been responsible for any representative functions immediately prior to appointment.</p> <p>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><i>See above which describes the disqualification criteria imposed by the PRB and the TRB in relation to members of the CIPA and ITMA Council– this is as outlined in the 2010 Certificate. In addition the LSB has confirmed that under s27(2) of the Legal Services Act 2007 - only ARs are automatically barred but has given guidance that the risk of conflict if the candidate hold another representational type post should be addressed at interview and highlighted in the advertisement for the post. One 2011 candidate did have a recent representational role and this was explored in his interview.</i></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</p>	<p><i>See above</i></p>

<p>regulation, rather than operating to represent any one or more sectoral 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>	
---	--

The Principle	Explanation of any other arrangements in place that bear 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>See above</p>

Principle 3: Strategy and Resources etc

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>See specific response</p>	<p>See specific response</p>	<p>Please detail the current process in place for the setting IPREG’s budget and strategy? Has a suitable process for budget preparation and deliberation been put into place?</p> <p>Strategy</p> <p>IPReg publishes the minutes of the PRB and TRB meetings on its website. A policy of transparency has been adopted. The minutes therefore give a detailed picture of the work being undertaken.</p> <p>IPReg published its 2011 business plan on the website in September last year and attached the plan to its 2010 annual report (copy attached) which was issued to all registrants in March.</p> <p>The 2011 Business Plan will be published in June /July (ahead of the budget consultation)</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>See specific response</p>	<p>See specific response</p>	<p>IPReg has also undertaken soundings meetings with (separately) representatives of CIPA and of ITMA, of the Joint Examination Board and of newly qualified and trainee attorneys, attorneys in industry and also representatives of the relevant universities. Each soundings meeting adopted the same set of questions and were attended by the same board members (one lay, one patent and one trade mark board member) for consistency. The soundings will not be published but will inform the development of the IPReg Education Strategy.</p>

<p>C. Insofar as provision of resources is concerned, arrangements must provide for transparent and fair budget approval mechanisms.</p>	<p>See specific response</p>	<p>See specific response</p>	<p>Budget</p> <p>IPReg has published on its website:</p> <ul style="list-style-type: none"> • A comparison between the 2010 budget and the actual spend • The 2011 budget • The 2012 budget timeline. <p>The 2012 IPReg Budget will be set as follows</p> <ul style="list-style-type: none"> • The 2012 Business Plan will be considered at the Governance Committee meeting on 12th May for submission to the full Board on 19th May. • Following approval of the 2012 Business Plan, the resulting draft budget will be considered by the Governance Committee on 15th June. • The draft budget will be submitted to the Board for approval on 21st July. • Once approved, the 2012 budget will be published on the IPReg website and also sent to CIPA and ITMA (see below) for consultation. • The consultation will close 12th September. • The final budget will be approved by the Board on 29th September.
<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>See specific response</p>	<p>See specific response</p>	

			<ul style="list-style-type: none"> • The practice fees submission will be issued to the LSB for approval immediately after the Board meeting. “ <p>How is this new process for setting the budget different from the process for 2010?</p> <p>IPReg will consult on its budget. Registrants will be consulted directly. The Institutes will be consulted as representatives of the profession.</p> <p>Separately, the AR Forum will be consulted on the 2012 draft business plan ahead of the development of the 2012 budget.</p> <p>When setting this year’s IPReg budget how did you assess the risks in the marketplace and the allocation of expenditure on activities needed to reduce those risks?</p> <p>IPReg consider that market place risks have not changed since last year although the “changing/new regulatory needs” (see below) create a dynamic with potential to produce challenges for a newly-formed and small regulator.</p> <p>Staff numbers are low with a corresponding low accommodation need. There are no market place risks attaching to either staff or accommodation but IPReg would become vulnerable in the event of a member of staff leaving (a small contingency would be used to cover costs of recruitment).</p> <p>Has IPReg needed to access resources 'in-year' in response to changing/new regulatory needs? If this has happened have any problems or difficulties arisen from such needs?</p>
--	--	--	---

			<p>No</p> <p>What is your process for considering extensions of regulatory powers, for example making a licensing authority application? When doing so how is the issue of regulatory capacity reflected in such considerations?</p> <p>Extension of regulatory powers (eg ABS) is a significant factor:</p> <p>A steering committee of CIPA and ITMA has been formed to review this. Senior members of the profession (one from a traditional law firm and one from a company already quoted on the stock exchange) are currently working closely with the Institutes and the Chairman and CEO of IPReg to formulate a view on whether PRB and/or TRB should apply to become a licensing authority. It is understood by the steering committee that the decision will be made by the two Institutes in consultation with the PRB and the TRB.</p> <p>However, IPReg notes that the extension of regulation (and its impact) is not confined to ABS. The likelihood of the applicability of FOI to us as well as the requirements to respond to other requests (surveys, consultations etc) present a real risk. The unexpected levy by LeO is also a factor.</p> <p>The establishment of IPReg, its resourcing in terms of people, premises and IT was based on the then known requirements in 2008. A small, finely-tailored organisation was set up. The prospect of additional regulatory “weight” is a cause for concern. There is no space for an additional staff member, nor is there funding for additional staff.</p> <p>If the regulatory extensions continue the inherent cost</p>
--	--	--	---

			<p>push will fall on registrants. Many registrants could continue their businesses without being on the IPReg register. There remains the underlying risk that practitioners may decide to walk away if the cost increases or the everyday burden of regulation is perceived to be more trouble than it is worth.</p> <p>While the question of ABS licensing is a matter for us – we have no influence over the external pressures of extending regulation.</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 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><i>No change</i></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><i>No change</i></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.</p> <p>The presumption under such arrangements should be – subject only to being exposed to unreasonable liability (such as in 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><i>No change</i></p>
<p>Each regulatory body should act reasonably when defining and implementing its strategy, and should in</p>	<p><i>No change</i></p>

<p>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>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><i>Currently there are no tried and tested arrangements by which the AARs have any insight into whether the Boards are applying this requirement. The initial observer arrangements, and information provided by the Boards to the AARs was not, in practice, implemented and proved unworkable. Arrangements for the CEOs to discuss any issues on day to day operations etc. on a weekly short telephone call basis have changed in that no CEO meetings take place anymore. All matters relating to the AARs are carried out through the new ARF. Board minutes are published on the web site. IPReg do not provide copies separately to the Institutes (or the ARF) or notify the Institutes (or ARF) when these are available on the web site.</i></p>
<p>The process established by the AAR 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><i>No change</i></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,</p>	<p><i>No change</i></p>

<p>where they believe their independence and/or effectiveness is compromised or prejudiced, from obtaining required services otherwise than through the AAR.</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><i>No change</i></p>
<p>When considering whether arrangements meet the required standards, the Board will consider factors such as:</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. 	<p><i>As part of the settling of the 2011 budget, revisions were made in the management of the registers:</i></p> <ul style="list-style-type: none"> • <i>IPReg now maintains in house the PRB and TRB registers of registered entities.</i> • <i>The fees charged by CIPA and ITMA for administering the registers of individual attorneys were reduced by 25% from £20 to £15.</i> • <i>The fees charged by CIPA and ITMA for administering the records of dual qualified attorneys were further reduced from £20 per Institute per registrant to a total of £22.50 (as opposed to just the 25% reduction to £30), because of savings that could be made.</i> <p><i>IPReg had not been able to satisfy itself that the 2010 fees had been at “market” levels and had initially proposed a reduction of 50% but CIPA and ITMA submitted a proposal setting out the services to be provided by the Institutes at a compromise figure of 25%, which was agreed.</i></p> <p><i>Going forward, IPReg proposes to develop a website which will facilitate on line registration and better communication generally and the 2011 budget contains the first tranche (the second and final in 2012) of the overall budget on this project.</i></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>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>See comments above regarding the development and implementation of the 2010 Business Plan which was produced independently.</p>

Principle 4: Oversight etc

Principle 4: Oversight etc

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Specific questions for answer by AAR.
A. Arrangements in place must be transparent and proportionate.	See specific comments	See specific comments	<p>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>There have been difficulties in finding the appropriate communication methods between the AAR and IPReg. IPReg has adopted a policy of transparency and seeks to publish as much material as it can subject to its regulatory responsibilities. There is still some progress to be made on communication and the aim will be to monitor and develop this over the coming year. Therefore (as part of the minutes of the PRB and the TRB board meetings) the management accounts are published on the website.</p> <p>The new AR Forum has only met once but IPReg intends to consult the AR Forum on its draft business plan and other relevant matters/issues.</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.	See specific comments	See specific comments	

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><i>ARF set up. Broadly the view has been taken within the AARs, based we believe on advice and instruction from the LSB, that the AARs should be essentially hands off, and this is the approach which has been taken. The AARs remain concerned that this approach leaves some of the regulatory processes operating inefficiently and in a manner which provides less cost effective regulation than might be the case, and also that it does not provide the appropriate balance with the AARs' responsibility for the discharge of its regulatory function.</i></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><i>No change</i></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><i>No change</i></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>The receptiveness of the two Institutes to the suggestion that the AR Forum be established was welcomed although the time taken for the Forum to be set up (nearly 6 months) has meant that IPReg has operated without this oversight for some time and has not seen this as any impediment to its operation, particularly given its engagement directly with the registrants through direct e-mail contact and a significant number of presentations during 2010 together with the publication in March of the 2010 annual report (attached).</p> <p>Given that the AR Forum is newly established it is difficult to assess fairly at this stage whether the Forum will provide sufficient communication mechanisms between the AAR and IPReg and allow the AAR to operate as an oversight body. In any event it is set up so that it will not result in any undue influence from the representative Institutes.</p>

General Evaluation

The Approved Regulator

Since 2010 certificate was submitted and comments from the LSB, IPReg has made significant changes to ensure governance compliance.

The AAR has encountered numerous communication problems that have fettered its ability to determine whether the Regulatory Arm(s) are performing their roles in accordance with the Act and Rules. Nevertheless, subject to the comments at the end of this section, the AARs' do not have any reason to be concerned, and indeed believe that the Boards are operating fully independently and without fetters on their freedom to act. An Approved Regulator Forum (ARF) has been set up with the aim of ensuring that there is an opportunity for the AAR and the regulatory arm to share information about all topics associated with the regulation of the professions in a transparent and cordial environment. There has been one meeting of this group to date and therefore the success or otherwise of this forum cannot yet be reported.

The AARs have some concerns that the extent or indications of independence that the regulatory arm is seeking to implement (or indeed has) goes beyond the requirements of the LSA 2007 and the IGRs and in many ways is proving to be counter-productive – for example in creating inefficiencies, or losing opportunities for savings, as well as making consultations more difficult and expensive, and risking alienation of the regulated community. We are aware that during the initial set up and during the early days of being in a fully operational state, issues were perceived over the representational arms' influence impinging on the regulatory duties of the regulatory arm and this caused difficulties – steps were taken to address these concerns. However, we believe that the Councils of the two representative bodies recognise that the regulatory arms are free to make regulatory decisions and should remain free to do so and that their credibility depends on that freedom being manifest. We believe that now the regulatory arms needs to trust the Institutes and indeed trust itself/themselves to be able to justify their independent decisions. Better communication and exchange of information would enhance the operation of the regulatory arm in meeting its regulatory objectives without any fettering of independence, and improve the ability to demonstrate independence. At present the current communication channels are almost non-existent and leave the AARs with substantial cause for concern.

This certificate and the associated risk assessment focuses on the risk of the regulatory arm being inhibited by actions of the representational body. However, we believe the LSB should acknowledge and not lose sight of the inherent risk for the AAR if independence goes too far and cuts the relationship that must exist between the AAR and its regulatory arm. If appropriate communication lines are not in place then this will inhibit the ability of the AAR to carry out its

statutory oversight role and to be satisfied that the regulatory arm is fulfilling its duties satisfactorily, as well as having a risk that it has a significant liability for activities of the regulatory arm which are not funded or properly funded.

The Regulatory Body

Following the issue of the 2010 certificate last September, significant steps have been taken to address regulatory independence and transparency. The PRB and the TRB are now satisfied that robust structures are in place to enable independent regulation.