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Dear Ann

Internal Governance Rules (IGR) – Dual self certification

You will have seen the letter from David Edmonds to Michael Heap, written following our 30 September Board meeting at which your compliance with the IGRs was discussed. This notes that at the time of the Board meeting no dual self-certificate had been delivered and that discussions involving both CIPA and ITMA were on-going. We were however able to provide the Board with an update on the issues as we understood them and have since received completed certificates, which my team have reviewed.

This letter sets out the Board's final assessment of the dual CIPA / PRB and ITMA/ TRB independence certificates for 2010/11.

Overall conclusion

The Board has concluded that whilst your arrangements are not yet compliant with the IGRs, given your progress and the commitments that you have made going forward we are willing to accept your position this year.

This year is the first time that the dual self-certificates have been returned since the establishment of the PRB and TRB, as facilitated by IPReg, as regulators of the Patent Attorney and Trademark Attorney professions. It is also the first return since the introduction of the IGRs in January 2010. Therefore, we have looked in detail at the structures that have been put in place in establishing the bodies to deliver regulation independently from the representative functions of the professional bodies. We have tested compliance against the framework provided by the IGRs.

We provided you with our initial assessment in July. This set out areas where we had concerns and provided you opportunity to respond. In some areas we asked for proposals to move to compliance faster than was being proposed and in others for further explanation including about the level of risk associated with certain arrangements and how the risks are being managed and mitigated.

Our decision was made on the basis of the suite of information that you have provided to us in response to our assessment and on condition of the satisfactory execution of agreed future

actions. The Board has noted that robust discussion between IPReg and the two Institutes was required to agree the content of the dual certificates this year. It is anticipated that discussions will carry on over the forthcoming months to ensure that all parties are clear on their respective roles and the boundaries between them. My team are happy to assist with this work. In any event, as set out in the final section of this document, we will be looking closely at how independent regulation is working in practice and likely risks to this. This will be the focus of the 2011 dual self-certification process.

There are 4 issues in particular that I would like to draw your attention to:

1. Budgets

You have accepted that you do not at present have in place sufficiently robust budget approval arrangements - vital arrangements when considering the regulator's ability to access the funds it requires to effectively undertake its decided upon operational activities. Prolonged discussions and late compromises were required to establish the budget and practising fee levels this year. The right of IPReg to assess the risks that arise from its regulated community, to set a strategy to manage those risks and to set a budget that allows delivery that is non-negotiable. You have committed to amend the delegation agreement to "ensure that a suitable process for budget preparation and deliberation is put in place". This should include clear arrangements for consultation with the institutes as representative bodies and acknowledgement that managing the allocation of practising fee income, other than any income for non-regulatory permitted purposes, rightly sits with IPReg.

We expect these arrangements to be put in place quickly in preparation for the budget planning cycle for next year. We will certainly seek assurances on this as part of both the 2011 IGR certification process and in considering the application to approve the 2012 practising fee levels.

2. Lay majority

The Board welcomes your action plan to immediately appoint an additional lay member to sit on the two regulatory Boards. This provides a lay majority on both Boards plus a non-voting chair who is a barrister who has never practised and without prior connection to the intellectual property professions. It also addresses the need that you have identified for greater capacity and business consumer experience on the Boards in the near term. The appointment will expire not later than 2013 when the current Chairman retires and will be replaced with a chair, or lay person, who meets the definition of lay within the IGRs.

3. Board members with recent representative responsibilities

Our initial assessment raised a concern about the high proportion of regulatory board members that had recent representative responsibilities. We have noted your observation that there is not a large pool of experienced professionals with the appropriate knowledge wishing to participate in regulatory functions. We are satisfied with your commitment to require a one year gap between any representational on the ITMA or CIPA council and an application for membership of the regulatory board. The key issue is that the risk to the principle and perception of independence is properly considered when balancing the membership of the Board during recruitment rounds.

4. Discipline and dismissal of board members.

In our initial assessment we asked for confirmation that no board member may be dismissed without the concurrence of the LSB (other than by exception). You have confirmed that dismissal cannot take place without prior consultation with the LSB. Please note that IGRs require concurrence rather than simply consultation. We also asked for further reassurance about the arrangements for re-appointment of regulatory board members and the chair. In particular we asked for reassurances about which body would control this process and the use of objective appraisal criteria. This was not directly addressed in your response but we understand that a codified appraisal process is not yet in place. We expect this to be rectified and appropriate

arrangements to be put in place prior to the first occasion on which posts fall for re-appointment in spring 2011

Looking forward

As you know, dual self-certification of compliance with the IGRs is an annual process and certificates will be due again in April 2011. Our focus next year will move away from reviewing the newly established governance arrangements and towards reviewing the practical effectiveness of embedding those arrangements. Or in other words that independent regulation is being delivered in practice. This is important as obstacles to the regulatory body's ability to determine and deliver its own strategy may be undesigned and cultural as much as systemic.

Next year we will be pro-active in identifying areas of risk to the delivery of independent regulation in practice and the 2011 review will be targeted at these areas, employing intelligence on real issues. A key test will also be regulatory decision making in light of pressure legitimately brought from practitioners, either individually, or through their professional body. We will also consider how risk is monitored and managed on an on-going basis. We will be in touch with IPReg and both Institutes with further details early next year.

Finally, we note that your response covers only the overall conclusion (or summary) within our initial assessment. As the key concerns have been addressed we are happy to sign of the certificate on this basis but may return to any other issues that were raised in the broader assessment at a future point if necessary.

I have written to Mick Ralph and Keven Bader in the same terms and copied in both their Chairs. Letters will be published on the LSB web-site early next week

If you have any further queries please contact Chris Handford on 020 7271 0074 or chris.handford@legalservicesboard.org.uk. I also remain available to discuss these matters with you.

Yours sincerely



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cc. Michael Heap, Chair

