



**LEGAL SERVICES
BOARD**

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15 July 2010

Dear Keven

Internal Governance Rules (IGR) – Dual self certification

Thank you for submitting the completed dual Regulatory Independence Certificate and accompanying documents. As you will recall, the IGRs came into effect on 1 January and approved regulators were required to self-assess their compliance with the rules by the end of April. In areas where it had not proved possible to achieve compliance by that date, regulators were asked to provide an action plan that would deliver compliance by no later than 31 October 2010.

It is clear that very considerable progress has been made and the Board, which has discussed your submission, appreciates the efforts that all sides have made. This letter sets out the result of our initial analysis of your arrangements, against the substance of the IGRs and the timetable for implementation. A copy of the summary report is enclosed.

The assessment highlights residual areas of concern and areas where we do not feel that we have sufficient information to assess compliance. It also sets out the actions that we now believe are necessary as the final stage of informal resolution. This is in accordance with our compliance and enforcement statement of policy.

The Board wants to make its final decision on internal governance at its September meeting and therefore this letter sets out remaining issues as well as the timetable for response. There are four significant issues to which we draw your attention, although it will also be necessary for you to review the issues in the summary report in full and to consider the required steps that are set out in that report.

1. **Lay Majority:** We understand the reasons for the current non-compliance with the requirement for the majority of the Trade Mark Regulation Board (TRB) to be lay persons. However, as you know, it has been a fundamental principle for the LSB that a lay majority is an essential component of transparent regulatory good governance. Your submission implies that the TRB would not become compliant before the end of the Chair's appointment (date not specified but thought to be 2013 at the earliest). You have put forward some reasons for why you believe that not complying until the end of Chair's term is reasonable. However, the Board has not been persuaded that a further two and a half years of non-compliance is acceptable. The Board would therefore be grateful if by the end

of August you could provide an action plan that will deliver compliance on a much earlier timescale. If you do not believe this to be possible, please provide a fuller justification of why it might be reasonable to move to a lay majority more slowly alongside a detailed plan for reaching compliance. You have said that you are considering co-opting a lay consumer expert to TRB whilst undertaking a cost and feasibility assessment for appointing a similar person in the longer term. It would be helpful if you were to undertake this analysis and conclude decisions in time to include the results within your response to this letter. A fourth lay member would bring you into compliance with the lay majority requirement (and the results of a proper cost and feasibility study would likely add weight to any further representations you may wish to make).

2. **Role of IPReg:** The second issue is that the Intellectual Property Regulation Board (IPReg) has been created to facilitate and co-ordinate the regulatory functions of the TRB and the equivalent board for patent attorneys. However, IPReg but can also have powers and functions delegated to it from time to time. Operating as a single entity the IPReg board, made up of all the members of TRB and the Patent Attorney Regulation Board (PRB), would have a significant professional majority. The information that you have provided does not set out whether any substantive regulatory functions or powers have been delegated to IPReg. The Board would be grateful if you could provide details of all such delegations, on the same timescale as above.
3. **Professional majorities on regulatory committees:** The third issue is that approved regulators have regulatory groups with strong professional membership sitting beneath their regulatory board. IPReg runs three formal regulatory committees on behalf of TRB and PRB, all of which have a professional majority. The IGR requiring lay majorities for regulatory boards does not explicitly extend to these groups but in our view there is an appreciable risk that the spirit and perception of independence is compromised if a significant proportion of the advice provided to the TRB comes from groups seen to be dominated by the provider interest. It would be helpful if you could provide details of the role of the regulatory committees, their delegations and decision making authorities, their reporting lines, composition and the appointment process for members. The Board would also welcome your views on the extent of the risk that you perceive, and the steps that you might propose to mitigate that risk, again by the end of August.
4. **Shared services, securing resources and dispute resolution:** Finally, you are aware the Board has long been concerned that having free access to and control of appropriate resources and services is the key to enabling (or frustrating) the development and delivery of regulatory strategy and policies by the regulatory board. Your arrangements for budget approval and accessing resources are built on principles of discussion and negotiation followed by formal dispute resolution. The Board has a real concern that this may cause issues in practice given the potential inequality of bargaining power between IPReg and its parent bodies; and given the likely unattractiveness of formally approaching the LSB or initiating potentially lengthy and costly of independent mediation (and arbitration). We are further concerned that there are no service level agreements in place for shared services. On the same timescale as above, we would welcome your views on whether you recognise this risk and if so the extent of the risk and the actions that you may take in mitigation. It would be helpful if you could provide details of the metrics that you currently or prospectively collect to routinely monitor whether arrangements do operate successfully in practice and deliver the necessary degree of independence.

The forward looking timetable for final decisions around compliance and acceptability of action plans is set out below:

Action	Date / deadline
LSB initial response to regulatory independence certificates and action plans	Thursday 15 July
Further submissions from approved regulators following LSB initial analysis as the final stage of informal resolution. If you believe that our interpretation of any of the information that you have provided is incorrect please inform us within your submission.	Friday 27 August
LSB analysis of further submissions	To 30 September 2010
LSB Board to consider recommendations to approve one of the following positions <ul style="list-style-type: none"> • Accept as having a clean bill of health; • Accept as having a proportionate plan to become compliant by the set date or having provided a legitimate justification for a slower timetable; or • Move to formal enforcement where informal resolution has failed. 	30 September 2010
Approved Regulators informed of outcome of final assessment and next steps	October 2010

If your Team would like to meet urgently to clarify any of the issues that I have raised, please contact Chris Handford on 020 7271 0074 or chris.handford@legalservicesboard.org.uk. I also remain available to discuss these matters with you think that would be helpful.

Yours sincerely



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