

8th February, 2018

Consultation Co-ordinator
Legal Services Board
One Kemble Street
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Reviewing the Internal Governance Rules

The Chartered Institute of Patent Attorneys (CIPA) is the professional body for patent attorneys in the UK. CIPA is responding to the consultation on the proposed review of the Internal Governance Rules (IGR) by the Legal Services Board (LSB) in its capacity as an Approved Regulator, as defined in the Legal Services Act 2007 (the Act), and as the representative body for Chartered Patent Attorneys.

CIPA has delegated its regulatory powers to the Intellectual Property Regulation Board (IPReg), a regulatory body established jointly with the Chartered Institute of Trade Mark Attorneys (CITMA). IPReg is entirely independent of CIPA and CITMA, with its own governance, finance and administration structures. In making this response, CIPA has drawn on its experience of building and maintaining its relationship with IPReg, where the regulatory and representative functions of the two organisations are fully separated.

In describing the future revision and amendment of the IGR, the LSB has identified four potential scenarios.

1. No change to the IGR, but with increased transparency on a voluntary basis by the regulatory bodies and the LSB facilitating discussions between the Approved Regulators and the regulatory bodies.
- 2(a) Incremental changes, with the existing IGR framework continuing to apply but where the Schedule to the IGR is modified to provide additional clarity.
- 2(b) More extensive changes, with definitions such as 'regulatory independence' reviewed and new obligations in the IGR Schedule to address specific issues.
- 2(c) A new approach, with a new IGR framework incorporating prescribed transparency by the regulatory bodies and a defined flow of information between the Approved Regulators and the regulatory bodies.

CIPA urges the LSB to take a step back before embarking on its review of the Internal Governance Rules and to reflect on the three-way relationship between the LSB, the Approved Regulators and the regulatory bodies. Where issues have arisen in CIPA's relationship with IPReg these invariably point to a lack of clarity in the regulatory obligations of the Approved Regulator, in particular where the Approved Regulator's supervision of the regulatory body begins and ends. The existing Internal Governance Rules do little to help the Approved Regulator and the regulatory body determine what supervisory or monitoring responsibilities the Approved Regulator has under the Act.

When addressing concerns over IPReg's administration of the Register of Patent Attorneys, CIPA sought guidance from leading counsel to determine the extent of its supervisory or monitoring responsibilities under the Act. Counsel pointed to Section 27 of the Act, placing the duty to promote the regulatory objectives squarely upon the Approved Regulators and that the first regulatory objective is to protect and promote the public interest. In discussions with counsel, it was apparent that the existing Internal Governance Rules do not make clear CIPA's supervisory or monitoring obligations in its role as the Approved Regulator.

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CIPA is aware that the LSB has the power to issue statements of policy under Section 49 of the Act. CIPA takes the view that it would be helpful for the LSB to set out its overarching governance objectives in a statement of policy and for that statement to provide greater clarity on the regulatory obligations of the Approved Regulators. CIPA believes that such a statement would set out the boundaries of the three-way relationship between the LSB, the Approved Regulators and the regulatory bodies and would provide the foundation for a simplified set of Internal Governance Rules.

At this stage, CIPA does not intend to respond to each of the consultation questions, but will instead make comments of a more general nature. When disagreements have arisen with IPReg, CIPA has not found the existing Internal Governance Rules to be particularly effective in moderating such disagreements (question 1). Indeed, it has often been the case that the LSB has been unable to act as the moderator and the concept of 'independence' has been used to prevent CIPA from monitoring or supervising IPReg. Any review and proposed amendment of the Internal Governance Rules must address this issue.

CIPA has faced challenges in its role as the Approved Regulator under the existing Internal Governance Rules (question 2) and believes that there needs to be a new approach to defining the relationship between the LSB, the Approved Regulators and the regulatory bodies, as signposted in option 2(c) of this consultation (question 3). The type and frequency of information required by the Approved Regulators is linked to the extent of the supervisory or monitoring obligations under the Act (question 4). It is difficult to specify this need without greater clarity in the relationship between the LSB, the Approved Regulators and the regulatory bodies.

CIPA believes that the LSB could take a more proactive role in disagreements between the Approved Regulators and the regulatory bodies but, once again, this is dependent on defining the Approved Regulators' supervisory or monitoring obligations and the concept of regulatory independence (question 5). CIPA respects the need for independent regulation but does not see independence as an end in itself, which overrides the need for an effective system of regulation which allows the Approved Regulator to monitor or supervise its regulatory body in a way which effectively serves the public interest. It may be that there are fewer disagreements once the extent of the Approved Regulators' obligations is set out in a statement of policy. The nature of any intervention by the LSB will be defined by the capacity in which it is operating. The Internal Governance Rules need to make it clear whether the LSB is intervening in a supervisory capacity or in the role of mediator.

Please do not hesitate to contact me should you require any amplification or clarification of the observations made in this consultation response. CIPA would be happy to discuss its response with representatives of the LSB.

Yours sincerely



Lee Davies
Chief Executive