

By email only

Danielle Viall  
General Counsel  
Legal Services Board

13 September 2024

Dear Danielle

## Evaluation of Internal Governance Rules

Thank you for your letter of 18 July requesting evidence from IPReg about how the current IGRs have worked in practice since they were introduced in 2019 and for extending the deadline for our response. The detailed response to your questions is set out below. In summary, IPReg's view is that the IGRs are working well in practice for IPReg and, we understand, CIPA and CITMA.

- A. LSB information request: *Any specific examples, with evidence, of where the IGR have worked well in respect of the independence of regulatory functions, independence-related disputes or the speed with which any issues have been resolved. Please provide evidence, and clarify which rule(s) each example relates to.*

The model that we have adopted for the delegation of regulatory functions to IPReg is one of complete separation. IPReg is a company limited by guarantee with its own board of directors who are also members of the Patent Regulation Board (**PRB**) and/or the Trade Mark Regulation Board (**TRB**). As a further move to ensure IPReg's independence, at its meeting on 10 July 2024, the CIPA Council took the decision to formally withdraw as a Subscriber of the Intellectual Property Regulation Board Limited. This issue will be considered by the CITMA Council at its meeting on 24 September. We have no shared services with either approved regulator and collect all our practising fees annually through our CRM; no element of the practising fee is remitted to CIPA or CITMA.

In July 2020, following finalisation of the current IGRs, we entered into [delegation agreements](#) and information sharing protocols with CIPA and CITMA. The delegation agreements set out the powers that have been delegated to the PRB (by CIPA) and the TRB (by CITMA); they also set out the remit of the Regulatory Forum at which the IPReg Chair and CEO meet with their CIPA and CITMA counterparts. In addition the three CEOs meet regularly (usually once a month).

One of the responsibilities of the Regulatory Forum is to consider any issues of non-compliance with the IGRs. There have been no such issues to date.

- B. LSB information request: *Any specific examples of where the IGR have failed, or been ineffective, in respect of the independence of regulatory functions, independence-related disputes or the speed with which any issues have been resolved. Please provide evidence of any failure or lack of effectiveness, evidence of the impact that this has had, and information about which rule(s) this relates to.*

The IGRs have worked well in practice and we have no examples of where they have failed or been ineffective.

- C. LSB information request: *Information about how you have met each of the required actions summarised in Annex A, and whether you have encountered any challenges in meeting these. Please use the prompts in the annex in answering these questions.*

- i. LSB information request: *The overarching duty. Please provide information about how and when you have reviewed your arrangements under sub-rule (2).*

We reviewed the arrangements at the Regulatory Forum on 7 September 2023. All parties confirmed that they were working well and that no changes were needed. IPReg considers that, providing there are no instances of non-compliance, it would be proportionate to review them again in September 2026.

- ii. LSB information request: *Provision of assurance to Approved Regulator. Please provide information about: any further information you have required from the Regulatory Body, and the safeguards you have put in place to prevent the misuse of information received for assurance purposes.* IPReg's understanding (as the Regulatory Body) is that this request is for the Approved Regulator to respond to.

- iii. LSB information request: *Prohibition of dual roles. Please provide information on how you have identified individuals involved in decisions relating to regulatory functions, and how you have ensured that these individuals do not become involved in representative functions.*

IPReg has identified three instances where IPReg Board members might have been considered to have a dual role which might have breached this prohibition. The Board members concerned had roles in CIPA committees or CIPA's other activities. In each case, we analysed the Board member's role against each element of the LSB's guidance on this rule. We compiled a detailed record of that analysis. In one case, we concluded that there was no dual role. In another, we concluded that there probably was a dual role and requested an exemption from the LSB for a time-limited period, which was granted. In the third case, we concluded that there was no dual role but we asked the LSB for an informal view. The LSB responded that:

*IPReg is best placed to understand the roles and the individual circumstances of the post holder and assess the risk of any prejudice under Rule 5. With this in mind, we will retain your letter as a record of that consideration and your determination that you do not see an immediate conflict of interest arising as a result of [the Board member's] membership of the [CIPA] Committee.*

*However, IPReg should, on an ongoing basis, be mindful of the risk of prejudice arising in the future and have processes in place to mitigate or prevent any potential conflict, including if necessary, the requirement for [the Board member] to recuse [themselves].*

- iv. LSB information request: Individual conduct. *Please provide information on: the systems you have put in place to ensure that relevant individuals are aware of the IGR and comply with them; how you have identified which individuals are caught by this rule; and whether you have produced any training materials and kept logs of dates and attendees at training sessions.*

The Guidance suggests that this question is aimed primarily at the Approved Regulators. However, given the importance of the IGRs for independent regulation, IPReg has proactively ensured that the induction for all new Board members and staff includes information about the IGRs.

- v. LSB information request: Shared services. *Please provide information on which, if any, services have been reviewed, and how and when you have carried out the assessments referred to in Guidance 11.7.*

There are no shared services.

- vi. LSB information request: Candour about compliance. *Please provide information on the systems you have in place for logging and recording matters relating to compliance with the IGR.*  
The Guidance suggests that this question is aimed primarily at the Approved Regulators. IPReg records all the information sent to CIPA and CITMA under the Information Sharing Protocol. There have not been any instances of actual or perceived non-compliance, referrals to the LSB for clarification or disputes.

- vii. LSB information request: Disputes and referrals for clarification. *Please provide information on: your protocol for handling disputes; what, if any, disputes you have considered and how these were resolved.*

The delegation agreements set out the protocol for handling disputes. These state:

If a dispute arises between the Parties about (i) whether an information request by [CIPA or CITMA] is being made on a reasonable basis, or (ii) any other matter arising under or in connection with the IGR, the Parties will use reasonable endeavours to resolve the dispute by discussion between the members of the Regulatory Forum (either at its next scheduled meeting or outside the agreed schedule of meetings). If the dispute cannot be resolved between the Parties in a reasonable period, the dispute must be referred to the LSB under Rule 14(2) of the IGR.

There have been no disputes between IPReg, CIPA and CITMA.

- D. LSB information request: *Anything else you would like to tell us about your experience of the IGR in respect of the independence of regulatory functions, independence-related disputes or the speed with which any issues have been resolved.*

IPReg, CIPA and CITMA are committed to independent regulation and the way in which we have implemented the IGRs has worked well in practice.

Please let me know if you need any more information or would like to discuss any aspects of this response.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Fran Gillon', with a horizontal line underneath.

Fran Gillon

**Chief Executive**