A - To carry out an independent review of the arrangements generally for the registration of Architects under the Building Control Act 2007

SUMMARY 'A'

- Statutory Registration has created a private monopoly which is to be permanently funded by State registered architects.
  Every registered architect must pay for membership of the Royal Institute whether or not that membership option is exercised.

- Statutory Registration is new and the standards are newly made into law.
  Yet everyone is not newly and equally assessed. Instead professionally trained architects are excluded from automatic registration unlike their MRIAI competitors of whatever vintage or provenance. Recognition of established rights is reserved for Royal Institute members.

- The Registration Body's remit has been inflated by the Royal Institute to well beyond what is expected by the Act and what is truly needed to operate a Registration system (cf the UK's ARB).

- **Irish university degrees** are sufficient for registration everywhere in Europe apart from here in Ireland.
  Whereas **non-Irish university degrees** are sufficient for automatic registration in the State, (It should be realized that EU migrant architects have no experience or training in self-certification. They are likely to have never heard of such a thing, yet cannot be denied registration in Ireland)
  Thus, many Irish graduates are free to work in Europe, thanks to EU law, whilst being barred at home, solely because of National Law (the Building Control Act 2007).

- The Royal Institute of (the) Architects of Ireland is not an accredited educational body.
  It is a private members' institute (a club), trading as a limited liability company.

- The RIAI is not inviolate. Nor are Department officials infallible.

- **Technical Assessment has failed. It is not fit-for-purpose.**
  Its scope is inappropriate; its direct and indirect costs are excessive; its methodologies are cumbersome and opaque; its decisions are uneven; RIAI's entirely private standards are applied retrospectively as the TA measure; the Panel assessors lack competence and objectivity, their focus is not on an applicant's tangible achievements as an architect but on digging for supposed procedural mistakes; particular aspects of TA, as conducted, go beyond what is described/permitted in the Act.
  Furthermore and based on its actual performance, TA would never have coped with a full complement of applications from professionally trained architects.
  A comparison with the flawed but efficiently conducted Minister's List process tells all.

- Part 6 of the Act, Fitness to Practice, does not itself conform to best practice.
  Most significantly there is no separation between the roles of Investigation/Reporting & Decision Making by the Professional Conduct Committee (cf the Medical Practitioners' Bill 2007, the Dentists' Act 1985, the Health & Social Care Professionals' Act 2005 and also the UK's Architects' Act of 1997).

- The Act provides **no redress for consumers**, only the chastisement of wayward architects.
  The Act's purpose and justification was to improve consumer protection.
  Instead, registration successfully protects a select body of architects rather than the public.

- There is no Grandfather Clause for architects.
  That omission is an insupportable anomaly and a disservice to both the profession and the public - see Alliance paper "The Grandfather Clause".

COMMENTARY 'A'

The State registration of architects is not required by EU law. The relevant Directives apply solely to the recognition of migrant architects (the Architects' Directive - 85/384/EC & the PQD - 2005/36/EC). A State may adopt, revise or cancel its own registration regime for architects. Where the profession is regulated by a Member State (whether by way of protected title or protected function or both) the Directives made/make this stipulation viz Migrant architects must be afforded automatic and full access into the profession by the Host State.

Part 3 of the Building Control Act 2007 seeks to protect the business use of the title or description 'architect' (plus cognate terms!). In reality that limited intention has been extended to include the protection of function, which can be seen in Government procurement procedures, in many non-State invitations to tender and, as ever, in architectural competitions i.e. only registered architects may apply.
Those additional restrictions will be legitimised in March 2014 when mandatory building certification commences. Then, registered practitioners alone will be authorised to certify. Thus, function too will become "protected" and architecture will be made a fully sheltered profession. Established, non-RIAI practices will close-down, decades of professional expertise will be lost and a great many livelihoods will disappear. RIAI Limited's dream of a legally endorsed monopoly will be made real.

Prior to the Act, the RIAI was a private members' club, operating, as it still does, as a limited liability company. It is very important to realize that the RIAI was and is not an accredited or recognised educational body. It has no lawful authority to decide upon any person's professional or academic competence.
Of course, like any club, it may make rules for deciding whether or not a candidate for club membership is worthy of becoming "one of us". But that certainly does not legitimise the application of its private membership rules to a Statutory registration process - Technical Assessment. (See "RIAI Standard of Knowledge, Skill and Competence for Practice as an Architect" which is being erroneously and harmfully applied in TA.)
Documentation is demanded which exceeds that which is carefully stipulated in the Act.
Nor is it being required on a case-by-case basis, but must accompany every TA application – see the "Competency Index". The RIAI-only Technical Assessment Panel's demands for additional information are not provided for in the Act.

Also prior to the Act, an effective common law test applied to practitioners ("The man on the Clapham Omnibus" refers). This is an appropriate and lawful measure of established rights which makes the case for a Grandfather Clause in all instances where a profession becomes newly regulated.
It is also important to note that the Act does not simply require the Royal Institute of the Architects of Ireland (Ltd) to establish or administer a registration system for architects. Instead S.13.1 reads: *The Royal Institute of Architects of Ireland (sic)* ***shall be*** *the registration body for the purposes of this Part.* S.13.2 gold-plates the matter: *For the purposes of the Directive, the registration body is the competent authority in the State as respects architects.*

A secular Trinity has thereby been created:-
the Royal Institute + the Royal Registration Body + the Royal Competent Authority.
Each part is commonly identified in documents and in speech simply as "the RIAI" i.e. three-in-one and one-in-three. This is a perfect basis for the opaqueness and gross mischief that marks the dealings of the Royal Institute of the Architects of Ireland Limited. For example:-
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1. Written Answer (16 April 2013) given in relation to the reporting obligations under S.73: *Section 73 of the Building Control Act 2007 requires a registration body, as soon as may be after the end of each year, to prepare a report of its proceedings under the Act during that year. It further requires the report, which must be published and available for purchase by members of the public, to include a copy of the body's audited accounts in so far as they relate to its income and expenditure in respect of the performance of its functions under the Act.*

I understand that the RIAI, as registration body for the purposes of Part 3 of the Act, has reported on its registration activities in its annual reports for 2010 and 2011 and that this will be the case in relation to its annual report for 2012 in due course. The reports in question can be accessed free of charge on the RIAI's website www.riai.ie.
The Minister's understanding is imperfect. An actual examination of those free-of-charge RIAI reports reveals their total vacuity as regards S.73 reporting compliance.

2. From the RIAI website: *Annual Register/RIAI Membership Charges*
A person who is a Member of the RIAI is eligible for admission to the Register and a person on the Register is eligible for Membership of the RIAI. Consequently an eligible person may choose to be an RIAI Member, to be on the Register, or both.

Register only	*€490.00*
*Register **and** RIAI Member / Fellow*	*€490.00*

There is no mis-typing here - it's €490 in both instances. **Everyone** named in the Statutory register must pay to support RIAI Ltd, the Institute.

A particularly disturbing consequence of this tripartite but indivisible creation is that the Competition Authority now regards RIAI Ltd, the private entity, as a Statutory Body and that decision puts all its actions beyond the Competition Authority's reach.

3. When asked at the 2012 EJOC Hearing to describe his role, John Graby outlined his duties as the Statutory Registrar, with no mention of his continuing obligations as CEO of RIAI Ltd, the Institute.

4. Code of Professional Conduct
RIAI's pursuit of self-interest is facilitated by the Act and can be seen in all its actions as the Registration Body. It has been granted wide discretion in the implementation of Registration and of TA in particular. However, the absence of essential oversight is made most obvious in the Code of Professional Conduct that it is charged to write and then enforce.
In 2009 a new RIAI Code of Professional Conduct was published, in accordance it was said with S.56.1 & 2 of the Act. Point 6 of that Code was this "get-out-of-jail-free card" and anti-consumer provision: *The Code is not to be taken as, nor understood as, having a bearing on the standard of proof required of a person pursuing legal proceedings against an architect (including breach of conduct, tort, criminal law or equitable principles).*
Without explanation, the 2009 Code has been replaced by a draft 2013 Code. In the introduction are these opposing statements:
*Section 56 of the Building Control Act 2007 (the "Act") requires the RIAI to prepare a code **specifying the standards** of professional conduct and practice that shall be adhered to by architects who are registered with the RIAI ("architects").*
The fact that conduct is not specifically referred to in the code does not mean that it cannot amount to professional misconduct or poor professional performance.
In other words "Forget clarity and transparency, whatever we say, goes."
Point 3.7 makes undeclared, open-ended rules within rules which is also not fitting in such a code and should in any case be redundant given Point 3.6:
3.6 Architects shall maintain, at all times, a reasonable level of professional skill and competence.
3.7 Architects shall comply on an annual basis with the RIAI's policy requirements in relation to continuing professional development. It shall be the architect's own responsibility to ensure compliance with these requirements.
Thus we have RIAI (the Registration Body) empowering RIAI (the Institute) to impose undeclared and variable requirements on architects which can lead to removal from the Statutory Register.
Of course that is not the anticipated consequence. It's merely the stick for anyone who is reluctant to pay-up for those profitable, RIAI approved, CPD courses.
Self-imposed and directly relevant CPD is undertaken by architects with every new project. This professionally motivated CPD is an essential and unavoidable aspect of the work.

Annual compulsory CPD, structured by others on a generalised and aspirational basis, is but a money-spinning ploy and an expression of authority. Compulsory administered CPD is not a requirement in most of Europe and none is required under the European Directive (see Evaluation of the Professional Qualifications Directive 2005/36/EC - Experience reports from national authorities with regard to architects).

5. Overall, the Royal Institute is not trusted to be objective and fair in its dealings with non-member architects. For decades its behaviour has been openly antagonistic - see BAI judgement, policy on architectural competitions, press notices, political lobbying training (denied at the 2012 EJOC), the creation of MRIAI(IRL), failing to reveal the role of the TA Panel until pressed, etc.
Its fitness for the office of Registration Body should be reconsidered in light of the repeated notices from the ODCE for its non-compliance over declarations required by both Irish and European company law; its misleading assertions at the EJOC Hearing; its disproved assertions justifying its fee scales (FTC Report, Clause 9.28); its dismissive view of lay representation on professional committees (FTC Report, Clause 16.3); etc.
As Registration Body it has made Technical Assessment a costly and discouraging obstacle course for choosing who will become "one of us".

6. The Competition Authority made a specific, unambiguous and quite normal recommendation which should not have been ignored in the making of the Act. This is from its website:

Recommendation for an independent regulator not accepted

We recommended that the new regulatory body for architects should be independent of existing professional representative organisations. This was to avoid any possible conflict of interest between a representative body (whose job it is to protect the interests of members) and a regulator (whose duty is to protect the public interest).

Our recommendation on this matter was not accepted. Under the Building Control Act 2007, the RIAI, which is the main professional representative body for architects in Ireland, was appointed as the new registration body and Competent Authority for architects. In November 2009, a new Register of Architects was introduced. The Register is administered and regulated by the RIAI.

B - To take stock of the overall experience to date in relation to the operation of the registration system with a view to seeing how the system can be further improved.

SUMMARY 'B'

- An independent Regulator is needed to demonstrate independence and to establish trust in registration. Consider making a single sectoral registration board to cover all construction professionals - who afterall share the same professional obligations to consumers.
- The academic qualifications for automatic registration in the State should be the same as those required for automatic recognition throughout Europe
- MRIAI is not a qualification, it is a membership affix. It should therefore be removed from the list of Irish academic qualifications tabled in the Directive
- A facility is needed for recognising training that takes place in more than a single architecture school eg. Three years in Dublin followed by 2 years in London
- Irish nationals with non-Irish yet EU-compliant qualifications should be properly recognised in the Act
- A designation for registered architects should be created such as "State Registered Architect"
- Cognate terms should not be protected by the Act
- The option to become a member of the Royal Institute should be removed from the Act
- A sunset clause is needed in relation to the automatic registration of RIAI fellows and members. Until then admission procedures should be introduced to facilitate the registration of all members of the RIAI - as provided for in the Act.
- The annual registration fee should not include the annual charge for membership of the Royal Institute (Ltd)
- Oversight is necessary for the writing of the Code of Professional Conduct
- The absence of a consumer redress process within the Act should be corrected
- Registration of title should not be used to protect function (see S.I. 80/2013)
- Introduce prescribed insurance to safeguard the public and to provide tangible consumer redress
- Contain the remit of the Registration Body - use the UK's ARB as the model
- Take account of the Regulatory Impact Study which, at the 2012 EJOC Hearing, the Registrar asserted had been undertaken
- Honorably resolve all State and EU legal issues

COMMENTARY 'B' none

C - Having regard to the lower than expected number of applications from practically trained architects, to review and make specific recommendations on how the registration of practically trained architects can be better encouraged.

SUMMARY 'C'

- Cease all involvement of the RIAI in the assessment of professionally trained architects
- Drastically reduce the application charges and speed up the process
- Provide transparency
- Provide assessment facilities in different parts of the State - not Dublin alone
- Acknowledge that automatic EU recognition will not be achieved through being registered and therefore remove the Article 46 academic requirements
- Acknowledge that others in the same class (i.e. other 'Grandfathers') have been automatically registered
- Implement the Alliance Solutions (see enclosed Alliance paper)

COMMENTARY 'C'

Although some of our recommendations involve changes to the Act, doing so may be unavoidable for other reasons viz the European Ombudsman's recent finding (ref. 503/2012/RA); the Part 6 procedural issues; the European Commission's ongoing examination of the Act for compliance with the Directive and also the operation of architectural competitions organised by the RIAI (CHAP(2011)01723 - EU Pilot 2310/11/MARK).

The harm done to professionally trained architects by the Act is completely disproportionate to any common good that might be imagined. Overall the Act is bad law and it should be corrected.

If the relevant Departments had not been constrained, so long ago, to negotiate closely with the Royal Institute, then the result would undoubtedly have been a far better Statutory registration system of architects.

ENCLOSURES

A "Europe Day" document (extract) – Government paper

B "The Grandfather Clause" – AAoI paper

C "Legislating for Taste?" – AAoI paper

D "CPD points for lobbying" – RIAI paper

E "Solutions" – AAoI paper

Additional documents are available via this LINK (start with the Contents.pdf file) :-

https://www.dropbox.com/sh/tbt7vgzf07suq8g/L-SFijUP_M