

Proposed Internal Governance Rules

Supplementary consultation on amendments to proposed Rules 4, 8 and 10 published by the Legal Services Board (LSB)

Comments from ACCA
12 June 2019
Ref: TECH-CDR-1827

ACCA (the Association of Chartered Certified Accountants) is the global body for professional accountants. We aim to offer business-relevant, first-choice qualifications to people of application, ability and ambition around the world who seek a rewarding career in accountancy, finance and management.

Founded in 1904, ACCA has consistently held unique core values: opportunity, diversity, innovation, integrity and accountability. We believe that accountants bring value to economies in all stages of development. We aim to develop capacity in the profession and encourage the adoption of consistent global standards. Our values are aligned to the needs of employers in all sectors and we ensure that, through our qualifications, we prepare accountants for business. We work to open up the profession to people of all backgrounds and remove artificial barriers to entry, ensuring that our qualifications and their delivery meet the diverse needs of trainee professionals and their employers.

We support our **219,000** members and **527,000** students in **179** countries, helping them to develop successful careers in accounting and business, with the skills required by employers. We work through a network of **110** offices and centres and more than **7,571** Approved Employers worldwide, who provide high standards of employee learning and development. Through our public interest remit, we promote appropriate regulation of accounting, and conduct relevant research to ensure accountancy continues to grow in reputation and influence.

Further information about ACCA's comments on the matters discussed here can be requested from:

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GENERAL COMMENTS

ACCA welcomes the opportunity to comment on the proposals to alter elements of the specific sub-rules which are part of Rules 4 (Regulatory Autonomy), 8 (Appointments and Terminations) and 10 (Regulatory Body Budget) in the proposed Internal Governance Rules (IGR) and to work with the LSB in developing an effective set of IGR that are principles-based and focused on achieving the right outcomes.

AREAS FOR SPECIFIC COMMENT

Question 1: Do you agree that the amendment to Rules 4, 8 and 10 as set out in this document should be adopted in the new IGR? Please provide your reasons.

In our response to the consultation on the proposed IGR launched in November 2018, ACCA expressed significant concerns about the use of the word ‘influenced’ in proposed Rule 1 (Overarching Duty) while the Legal Services Act 2007 (the Act) used the word ‘prejudiced’ in sections 29 and 30. We believed that the proposed drafting of the IGR went beyond the requirements of the Act, and failed to recognise the intent in drafting the Act.

We are pleased that the Legal Services Board (LSB) has listened to concerns raised by ACCA and other stakeholders about the inappropriate use of the word ‘influence’ and, by replacing the term ‘influence’ with ‘prejudice’ in Rule 1, has removed this inconsistency from the proposed IGR.

The amendment to the language used in Rule 1 achieves greater clarity among approved regulators and regulatory bodies and now recognises the intent in drafting the Act, which is to avoid ‘prejudice’. As an approved regulator with both representative and regulatory functions, there may be occasions when it will be appropriate for ACCA’s representative functions to legitimately influence the regulatory body. As a result of this amendment, opportunities and innovations where the interests of both the regulatory and representative functions are aligned, and where the insights of the regulated population may be valuable, will now be recognised.

We support the inclusion within Rules 4, 8 and 10 (which relate to independent decision making, board appointments, and regulatory budgets) of the proposed alternative sub-rule. The proposed change sets out more clearly the boundary around the approved regulator’s use of its ‘influence’ when acting as a representative body, and removes an unhelpful restriction on the way in which the approved regulator’s views can be taken into account. We believe the consequential amendments to Rules 4, 8 and 10 achieve consistency with the revised text of Rule 1 and should therefore be adopted in the new IGR.

At this stage, we do not anticipate any unforeseen or unintended consequences of amending these Rules in the proposed IGR.



Question 2: Does the proposed revised guidance on Rules 4, 8 and 10 at Annex A provide sufficient detail to help you interpret and comply with the proposed revised versions of Rules 4, 8 and 10? Please provide specific comments on any areas of the guidance for Rules 4, 8 and 10 where further information would improve clarity.

We are broadly supportive of the proposed revisions to the statutory guidance supporting Rules 4, 8 and 10 which reflect the proposed changes to these Rules and provide greater consistency, clarity and brevity. In particular, we welcome the removal of unnecessary guidance and surplus information, for example the removal of inappropriate references to ‘influence’ from the approved regulator and the limitation relating to regulatory body consultation. However, we believe there is scope for the LSB to identify further opportunities to simplify the statutory guidance supporting all 17 Rules within the IGR.

Furthermore, we reiterate the concerns we raised in our response to the previous consultation in relation to the statutory guidance for Rule 4. We note that the guidance, as drafted, continues to state that *‘if an AR has provisions in its constitution about the election of members of the regulatory board or recruitment to senior positions in the regulatory body, this must be removed or amended so that sole control lies with the regulatory body itself’*. We believe the use of the word *‘must’* changes the status of the guidance, and illustrates the lack of focus on principles and required outcomes in the proposed IGR and guidance.

ACCA is supportive of a principles-based approach to regulation, as this requires regulators to focus on achieving the right regulatory outcomes (and being seen to do so). It also makes approved regulators accountable for having effective (and sometimes innovative) regulatory arrangements. In our opinion, the proposed IGR as a whole contains an extensive set of prescriptive rules and the accompanying statutory guidance is excessively detailed and lacks focus on achieving the necessary outcomes. Therefore, we would encourage the LSB to produce a final IGR and guidance which is simplified and principles-based, in order to achieve effective compliance by the approved regulators and enhance independent regulatory decision-making.

Equality Act assessment

We refer to comments made in ACCA's previous consultation response that an unintended consequence of the IGR and guidance, as drafted, may be increased costs, which must be passed on to the regulated individuals and firms and ultimately to consumers. This would have a disproportionate negative impact on small practices and their clients and may be seen as an equality issue. It may also result in a reduction in competition and diversity in the provision of legal services. Care must be taken to support all the regulatory objectives. In particular, stifling diversity and innovation in the legal services market would have a negative impact in terms of unmet legal need.

