



## **Internal Governance and Practising Fee Rules: Supplementary Consultation, September 2009**

Comments from ACCA  
October 2009



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### ***General Comments***

1. ACCA welcomes the opportunity to comment on the supplementary consultation on the proposed Rules to be made under sections 30 and 51 of the Legal Services Act 2007 ('the Act').
2. Statutory Instrument 2009/1588 was made on 26 June 2009, making ACCA an approved body for the purpose of granting exemption under section 55 of the CLSA 1990 (in respect of probate work). In due course ACCA's name (as an approved regulator) will be added to the face of the Act, bringing it within the regulatory remit of the LSB.
3. As a professional body of accountants, we are concerned that the draft Rules within the consultation paper (and related rules and procedures that may be drafted in accordance with such Rules) may be inappropriate for an approved regulator that is overseen by the Legal Services Board ('LSB') in respect of such a limited range of work (ie probate work only).
4. ACCA is supportive of the approach which focuses on adherence to Principles, with Rules only being laid down to dictate specific measures necessary to ensure compliance with the overarching principles, although additional measures may also be necessary. Approved regulators must have regard to any Illustrative Guidance issued, and if such guidance is not followed, they should be prepared to demonstrate why following the guidance would have been contrary to the spirit of the Rules and Principles.
5. When finalising both the Internal Governance Rules and the Practising Fee Rules, the LSB should be aware of the risk that a 'one size fits all' approach may lessen the impact of the Rules.

### ***Internal Governance Rules***

6. ACCA's Regulatory Board was launched in September 2008, bringing together all of ACCA's previous governance arrangements for regulation and discipline into a single entity. The remit of the Regulatory Board is to provide oversight of ACCA's regulatory and disciplinary activities, and to report directly to ACCA's Council on the fairness and impartiality of those activities, thereby

placing oversight of regulation and discipline at arm's length from the governance of ACCA's other activities.

7. ACCA's Regulatory Board and Committee Regulations may be viewed online at <http://rulebook.accaglobal.com/>.
8. The definition of a 'lay person', for the purpose of the Internal Governance Rules (IGRs), is that given in paragraphs 2(4) and (5) of Schedule 1 to the Act. This would not be consistent with ACCA's definition of a lay person with regard to its Regulatory Board, as a lay person from ACCA's perspective is a non-accountant.
9. ACCA's Regulatory Board comprises three members of ACCA's Council and seven independent 'lay appointees'. In this context, a 'lay appointee' is a non-accountant. The Regulatory Board is currently required to have a 'Lay Chairman'.
10. There are ten members of ACCA's Regulatory Board, and whilst ACCA's intention is to have a range of experience represented on the Board, there is no specific requirement for lawyers, including those authorised to provide probate services, to be in the minority. Adherence to Principle 1, Governance, is brought about by the independence of the Board, ie members of the Board who may themselves be regulated by the approved regulator should not unduly influence the Board (or be perceived as doing so). Therefore, in the case of ACCA, any participation of lawyers on the Regulatory Board does not provide a threat to independence. However, we would like to see the Rules drafted in order to be inclusive of such bodies.
11. The consultation recognises that the IGRs must have regard to the principles of better regulation, as set out in section 3(3)(a) of the Act. Therefore, the Rules must be consistent with the principle of oversight, and be proportionate. We also note that the LSB recognises that its approach to implementation and onward compliance must be proportionate and risk-based. ACCA fully supports this approach.
12. The definition of 'Regulatory Board' within the IGRs refers to the meaning given in 'Part 1 of the Table in the Schedule to these Rules'. This is unclear, as there is no 'Part 1' to the Table identified.

13. Rule 11 is unclear. In particular, the term 'consumer panel associated with the Applicable Approved Regulator' appears contradictory, as 'consumer panel' is defined in accordance with schedule 8 of the Act, and is independent of the Applicable Approved Regulator. Neither is the objective of this Rule apparent.

### ***Practising Fee Rules***

14. The requirements of section 51 of the Act appear burdensome for the LSB and, potentially, for approved regulators also.
15. The Practising Fee Rules (PFRs) are at a high level, and the consultation document explains that the LSB 'envisages' writing to each individual approved regulator, setting out the requirements, and those letters will be published on the LSB's website. The contents of the letter would be based on consultation with each approved regulator.
16. In other regulated areas of members' activities, such as audit and insolvency, ACCA balances its regulatory account for each particular activity amongst those members authorised. It does not spread the cost burden across the entire membership.
17. The PFRs, as drafted, still provide a level of uncertainty. In particular, we have concerns regarding the possible imposition of consultation by the LSB on a body such as ACCA. We anticipate that the 'practising fee' to be charged by ACCA in respect of authorisation to provide probate services will be relatively low. The costs of consultation with members regarding the level of fee to be charged would be disproportionate. Therefore, we would like to see specific mention of the principle of proportionality in this area of the PFRs.
18. Similarly, we would like to see other references to proportionality throughout the Rules concerning the approval mechanism.

