

## Chairs of regulatory bodies

A consultation issued by the Legal Services Board

Comments from ACCA to the Legal Services Board

November 2013

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.

We support our 162,000 members and 428,000 students in 173 countries, helping them to develop successful careers in accounting and business, with the skills needed by employers. We work through a network of over 89 offices and centres and 8,500 Approved Employers worldwide, who provide high standards of employee learning and development.

ACCA works in the public interest, assuring that its members are appropriately regulated for the work they carry out, and promoting principles-based approaches to regulation. We actively seek to enhance the public value of accounting in society through international research and we take a progressive stance on global issues to ensure accountancy as a profession continues to grow in reputation and influence.

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ACCA welcomes the opportunity to comment on the proposals issued by the Legal Services Board (LSB).

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## SUMMARY

ACCA supports ‘the principle of regulatory independence’, meaning that ‘structures or persons with representative functions must not exert, or be permitted to exert, undue influence or control over the performance of regulatory functions, or any person(s) discharging those functions’. The impact of the chairman on the regulatory independence of a regulatory board depends upon the characteristics of the chairman and his or her influence over the board in question. There are many contributory factors, of which one is the question of whether the chairman is a lay person.

While ACCA supports the proposed change to the Internal Governance Rules, we believe that the requirement for the chairman to be a lay person must not detract from the underlying principle of regulatory independence. While a lay majority on regulatory boards is important in support of the principle of regulatory independence, it should also allow an appropriate level of representation from within the profession, in order to provide the necessary insights.

In the Internal Governance Rules, ‘lay person’ has the meaning given in Schedule 1, paragraphs 2(4) and (5) of the Legal Services Act 2007 (the Act). These paragraphs require that a ‘lay person’ must be a person who has never been an authorised person in relation to an activity which is a reserved legal activity. In the case of an approved regulator that is not an applicable approved regulator (ie one whose members are *not* persons whose primary reason to be regulated by that approved regulator is their qualifications to practise a reserved legal activity), this definition serves no practical purpose. For example, in the case of ACCA, we would require a lay person sitting on our Regulatory Board to be a non-accountant, and a solicitor or barrister, for example, would meet our requirements and satisfy the public’s expectation of independence.

We understand that the overriding principle that concerns the LSB is that of professions regulating professions. More precisely, it is not acceptable for professionals to be regulating members of their own profession. However, in the case of an accountancy body that is an approved regulator for probate services, the reserved legal activity of probate is incidental to the other accountancy services provided. The fact that an accountant is authorised to provide a particular reserved legal activity does not define that person as a lawyer. He and his fellow professionals remain accountants. Independent

regulation implies that the regulation of accountants should be by non-accountants and, in this context, a lay person is a non-accountant.

Furthermore, the accountancy bodies referred to in the consultation document are all subject to independent regulatory oversight by the Financial Reporting Council (FRC). Therefore, a proportionate approach to furthering regulatory independence is to exclude those approved regulators from the requirements of the schedule to the Internal Governance Rules.

ACCA has chosen to require the chairman of its Regulatory Board to be a lay person (ie a non-accountant). While we believe that it is possible to achieve the desired independence through having a lay majority, we believe that the message delivered to the public by having a lay chairman underlines ACCA's regard for the public interest.

In the context of the Internal Governance Rules, the only requirements in respect of lay persons are in the schedule, which is only relevant to applicable approved regulators. However, while addressing the leadership of regulatory boards, it would be useful for the LSB to seek a definition of 'lay person' that is relevant to *all* approved regulators. Without this, there is the risk of a two-track system developing for the regulatory oversight of the approved regulators.

In principle, we conclude that lay chairs for the regulatory boards of the legal profession are appropriate. A lay chairman is better placed to enhance engagement and communication between the professional members of a regulatory board and its non-professionals. However, we would urge the LSB to proceed with caution. There is value in self-regulation, as it has the potential to enhance trust in a profession, and to motivate the profession to high standards of ethics and conduct. Nevertheless, ACCA also perceives the additional public value derived from the implementation of independent regulatory oversight.

Although ACCA has a lay chairman, we note (from paragraph 5 of the consultation document) that the proposals of the LSB are not based on empirical evidence in respect of the legal profession. Therefore, we would question the need for urgent change in the absence of an improved definition of 'lay person'.

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## SPECIFIC COMMENTS

### CONDUCT REQUIREMENTS AND RULES

#### 1. Do you agree with the proposed change to the IGRs in order to deliver lay chairs?

Although we have reservations as set out above, we support the proposed change. Our reservations include concern that such a specific requirement could weaken the focus on the fundamental principle of regulatory independence of the regulatory function as a whole. We would also encourage efforts to determine a clearer understanding of 'lay person', relevant to all approved regulators.

#### 2. Do you think the proposed change should take immediate effect or only be applicable to future appointments?

The consultation document presents the respondent with two options with regard to timing. We suggest the first of these is incorrectly worded, and is intended to suggest that currently serving chairs should be replaced immediately. It must be assumed that there would be costs associated with this process, including potential disruption to the regulatory oversight arrangements of some applicable approved regulators.

Therefore, we would consider it unreasonable to implement the proposed change to the Internal Governance Rules without appropriate notice or the inclusion of transitional provisions. The alternative proposed in paragraph 31 is that the change should be applicable to the next appointed chairs. However, this could have unintended consequences, and a preferred option might be to require the chair of a regulatory board to be a lay person with effect from a prescribed date in 2015.

#### 3. Do you agree that the requirement for lay chairs to apply only to the AARs?

As 'lay person' is currently defined, if the requirement was to be applied to all approved regulators, it would deny some approved regulators access to valuable skill sets, including relevant regulatory expertise. Therefore, at this stage, we agree that any requirement for lay chairmen must only apply to applicable approved regulators.

In paragraph 35 of the consultation document, it is noted that the number of accountants who would provide reserved legal activities, were their professional bodies to become active legal regulators, would be small. For this reason, it would be disproportionate to include those professional bodies within the definition of 'applicable approved regulator'. While the number of regulated persons is an important factor when assessing proportionality, we believe that this paragraph fails to acknowledge a stronger rationale for distinguishing

between approved regulators in this way. The definition of ‘applicable approved regulator’ has been crafted to exclude those bodies whose members are *not* persons whose main business is to practise a reserved legal activity. Essentially, these are not professional bodies whose members practice law, and so the distinction between these and the applicable approved regulators allows appropriate, targeted oversight activities over the professional bodies whose members are primarily lawyers (for example, within the schedule to the Internal Governance Rules). To require the regulatory board of an accountancy body to have a chairman who has never been an authorised person in respect of a reserved legal activity would, at best, severely limit the talent available to such bodies.

We note the reference, in paragraph 38, to the risk of ‘closeness to the profession’. This is mentioned in respect of regulators that are not applicable approved regulators. Therefore, it is unclear which profession is meant by ‘the profession’. We also consider it inappropriate in that paragraph to consider the risk in respect of the accountancy regulators together with that in respect of the Council for Licensed Conveyancers, as the accountancy bodies are subject to independent regulatory oversight by the FRC.

#### **4. Do you agree with the proposed exclusion of the Master of Faculties from the proposed change?**

We agree that the Master of Faculties should be excluded from the proposed change. However, paragraph 37 further illustrates the differences between the various approved regulators. This, in turn, highlights the need to focus on the underlying principle of regulatory independence.



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