

# Internal Governance Rules

## Proposed Rules and Guidance

Stakeholder roundtable events  
4, 11 and 13 December 2018

# We said the proposed IGR would

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- Enhance regulatory independence within the LSA framework
- Be principled and outcome-focused, supplemented where necessary with specific requirements
- Provide greater clarity to aid compliance
- Clarify the oversight role
- Not include a definition of regulatory independence
- Remove the Applicable Approved Regulator (AAR) definition. In particular, any Approved Regulators that have both representative and regulatory functions will be subject to the same obligations
- Require proactive reporting of non-compliance
- Not require third party assurance

# We communicated in August/September that the new IGR might....

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- **For all ARs, include:**
  - A duty of candour about compliance
  - Obligations around individual conduct
- **For ARs with both regulatory and representative functions,** cover familiar territory (duty to delegate, regulatory strategy, appointments, budgets, shared services - although some details might change). But might also include:
  - Restrictions around 'dual roles'
  - Obligations around provision of information to enable AR oversight
  - Restrictions on how information can be used

# Overarching duty

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## Rule 1: Overarching duty

*Each AR must determine and implement arrangements which are as effective as reasonably practicable for separation of its regulatory functions and which are consistent with Section 28 of the Act.*

- This rule is pre-eminent
- For questions about the separation of regulatory and representative functions this rule provides parties with the criteria for decision making
- Requires regular review of the arrangements for separation and maintenance of independence

# Separation and Assurance

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## **Rule 2: Duty to delegate.**

*Representative and Regulatory Functions shall be discharged by separate bodies.*

- Similar provision in current IGR
- Regulatory function (ie the delegation) is performed by an approved regulator (part of its residual role)

## **Rule 3: Provision of assurance to AR**

*The AR and regulatory body shall cooperate with one another to provide and accept assurance.*

- Regulatory body has to provide the AR with information to allow it to meet its residual role
- Information gained in such a way by the AR can't be used for representative functions

# Regulatory Autonomy

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## **Rule 4: Regulatory Autonomy**

*The regulatory body shall decide how to regulate free from influence by the AR.*

- Provides clarity that regulation is the sole responsibility of the regulatory body
- Limits AR involvement unless consulted
- Does not prohibit routine contact

## **Rule 5: Prohibition on dual roles**

*No person may have a material role in both representative and regulatory functions.*

- Applies to anyone with a material role that can affect regulatory decisions
- Applies to employees and Board/Council members

# Conduct and responsibility

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## Rule 6: Individual conduct

*The AR is responsible for the awareness and compliance of each individual with a role within regulation or which may affect regulation.*

- New obligation
- ARs, and where appropriate the Regulatory Bodies, are responsible for those working for them
- Applies (amongst others) to Board/Council members
- Obligation to ensure that those with a material role are trained in IGR

# Governance

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## **Rule 7: Governance: Lay Composition**

*Regulation should be predominantly governed by lay persons.*

- Contained in current IGR

## **Rule 8: Regulatory Board appointments and terminations**

*The regulatory body shall independently appoint, appraise, remunerate and terminate the members of its board.*

- Change from procedures under the current IGR
- Clarifies that the responsibility for appointments lies with regulatory body
- Representative bodies can only be involved with express permission of LSB

# Budget and resources

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## **Rule 9: Regulatory resources**

*Regulation shall have the resources it requires to be effective.*

- Current provision and is a requirement of section 30 of the Act

## **Rule 10: Regulatory body budget**

*It is for the regulatory body to determine and allocate the resources required for regulatory functions.*

- Change from any AR-involving process under the current IGR
- AR must have no influence over setting the regulatory budget
- Clarifies the residual role of AR as LSB decides and determines the budget through PCF

# Budget and resources (cont.)

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## Rule 11: Shared services

*The AR and Regulatory Body must not share services unless specific requirements are met.*

- AR and Regulatory Body must agree
- Need to show that sharing the service is necessary to be efficient and cost-effective
- Regulatory body must be in no less favourable a position under any contract than the AR

# Communication and Candour with LSB

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## **Rule 12: Communication by persons involved in regulation**

*There should be a direct line of communication between the regulator and key statutory bodies including the Legal Services Board.*

- Current provision and requirement of section 30 of the Act

## **Rule 13: Candour about compliance**

*Each AR shall be honest and open with the Legal Services Board about compliance issues.*

- AR must be able to respond to requests from the LSB for information about compliance
- ARs must proactively inform the LSB of non compliance where it cannot be remedied in reasonable time
- A log of incidents of non compliance must be kept

# Communication and Candour with LSB (cont.)

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## **Rule 14: Disputes and referrals for clarification**

*The LSB may provide clarification to assist with compliance if an AR cannot resolve an issue.*

- Explains the difference between an IGR interpretation issue and a dispute
- Obligation to have attempted to resolve the matter/issue prior to LSB referral
- If the LSB makes a decision it will be determinative

# Guidance and Saving provisions

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## Rule 15: Guidance

*This Rule requires ARs to have regard to this Guidance in seeking to comply with the IGR.*

- Existing provision

## Rule 16: Saving provisions

*No AR will breach the IGR if its action or omission is necessary to comply with its legal obligations or authorised by the LSB.*

- Purpose is to recognise that in some situations other legislation may not be consistent with IGR obligations
- Enables AR to put case to LSB where there are good reasons why it cannot comply with IGR but does not guarantee acceptance

# Next steps timetable

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## Our plans

- Consultation ends 21 January 2019
- LSB Analysis in January and February
- LSB Board consideration February and March
- Publication of IGR most likely April 2019, transition period begins
- 6 month transition period ends in September

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