

Internal Governance Rules 2019

24 July 2019

INTERNAL GOVERNANCE RULES

The Legal Services Board has on 24 July 2019 made the following rules under the Legal Services Act 2007 (c.29), Section 30.

The Internal Governance Rules 2009 (as amended 20 February and 30 April 2014) made by the Legal Services Board under Section 30(1) are hereby revoked.

DEFINITIONS

Act	The Legal Services Act 2007.
Approved Regulator	As defined in Part 1 of Schedule 4 to the Act or designated under Part 2 of Schedule 4 to the Act.
Better Regulation Principles	The principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed (see Section 3(3)(a) and Section 28(3)(a) of the Act).
Consumer Panel	The Consumer Panel established by the Legal Services Board in accordance with Section 8 of the Act.
Lay Person	As defined in paragraph 2(4) of Schedule 1 to the Act.
Legal Services Board	As defined in Section 2 of the Act.
OLC	The Office for Legal Complaints established by Section 114 of the Act.
Regulatory Arrangements	As defined in Section 21 of the Act, except for the arrangements for delegation of regulatory functions to a regulatory body and assurance of compliance with Section 28 of the Act, in accordance with Rule 2.
Regulatory Body	A body which has been delegated the regulatory functions of an Approved Regulator, as defined in Rule 2(1).
Regulatory Functions	As defined in Section 27(1) of the Act, except functions relating to arrangements for delegation of regulatory functions to a regulatory body and assurance of compliance with Section 28 of the Act, in accordance with Rule 2.
Regulatory Objectives	As defined in Section 1 of the Act.
Representative Functions	As defined in Section 27(2) of the Act.
Residual Role	As defined in Rule 2(2).
Services	For the purposes of Rule 11, 'Services' includes information technology, equipment, administration, human resources, finance and corporate services, office space and facilities.

PREAMBLE

These Rules are created to comply with the Legal Services Board's duty under Section 30 of the Act.

Independent regulation is essential to maintain the integrity of legal services and to give confidence to consumers, providers, investors and society as a whole that legal services work in the public interest and support the rule of law.

The Legal Services Board recognises the inherent tension for approved regulators, defined by Schedule 4 to the Act, who have both representative and regulatory functions and are required to separate their regulatory functions whilst remaining responsible for assuring compliance by their regulatory body with Section 28 of the Act. In this situation, the Act does not allow for complete separation or complete independence.

These Rules are intended to enhance regulatory independence as far as reasonably practicable; to create and maintain clear divisions which prevent the representative functions prejudicing the regulatory functions, to promote the regulatory objectives and to uphold the better regulation principles.

These Rules aim to balance the interest of the approved regulator in ensuring that its regulatory body is accountable and the public interest in fair and proper regulation which is not, and is not seen to be, undermined or prejudiced by any representative interests.

1. THE OVERARCHING DUTY

- (1) Each approved regulator has an overarching duty to ensure that the exercise of its regulatory functions is not prejudiced by any representative functions it may have.
- (2) In particular, each approved regulator must have arrangements in place to:
 - a. separate its regulatory functions from any representative functions it may have; and
 - b. maintain the independence of its regulatory functionsas effectively as is reasonably practicable and consistent with Section 28 of the Act.
- (3) Each approved regulator must periodically review and, if reasonably practicable, improve its arrangements under sub-rule (2).

SEPARATION AND ASSURANCE

2. DUTY TO DELEGATE

- (1) Each approved regulator with both representative and regulatory functions must delegate the discharge of its regulatory functions in compliance with Section 28 of the Act to a separate body ('regulatory body').
- (2) After delegating its regulatory functions, the approved regulator must only retain a role to the extent that this is reasonably necessary to be assured that regulatory functions are being discharged in compliance with Section 28 of the Act or as otherwise required by law ('residual role').
- (3) An approved regulator must promptly inform its regulatory body if the approved regulator makes or intends to make a decision, plan, communication or other arrangement which may reasonably be considered likely to undermine the discharge of regulatory functions in compliance with Section 28 of the Act.

3. PROVISION OF ASSURANCE TO APPROVED REGULATOR

- (1) Each regulatory body shall provide sufficient information to the approved regulator with a residual role as is reasonably required for the approved regulator to be assured of the regulatory body's compliance with Section 28 of the Act.
- (2) The approved regulator with a residual role:
 - a. may only require further information from the regulatory body if it has reasonable grounds to do so;
 - b. must not require the regulatory body to provide information which may reasonably be considered likely to undermine the regulatory body's independence or effectiveness; and

- c. must not use the information it receives for the representation, protection or promotion of the interests of the persons it represents unless and until it receives that information for that purpose or that information is made publicly available.

REGULATORY AUTONOMY

4. REGULATORY AUTONOMY

- (1) The regulatory body must independently determine the most appropriate and effective way of discharging its functions in a way which is compatible with the regulatory objectives and having regard to the better regulation principles.
- (2) In particular, the regulatory body must determine:
 - a. its own governance, structure, priorities and strategy; and
 - b. whether any amendment to the regulatory arrangements is necessary and, if so, what form that amendment should take.
- (3) The approved regulator with a residual role:
 - a. may only seek to influence these determinations in the exercise of its representative functions; and
 - b. must not prejudice the independent judgement of the regulatory body.

5. PROHIBITION ON DUAL ROLES

No person, whether remunerated or not, who is involved in decisions relating to regulatory functions may also be involved in the representative functions of the approved regulator, unless that person's role is within a shared service in accordance with Rule 11.

CONDUCT AND RESPONSIBILITY

6. INDIVIDUAL CONDUCT

Each approved regulator must ensure that any individual, whether remunerated or not, with a role:

- a. in the exercise of regulatory functions; or
- b. which may otherwise reasonably be considered likely to affect regulatory functions

is aware of and complies with these Rules and the arrangements in place under Rule 1.

GOVERNANCE

7. GOVERNANCE: LAY COMPOSITION

The board or equivalent body which makes decisions about how to exercise regulatory functions must be comprised of a majority of lay persons and the chair of that body must be a lay person.

8. THE REGULATORY BOARD: APPOINTMENTS AND TERMINATIONS

(1) The regulatory body must independently determine and carry out its procedures for appointing, re-appointing and terminating members of its board or equivalent decision-making body including the chair, assessing their remuneration and carrying out appraisals.

(2) The approved regulator with a residual role:

- a. may only seek to influence these determinations in the exercise of its representative functions; and
- b. must not prejudice the independent judgement of the regulatory body.

BUDGET AND RESOURCES

9. REGULATORY RESOURCES

Each approved regulator must provide such resources as are reasonably required for its regulatory functions to be efficiently and effectively discharged.

10. REGULATORY BODY BUDGET

(1) The regulatory body shall independently:

- a. formulate its own budget in accordance with its priorities and strategy under Rule 4; and
- b. determine the allocation of its resources.

(2) The approved regulator with a residual role:

- a. may only seek to influence these determinations in the exercise of its representative functions; and
- b. must not prejudice the independent judgement of the regulatory body.

11. SHARED SERVICES

(1) An approved regulator with a residual role and its regulatory body may only share a service if they are in agreement that:

- a. this will not undermine, and could not reasonably be seen to undermine, the separation of regulatory and representative functions;
- b. this is effective and appropriate for the regulatory body to discharge its regulatory functions; and

- c. this is necessary to be efficient and reasonably cost-effective.
- (2) Any services shared between the approved regulator with a residual role and the regulatory body under Rule 11(1) must be provided to the regulatory body on a basis no less favourable than to the approved regulator with a residual role.

COMMUNICATION AND CANDOUR WITH THE LEGAL SERVICES BOARD

12. COMMUNICATION BY PERSONS INVOLVED IN REGULATION

- (1) Each approved regulator must have arrangements in place for persons involved in the exercise of its regulatory functions to communicate directly with the Legal Services Board, Consumer Panel, OLC and other approved regulators.
- (2) In particular these arrangements must enable individuals to notify the Legal Services Board directly if they consider that the independence or effectiveness of regulatory functions is being or will be prejudiced.

13. CANDOUR ABOUT COMPLIANCE

- (1) Each approved regulator must respond promptly and fully to all requests for information by the Legal Services Board made for the purposes of assessing and assuring compliance with these Rules.
- (2) Each approved regulator must ensure that any issue in relation to compliance with these Rules which cannot be or has not been remedied within a reasonable period is reported in writing to the Legal Services Board, whether this information is requested or not.

14. DISPUTES AND REFERRALS FOR CLARIFICATION

- (1) If an approved regulator has been unable to resolve any point arising under or in connection with these Rules, it may refer that point to the Legal Services Board for clarification.
- (2) In the event of a dispute between an approved regulator with a residual role and its regulatory body in relation to any point arising under or in connection with these Rules, the dispute must be referred to the Legal Services Board before any further action is taken.
- (3) Any response provided by the Legal Services Board shall be determinative unless expressly indicated otherwise.

GUIDANCE

15. GUIDANCE

In seeking to comply with these Rules, each approved regulator must have regard to any guidance issued by the Legal Services Board under Section 162 of the Act.

SAVING PROVISIONS

16. SAVING PROVISIONS

(1) No approved regulator shall be in breach of these Rules if the action or omission, which would otherwise constitute the breach, is:

- a. in relation to an approved regulator with a residual role, reasonably necessary to satisfy its residual role;
- b. required by primary legislation; or
- c. carried out with the prior written authorisation of the Legal Services Board.

(2) In the event of a dispute as to whether any of these Saving Provisions apply, the matter must be referred to the Legal Services Board before any action is taken and any response will be determinative in accordance with Rule 14.

EXEMPTIONS

17. EXEMPTIONS

The following Rules do not apply to an approved regulator with only regulatory functions:

- a. Rules 2 to 5;
- b. Rule 8;
- c. Rules 10 and 11;
- d. Rule 14(2); and
- e. Rule 16(1)(a).