

## rulebook commentary 2008

**Sundeep Takwani provides an overview of the main changes to ACCA's *Rulebook*, which come into effect on 1 January 2008 and of the ACCA *Regulatory Board* proposals to oversee ACCA's regulatory and disciplinary arrangements.**

The significant changes this year have arisen as a result of policy decisions by ACCA's Council, in particular those concerning continuing professional development (CPD) and direct membership routes for members of other bodies.

Many of the other changes this year reflect 'improvements' on current regulations with the aim to either provide guidance where the procedure has been unclear or address unintended consequences.

### **royal charter**

The change, approved at the AGM this year, allows the Royal Charter to cover modifications to legislation. This means that, in the future, changes will not be required to the Charter relating to each individual relevant piece of legislation.

### **bye-laws**

The changes to the bye-laws, also approved at the AGM this year, introduce an upper limit for serving as a Council member (nine years) and remove the requirement to have a minimum number of UK registered auditors.

### **fees regulations**

The regulations reflect Council's powers to set membership fees and the fees for 2008, which have been set at £175.

### **electronic communications regulations and online provision of annual reports and notices regulations**

The *Rulebook* now sets out, as annexes to the bye-laws, The Chartered Certified Accountants' Electronic Communications Regulations 2002 and The Chartered Certified Accountants' Online Provision of Annual Reports and Notices Regulations 2006, which were approved by Council in 2002 and 2006 respectively, for completeness.

### **membership regulations**

Following the launch of ACCA 2007 – the new ACCA Qualification – this year, the transitional provisions which were necessary to give effect to its introduction have been removed.

Similarly, references to the *CAT alumni* have been removed following the withdrawal of this concept.

Membership Regulation 3, concerning direct membership routes for members of other bodies has been amended to reflect the successful recognition agreements

between ACCA and the Certified General Accountants Association of Canada and Malaysian Institute of Certified Public Accountants.

There are also a number of amendments to the CPD provisions to reflect:

- the 'phasing out' of the accelerated fellowship scheme
- the revised policy concerning part-time and semi-retired members
- the completion of the 'phasing in' of *ACCA Realise*
- the revised policy concerning long-term affiliates.

As with the fees regulations above, the regulations reflect Council's powers to vary, suspend or waive membership fees.

There are also a number of amendments which clarify:

- the obligations on affiliates and registered students to provide a nominated mailing address
- that the disclosure of personal details to third parties includes statutory regulators
- that an individual applying for re-admission can only do so if all outstanding sums due to ACCA, including any fine or costs imposed by a disciplinary order, have been paid
- the requirements for achieving the practical experience requirements.

### **global practising regulations**

As with the membership regulations, the transitional provisions following the launch of ACCA 2007 have been removed.

The UK and Irish Annexes to the global practising regulations have been amended to reflect that the panel of assessors who conduct Audit Orientation Course and Test vivas include members of ACCA's Technical Advisory team.

In relation to the Irish Annex, the amendments reflect that:

- in Ireland, audit firms cannot be limited companies
- ACCA's obligations concerning investment business activities in Ireland are now to the Financial Regulator and not to the Central Bank of Ireland
- in Ireland, firms that audit public interest entities are not subject to monitoring by IAASA – the Irish Auditing & Accounting Supervisory Authority.

### **designated professional body regulations**

The significant changes to the designated professional body regulations reflect amendments to the UK Regulated Activities Order, which introduced new regulated activities in relation to home reversion plans, home purchase plans and rights under a personal pension scheme. These activities became regulated activities on 6 April 2007.

### **committee regulations**

ACCA has, for many years, had disciplinary and regulatory committees which are independent, and composed of lay majorities. However, the regulations did not reflect this fully. The regulations have, therefore, been amended to make it clearer that there cannot be accountant majorities on the committees.

The sharing of information provisions have been streamlined as those in the 2007 *Rulebook* were cumbersome and required bodies to be specified. The revised provisions also cover legislation in any country.

### **authorisation regulations**

The amendments to the regulations now make clear the circumstances in which cases have to be dealt with at a hearing.

### **disciplinary regulations**

ACCA is mindful of the need to ensure that the disciplinary process is not unnecessarily delayed on procedural technicalities. Accordingly, the amendments:

- clarify that the duty to co-operate is with anyone involved in the investigation, not just the investigating officer
- clarify that when an assessor is reviewing the Professional Conduct Department's decision not to investigate, they can ask for further enquiries to be made before making a decision. An assessor should not decide that a report should be prepared for another assessor unless the further investigation shows that to be appropriate
- allow members to ask the case presenter questions in order to clarify the case against them
- allow the case presenter to cross-examine the relevant person
- allow the case presenter and the relevant person to make closing submissions
- clarify ACCA's obligations regarding the service of documents  
clarify that the standard of proof applied by the Disciplinary Committee is 'the balance of probabilities'
- reflect the current practice of agreeing to meritorious requests for adjournments without reference to Chairmen where the papers for the hearings have not been issued.

The assessor's power to refer regulatory issues of concern to the Admissions and Licensing Committee has moved to be a referral to the Practice Monitoring Department instead. Assessors are not always in a position to know whether such issues are serious enough to be brought directly before the Admissions and Licensing Committee and in practice the Admissions and Licensing Committee is likely to ask the Practice Monitoring Department to follow-up such matters. This change does not, of course, preclude serious issues referred by assessors from being brought before the Committee once further enquiries have taken place by the Department.

Similarly, non-disciplinary regulatory powers of the Disciplinary Committee have been removed to improve the clarity and use of the regulations. The proposed regulations will, therefore, reflect the practice of several years' standing, which is that Disciplinary Committee refers regulatory/licensing issues to the Admissions and Licensing Committee for consideration. Accordingly, the regulations now set out the usual orders that the Disciplinary Committee can impose plus a set of interim orders.

### **appeal regulations**

As with the disciplinary process, ACCA is mindful that the appeal process should not be unnecessarily delayed on procedural technicalities. To this end, the regulations clarify:

- the meaning of 'material difference to the outcome of the case' in the context of a ground for appeal
- the test the Chairman should apply when considering an application for permission to appeal
- the powers of the Chairman and the Appeal Committee itself, to give directions when considering permission to appeal
- the appellant's right to decide to drop their other grounds for appeal if the appellant is happy to proceed on the limited grounds stated by the Chairman
- that a Chairman who considered the appeal application notice cannot participate in the full hearing
- the appellant's right to be heard at a hearing
- the ability of the Appeal Committee to hear the appeal immediately after the permissions hearing so long as all parties have agreed to this
- that a compelling reason for why an appeal should be heard is not an alternative ground of appeal
- ACCA's obligations regarding the service of documents
- that the standard of proof applied by the Appeal Committee is 'the balance of probabilities'.

The regulations now allow the Appeal Committee to grant permission to appeal on the basis of a ground that the applicant did not specify, and to amend grounds of appeal at full hearings. This in essence allows the Appeal Committee to add appeal grounds of its own volition.

Again, and in line with the Disciplinary Regulations, the regulations now reflect the current practice of agreeing to meritorious requests for adjournments without reference to Chairmen where the papers for the hearings have not been issued.

### **code of ethics and conduct**

Many of the proposed amendments to this section are 'improvements' to the current code, which aim to provide guidance where procedures have been unclear or to address unintended consequences.

### introduction

This section had been amended to accommodate revised definitions of 'firm', 'network firm' and 'network', issued by IFAC – the International Federation of Accountants – which apply to assurance reports issued after 31 December 2008.

#### integrity, objectivity and independence

Similarly, this section has been amended to include additional guidance issued by IFAC on the application of the new definition of 'network'.

#### the ethical responsibilities of members in business

This section has been amended to clarify that members must comply with all technical and professional standards relevant to their work.

#### money laundering

This section has been amended to update guidance so that it is aligned with the revised guidance of the Financial Action Task Force on Money Laundering.

#### description of members and firms and the names of practising firms

Changes to this section reflect the revised requirements concerning the use of the new ACCA logo.

#### the incapacity or death of a practitioner

The amendments to this section clarify that, in the event of a death of a practitioner who is an auditor, it may be necessary for the client to fill a casual vacancy by appointing the continuity nominee as auditor.

### **ACCA regulatory board**

ACCA's Council has agreed to form an *ACCA Regulatory Board* with the aim of drawing together the various governance arrangements for regulation and discipline into a more coherent structure. In addition to being in line with governance best practice, such a structure would be easier to present and explain to ACCA's various stakeholders.

ACCA's current regulatory governance arrangements encompass several separate strands of independent lay involvement (e.g. Lay Observer, independent Appointments Committee) but, crucially, not at the apex of a unified structure. The aim is to provide oversight of the entire regulatory process.

In summary, therefore, the introduction of an ACCA Regulatory Board will repair what are, arguably, the four flaws in ACCA's current governance arrangements for regulation and discipline as follows:

- incrementally developed mechanisms will be drawn together into a single coherent framework
- a coherent structure will be far easier to explain and promote externally than the current disparate arrangements

- there will be a body formally charged with setting intermediate-level policy
- there will be a strong independent element at the apex of the structure, which will have an explicit oversight role.

The changes to effect the introduction of an ACCA Regulatory Board are not due to come into effect until mid-2008, pending approval at the 2008 AGM of the bye-law changes necessary for the full regulatory board proposal to go ahead.

ACCA's *Rulebook* can be viewed on ACCA's website at <http://rulebook.accaglobal.com/>.

**Sundeep Takwani – Head of Ethics and Regulation, Professional Standards, ACCA**