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FINANCIAL CENTRE  

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REGULATORY AUTHORITY

# **Controls Rulebook (CTRL)**

**Version No. 3**

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**Includes amendments made by  
Conduct of Business Rulebook Rule Making Instrument 2007  
QFCRA RM/2007-01**

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### Background to this Rulebook

1. The *Regulatory Authority* considers that effective internal controls and appropriate arrangements for *Senior Management* are essential to the orderly operation of *Authorised Firms* and that failure by an *Authorised Firm* to organise its affairs properly increases risk both to that *Authorised Firm* and to other *Persons* with whom that *Authorised Firm* has dealings.
2. Failure by an *Authorised Firm* to comply with this rulebook is likely to impact on the *Regulatory Authority's* assessment of that *Authorised Firm's Fitness and Propriety*.
3. CTRL-VER2-Sep06 incorporates amendments made by Prudential - Insurance Rulebook Rule Making Instrument No. 2006/01 (RM2006/01). See the endnotes for rulebook and amendment history.

# 1 Application

## 1.1 Application

**1.1.1** This rulebook (*CTRL*), other than section 4.10, applies to every *authorised firm* in relation to the conduct of *regulated activities* in or from the *QFC*.

**1.1.2** However, section 4.10 (Professional indemnity insurance for insurance mediation business) applies only to *authorised firms* conducting *insurance mediation business*.

### Guidance

The effect of Rule 1.1.1 is that this rulebook applies to, amongst other things, the:

- a. management structures, systems and procedures outside the *QFC* to the extent that those structures, systems and procedures relate to *Regulated Activities* carried on inside the *QFC*; and
- b. activities carried on by or on behalf of an *Authorised Firm* outside the *QFC* (including outsourced activities) to the extent that those activities relate to *Regulated Activities* carried on by the *Authorised Firm* in the *QFC*.

## 2 Management Oversight

### 2.1 General Requirement

**2.1.1** An *Authorised Firm* must appoint one or more members of its *Senior Management* to fulfil the obligations on behalf of the *Authorised Firm* set out in chapters 3 and 4.

**2.1.2** The *Person* or *Persons* appointed under Rule 2.1.1 must be:

- (A) the *Person* or *Persons* performing the *Authorised Firm's Senior Executive Function*; or
- (B) a *Director* or *Senior Manager* of the *Authorised Firm's Group* responsible:
  - (i) for overall management of the *Authorised Firm's Group*; or
  - (ii) a division of the *Authorised Firm's Group* within which all of the *Authorised Firm's Regulated Activities* fall.

#### Guidance

The *Regulatory Authority* considers that in most cases it will be appropriate for just one member of the *Authorised Firm's Senior Management* to fulfil these obligations.

### 2.2 Reporting and Record Keeping

**2.2.1** The *Person* or *Persons* appointed under Rule 2.1.1 must report periodically to the *Authorised Firm's Governing Body* in respect of any issues arising from the fulfilment of the obligations set out in chapters 3 and 4.

**2.2.2** An *Authorised Firm* must retain records of all reports submitted to the *Authorised Firm's Governing Body* in accordance with Rule 2.2.1 for at least six years from the date on which such reports are submitted to the *Authorised Firm's Governing Body*.

### **3 Allocation of Responsibilities**

#### **3.1 Allocation of Responsibilities**

**3.1.1** An *Authorised Firm* must allocate responsibility for all aspects of its business amongst its *Senior Management* in such a way that at all times:

- (A) all significant areas of its business are subject to appropriately senior levels of management and supervision;
- (B) the roles and the extent of the responsibilities of all *Senior Management* are clear; and
- (C) the business and affairs of the *Authorised Firm* can be effectively monitored and controlled by the relevant *Senior Management* and *Governing Body* of the *Authorised Firm*.

**3.1.2** In establishing and maintaining management structures for the purposes of Rule 3.1.1 an *Authorised Firm* must have regard to all relevant factors including:

- (A) the nature, scale and complexity of each aspect of its business;
- (B) any actual or potential conflicts of interest that may arise as a result of the allocation of the relevant responsibilities; and
- (C) the ability, qualifications and experience of the relevant *Senior Management*.

#### **3.2 Records of Allocation of Responsibilities**

**3.2.1** (1) An *Authorised Firm* must make a written record of all appointments and management structures it adopts for the purposes of compliance with Rule 3.1.1 and retain that record for at least six years from the date on which any such procedures are revoked or superseded.

- (2) Where responsibilities have been allocated to more than one individual, the *Authorised Firm's* records must show clearly how those responsibilities are shared or divided between the individuals concerned.

**3.2.2** The records in Rule 3.2.1 must show that the relevant *Senior Management* are aware of and have accepted the responsibilities apportioned in accordance with Rule 3.2.1(2).

## 4 Systems, Resources, Procedures and Controls

### 4.1 General Requirement

**4.1.1** An *Authorised Firm* must take adequate steps to ensure that its systems, resources, procedures and controls are at all times appropriate to its business having regard to all relevant factors, including:

- (A) the nature, scale and complexity of its business;
- (B) the diversity of the business and the volume of transaction it *Executes*; and
- (C) the degree of risk associated with its operations.

**4.1.2** An *Authorised Firm* must undertake a review at least annually to examine and evaluate the adequacy of and effectiveness of its systems, procedures and controls and the resources allocated to them.

**4.1.3** (1) Written findings of the reviews in Rule 4.1.2 must be reported to the *Authorised Firm's Governing Body* at least annually.

- (2) The reports in (1) must be retained for at least six years from the date submitted to the *Authorised Firm's Governing Body*.

#### Guidance

The areas typically covered by systems and controls are those identified throughout this chapter and covers some of the main issues which an *Authorised Firm* is expected to consider in establishing and maintaining the systems, procedures and controls appropriate to its business. Detailed requirements regarding systems, procedures and controls relevant to a particular activity or type of *Authorised Firm* are covered elsewhere in the *Rulebooks*.

### 4.2 Organisation

**4.2.1** An *Authorised Firm* must establish appropriate internal management and organisational structures, policies and procedures which must include:

- (A) mapping out of reporting lines;
- (B) procedures for reporting and communicating information, policies, and decisions to all relevant levels of the *Authorised Firm*;
- (C) clear and documented allocation of responsibilities;
- (D) procedures to monitor and control delegation and outsourcing;

- (E) segregation of responsibility for functions in respect of which conflicts of interest may arise; and
- (F) internal checks and balances such as:
  - (i) hierarchical controls;
  - (ii) cross-checking; and
  - (iii) joint responsibilities.

**4.2.2** The policies and procedures in Rule 4.2.1 must be documented and communicated to all *Employees* within the *Authorised Firm*.

**4.2.3** An *Authorised Firm* must, where appropriate to the scale of its business, adopt clear and documented decision making procedures and establish internal compliance mechanisms designed to ensure compliance with the policies and procedures in Rule 4.2.1.

### 4.3 Compliance

**4.3.1** An *Authorised Firm* must establish an effective and independent compliance function including systems, controls and written policies and procedures that:

- (A) ensure compliance with applicable requirements and standards under the *Regulatory System*; and
- (B) reduce, so far as possible the risk that the *Authorised Firm* or the *Authorised Firm's* facilities may be used for the furtherance of *Financial Crime*.

**4.3.2** An *Authorised Firm* must allocate adequate resources to the compliance function established for the purposes of Rule 4.3.1 including appropriate levels of staffing.

**4.3.3** The systems, resources, procedures and controls required for the compliance function must be appropriate in light of the nature, scale and complexity of the *Authorised Firm's* business.

#### Guidance

Measures which will assist an *Authorised Firm* in ensuring that its compliance function operates independently for the purposes of Rule 4.3.1 include ensuring that staff involved in the compliance function:

- a. are not involved in performance of the services they monitor;
- b. are given the necessary authority to effectively carry out their roles including full access to all information, documents and records necessary to carry out the compliance function, and access to the *Authorised Firm's Governing Body* and *Senior Management*;
- c. have the necessary expertise to perform the functions allocated to them;



- d. are remunerated in such a way as not to undermine their independence; and
- e. have ultimate recourse to the *Authorised Firm's Governing Body*.

**4.3.4** An *Authorised Firm* must appoint a member of its *Senior Management* to the *Compliance Oversight Function*.

**4.3.5** The *Person* appointed under Rule 4.3.4 must have overall responsibility for:

- (A) monitoring and assessing on an ongoing basis:
  - (i) the adequacy and efficacy of the *Authorised Firm's* written compliance policies and procedures;
  - (ii) compliance with the written compliance policies and procedures; and
  - (iii) the adequacy and efficacy of measures taken to address deficiencies;
- (B) reporting on the matters in (A) to the *Authorised Firm's Governing Body*;
- (C) maintaining and updating the *Authorised Firm's* written compliance policies and procedures in conjunction with the *Authorised Firm's Senior Management*; and
- (D) providing advice and support to the *Authorised Firm's Senior Management* in respect of compliance issues.

## **4.4 Risk Management and Risk Control**

**4.4.1** An *Authorised Firm* must establish and regularly review its risk management policy which must be appropriate in light of the nature, scale and complexity of its business.

**4.4.2** An *Authorised Firm's* risk management policy must address:

- (A) the identification and assessment of the risks relating to the *Authorised Firm's* activities, processes and systems;
- (B) the determination of an appropriate level of risk tolerance for the *Authorised Firm*; and
- (C) arrangements for the management of those risks.

**4.4.3** (1) An *Authorised Firm* must appoint an individual to advise its *Governing Body* and *Senior Management* of such risks.

- (2) An *Authorised Firm* which is part of a *Group* should be aware of the implications of any *Group* wide risk policy and system and controls regime.

**4.4.4** (1) Where appropriate to the nature, scale and complexity of the *Authorised Firm's* business, an *Authorised Firm*, other than an *Insurer*, must appoint a member of its *Senior Management* to the *Risk Management Function*.

(2) An *Insurer* must appoint a member of its *Senior Management* to the *Risk Management Function*.

**4.4.5** The *Person* under Rule 4.4.4 must have overall responsibility for:

(A) implementing the risk management policy referred to in Rule 4.4.1;

(B) advising the *Authorised Firm's Governing Body* on risk management;

(C) reporting to *Senior Management* on risk management;

(D) preparing periodic reports setting out an overview of risk management during the relevant period, and send a copy of such reports to the internal audit function (if the *Authorised Firm* has one) and make the report available to the external audit function; and

(E) in the case of an *Insurer*, developing, implementing, and maintaining the *Insurer's Risk Management Strategy* in accordance with PINS chapter 2.

**4.4.6** If an *Authorised Firm* has a *Risk Management Function*, it must be separated from the risk taking functions in the *Authorised Firm*.

## 4.5 Management Information

**4.5.1** An *Authorised Firm's* arrangements must be such as to ensure that its *Senior Management* receives the information it requires to identify, measure, manage and control regulatory risks in a timely and reliable manner.

### Guidance

Regulatory risks which will be of particular concern to *Senior Management* include risks which relate to:

a. services provided to *Clients*;

b. fair treatment of *Customers*;

c. *Customer Assets*;

d. confidence in the *Financial System*; and

e. *Financial Crime*.

## 4.6 Employees and Agents

**4.6.1** An *Authorised Firm* must have systems and controls that enable it to satisfy itself of the suitability of anyone who acts for it having regard to the role that *Person* is to have in the *Authorised Firm*, and applicable *Rules* and legislation under the *Regulatory System*.

**4.6.2** An *Authorised Firm* must ensure, as far as reasonably practical, that its staff are:

- (A) fit and proper;
- (B) appropriately trained for the duties they perform; and
- (C) trained in the requirements of the legislation applicable in the *QFC*.

## 4.7 Audit Committee and Internal Audit

**4.7.1** The review of systems, procedures and controls and the resources allocated to them undertaken in accordance with Rule 4.1.2 must, where appropriate to the nature, scale and complexity of the *Authorised Firm's* business, be performed by an internal audit function that:

- (A) has clear responsibilities and reporting lines to an audit committee or *Senior Management*;
- (B) is adequately staffed by competent individuals;
- (C) is independent of the day to day activities of the *Authorised Firm*; and
- (D) has appropriate access to the *Authorised Firm's* records.

### Guidance

It may be appropriate for an *Authorised Firm* to establish an audit committee. An audit committee could typically examine management's processes for ensuring the appropriateness and effectiveness of systems and controls, examine the arrangements made by management to ensure compliance with the requirements under the *Regulatory System* and provide an interface between management and the external auditors. An effective audit committee should have formal terms of reference in which its responsibilities are clearly documented.

## 4.8 Business Plan

**4.8.1** An *Authorised Firm* must plan its business appropriately so as to identify, manage and control regulatory risks.

**4.8.2** An *Authorised Firm* must have a written business plan updated on a regular basis to take account of changes in the business environment.

## 4.9 Business Continuity

- 4.9.1** An *Authorised Firm* must have procedures in place to ensure, so far as practicable, that it can continue to function to meet its obligations under the *Regulatory System* in the event of an unforeseen interruption.
- 4.9.2** An *Authorised Firm* must keep its procedures adopted under Rule 4.9.1 under review, and test them periodically.

## 4.10 Professional indemnity insurance for insurance mediation business

**4.10.1** This section applies to an *authorised firm* carrying on *insurance mediation business*, unless:

- (A) the *authorised firm* is an *insurer*; or
- (B) another *authorised firm* provides a guarantee for it in accordance with rules 4.10.2 to 4.10.4.

### Guidance for r 4.10.1

The *INAP* definition of *insurance mediation business* is any of several activities carried on 'in relation to a contract of insurance'. This includes a contract of reinsurance. This section, therefore, applies to a reinsurance intermediary in the same way as it applies to any other insurance intermediary.

- 4.10.2** An *authorised firm* may provide a guarantee for another *authorised firm* for rule 4.10.1 (B) only if it has net tangible assets of more than US \$10 million.
- 4.10.3** If the *authorised firm* to whom the guarantee is to be provided is a member of a *group* in which there is an *authorised firm* with net tangible assets of more than US \$10 million, an *authorised firm* that is not a member of the *group* must not provide a guarantee for rule 4.10.1 (B).

**4.10.4** A guarantee provided by an *authorised firm* for rule 4.10.1 (B) must be –

- (A) in writing; and
- (B) on terms at least equal to those required by rule 4.10.5 in relation to a contract of professional indemnity insurance; and
- (C) cover all claims that might arise as a result of a breach by the *authorised firm* of its duties under the *regulatory system* or civil law.

**4.10.5** An *authorised firm* must take out and maintain professional indemnity insurance that is at least equal to the requirements of this section from –

- (A) an insurer authorised to transact professional indemnity insurance in the *QFC*; or
- (B) a *person* of equivalent status in –
  - (i) a *Zone 1* country; or

- (ii) any other jurisdiction as specified by the *Regulatory Authority* by notice.

**4.10.6** The contract of professional indemnity insurance must incorporate terms that make provision for –

- (A) cover in relation to claims for which the *authorised firm* may be liable as a result of the conduct of itself, its *employees* and its agents; and
- (B) the minimum limits of indemnity per year set out in rule 4.10.8; and
- (C) an excess as set out in rules 4.10.9 to 4.10.11; and
- (D) appropriate cover in relation to legal defence costs; and
- (E) continuous cover in relation to claims arising from work carried out from the date on which the *authorised firm* was given authorisation for the *insurance mediation business* concerned; and
- (F) cover in relation to awards made against the *authorised firm* under the *customer dispute resolution scheme*.

**Guidance for r 4.10.6**

An *authorised firm* is responsible for the conduct of all of its *employees* and agents (within the scope of their employment or appointment). The firm's *employees* include, but are not limited to, its partners, *directors*, individuals that are self-employed or operating under a contract hire agreement and any other individual that is employed in connection with its business.

**4.10.7** An *authorised firm* must not take out professional indemnity insurance that includes terms that make provision for the payment of fines imposed by the either the *Regulatory Authority* or the *QFC Authority*.

**4.10.8** For rule 4.10.6 (B), the minimum limits of indemnity per year are –

- (A) for a single claim – US \$500 000; and
- (B) US \$1 million in total or, if higher, 10% of annual income up to US \$ 15 million.

**4.10.9** For rule 4.10.6 (C) and for an *authorised firm* that does not hold *client money* or other client assets, the excess must not be more than the higher of –

- (A) US \$5 000; and
- (B) 1.5% of annual income.

**4.10.10** For rule 4.10.6 (C) and for an *authorised firm* that holds *client money* or other client assets, the excess must not be more than the higher of –

- (A) US \$10 000; and
- (B) 3% of annual income.

**4.10.11** For rule 4.10.6 (C), if a policy provides cover to more than a single *authorised firm* –

- (A) the limits of indemnity must be calculated on the combined annual income of all the firms named in the policy; and
- (B) each firm named in the policy must have the benefit of the relevant minimum limits of indemnity.

**4.10.12** In this section:

*client assets* includes a document only if it has value, or can have value, in itself (for example, a bearer instrument).

## **4.11 Records**

**4.11.1** An *Authorised Firm* must maintain appropriate records relating to its business (including accounting records) and as a minimum must comply with applicable rules and regulations under the *Regulatory System*.

### **Guidance**

Further provisions and procedures regarding record keeping are contained in the *GENE Rulebook* and include provisions regarding the maintenance of records and a summary of the record keeping requirements relevant to *Authorised Firms*.

## 5 Outsourcing

### 5.1 Effect of Outsourcing on Authorised Firms

- 5.1.1** An *Authorised Firm* which *Outsources* any of its functions or activities directly related to *Regulated Activities* to third party providers (including within its *Group*) is not relieved of its regulatory obligations and remains responsible for compliance with applicable requirements in the *QFC*.
- 5.1.2** An *Authorised Firm* must not enter into an *Outsourcing* arrangement which may adversely impact on the *Regulatory Authority's* ability to supervise the activities of the *Authorised Firm*.
- 5.1.3** An *Authorised Firm* that *Outsources* any of its functions must take steps to mitigate against any operational risk that may be relevant.

### 5.2 Notification of Material Outsourcing Arrangements

- 5.2.1** An *Authorised Firm* must provide the *Regulatory Authority* with prior notification of its intention to enter into any *Material Outsourcing* arrangement.
- 5.2.2** An *Authorised Firm* must make available on request of the *Regulatory Authority* all information relevant to the *Material Outsourcing* to enable the *Regulatory Authority* to assess compliance of the arrangements with chapter 5.

### 5.3 Management of Material Outsourcing Arrangements

- 5.3.1** An *Authorised Firm* must exercise due skill, care and diligence in selecting, entering into, managing and exiting from *Material Outsourcing* arrangements.
- 5.3.2** An *Authorised Firm* must ensure that:
- (A) *Senior Management* approves and periodically reviews the *Authorised Firm's* policy for outsourcing operational functions including its procedures for:
    - (i) the assessment of feasibility;
    - (ii) the assessment of risk;
    - (iii) the assessment of impact on the *Authorised Firm's* business;
    - (iv) costing of the *Material Outsourcing*; and
    - (v) the criteria for selecting the service providers; and

- (B) the service provider has the ability and capacity to perform the outsourced functions reliably and professionally at the start and during the life cycle of the *Material Outsourcing* having regard to the following non-exhaustive factors:
  - (i) whether the service provider is regulated, to what extent, and by whom;
  - (ii) whether the provision of the outsourced function is subject to specific regulation or supervision;
  - (iii) the risk that the requested services are not available due to the number of other persons using the same service provider;
  - (iv) the financial stability and expertise of the service provider; and
  - (iv) potential conflicts of interest that may arise from the provision of the service by the service provider.

**5.3.3** The *Authorised Firm* must enter into a written agreement with the service provider which requires the service provider:

- (A) to deal with the *Regulatory Authority* in an open and co-operative way in respect of matters relating to the *Authorised Firm* under the *Material Outsourcing*; and
- (B) to grant the *Regulatory Authority* access to the *Authorised Firm's* books, records and data in the possession or control of the service provider.

**5.3.4** The written agreement referred to in Rule 5.3.3 must also include, where appropriate, provisions as to:

- (A) the law applicable to the contract;
- (B) the reporting or notification requirements on the service provider and the means for measuring quantitative and qualitative performance by the service provider;
- (C) access to the *Authorised Firm's* books, records and data in the possession or control of the service provider by the *Authorised Firm*, its internal auditors, external auditors or actuaries;
- (D) the obligation to protect confidential information and *Personal Data*;
- (E) the contingency procedures;
- (F) the rules for subcontracting if permitted under the arrangement; and
- (G) the termination rights for each party.



**5.3.5** An *Authorised Firm* must ensure that it has a comprehensive contingency arrangement to allow business continuity in the event of a significant loss of services from the service provider under a *Material Outsourcing* including an exit strategy, and where appropriate partial exit and step-in clauses. These arrangements must include, among other things:

- (A) a significant loss of resources at the service provider;
- (B) financial failure of the service provider; and
- (C) unexpected termination of the *Outsourcing* agreement.

## Endnotes

### 1 Abbreviation key

|                      |                              |
|----------------------|------------------------------|
| a = after            | om = omitted/repealed        |
| am = amended         | orig = original              |
| amdt= amendment      | par = paragraph/subparagraph |
| app = appendix       | prev = previously            |
| art = article        | pt = part                    |
| att = attachment     | r = rule/subrule             |
| b = before           | renum = renumbered           |
| ch = chapter         | reloc = relocated            |
| def = definition     | s = section                  |
| div = division       | sch = schedule               |
| g = guidance         | sdiv = subdivision           |
| hdg = heading        | sub= substituted             |
| ins = inserted/added |                              |

### 2 Rulebook history

#### Controls Rulebook (CTRL)

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### 3 Amendment history

#### s 1.1 Application

r 1.1.1 sub RM2007/01

r 1.1.2 sub RM2007/01

#### s 4.4 Risk Management and Risk Control

r 4.4.4 sub RM2006/01

r 4.4.5 am RM2006/01

**s 4.10 Professional indemnity insurance for insurance mediation business**

s 4.10 orig s 4.10 renum as s 4.11  
ins RM 2007/01 amdt 5

r 4.10.1 ins RM2007/01

r 4.10.2 ins RM2007/01

r 4.10.3 ins RM2007/01

r 4.10.4 ins RM2007/01

r 4.10.5 ins RM2007/01

r 4.10.6 ins RM2007/01

r 4.10.6g ins RM2007/01

r 4.10.7 ins RM2007/01

r 4.10.8 ins RM2007/01

r 4.10.9 ins RM2007/01

r 4.10.10 ins RM2007/01

r 4.10.11 ins RM2007/01

r 4.10.12 ins RM2007/01

**s 4.11 Records**

s 4.11 (prev s 4.10) renum RM/2007/01

r 4.10.1 (orig r 4.10.1) renum RM 2007/01