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QATAR FINANCIAL CENTRE
REGULATORY
AUTHORITY

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Governance and Controlled Functions Rules 2012

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Financial Services Regulations

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Chapter 1 General

1.1.1 Name of rules

These rules are the *Governance and Controlled Functions Rules 2012* (or CTRL).

1.1.2 Commencement

These rules commence on 1 July 2013.

Note There are also references to 1 January 2014 in r 3.2.3 and r 3.2.5 and in the notes following r 3.1.8, r 3.1.10, r 4.1.2 and r 4.1.7.

1.1.3 Application of CTRL

- (1) These rules apply to an authorised firm in relation to the carrying on of a regulated activity in or from the QFC.
- (2) These rules also apply to:
 - (a) an authorised firm's management structures, policies, procedures and controls outside the QFC to the extent that they relate to a regulated activity carried on in or from the QFC; and
 - (b) every function exercised by or on behalf of an authorised firm outside the QFC (including any outsourced function) to the extent that the function relates to the carrying on of a regulated activity in or from the QFC.
- (3) Subrules (1) and (2) are subject to any provision of these rules to the contrary.

Note Division 4.1.E (Actuarial function) applies only to certain QFC insurers—see r 4.1.10.

1.1.4 Glossary

The glossary at the end of these rules is part of these rules.

Note 1 There are also relevant definitions in the *INAP* glossary. To assist the reader, the fact that a definition in that glossary applies to an expression used in these rules is usually indicated by the expression, where used in these rules, being in italics (not bold italics).

Chapter 1 General

Rule 1.1.4

Note 2 By contrast, an expression defined in the glossary to these rules is not in italics where used in these rules.

Note 3 For the application of definitions, see *INAP*, r 2.1.8 (Application of definitions).

Note 4 A note in or to these rules is explanatory and is not part of the rules (see *INAP*, r 2.1.6 (1) and r 2.1.7).

Note 5 However, examples and guidance are part of these rules (see *INAP*, r 2.1.4 (1) (b) and (2)).

Note 6 An example is not exhaustive, and may extend, but does not limit, the meaning of these rules or the particular provision of these rules to which it relates (see *INAP*, r 2.1.5).

Note 7 For the effect of guidance, see FSR, art 17 (4).

Chapter 2 Governance principles and the roles of governing body and senior management

Notes for ch 2

- 1 Chapter 2, together with chapters 3 and 4, aims to ensure that authorised firms maintain a culture that promotes effective corporate governance that underpins the transparency and integrity of the financial sector in the QFC, minimises the risk of reputational damage and promotes business conduct in accordance with best international standards.
- 2 Effective corporate governance also strengthens the protection of a firm's depositors, policyholders, clients and other stakeholders.

Part 2.1 Governance principles

2.1.1 Principle 1—role of governing body

- (1) The board of directors of an authorised firm that is a *company* must approve a corporate governance framework for the firm:
 - (a) that is appropriate to the nature, scale and complexity of the firm's business; and
 - (b) that is ultimately responsible for ensuring that the firm carries out the firm's obligations under these rules.
- (2) In the case of any other firm, the firm's membership, committee of management or other body (whatever it is called) described in its constitutional document must approve a corporate governance framework for the firm:
 - (a) that is appropriate to the nature, scale and complexity of the firm's business; and
 - (b) that is ultimately responsible for ensuring that the firm carries out the firm's obligations under these rules.

2.1.2 Principle 2—role of senior management

The senior management of an authorised firm must ensure that the corporate governance framework is effectively implemented and maintained throughout the firm’s business.

2.1.3 Principle 3—knowledge, skills and expertise

The governing body and senior management of an authorised firm must have an appropriate mix of knowledge, skills and expertise to ensure effective management of the firm commensurate with the nature, scale and complexity of its business.

Guidance

- 1 For a firm that is a *company*, the Regulatory Authority’s view is that non-executive directors should represent the majority of the board.
- 2 Additional guidance can be found in the Regulatory Authority’s publication ‘A Guide to Corporate Governance for QFC Authorised Firms’.

2.1.4 Principle 4—review

The governing body of an authorised firm must ensure that the firm reviews its corporate governance framework and risk management and internal controls framework appropriately and with sufficient frequency to ensure that:

- (a) the frameworks remain effective; and
- (b) the functions within the frameworks remain independent; and
- (c) any necessary corrective action is taken.

Part 2.2 Governing bodies

2.2.1 What is a firm's *governing body*?

For these rules, an authorised firm's *governing body* is:

- (a) in the case of a firm that is a *QFC entity* or a partnership constituted under the Partnership Regulations 2007—its board of directors or the body (whatever it is called) that, under the firm's constitutional document, has the responsibility of overseeing the firm's business in or from the QFC; and
- (b) in the case of a firm that is a *branch*:
 - (i) that part of the board of directors of the firm that has the responsibility of overseeing the firm's business in or from the QFC; or
 - (ii) if the firm does not have that part of the board described in subparagraph (i)—that part of the firm's membership, committee of management or other body (whatever it is called) that has the responsibility of overseeing the firm's business in or from the QFC; or
 - (iii) if the firm does not have the board or body described in subparagraphs (i) and (ii)—the person or persons delegated by the board, membership, committee or other body with the responsibility of overseeing the firm's business in or from the QFC.

Note 1 *QFC entity* is defined in *INAP* as a *company* incorporated under the Companies Regulations 2005 or a *limited liability partnership* incorporated under the Limited Liability Partnership Regulations 2005.

Note 2 A firm that is a *branch* is the local office in the QFC of a *company* or *limited liability partnership* incorporated in a jurisdiction outside the QFC.

Guidance

This rule draws a distinction (for some purposes) between:

- a firm incorporated as a *company* or a *limited liability partnership* in the QFC; and
- a firm that is incorporated outside the QFC (a *branch*).

In the case of a branch that is a *company*, the firm's board (which might be in Bahrain, London or New York) remains ultimately responsible for the oversight of the firm, but many policy decisions may be made by a part, or a delegate, of the firm's board. These rules recognise that firms choose to allocate their responsibilities and undertake their business in different ways; these rules therefore place the responsibility for certain kinds of oversight on the firm's board or the part or delegate of the board.

2.2.2 Governing body's role

- (1) The governing body of an authorised firm must:
 - (a) approve the corporate governance framework through which the firm is managed and controlled; and
 - (b) ensure the firm's financial soundness and maintain transparency and disclosure; and
 - (c) be mindful of the legitimate interests of depositors, policyholders, clients and other stakeholders when making decisions; and
 - (d) consider how it can best perform its role, including whether to create 1 or more committees to make recommendations to the body on matters required to be decided by it.

Note Additional guidance about the creation of committees can be found in the Regulatory Authority's publication 'A Guide to Corporate Governance for QFC Authorised Firms'.

- (2) The *corporate governance framework* of an authorised firm is made up of the structures, policies, procedures and controls of the firm.

Guidance

- 1 The corporate governance framework deals with the relationships between a firm's board, its senior management, depositors, policyholders, clients and other stakeholders. It includes the firm's objectives and the means of achieving them, and the risk management and internal controls framework. Other important aspects of corporate governance are the separation of functions within the firm and the accountabilities for the internal control functions.
- 2 The corporate governance framework includes at the minimum the firm's objectives and the corporate governance obligations in these rules, the Companies Regulations 2005, and other regulations, rules and guidance applicable to firms.

2.2.3 Obligation to approve and update plans

- (1) An authorised firm's governing body:
- (a) must approve strategic and business plans appropriate to the nature, scale and complexity of the firm's business; and
 - (b) must update the plans regularly to take account of changes in the business environment.
- (2) The plans may be combined in 1 document.

Note **Document** is defined in the glossary.

2.2.4 Obligation to approve risk management and internal controls framework

An authorised firm's governing body must approve the firm's risk management and internal controls framework.

Note A firm's risk management and internal controls framework is made up of its risk management, compliance oversight, internal audit and actuarial functions (see r 4.1.1).

2.2.5 Obligation to allocate responsibilities

- (1) An authorised firm's governing body must take reasonable care to maintain a clear and appropriate allocation of responsibilities between the body and the firm's senior management.
- (2) The allocation must be in writing and must state whether each significant responsibility is a responsibility of the governing body or senior management.
- (3) The body must determine which of the firm's functions or controlled functions (other than the internal control functions) report to the body or a committee of the body.

Note Under r 4.2.2, the individuals exercising the internal control functions have direct access and reporting to the firm's governing body, the chair of the body, or any relevant committee of the body.

- (4) The allocation:
 - (a) must consider whether the individuals who make up the firm's senior management ought to be ordinarily resident in Qatar to adequately exercise their functions; and
 - (b) must ensure that the firm's business can be adequately managed by the body and the senior management.

2.2.6 Obligation relating to appointment of individuals for certain functions

- (1) The governing body, relevant committee of the governing body or chair of the governing body must decide the appointment, performance assessment, remuneration, disciplining and dismissal of the individual approved to exercise the senior executive function.
- (2) The governing body, chair of the governing body or governing body's audit committee must decide the appointment, performance assessment, remuneration, disciplining and dismissal of an internal auditor for the firm.
- (3) Any decision regarding the appointment, performance assessment, remuneration, disciplining and dismissal of an individual approved to

exercise the risk management function, compliance oversight function or actuarial function for a firm may be made by:

- (a) the firm's governing body or the relevant committee of the governing body; or
- (b) its senior management after consultation with the governing body or the relevant committee of the governing body.

2.2.7 Obligation to establish remuneration policy

- (1) An authorised firm's governing body must establish and maintain for itself and the whole firm a remuneration policy appropriate to the nature, scale and complexity of the firm's business.

Note 1 The requirement to establish a remuneration policy commences on 1 July 2013 and the policy will not apply to any bonus for the 2012 calendar year (even if the bonus is received on or after 1 July 2013).

Note 2 Appropriate records must be kept of remuneration policies and procedures—see GENE, r 6.1.1.

- (2) The policy must set out the objectives and structure of the firm's remuneration arrangements, including:
 - (a) the objectives and structure of any performance-based component; and
 - (b) performance measures that are in line with the firm's risk management strategy; and
 - (c) eligibility for, and timing of, payments that comply with subrules (3) to (5) and that take into account the timeframes within which risks associated with the performance are likely to materialise; and
 - (d) forms and mix of remuneration that are consistent with sound risk management and performance-based rewards.

Examples

- 1 fixed and variable components
- 2 cash and equity-related benefits
- 3 termination payments.

- (3) The policy must permit a performance-based component of a person's remuneration (or the remuneration of a class of persons):
 - (a) to be deferred or reduced (including reduced to zero) if necessary:
 - (i) to protect the firm's financial soundness (for example, in circumstances of subdued or negative financial performance of the firm); or
 - (ii) to respond to significant unexpected or unintended consequences of the firm's activities; and
 - (b) to be returned if the firm is later satisfied that:
 - (i) the person failed to meet the performance measures for the function; or
 - (ii) the person's excessive risk-taking contributed in a material way to the firm's negative financial performance.
- (4) The policy must prohibit a person who has received from the firm any equity or equity-linked deferred remuneration from hedging his or her economic exposures to the resultant equity price risk before the equity or equity-linked remuneration is:
 - (a) fully vested; and
 - (b) able to be sold for cash by the person.
- (5) A remuneration package offered by the firm, including any performance-based component:
 - (a) must encourage behaviour that supports:
 - (i) the firm's long-term financial soundness; and
 - (ii) the firm's risk management strategy; and
 - (b) must align remuneration with prudent risk-taking; and
 - (c) must incorporate adjustments to reflect:
 - (i) the outcomes of the firm's activities; and

- (ii) the risks related to those activities, taking account of the cost of the associated capital; and
 - (iii) the time necessary for the outcomes of those activities to be reliably measured.
- (6) The governing body must periodically review the firm's remuneration policy.

Guidance

- 1 Guaranteed bonuses should generally not be offered because such bonuses are not consistent with sound risk management and performance-based rewards.
- 2 Remuneration payments must be linked to performance over time and designed in a way that does not reward failure.
- 3 Any period of deferral of payment to a person must take into account the timeframe within which risks associated with the person's performance may materialise (for example, the cost of capital required to support the risks taken and associated uncertainties in the timing and likelihood of future revenues and expenses).
- 4 The application of any deferral of payment may vary depending on:
 - the level of seniority or responsibility of the persons eligible for the payment; and
 - the nature of risks to which the firm is exposed; and
 - any other relevant matters.
- 5 Nothing in rule 2.2.7 prevents a firm from adopting the remuneration policy of a member of the firm's *group* provided that:
 - the policy is approved by the firm's governing body; and
 - the policy complies with that rule.

2.2.8 Obligation to have business continuity procedures

- (1) An authorised firm's governing body must establish procedures to ensure, so far as practicable, that the firm can continue to fulfil its obligations under the law applicable in the QFC in the event of an interruption.
- (2) The body must keep the procedures under review and must ensure that they are tested at such intervals determined by the body.

- (3) The interval between testings must be appropriate to the nature, scale and complexity of the firm's business but must not be longer than 18 months.
- (4) The Regulatory Authority may direct the firm to test its procedures at any time and in a way that the authority considers appropriate.

2.2.9 Obligation relating to conflicts of interest

- (1) An authorised firm's governing body must ensure that each part of the firm's corporate governance framework and risk management and internal controls framework is designed:
 - (a) to avoid conflicts of interest in relation to the framework (or, if this is not possible, to mitigate such conflicts); and
 - (b) to effectively deal with any conflict of interest.
- (2) The framework must require that:
 - (a) any such conflict of interest that arises must be reported:
 - (i) to the senior management of the firm, or, if the firm is a branch, to the body that is responsible for the branch; and
 - (ii) if it is not addressed within a reasonable time by the senior management, to the firm's governing body; and
 - (b) every 6 months, the senior management must give to the firm's governing body a written summary of all conflicts of interest addressed by the senior management during the period.
- (3) In this rule and rule 2.2.10, a reference to a firm's governing body is a reference to the board, membership, committee, body (whatever it is called) or person (however it might be delegated) that has responsibility for the firm's corporate governance framework and risk

management and internal controls framework in relation to conflicts of interest and periodic review.

Examples for subrule (3)

For a firm that is part of a *group*, the governing body that might have responsibility for conflicts of interest might be:

- a committee that has carriage for the place in which the firm is located; or
- the individual approved to exercise the senior executive function for the firm; or
- any other body or person that has such responsibility under the firm's governance arrangements.

Guidance

A conflict of interest involving a member of the firm's governing body is to be dealt with under the governing body's own conflicts policy, governance manual or terms of reference.

2.2.10 Obligation relating to periodic review

- (1) An authorised firm's governing body must ensure that the firm's corporate governance framework and risk management and internal controls framework are reviewed at least once every 3 years by:
 - (a) the firm's internal auditor; or
 - (b) an independent and objective external reviewer.
- (2) The person who carries out the review must report in writing to the body within 30 days after the review is completed.
- (3) The firm must give a copy of the report to the Regulatory Authority within 30 days after the firm's governing body receives the report.
- (4) The authority may direct an authorised firm to carry out more frequent reviews than are required by subrule (1).

Note For the use of the term 'governing body' in this rule, see r 2.2.9 (3).

Part 2.3 Senior management

2.3.1 What is a firm's *senior management*?

A firm's *senior management* is made up of:

- (a) each individual (if any) who is approved to exercise the following controlled functions for the firm:
 - (i) the senior executive function;
 - (ii) the finance function;
 - (iii) the senior management function;
 - (iv) the MLRO function;
 - (v) the risk management function;
 - (vi) the compliance oversight function;
 - (vii) the internal audit function;
 - (viii) the actuarial function; and
- (b) any other individual who, together with the individuals in paragraph (a), the Regulatory Authority considers has overall responsibility for the day-to-day management of the part or parts of the firm's business in or from the QFC.

Guidance for para (b)

Depending on the governance and reporting structures for the firm, senior management might include:

- a person who reports directly to the individual approved to exercise the senior executive function; or
- a person who oversees the senior executive function; or
- a person who exercises specific risk functions (for example, credit risk, market risk, liquidity risk and operational risk) and who reports to the individual approved to exercise the risk management function or to the person who heads the *group* risk management function.

2.3.2 Senior management's role

The senior management of an authorised firm:

- (a) must be responsible for implementing the corporate governance framework and risk management and internal controls framework approved by the governing body; and
- (b) must ensure that the implementation of the frameworks is in accordance with these rules; and
- (c) must oversee the daily operations of the firm; and
- (d) must discharge its management responsibilities conscientiously and prudently; and
- (e) must maintain clear decision-making procedures to the extent appropriate to the nature, scale and complexity of the firm's business; and
- (f) must actively promote a strong governance and risk management culture throughout the firm; and
- (g) must establish and maintain policies and procedures that enable it to satisfy itself of the suitability of any person who acts for the firm, having regard to:
 - (i) the role that he or she is to have in the firm; and
 - (ii) the law applicable in the QFC.

2.3.3 Duties of individuals towards firm

Each individual who makes up a firm's senior management owes towards the firm the following duties:

- (a) to act for the benefit of the firm;
- (b) to avoid any conflict between his or her interests and those of the firm (or, if this is not possible, to mitigate such conflict);
- (c) to possess and maintain the knowledge and skills that are reasonably expected of a person holding a similar appointment,

and carrying out similar functions, in the senior management of that firm;

- (d) to exercise as much care in the carrying out of his or her functions as might reasonably be expected of a diligent person:
 - (i) who holds the same appointment under similar circumstances; and
 - (ii) who possesses the knowledge and skills in paragraph (c) and any additional knowledge and skills that the individual may have.

2.3.4 Obligation relating to independence

- (1) The senior management of an authorised firm must ensure that the implementation of the firm's corporate governance framework and risk management and internal controls framework comply with this rule.
- (2) An approved individual who exercises an internal control function, and each *employee* allocated to the frameworks, must be sufficiently free from influence for the framework to be effective in achieving its purposes.
- (3) The requirement in subrule (2) is satisfied if reasonable measures have been taken to ensure that:
 - (a) no such individual, and no such *employee*, is remunerated in a way that would tend to undermine his or her independence and objectivity in exercising the function or performing the duties; and
 - Note* For the requirements relating to a firm's remuneration policy, see r 2.2.7.
 - (b) no such individual, and no such *employee*, is involved in performing a revenue function of the firm; and
 - (c) no such individual, and no such employee, is limited or restricted as to the matters that he or she can investigate or report on in the exercise of his or her function; and

- (d) the reports and conclusions of such an individual or employee can be honest and candid, without fear of reprisal; and
- (e) pressure or influence is not applied to such an individual or employee to modify his or her reports or conclusions.

Guidance

An internal control function cannot be effective unless it is independent. **Independent** means, broadly, that it is not subjected to pressure to mould or manipulate its conclusions or results. An internal control function that produces only results that are convenient to the firm's governing body or management would not be regarded as satisfying r 2.3.4.

- (4) In subrule (3):
revenue function of an authorised firm means a function that generates, or is intended to generate, revenue for the firm.

2.3.5 Obligation relating to employees

- (1) The senior management of an authorised firm must ensure that the implementation of the firm's corporate governance framework and risk management and internal controls framework comply with this rule.
- (2) An approved individual who exercises an internal control function, and each *employee* allocated to the frameworks, must have:
 - (a) the necessary authority to exercise the function or carry out his or her duties; and
 - (b) access to all necessary information, documents and records of the firm; and
 - (c) appropriate access to the firm's governing body and senior management.

2.3.6 Obligation relating to documentation

The senior management of an authorised firm must ensure that the firm maintains a written record of the authority and duties of:

- (a) each approved individual exercising an internal control function; and
- (b) each *employee* allocated to the firm's corporate governance framework and risk management and internal controls framework.

Chapter 3 Controlled functions

Notes for ch 3

- 1 Chapter 3, together with chapters 2 and 4, aims to ensure that authorised firms maintain a culture that promotes effective corporate governance that underpins the transparency and integrity of the financial sector in the QFC, minimises the risk of reputational damage and promotes business conduct in accordance with best international standards.
- 2 Effective corporate governance also serves to strengthen the protection of a firm's depositors, policyholders, clients and other stakeholders.
- 3 FSR, art 41 provides that a person must not perform a controlled function for an authorised firm unless he or she is approved by the Regulatory Authority as an approved individual. In relation to approval as an approved individual, see *INDI*, Chapter 3.
- 4 The senior management (which includes approved individuals exercising particular controlled functions) is responsible for the daily operations of the firm and implementing the corporate governance framework and risk management and internal controls framework set and approved by the governing body.

Part 3.1 Controlled functions—definitions

3.1.1 What functions are controlled functions?

For FSR, article 41 (2), each of the following is a *controlled function*:

- (a) the non-executive governance function;
- (b) the executive governance function;
- (c) the senior executive function;
- (d) the finance function;
- (e) the senior management function;
- (f) the MLRO function;
- (g) the risk management function;
- (h) the compliance oversight function;

- (i) the internal audit function;
- (j) the actuarial function.

Note There are 10 controlled functions and each of them is defined below in the order set out in this rule. Of these 10, 4 functions (compliance oversight, risk management, internal audit and actuarial functions) make up the *internal control functions*.

3.1.2 What is the *non-executive governance function*?

The *non-executive governance function* is the function of holding a position on the governing body of an authorised firm that is a *QFC entity* but not having responsibility for the day-to-day direction of the firm's affairs.

Note *QFC entity* is defined in *INAP* as a *company* incorporated under the Companies Regulations 2005 or a *limited liability partnership* incorporated under the Limited Liability Partnership Regulations 2005.

3.1.3 What is the *executive governance function*?

- (1) The *executive governance function* for an authorised firm that is a *QFC entity* is the function of acting in the capacity of a director, other than a non-executive director, of the firm.
- (2) The *executive governance function* for an authorised firm that is a branch is the function of acting in the capacity of a director with responsibility for the firm's business in or from the QFC.

Note *Branch* is defined in *INAP* as a legal entity incorporated in a jurisdiction outside the QFC. A firm that is a *branch* is the local office in the QFC of a *company* or *limited liability partnership* incorporated in a jurisdiction outside the QFC.

3.1.4 What is the *senior executive function*?

The *senior executive function* for an authorised firm is the function of having responsibility for:

- (a) the whole business of the firm; or
- (b) in the case of a non-local firm—the business of the firm carried on in or from the QFC.

3.1.5 What is the *finance function*?

The *finance function* for an authorised firm includes the function of being responsible for the prudential returns that the firm is required to prepare.

3.1.6 What is the *senior management function*?

The *senior management function* for an authorised firm is the function of being responsible (alone or with others) for managing and supervising a part or parts of the firm's business related to its regulated activities (other than those parts that are included in any of the other controlled functions defined in rules 3.1.2 to 3.1.5 and rules 3.1.7 to 3.1.11).

Guidance

Depending on the governance and reporting structures for the firm, this function may be required for a person to exercise a function (other than the other controlled functions). A person exercising the senior management function may report directly to:

- the individual approved to exercise the senior executive function; or
- a person who oversees the senior executive function; or
- a person who has overall responsibility for the day-to-day management of the part or parts of the firm's business in or from the QFC; or
- a person who exercises specific risk functions (for example, credit risk, market risk, liquidity risk and operational risk) and who reports to the individual approved to exercise the risk management function or to the person who heads the *group* risk management function.

3.1.7 What is the *MLRO function*?

The *MLRO function* for an authorised firm is the function of being the firm's MLRO under *AML/CFTR* or *AMLG*.

3.1.8 What is the *risk management function*?

The *risk management function* for an authorised firm is the function of having responsibility:

- (a) for the firm's risk management policies, procedures and controls; and

- (b) for taking appropriate steps to ensure the implementation of and compliance with those policies, procedures and controls.

Note 1 See also rules 4.1.2 and 4.1.3.

Note 2 A QFC insurer (other than a *QFC captive insurer*) must have an individual approved to exercise the risk management function. As a general rule, a QFC bank must, from 1 January 2014, have an individual approved to exercise the risk management function—see r 3.2.3.

3.1.9 What is the **compliance oversight function**?

The **compliance oversight function** for an authorised firm is the function of having responsibility:

- (a) for the firm’s compliance policies, procedures and controls; and
- (b) for taking appropriate steps to ensure the implementation of and compliance with those policies, procedures and controls.

Note See also rules 4.1.5 and 4.1.6.

3.1.10 What is the **internal audit function**?

The **internal audit function** for an authorised firm is the function of having responsibility:

- (a) for the firm’s internal audit policies, procedures and controls; and
- (b) for taking appropriate steps to ensure the implementation of and compliance with those policies, procedures and controls.

Note 1 See also rules 4.1.7 and 4.1.8.

Note 2 As a general rule, a QFC insurer (other than a *QFC captive insurer*) and a QFC bank must, from 1 January 2014, have an internal auditor—see r 3.2.5.

3.1.11 What is the **actuarial function**?

The **actuarial function** for an authorised firm is the function of having responsibility:

- (a) for the firm’s actuarial policies, procedures and controls; and

- (b) for taking appropriate steps to ensure the implementation of and compliance with those policies, procedures and controls.

Note See also rules 4.1.11 and 4.1.12.

Part 3.2 Controlled functions—firms' obligations

Notes for pt 3.2

- 1 FSR, art 31 provides that, subject to the conditions and requirements in that article, the Regulatory Authority may:
 - (a) impose or vary such conditions, restrictions and requirements on an authorisation as the authority considers appropriate; or
 - (b) require a person specified in the condition, restriction or requirement to take or refrain from taking such action as the authority considers appropriate.
- 2 For this part, the powers in FSR, art 31 enable the Regulatory Authority, for example:
 - to direct a firm to appoint an individual who is ordinarily resident in Qatar even if this part does not require the individual to be such a resident; and
 - to direct a firm to appoint an individual to a controlled function even if this part does not require the firm to have such an individual.

3.2.1 Senior executive function

- (1) An authorised firm must have an individual approved to exercise the senior executive function.
- (2) The individual approved to exercise the senior executive function for the firm must be ordinarily resident in Qatar.

3.2.2 Finance function

An authorised firm must have an individual approved to exercise the finance function.

3.2.3 Risk management function

- (1) A QFC insurer (other than a *QFC captive insurer*) must have an individual approved to exercise the risk management function.

Note *QFC insurer* and *QFC bank* are defined in the glossary.
- (2) From 1 January 2014, a QFC bank must have an individual approved to exercise the risk management function.

- (3) Despite subrules (1) and (2), an authorised firm must appoint an individual to the risk management function if it is appropriate to do so because of the nature, scale and complexity of the firm's business.

Note An authorised firm that is not a QFC insurer or QFC bank is required by this rule to have an individual approved to exercise the risk management function if it is appropriate to do so. Likewise, a QFC bank is required to have an individual approved to exercise the risk management function before 1 January 2014 if it is appropriate to do so.

- (4) The individual approved to exercise the risk management function for the following firms must be ordinarily resident in Qatar:
- (a) a QFC bank;
 - (b) a QFC insurer (other than a *QFC captive insurer*) that is a *company* incorporated under the Companies Regulations 2005.

3.2.4 Compliance oversight function

- (1) An authorised firm must have an individual approved to exercise the compliance oversight function.
- (2) The individual approved to exercise the compliance oversight function for the following firms must be ordinarily resident in Qatar:
- (a) a QFC bank;
 - (b) a QFC insurer (other than a *QFC captive insurer*) that is a *company* incorporated under the Companies Regulations 2005.

Note *QFC bank* and *QFC insurer* are defined in the glossary.

3.2.5 Internal audit function

- (1) From 1 January 2014, a QFC bank must have an individual approved to exercise the internal audit function.
- (2) From 1 January 2014, a QFC insurer (other than a *QFC captive insurer*):
- (a) must have an individual approved to exercise the internal audit function; or

- (b) must, with the permission of the Regulatory Authority, appoint a firm of auditors as internal auditor under a material outsourcing arrangement to which chapter 5 applies.

Note **QFC bank** and **QFC insurer** are defined in the glossary.

- (3) Despite subrules (1) and (2):
- (a) an authorised firm must appoint an individual to the internal audit function if it is appropriate to do so because of the nature, scale and complexity of the firm's business; and
- (b) the Regulatory Authority may direct an authorised firm to appoint an individual to the internal audit function.

Note Nothing in this rule prevents a firm from appointing a *group employee* to the internal audit function.

Guidance

- 1 A firm should use separate audit firms for its external audit and internal audit functions. If the firm chooses to use the same audit firm, the firm should satisfy itself that there are appropriate 'Chinese walls' in the audit firm between internal and external audit to ensure that there are arrangements in place to avoid conflicts of interest (or, if this is not possible, to mitigate such conflicts).
- 2 For a firm that is part of a *group*, the *group* internal audit function may be used to perform the function for the firm. This means that the firm is not required to have a dedicated resource for the internal audit function. The work to be undertaken by the internal audit function will depend on the agreed risk-based audit plan for the firm and the *group*-wide auditor would be best placed to determine this.

3.2.6 Actuarial function

- (1) This rule applies to a QFC insurer if:
- (a) the insurer conducts *long term insurance business*; or
- (b) the insurer conducts general insurance business and:
- (i) more than 15% of the insurer's gross outstanding liabilities are attributable to *contracts of insurance* for general insurance business in PINS category 1; or

- (ii) more than 20% of the insurer's gross outstanding liabilities are attributable to *contracts of insurance* for general insurance business in PINS category 4.
- (2) However, this rule does not apply to a *QFC captive insurer*.
- Note* For the obligations of a *QFC captive insurer* in relation to the actuarial function, see *CAPI*, ch 7.
- (3) A QFC insurer to which this rule applies must have an individual approved to exercise the actuarial function.
- (4) The individual must not be one who:
- (a) exercises the senior executive, executive governance or non-executive governance function for the insurer or a *related* body corporate (except a *related* body corporate that is a *subsidiary* of the insurer); or
 - (b) is an *employee* or director of an approved auditor (under the Companies Regulations 2005, article 85 (1), or the Limited Liability Partnerships Regulations 2005, article 37) for the insurer.
- (5) In subrule (1):
- general insurance business* has the meaning given by PINS, rule 1.2.5 (1).
- PINS category 1* and *PINS category 4* have the respective meanings given by PINS, rule 1.2.8.

3.2.8 Exercise of 2 or more controlled functions by the same individual

- (1) An individual may exercise 2 or more controlled functions for an authorised firm if (but only if):
 - (a) the firm's governing body confirms to the Regulatory Authority that it is satisfied that:
 - (i) his or her exercise of those controlled functions in combination does not :
 - (A) give rise to any internal or external conflict of interest; and
 - (B) compromise the independence, objectivity and effectiveness of the exercise of any of the functions; and
 - (ii) the combined exercise of the functions will not increase the firm's risk of non-compliance with the law applicable in the QFC or any other applicable law; and
 - (iii) it is appropriate, having regard to the nature, scale and complexity of the firm's business, for him or her to exercise both or all the controlled functions; and
 - (b) the Regulatory Authority is satisfied that the conditions in paragraph (a) have been met and the individual can adequately exercise the functions together.
- (2) The firm's senior management must annually review:
 - (a) the firm's policies, procedures and controls for combining the functions, including its procedures for assessing:
 - (i) the continuing feasibility of combining the functions; and
 - (ii) the risk in doing so; and
 - (iii) the likely effect on the firm's business; and

- (b) any combined exercise of functions to satisfy itself that:
 - (i) the continued combined exercise does not compromise the independence, objectivity and effectiveness of the exercise of each function; and
 - (ii) no internal or external conflict of interest arises; and
 - (iii) the combined exercise has not increased, and will not increase, the firm's risk of non-compliance with the law applicable in the QFC or any other applicable law; and
 - (iv) the combined exercise continues to be appropriate, having regard to the nature, scale and complexity of the firm's business.
- (3) The senior management must report the results of the review to the firm's governing body within 30 days after the review.
- (4) If the Regulatory Authority is satisfied that it is no longer appropriate for 2 or more functions to be exercised by the same individual, the authority may, by written notice, direct the firm:
 - (a) to stop combining the functions; and
 - (b) to appoint 1 or more individuals to exercise the functions.
- (5) In particular, the authority may give a direction under subrule (4) if the authority considers that:
 - (a) the continued performance by the individual of both or all the functions:
 - (i) is no longer appropriate, having regard to the nature, scale and complexity of the firm's business;
 - (ii) has given rise, or is likely to give rise, to an internal or external conflict of interest; or
 - (iii) has compromised, or is likely to compromise, the independence, objectivity and effectiveness of the performance of any of the functions;

- (b) the individual is performing any of the functions at below the standard at which a reasonable person having the necessary skills, knowledge and experience would be expected to perform that function;
- (c) the combined performance of the functions by the individual has impaired, or is likely to impair, the firm's compliance with the requirements applicable to the conduct of its business in or from the QFC; or
- (d) the firm's governing body:
 - (i) has failed to carry out the review required by subrule (2);
 - (ii) has failed to submit the report of such a review to the authority; or
 - (iii) has submitted a report that does not satisfy the authority that it is appropriate for the arrangement to continue.

Guidance

As a general rule, the Regulatory Authority would not permit combining the internal audit function with the risk management, compliance oversight, MLRO or other controlled functions.

3.2.9 Performing controlled functions within a *group*

An individual may perform controlled functions for more than 1 authorised firm if the firms are part of the same *group* or are owned by the same shareholders.

Chapter 4 **Risk management and internal controls framework**

Notes for ch 4

- 1 Chapter 4, together with chapters 2 and 3, aims to ensure that authorised firms maintain a culture that promotes effective corporate governance that underpins the transparency and integrity of the financial sector in the QFC, minimises the risk of reputational damage and promotes business conduct in accordance with best international standards.
- 2 Effective corporate governance also serves to strengthen the protection of a firm's depositors, policyholders, clients and other stakeholders.

Part 4.1 **Composition of framework**

Division 4.1.A **Internal control functions**

4.1.1 **What makes up the *risk management and internal controls framework*?**

An authorised firm's risk management and internal controls framework is made up of its internal control functions.

Note The 4 internal control functions of risk management, compliance oversight, internal audit and actuarial functions are described in the following divisions.

Division 4.1.B **Risk management function**

4.1.2 **Authorised firms to have risk management function**

- (1) The senior management of an authorised firm must establish and maintain a risk management function appropriate to the nature, scale and complexity of the firm's business.
- (2) The risk management function:
 - (a) must provide for the timely monitoring of, advising on, investigating of and reporting on all reasonably foreseeable material risks; and

- (b) for each such risk, must take into account:
 - (i) its likelihood; and
 - (ii) its possible consequences; and
 - (iii) its duration.

Note As a general rule, a QFC bank is not required to have an individual approved to exercise the risk management function until 1 January 2014—see r 3.2.3.

4.1.3 What makes up an authorised firm's *risk management function*?

- (1) An authorised firm's *risk management function* is made up of:
 - (a) the individual (if any) approved to exercise the risk management function for the firm; and
 - (b) any other *employees* allocated to the function; and
 - (c) the part of the firm's resources (other than staff) allocated to the function; and
 - (d) the firm's risk management strategy; and
 - (e) the firm's risk management policy; and
 - (f) the records that the firm keeps in relation to risk management.

Note 1 For the requirements relating to risk management strategy, see r 4.1.4.

Note 2 There are also requirements in PINS for a QFC insurer's risk management strategy and policy.

- (2) The purpose of an authorised firm's risk management function is to monitor and control the firm's risk exposure.

4.1.4 Risk management strategy

- (1) An authorised firm's risk management strategy must be appropriate to the nature, scale and complexity of the firm's business.

Note The risk management and internal controls framework includes the risk management framework approved by the firm's governing body.

- (2) The strategy:
- (a) must make provision for assessing material risks; and
 - (b) must set out policies and procedures for monitoring, prioritising and managing major risk exposures; and
 - (c) must make provision for monitoring significant changes to the firm's risk profile; and
 - (d) must state the firm's risk tolerance.

Guidance

The firm's risk management strategy will usually refer to risk tolerance although risk appetite may also be used. The terms 'risk tolerance' and 'risk appetite' embrace all relevant definitions used by different institutions and supervisory authorities. These 2 terms are used interchangeably to describe both the absolute risks a firm is open to take (which some may call risk appetite) and the actual limits within its risk appetite that a firm pursues (which some call risk tolerance).

- (3) The strategy must include:
- (a) objectives, principles and allocation of responsibility for dealing with risk across the firm, including any branches; and
 - (b) definition and categorisation of the types of risk to which the firm is exposed; and
 - (c) processes (covering contingency planning, business continuity, crisis management and fraud) for identifying, assessing, monitoring, managing and reporting on risks; and
 - (d) a process for obtaining and recording the governing body's approval for any material change to, or deviation from, the strategy; and
 - (e) a process for obtaining a governing body direction settling any major question of the interpretation of the strategy.
- (4) The firm must ensure:
- (a) that there are written records of the firm's risk management strategy; and

- (b) that the strategy is kept up to date to take into account new internal and external circumstances; and
- (c) that the strategy is reviewed at least annually.
- (5) In determining the risk management strategy of an authorised firm that is part of a *group*, the governing body must know the implications for the firm of any *group*-wide risk management strategy.

Guidance

Risk management includes:

- identifying, assessing and reporting risk management information (including information dealing with issues of corporate strategy, mergers and acquisitions, and major projects and investments) to the governing body and the firm's senior managers in a timely way; and
- assessing risk positions, risk exposures, the steps being taken to manage them and, if appropriate, pre-defined risk limits; and
- participating in the process of approving new products or significant changes to existing products; and
- preparing periodic reports to the firm's governing body setting out an overview of risk management during the relevant period, sending a copy of each such report to the firm's internal auditor and making the report available to the firm's external auditors; and
- assessing risk events and identifying appropriate remedial action; and
- assessing changes in the firm's risk profile; and
- identifying available resources to manage the firm's risks; and
- facilitating business continuity planning and disaster recovery for the firm; and
- developing and maintaining external relationships relevant to risk management in the firm; and
- developing and maintaining effective risk management communication within the firm; and
- monitoring and assessing the adequacy and effectiveness of the firm's risk management policies, procedures and controls.

Note 1 Additional requirements in relation to risk management apply to a QFC insurer. See PINS, ch 2.

Note 2 Additional requirements under the *Banking Business Prudential Rules 2014* or *Investment Management and Advisory Rules 2014* may apply to an authorised firm.

Division 4.1.C Compliance oversight function

4.1.5 Authorised firms to have compliance oversight function

The senior management of an authorised firm must establish and maintain a compliance oversight function appropriate to the nature, scale and complexity of the firm's business.

4.1.6 What makes up an authorised firm's *compliance oversight function*?

- (1) An authorised firm's *compliance oversight function* is made up of:
 - (a) the individual approved to exercise the compliance oversight function for the firm; and
 - (b) any other *employees* allocated to the function; and
 - (c) the part of the firm's resources (other than staff) allocated to the function; and
 - (d) the firm's compliance policies and procedures; and
 - (e) the records that the firm keeps in relation to compliance matters.

Note Appropriate records must be kept of policies and procedures—see GENE, r 6.1.1.

- (2) The purposes of an authorised firm's compliance oversight function are the following:
 - (a) to ensure that the firm complies with:
 - (i) supervisory decisions; and
 - (ii) the firm's internal policies, procedures and controls; and
 - (iii) requirements and standards applicable to the firm under the law applicable in the QFC or any other applicable law;
 - (b) to ensure that the firm's business is conducted ethically and responsibly;

- (c) to minimise the risk of the firm or its facilities being used in the furtherance of *financial crime*.

Guidance

The compliance oversight function includes:

- monitoring and assessing the adequacy and effectiveness of the firm's compliance policies and procedures; and
- participating in the process of approving new products or significant changes to existing products; and
- monitoring and assessing the extent to which it complies with those policies and procedures; and
- monitoring and assessing the adequacy and effectiveness of measures taken to correct any deficiencies; and
- reporting to the firm's governing body on the matters mentioned in rule 4.1.6 (2) (a); and
- maintaining and updating the firm's compliance policies and procedures in conjunction with the firm's senior managers; and
- providing advice and support to the firm's senior managers about compliance issues.

Division 4.1.D Internal audit function

4.1.7 Which authorised firms must have internal audit function?

- (1) The senior management of a QFC insurer (other than a *QFC captive insurer*) or QFC bank must establish and maintain an internal audit function.

Note *QFC insurer* and *QFC bank* are defined in the glossary.

- (2) An authorised firm that is not required by subrule (1) to have an internal audit function must establish and maintain such a function if appropriate because of the nature, scale and complexity of its business.
- (3) The Regulatory Authority may direct an authorised firm to establish and maintain an internal audit function.

- (4) An authorised firm's internal audit function must be appropriate to:
- the nature, scale and complexity of the firm's business; and
 - its risk profile and legal status.

Note As a general rule, QFC banks and QFC insurers (other than *QFC captive insurers*) are not required to have individuals approved to exercise the internal audit function until 1 January 2014—see r 3.2.5.

4.1.8 What makes up an authorised firm's *internal audit function*?

- (1) An authorised firm's *internal audit function* is made up of:
- firm's internal auditor (if any); and
 - any other *employees* allocated to the function; and
 - the part of the firm's resources (other than staff) allocated to the function; and
 - the firm's audit charter and risk-based audit plan; and
 - the records that the firm keeps in relation to internal audit.

Note For other audit requirements for firms, see GENE, s 9.5.

- (2) The purpose of an authorised firm's internal audit function is to assess the adequacy and effectiveness of:
- the firm's internal control functions, policies and procedures; and
 - its financial and other controls; and
 - its governance.

Guidance

The internal audit function includes:

- establishing, implementing and maintaining a risk-based audit plan to review the firm's whole business or parts of it, both reactively and preventively; and
- reviewing and assessing the adequacy and effectiveness of the firm's policies and procedures and the documentation concerning them for the firm as a whole, its *group*, each *subsidiary* if any and each part of the firm (such as a business unit, business area or department); and

- assessing the reliability and integrity of information and the means used to identify, measure, classify and report such information; and
- ensuring that the identified risks and the agreed actions to address them are accurate and current; and
- assessing the means of safeguarding the assets of the firm and its depositors, policyholders, clients and other stakeholders, verifying the existence of those assets and verifying that the firm's assets are appropriately segregated from the assets of its depositors, policyholders, clients and other stakeholders; and
- coordinating with the firm's external auditors and, to the extent requested by its governing body and consistently with applicable law, assessing the performance of the external auditors; and
- conducting regular assessments of the firm's internal audit policies, procedures and controls and incorporating any necessary improvements.

4.1.9 Authority of internal auditor

An authorised firm's internal audit policies, procedures and controls must provide that:

- (a) the firm's internal auditor, and any *employee* allocated to the internal audit function, must have access to, and must review, any information, documents and records of the firm that he or she considers necessary to carry out an audit or other review; and
- (b) the internal auditor has the authority:
 - (i) to undertake, on his or her own initiative, a review of any area or any function of the firm consistently with the internal audit function's purpose; and
 - (ii) to require an appropriate management response to an internal audit report, including the development of a suitable remediation or mitigation plan or other follow-up plan; and
 - (iii) to decline to undertake an audit or review, or take on any other duty, that he or she believes is inconsistent with the

internal audit function's purpose or the firm's internal audit policies and procedures.

Division 4.1.E Actuarial function

4.1.10 Application—div 4.1.E

This division applies to a QFC insurer if the insurer is required by rule 3.2.6 (Actuarial function) to have an approved actuary.

4.1.11 Certain insurers to have actuarial function

The senior management of a QFC insurer to which this division applies must establish and maintain an actuarial function appropriate to the nature, scale and complexity of the insurer's business.

4.1.12 What makes up an authorised firm's *actuarial function*?

- (1) An insurer's *actuarial function* is made up of:
 - (a) each approved actuary for the insurer; and
 - (b) any other *employees* allocated to the actuarial function; and
 - (c) the part of the insurer's resources (other than staff) allocated to the function; and
 - (d) the insurer's actuarial policies and procedures; and
 - (e) the records that the insurer keeps in relation to actuarial matters.

Note See PINS, ch 9, for an insurer's obligations in relation to actuarial reporting.
- (2) The purpose of the actuarial function of a QFC insurer is to advise on, monitor, investigate and report on risks that materially affect the insurer's:
 - (a) ability to meet its liabilities to policyholders; and
 - (b) capital requirements and solvency position; and
 - (c) technical provisions; and

(d) setting of premiums or prices.

Guidance

The matters about which an insurer's actuary might advise the insurer include:

- the insurer's actuarial and financial risks; and
- its investment policies and the valuation of assets; and
- its solvency position, including the calculation of the minimum capital required for regulatory purposes and liability and loss provision; and
- its prospective solvency position; and
- its risk management strategy, risk assessment and management policies, procedures and controls relevant to actuarial matters or the financial condition of the firm; and
- distribution of policy dividends or other benefits; and
- underwriting policies; and
- reinsurance arrangements; and
- product development and design, including the terms and conditions of insurance contracts; and
- the sufficiency and quality of data used in the calculation of technical provisions; and
- risk modelling in the insurer's own risk and solvency assessment; and
- its use of internal models.

4.1.13 Insurer to give notice before removal of approved actuary

- (1) A QFC insurer that has an approved actuary must give the Regulatory Authority reasonable advance notice of any intention to remove the actuary.
- (2) The notice must set out the reasons for the removal.

4.1.14 Insurer to give notice if appointment of approved actuary ends

If the appointment of a QFC insurer's approved actuary ends for any reason, the insurer must tell the Regulatory Authority immediately, but by no later than the second *business day* after the day the appointment ends:

- (a) that the appointment has ended; and

- (b) the reasons for the ending of the appointment.

Note For the obligation of the approved actuary to notify the Regulatory Authority if his or her appointment ends, see FSR, art 91 (Resignation of auditors and actuaries).

4.1.15 Insurer to appoint actuary if vacancy arises

If at any time there is no approved actuary for a QFC insurer, the insurer must appoint an individual to the actuarial function as soon as practicable, but within 3 months after the day the vacancy arises.

4.1.16 Authority of insurer's approved actuary

A QFC insurer's actuarial policies, procedures and controls must provide that:

- (a) the insurer's approved actuary must have access to, and must review, any information, documents and records of the insurer that he or she considers necessary to carry out a review; and
- (b) the approved actuary has the authority:
 - (i) to undertake, on his or her own initiative, a review of any area or any function of the insurer consistently with the actuarial function's purpose; and
 - (ii) to require an appropriate management response to an actuarial report, including the development of a suitable remediation or mitigation plan or other follow-up plan; and
 - (iii) to decline to undertake a review, or take on any other duty, that he or she believes is inconsistent with the actuarial function's purpose or the insurer's actuarial policies and procedures.

4.1.17 Regulatory Authority may appoint actuary in certain circumstances

- (1) If no individual is approved to exercise the actuarial function for a QFC insurer within 28 days of a vacancy arising, the Regulatory

Authority may appoint an actuary, or 2 or more actuaries, to exercise any part of the actuarial function for the insurer on the following terms:

- (a) the insurer is to remunerate the actuary or actuaries on a basis agreed between the insurer and the actuary or, if there is no agreement, on a reasonable basis;
 - (b) each actuary is to hold office until he or she resigns or an actuary is approved for the insurer;
 - (c) each actuary has the same authority within the insurer that he or she would have as an approved actuary.
- (2) The insurer must comply with, and is bound by, the terms on which the Regulatory Authority appoints an actuary under subrule (1).
- (3) An actuary appointed by the Regulatory Authority under subrule (1) is not an approved actuary.

Guidance

- 1 Rule 4.1.17 allows, but does not require, the Regulatory Authority to appoint an actuary if no actuary has been approved for the insurer within the 28-day period referred to in r 4.1.17 (1). In considering whether to use that power, the authority would take into account the likely delay until the insurer can make an appointment, and the urgency of any pending duties of the actuary.
- 2 The authority would not normally seek to appoint an actuary under r 4.1.17 if the insurer concerned has applied for the approval of an individual to exercise the actuarial function and that application is still being considered.
- 3 If the authority appoints an actuary, the insurer remains obliged to appoint an individual to the actuarial function and must seek the authority's approval of the individual (even if the individual it proposes to appoint is the actuary appointed by the authority).

Part 4.2 Reporting

4.2.1 Reports about internal control functions

- (1) The senior management of an authorised firm must ensure that periodic reports about each internal control function are given to the firm's governing body or a relevant committee of the body about the matters in subrule (2).
- (2) A report under subrule (1) must be in writing and include:
 - (a) how each function is performing against the policies, procedures and controls for the function; and
 - (b) shorter-term and longer-term objectives of each internal control function, and the progress made in achieving those objectives; and
 - (c) resources of staff, equipment, time and budget allocated to the framework and an analysis of the adequacy of those resources; and
 - (d) any material deficiency, material weakness or material failure of an internal control function, and the response to the deficiency, weakness or failure.
- (3) The body or committee must determine:
 - (a) how often the report must be made; and
 - (b) how serious a deficiency, weakness or failure must be to require reporting under subrule (2) (d).

Note Under GENE, r 4.1.3 (2) (g) an authorised firm must immediately tell the Regulatory Authority about any material deficiency, material weakness or material failure in the firm's internal control functions.

4.2.2 Direct access to governing body by certain individuals

- (1) This rule applies to the following individuals:
 - (a) an individual approved to exercise the compliance oversight function for a firm;

- (b) an individual approved to exercise the risk management function for a firm;
- (c) a firm's internal auditor;
- (d) a firm's approved actuary.

Note **Internal auditor** and **approved actuary** are defined in the glossary.

- (2) An authorised firm's policies, procedures and controls must provide that an individual to whom this rule applies:
 - (a) must promptly raise material matters directly with the firm's governing body, the chair of the body, or any relevant committee of the body (without the presence of any representative of the firm's senior management); and
 - (b) must promptly tell any other individual to whom this rule applies if the individual becomes aware of a risk that might have (or a number of risks that, taken together, might have) a material effect on:
 - (i) the firm's risk management strategy; or
 - (ii) the other individual's functions.

Chapter 5 Outsourcing

Note for ch 5

This chapter is drafted so that the governing body of a firm is responsible for the outsourcing policy (see r 5.1.2) while the firm's senior management is responsible for implementing that policy (see r 5.2.1).

Part 5.1 Outsourcing generally

5.1.1 Application of ch 5

This chapter does not apply to the outsourcing of a function by an authorised firm if the functions are outsourced by the firm under *COLL*, *PRIV* or *CAPI*.

Note 1 Each of *COLL*, *PRIV* and *CAPI* contains separate outsourcing rules for functions outsourced by authorised firms under those rules.

Note 2 **Outsourcing** is defined in the glossary.

5.1.2 Obligation to have outsourcing policy

- (1) An authorised firm's governing body must establish and maintain an outsourcing policy.
- (2) The policy must at least provide for:
 - (a) whether the firm will outsource any function at all; and
 - (b) what functions may be outsourced.

Note Appropriate records must be kept of policies and procedures—see GENE, r 6.1.1.

- (3) A policy that the firm will not outsource any function satisfies subrule (1).
- (4) The governing body must review, at least once every 2 years, the firm's outsourcing policy and procedures, including:
 - (a) its procedures for:
 - (i) assessing the feasibility of a proposed outsourcing and the risks that the outsourcing poses to the firm's business; and

- (ii) costing any proposed material outsourcing; and
- (b) the criteria for selecting service providers.

Note **Material outsourcing** is defined in the glossary.

- (5) In this rule and rule 5.1.3, a reference to a firm's governing body is a reference to the board, membership, committee, body (whatever it is called) or person (however it might be delegated) that has responsibility for the outsourcing policy.

Examples for subrule (5)

For a firm that is part of a *group*, the governing body that might have responsibility for outsourcing policy might be:

- a committee that has carriage for the place where the firm is located; or
- the individual approved to exercise the senior executive function for the firm; or
- any other body or person that has such responsibility under the firm's governance arrangements.

5.1.3 Responsibility for outsourced functions

- (1) The outsourcing of a function by an authorised firm does not relieve the firm's governing body from any obligation in relation to the function under the law applicable in the QFC.
- (2) The governing body remains responsible for ensuring:
 - (a) that all requirements are complied with in relation to the function; and
 - (b) that the function is otherwise properly exercised.
- (3) The governing body must exercise due skill, care and diligence in carrying out its obligations in relation to outsourced functions.

Note For the use of the term 'governing body' in this rule, see r 5.1.2 (5).

5.1.4 Outsourcing arrangements

- (1) An authorised firm may enter into an outsourcing arrangement only if:
 - (a) the firm's governing body has approved the firm's outsourcing policy; and
 - (b) the outsourcing arrangement is permitted by the policy; and
 - (c) the arrangement will neither:
 - (i) reduce the firm's ability to fulfil its obligations to depositors, policyholders, clients and other stakeholders; nor
 - (ii) increase the firm's risk of non-compliance with the law applicable in the QFC or any other applicable law; nor
 - (iii) affect the Regulatory Authority's ability to appropriately supervise the firm.

Example

The place where the service provider is located, or that place's legal system, could prevent the Regulatory Authority from appropriately supervising the firm.

- (2) The outsourcing arrangement must be in writing.

5.1.5 Review of outsourcing of controlled functions

- (1) This rule applies if an authorised firm outsources a controlled function.
- (2) The senior management of the firm must annually review the arrangements for the outsourcing to ensure that the independence, objectivity and effectiveness of the exercise of the function are not adversely affected.
- (3) The senior management must report the results of the review to the firm's governing body.

Note The outsourcing of a function by an authorised firm does not relieve the firm from any obligation in relation to the function (see r 5.1.3 (1)) and

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the firm's governing body is ultimately responsible for ensuring that the firm carries out the firm's obligations under these rules (see r 2.1.1).

5.2.2 Written agreement required for material outsourcing arrangements

- (1) An authorised firm that enters into a material outsourcing arrangement must enter into a written agreement with the service provider concerned.
- (2) The agreement must require the service provider:
 - (a) to deal with the Regulatory Authority in an open and co-operative way in relation to matters relating to the firm under the material outsourcing; and
 - (b) to grant the Regulatory Authority access to the firm's books, records and data in the possession or control of the service provider.

Guidance

The Regulatory expects firms to be able to demonstrate that the outsourced function is being performed effectively. The authority may seek documentary evidence relating to the performance of the service provider.

- (3) The agreement must include, if appropriate, provisions as to:
 - (a) the law applicable to the agreement; and
 - (b) the reporting or notification requirements on the service provider and the means for measuring quantitative and qualitative performance by the service provider; and
 - (c) access by the firm, its internal auditors, external auditors or actuaries to its books, records and data in the possession or control of the service provider; and
 - (d) the obligation to protect confidential information and *personal data*; and
 - (e) the rules for subcontracting, if the arrangement permits it; and
 - (f) the termination rights of each party; and

(g) contingency arrangements.

Note Rule 5.2.5 requires the making of contingency arrangements to allow the business of the firm to continue in the event of a significant loss of services from the service provider.

5.2.3 Regulatory Authority to be notified of certain matters

- (1) An authorised firm must not enter into a material outsourcing arrangement unless it notifies the Regulatory Authority of its intention to enter into the arrangement at least 30 *business days* before the day it enters into the arrangement.
- (2) If the material outsourcing arrangement permits subcontracting to a third party, the firm must give the Regulatory Authority notice of that fact.

5.2.4 Additional information about material outsourcing arrangements

- (1) The Regulatory Authority may, by written notice to an authorised firm, require the firm to give the authority, within a stated reasonable period, information about a material outsourcing arrangement (or proposed material outsourcing arrangement) that the authority reasonably needs to enable it to decide whether the arrangement complies with this chapter.
- (2) The power given by this rule is additional to the Regulatory Authority's other powers.

Note See for example FSR, art 48 (Powers to obtain documents and information).

5.2.5 Contingency arrangements

- (1) An authorised firm that enters into a material outsourcing arrangement must make comprehensive contingency arrangements to allow its business to continue in the event of a significant loss of services from the service provider.
- (2) The contingency arrangements must include:
 - (a) an exit strategy; and

- (b) if appropriate, provision for partial exit and step-in.
- (3) The contingency arrangements must cover at least the following:
 - (a) a significant loss of resources at the service provider;
 - (b) financial failure of the service provider;
 - (c) unexpected termination of the outsourcing arrangement.

Glossary

(see r 1.1.4)

actuarial function means the function described in rule 3.1.11.

approved actuary of a firm means the individual approved under FSR, article 41 to exercise the actuarial function for the firm.

approved individual means an individual approved under FSR, article 41 to exercise 1 or more controlled functions.

authorisation means an authorisation granted under FSR, part 5.

authorised firm (or **firm**) means a person that has been granted an authorisation in accordance with FSR, part 5.

BANK means the *Banking Business Prudential Rules 2014*.

compliance oversight function means the function described in rule 3.1.9

controlled function has the meaning given by FSR, article 41 (2).

corporate governance framework has the meaning given by rule 2.2.2 (2).

director of an authorised firm includes any person appointed as a director of the firm and any person in accordance with whose instructions the firm is accustomed to act.

document means a record of information in any form (including electronic form), and includes, for example:

- (a) anything in writing or on which there is writing; and
- (b) anything on which there are figures, marks, numbers, perforations, symbols or anything else having a meaning for individuals qualified to interpret them; and
- (c) a drawing, map or photograph or plan; and
- (d) any other item or matter (in whatever form) that is, or could reasonably be considered to be, a record of information.

entity means any kind of entity, and includes, for example, any person.

executive governance function means the function described in rule 3.1.3.

exercise a function includes perform the function.

finance function means the function described in rule 3.1.5.

firm (or **authorised firm**) means a person that has been granted an authorisation in accordance with FSR, part 5.

FSR means the *Financial Services Regulations*.

function includes power.

GENE means the *General Rules 2005*.

governing body of an authorised firm has the meaning given by rule 2.2.1.

insurer (or **QFC insurer**) means an authorised firm that has an authorisation to conduct *insurance business*.

internal auditor means:

- (a) in the case of an authorised firm that has an individual approved to exercise the internal audit function—that individual; and
- (b) in the case of an insurer that does not have such an individual—the firm of auditors appointed under a material outsourcing arrangement to which chapter 5 applies.

Note For the approval or appointment of internal auditors, see r 3.2.5.

internal audit function means the function described in rule 3.1.10.

internal control function means each of the following controlled functions:

- (a) the compliance oversight function;
- (b) the risk management function;
- (c) the internal audit function;
- (d) the actuarial function.

material outsourcing, for an authorised firm, means the outsourcing of a function of such importance that weakness or failure in the exercise of the function would cast serious doubt on:

- (a) the firm's ability to comply with:
 - (i) any regulations, rules or principles; or
 - (ii) any condition, restriction or requirement of its authorisation; or
- (b) its financial performance or position; or
- (c) its ability to continue in business.

MLRO function means the function described in rule 3.1.7.

non-executive director of a firm means a director who has no responsibility for implementing the decisions or the policies of the firm's governing body.

non-executive governance function means the function described in rule 3.1.2.

non-local firm means an authorised firm that is neither:

- (a) a *company* incorporated under the Companies Regulations 2005; nor
- (b) a *limited liability partnership* incorporated under the Limited Liability Partnership Regulations 2005.

outsourcing, for an authorised firm, means any arrangement that involves the firm relying on a separate service provider (including a member of the firm's *group*) for the exercise of a function relating to a regulated activity of the firm that would otherwise be exercised by the firm, but does not include the following arrangements:

- (a) advisory services (such as the provision of legal advice), audit services, training of personnel, billing, and physical security;
- (b) supply arrangements and functions (including, for example, the supply of electricity or water and the provision of catering and cleaning services);

- (c) the purchase of standardised services (such as, for example, market information services and the provision of prices);
- (d) the appointment of a *group employee* to a controlled function for the firm.

person means:

- (a) an individual (including an individual occupying an office or position from time to time); or
- (b) a legal person—that is, an entity, other than an individual, on which the legal system of a jurisdiction confers rights and imposes duties (including, for example, any entity that can own, deal with or dispose of property).

PINS means the *Insurance Business Rules 2006*.

QFC means the Qatar Financial Centre.

QFC bank means an authorised firm that is:

- (a) a deposit-taker, within the meaning of BANK; or
- (b) an Islamic bank or Islamic investment dealer, within the respective meanings of the *Islamic Banking Business Prudential Rules 2015*.

QFC insurer (or **insurer**) means an authorised firm that has an authorisation to conduct *insurance business*.

regulated activity means an activity that is a regulated activity under FSR.

Regulatory Authority means the Qatar Financial Centre Regulatory Authority established under the *QFC Law*, article 9.

risk management and internal controls framework has the meaning given by rule 4.1.1.

risk management function means the function described in rule 3.1.8.

risk management strategy means the document described in rule 4.1.4.

senior executive function means the function described in rule 3.1.4.

senior management of an authorised firm has the meaning given by rule 2.3.1.

senior management function means the function described in rule 3.1.6.

writing means any form of writing, and includes, for example, anyway of representing or reproducing words, numbers or symbols or anything else in legible form (for example, by printing or photocopying).

Endnotes

1 Abbreviation key

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

2 Rules history

Governance and Controlled Functions Rules 2012

made by

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and

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Version No. 2

Islamic Banking Business Prudential (Consequential) and Miscellaneous Amendments Rules 2015 (QFCRA Rules 2015- 3, sch 1, pt 1.4)

Made 13 December 2015

Commenced 1 January 2016

Version No. 3

3 Amendment history

Controlled functions

ch 3 n am Rules 2014-6

What functions are controlled functions?

r 3.1.1 am Rules 2014-6

What is the *senior management function*?

r 3.1.6 am Rules 2014-6

What is the *customer facing function*?

r 3.1.12 om Rules 2014-6

Temporary exercise of customer facing function

r 3.2.7 om Rules 2014-6

Risk management strategy

r 4.1.4 am Rules 2014-3

Glossary

def **BANK** ins Rules 2014-3

def **customer facing function** om Rules 2014-6

def **QFC bank**

Endnotes

def *PIIB* sub Rules 2014-3, Rules 2015-3
om Rules 2014-3

4 Editorial changes

INAP, rule 3.1.7, authorises certain editorial changes to Rules on publication (provided that the changes do not change the legal effect of the Rules). In version 2 of CTRL, the following editorial changes were made:

- in the glossary (def of *document*, para (d)), the word *considerer* has been replaced with *considered*
- minor grammatically-necessary changes to punctuation
- the punctuation before a series of paragraphs or subparagraphs is now uniformly a colon rather than an em-dash, in accordance with current practice
- running headers inserted to conform to current practice.