



qatar

FINANCIAL CENTRE  

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REGULATORY AUTHORITY

# **General Rulebook (GENE)**

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# 1 Application

## 1.1 Application

**1.1.1** This rulebook (*GENE*) applies to *Authorised Firms* and *Applicants* where specified.

## 2 Fitness and Propriety

### 2.1 Application

**2.1.1** This chapter applies to an *Applicant* and an *Authorised Firm*.

#### Guidance

1. Article 29 of the *Financial Services Regulations* provides the *Regulatory Authority* with the power to make *Rules* setting out the criteria which an *Applicant* must satisfy before *Authorisation* can be granted. The *FSR* states that such criteria shall include the *Fitness and Propriety*, legal form, resources, systems and controls and location of offices of an *Applicant*.
2. The purpose of *Fitness and Propriety* criteria is to set out the minimum criteria that a *Person* must meet for it to become and remain *Authorised*. It also enables the *Regulatory Authority* to ensure that its regulation of *Authorised Firms* is not impeded as a result of:
  - a. the *Authorised Firm's* group structure or internal administration;
  - b. any other laws, regulations or administrative provisions of another jurisdiction to which the *Authorised Firm* is subject; or
  - c. an inability or unwillingness to comply, on an ongoing basis with the requirements imposed by the *Regulatory System*.
3. The *Fitness and Propriety* criteria summarises some of the areas that the *Regulatory Authority* will consider during the assessment of an *Applicant* for *Authorisation*. Also, as part of its supervisory approach, the *Regulatory Authority* will monitor whether an *Authorised Firm* continues to meet the *Fitness and Propriety* requirements. Under Article 31, the *Regulatory Authority* may impose conditions or withdraw the *Authorised Firm's Authorisation* if it fails to satisfy the criteria in Article 29.

### 2.2 General Provisions

**2.2.1** Pursuant to Article 29 of the *FSR*, in order to become and remain an *Authorised Firm*, a *Person* must be able to demonstrate to the *Regulatory Authority's* satisfaction both initially and on an ongoing basis that it satisfies the *Fitness and Propriety* criteria outlined in this chapter.

### 2.3 Fitness and Propriety

**2.3.1** In considering the *Fitness and Propriety* of an *Applicant* or *Authorised Firm*, the *Regulatory Authority* will consider:

#### Controllers

- (A) the *Applicant's* or *Authorised Firm's* connection with its *Controllers* as outlined in the *FSR* and chapter 8;

**Close Links and other Connections**

- (B) the *Applicant's* or *Authorised Firm's Close Links* with another *Person* or connection with any other *Person* including any *Person* appearing to be, or likely to be in a contractual relationship with the *Applicant* or *Authorised Firm*;

**Regulated Activities**

- (C) the nature of the *Regulated Activities* concerned;

**Prudence**

- (D) whether the *Applicant's* or *Authorised Firm's* affairs will be or are conducted and managed in a sound and prudent manner;

**The Location of Offices**

- (E) the location and jurisdiction of the *Applicant* or *Authorised Firm's* head office and registered office and the location and jurisdiction of its *Parent Entity*;

**Legal Form**

- (F) the legal form that the *Applicant* intends to adopt in light of the location of its offices and of the *Regulated Activities* concerned; and

**Other Matters contained in Appendix 1**

- (G) any other relevant matters including those contained in Appendix 1.

**2.4 Other Authorisation Requirements**

**2.4.1** If the *Application* is in respect of any of the following *Regulated Activities*:

- (A) *Effecting Contracts of Insurance*;
- (B) *Carrying Out Contracts of Insurance*; or
- (C) *Deposit Taking*

the *Applicant* must be a *Body Corporate*.

**2.4.2** An *Authorisation* or variation of an *Authorisation* will only be granted if the *Applicant* or *Authorised Firm*, is at the time the *Application* is granted:

- (A) a *QFC Entity*; or
- (B) has registered a place of business in the *QFC* with the *CRO*; and
- (C) has a *Licence* issued by or on behalf of the *QFC Authority*.

## 2.5 Restrictions on Client Money and Insurance Money

**2.5.1** An *Authorised Firm* whose *Authorisation* authorises it to carry on only one or more of the *Regulated Activities* of:

- (A) *Arranging Credit Facilities*;
- (B) *Arranging Deals in Investments*;
- (C) *Advising on Investments*; or
- (D) *Arranging the Provision of Custody Services*

must not hold *Client Money* or *Insurance Money*.

### Guidance

If an *Authorised Firm* conducts any *Regulated Activity* other than those in Rule 2.5.1, it may hold *Client Money* or *Insurance Money* unless prevented by a condition on its *Authorisation*.

**2.5.2** An *Authorised Firm* which is subject to Rule 2.5.1 must:

- (A) immediately it receives a cheque or payable order made payable to a *Regulated Financial Institution* outside the *QFC* in connection with a transaction arranged or advised on by the *Authorised Firm* ensure that:
  - (i) the cheque or other payable order is not collected or paid within the *QFC*, and is forwarded by the *Authorised Firm* to the *Regulated Financial Institution* outside the *QFC* in accordance with the *Client's* instructions as soon as reasonably practicable, and in any event within two *Business Days* of the date of receipt from the *Client*; and
  - (ii) a record is maintained by the *Authorised Firm* detailing the cheque or payable order received and forwarded in accordance with this rule (including details of the *Client*, *Regulated Financial Institution* and dates of receipt and forwarding involved) and that a copy of all such cheques and other payable orders is maintained; and
- (B) immediately return to the *Client* any other money, including any cheque or payable order received from a *Client* and payable to a third party or to the *Authorised Firm*, other than in payment of fees or costs payable by the *Client* to the *Authorised Firm*; and maintain a record detailing all such money received and returned (including details of the *Client*, and the dates of receipt and return involved).



### 3 General Provisions

#### 3.1 Disclosure of Regulatory Status

**3.1.1** An *Authorised Firm* must not misrepresent its regulatory status expressly or by implication.

**3.1.2** (1) An *Authorised Firm* must take reasonable care to ensure that all business documents in connection with the carrying on of *Regulated Activities* in or from the QFC include one of the disclosures in (3).

(2) The expression “business documents”:

(A) includes, but is not limited to, letterheads, whether issued by post, fax or electronic means, terms of business, client agreements, written financial communications, business cards, prospectuses and websites; but

(B) does not include compliment slips, account statements or text messages.

(3) The disclosure required under this *Rule* is:

(A) ‘Authorised by the Qatar Financial Centre Regulatory Authority’; or

(B) ‘Authorised by the QFC Regulatory Authority’.

(4) The *Regulatory Authority* logo must only be reproduced with the express written permission of the *Regulatory Authority* and in accordance with any conditions for use issued from time to time.

#### 3.2 Communication with the Regulatory Authority

##### Financial Services Regulations

Article 107 of *FSR* states:

##### Article 107 - Language of Communication and Documentation

(1) All communications made to the Regulatory Authority in accordance with or pursuant to these Regulations shall be in English unless otherwise permitted by the Regulatory Authority.

(2) All internal procedures, records or other documentation created or maintained by the Authorised Firm or Approved Individuals as the Regulatory Authority shall determine shall be in English.

### 3.3 Complaints against the Regulatory Authority

#### Guidance

1. Article 25.1 of Schedule 1 of the *FSR* requires the *Regulatory Authority* to make arrangements for the prompt, efficient, impartial and independent investigation of complaints made against it arising out of the exercise, or failure to exercise, any of its functions (other than the formulation of regulatory policy, *Rules* and guidance and proposing *Regulations* as described in paragraph 1.3 of Schedule 1 of the *FSR*).
2. In accordance with Article 25.1, the *Regulatory Authority* is required to appoint an *Independent Person* to investigate and deal with any complaints made against the *Regulatory Authority* which are not promptly and satisfactorily dealt with by the *Regulatory Authority*.

### 3.4 Registers of Public Information

#### Guidance

##### General

1. Article 18 of the *FSR* requires the *Regulatory Authority* to make public certain registers and other information.

##### Registers

2. The *Regulatory Authority* makes public its register of *Authorised Firms*, which is a database of all firms *Authorised* to conduct *Regulated Activities*. It details the name of the *Authorised Firm*, the *Regulated Activities* it is authorised to conduct, any conditions or restrictions applying to the *Authorised Firm* and a breakdown of the *Specified Products* in respect of which it may conduct *Regulated Activities*.
3. The *Regulatory Authority* makes public its register of *Approved Individuals*, which details all individuals approved by the *Regulatory Authority* to undertake a *Controlled Function* at an *Authorised Firm*. The register details which *Controlled Functions* an individual is permitted to conduct in relation to each *Authorised Firm*.
4. The *Regulatory Authority* registers will be maintained in electronic form in English and made available through the *Regulatory Authority* website at [www.qfcra.com](http://www.qfcra.com).
5. Separate to the *Regulatory Authority* registers, the *QFC Authority* maintains a register of all *QFC Licensed Firms*, listing details of all entities *Licensed* in the *QFC* and the scope of *Licensing*. The *CRO* maintains a register of all such entities incorporated and registered under the *Companies Regulations 2005* and the *Limited Liability Partnership Regulations 2005*.
6. Extracts of the registers will also be made available at the premises of the *Regulatory Authority* during normal business hours, upon application and payment of the prescribed fee.

##### Publication of Other material

7. The *Regulatory Authority's* website will contain other published material including consultation papers, policy statements, codes, guides, notices, press releases and other statements which the *Regulatory Authority* wishes to bring to public attention.

### **3.5 Provision of Information**

- 3.5.1** An extract of information from the registers maintained by the *Regulatory Authority*, in relation to any particular *Authorised Firm* or *Approved Individual*, provided in accordance with Article 18 of the *FSR* by the *Regulatory Authority*, upon application and payment of the prescribed fee, is prima facie evidence of the matters stated in it.

## 4 Notices to the Regulatory Authority

### 4.1 Application and Purpose

**4.1.1** This chapter applies to an *Authorised Firm*.

#### Guidance

1. This chapter sets out specific events, changes or circumstances that require notification to the *Regulatory Authority* and outlines the process and requirements for notifications.
2. The list of notifications outlined is not exhaustive. Additional notification requirements may be detailed in other areas of the *Rulebooks*.
3. An *Authorised Firm* and its auditor are also required to disclose to the *Regulatory Authority* any matter which may indicate a breach, or likely breach, a failure or likely failure to comply with laws or *Rules*. An *Authorised Firm* is also required to establish and implement systems and procedures to enable its and its auditor's compliance with notification requirements.

### 4.2 Provision of Notifications

**4.2.1** Unless a *Rule* states otherwise, an *Authorised Firm* must ensure that each notification it provides to the *Regulatory Authority*:

- (A) is in writing and contains the *Authorised Firm's* name and QFC number; and
- (B) is submitted on the relevant QFC Form.

#### Guidance

In the absence of a specific form for a notification requirement, QFC Form Q07 should be used to fulfill an obligation to make a notification to the *Regulatory Authority*.

**4.2.2** A notification must be submitted to the *Regulatory Authority*:

- (A) by electronic mail at the address provided by the *Regulatory Authority*; and
- (B) duly signed by the signatories specified in the relevant *Rule* and delivered by:
  - (i) post to the current address of the *Regulatory Authority*;
  - (ii) hand delivery to the current address of the *Regulatory Authority*; or
  - (iii) fax to a fax number provided by the *Regulatory Authority*.

**4.2.3** Where a *Rule* does not specify a specific signatory, the notification in Rule 4.2.2(B) must be signed by the individual performing the *Senior Executive Function* or a *Director* of the *Authorised Firm*.

**4.2.4** This section (Provision of Notifications) applies to a notification that is allowed or required to be given to the *Regulatory Authority* under a provision of the *Regulations* or *Rulebooks* (whether the word 'notify', 'advise', 'inform', 'tell' or some other word is used).

### 4.3 Core Details

**4.3.1** An *Authorised Firm* must provide the *Regulatory Authority* with reasonable advance notice of any change in:

- (A) the *Authorised Firm's* name;
- (B) any business or trading name under which the *Authorised Firm* carries on a *Regulated Activity* in or from the *QFC*;
- (C) the address of the *Authorised Firm's* principal place of business in the *QFC*;
- (D) in the case of a branch, its registered office or head office address;
- (E) its legal structure; or
- (F) an *Approved Individual's* name or any material matters relating to his fitness and propriety.

**4.3.2** A *Local Firm* must provide the *Regulatory Authority* with prior notice of the establishment or closure of a branch office anywhere in the world from which it carries on financial services.

### 4.4 Significant Events

**4.4.1** An *Authorised Firm* must advise the *Regulatory Authority* immediately it becomes aware, or has reasonable grounds to believe, that any of the following matters may have occurred or may be about to occur:

- (A) the *Authorised Firm's* failure to satisfy the *Fitness and Propriety* requirements;
- (B) any matter which could have a significant adverse effect on the *Authorised Firm's* reputation;
- (C) any matter in relation to the *Authorised Firm* which could result in serious adverse financial consequences to the financial system or to other firms;
- (D) a significant breach of a *Rule* by the *Authorised Firm* or any of its *Employees*;
- (E) a significant breach of any requirement imposed by any applicable regulation or other law by the *Authorised Firm* or any of its *Employees*;
- (F) any proposed restructuring, merger, acquisition, reorganisation or business expansion which could have a significant impact on the *Authorised Firm's* risk profile or resources;

- (G) any significant failure in the *Authorised Firm's* systems or controls, including a failure reported to the *Authorised Firm* by the firm's auditor;
- (H) any action that would result in a material change in the capital adequacy or solvency of the *Authorised Firm*; or
- (I) non-compliance with *Rules* due to an emergency outside the *Authorised Firm's* control and the steps being taken by the *Authorised Firm*.

#### Guidance

1. The proposed restructurings, mergers, acquisitions, reorganisations or business expansions in Rule 4.4.1(F) include material changes in an *Authorised Firm's* *Controllers*.
2. The *Regulatory Authority* would also require notification of the implementation, or planned implementation of major new or revised IT systems or new technology affecting the *Authorised Firm's* business, risk profile or resources.

## 4.5 Fraud and Errors

**4.5.1** An *Authorised Firm* must notify the *Regulatory Authority* immediately if one of the following events arises in relation to its activities in or from the *QFC*:

- (A) it becomes aware that an *Employee* may have committed a fraud against one of its customers;
- (B) a serious fraud has been committed against it;
- (C) it has reason to believe that a *Person* is acting with intent to commit a serious fraud against it;
- (D) it identifies significant irregularities in its accounting or other records, whether or not there is evidence of fraud; or
- (E) it suspects that one of its *Employees* who is connected with the *Authorised Firm's* *Regulated Activities* may be guilty of serious misconduct concerning his honesty or integrity.

## 4.6 Other Regulators

**4.6.1** An *Authorised Firm* must advise the *Regulatory Authority* immediately:

- (A) of the granting or refusal of any application for or revocation of *Authorisation* to carry on financial services in any jurisdiction outside the *QFC*;
- (B) of the granting, withdrawal or refusal of an application for, or revocation of, membership of the *Authorised Firm* of any exchange or clearing house;
- (C) where the *Authorised Firm* becomes aware that an *Overseas Regulator* has started an investigation into the affairs of the *Authorised Firm*;

- (D) of the appointment of inspectors, howsoever named, by an *Overseas Regulator* to investigate the affairs of the *Authorised Firm*; or
- (E) of the imposition of disciplinary measures or disciplinary sanctions on the *Authorised Firm* in relation to its financial services by any *Overseas Regulator* or any exchange or clearing house.

## **4.7 Action against an Authorised Firm**

**4.7.1** An *Authorised Firm* must notify the *Regulatory Authority* immediately if:

- (A) civil proceedings are brought against the *Authorised Firm* and the amount of the claim is significant in relation to the *Authorised Firm's* financial resources or its reputation; or
- (B) the *Authorised Firm* is prosecuted for, or convicted of, any offence involving fraud or dishonesty, or any penalties are imposed on it for tax evasion.

## **4.8 Winding up, Bankruptcy and Insolvency**

**4.8.1** An *Authorised Firm* must notify the *Regulatory Authority* immediately on:

- (A) the calling of a meeting to consider a resolution for winding up the *Authorised Firm*;
- (B) an application to dissolve the *Authorised Firm* or to strike it from the register, maintained by the *CRO*, or a comparable register in another jurisdiction;
- (C) the presentation of a petition for the winding up of the *Authorised Firm*;
- (D) the making of, or any proposals for the making of, a composition or arrangement with creditors of the *Authorised Firm*; or
- (E) the application of any person for the commencement of any insolvency proceedings, appointment of any receiver, administrator or provisional liquidator under the law of any country.

## 5 Reporting

### 5.1 Application

**5.1.1** This chapter applies to an *Authorised Firm*.

#### Guidance

1. The purpose of this chapter is to outline the process and requirements that must be followed when making a report to the *Regulatory Authority*.
2. Other sections of the *Rulebooks* outline the specific reports that must be provided and will generally specify the due date, frequency, timeframe for delivery and the contents that are required in the report.
3. In the absence of a specific form for a reporting requirement, QFC Form Q14 should be used when submitting the report to the *Regulatory Authority*.

### 5.2 Provision of Regulatory Reports

**5.2.1** (1) Unless a *Rule* states otherwise, an *Authorised Firm* must ensure that each report it provides to the *Regulatory Authority*:

- (A) contains the *Authorised Firm's* name and *QFC Number*; and
- (B) subject to (2) is received by the *Regulatory Authority* by 5pm on the day on which it is due.

(2) If the due date is not a *Business Day*, the report must be received by the *Regulatory Authority* by 5pm on the next *Business Day*.

(3) A report will not be considered to have been received by the *Regulatory Authority* until it has been:

- (A) received by electronic mail at the address provided by the *Regulatory Authority*; and
- (B) duly signed by the signatories specified in the relevant *Rule* and delivered by:
  - (i) post to the current address of the *Regulatory Authority*;
  - (ii) hand delivered to the current address of the *Regulatory Authority*; or
  - (iii) faxed to a fax number provided by the *Regulatory Authority*.

**5.2.2** Where a *Rule* does not specify a specific signatory, the report must be signed by the individual performing the *Senior Executive Function* or a *Director* of the *Authorised Firm*.



**Guidance**

*Authorised Firms* are reminded that under Article 107 of the FSR all communications made to the *Regulatory Authority* must be in English unless otherwise permitted by the *Regulatory Authority*.

## **5.3 Summary of Reporting Requirements**

**Guidance**

Appendix 2 contains a summary of the reporting requirements relevant to *Authorised Firms*.

## 6 Record Keeping

### 6.1 General Requirements

#### Financial Services Regulations

Article 107 of the *FSR* states:

##### Language of Communication and Documentation

- (1) All communications made to the Regulatory Authority in accordance with or pursuant to these Regulations shall be in English unless otherwise permitted by the Regulatory Authority.
- (2) All internal procedures, records or other documentation created or maintained by Authorised Firm or Approved Individuals as the Regulatory Authority shall determine shall be in English.

**6.1.1** An *Authorised Firm* must maintain appropriate records of:

- (A) matters and dealings, including accounting records;
- (B) policies and procedures; and
- (C) other documentation

which are required under *Regulations* or *Rules* applicable in the *QFC*.

### 6.2 Maintenance of Records

**6.2.1** An *Authorised Firm* must ensure records, however stored, are capable of reproduction on paper within a reasonable period not exceeding three days.

**6.2.2** In maintaining records, an *Authorised Firm* must have regard to any requirements for preservation, confidentiality, security and the frequency and ease of access required to records.

**6.2.3** Subject to Rule 6.2.4, an *Authorised Firm* must ensure records are maintained in the English language.

**6.2.4** Where records relate to an *Authorised Firm's* activities not related to *Regulated Activities* in or from the *QFC*, the *Authorised Firm* may maintain those records in another language. If those records are requested by the *Regulatory Authority* they must be reproduced in English within a reasonable period not exceeding seven days.

**6.2.5** (1) Where original documents cannot be maintained, copies may be kept, provided they are duly certified copies of the original documents.

- (2) A document in (1) must be certified by:
- (i) in the case of a document created or issued by the *Authorised Firm* itself, a director or secretary of the *Authorised Firm*;
  - (ii) in the case of a document issued by a public body responsible for the maintenance of the original document, a *Person* properly authorised by that public body; or
  - (iii) in any other case, a *Person* duly authorised to certify official documents in the jurisdiction in which the copy is being certified.

**6.2.6** Unless otherwise stated in a specific provision, records and documents must be maintained by the *Authorised Firm* for at least six years.

### **6.3 Summary of Record Keeping Requirements**

#### **Guidance**

Appendix 3 contains a summary of the record keeping requirements relevant to *Authorised Firms*.

## 7 Waivers and Modifications

### 7.1 Application

**7.1.1** This chapter applies to an *Applicant* and an *Authorised Firm*.

#### Financial Services Regulations

Article 16(1) of the *FSR* states:

##### Waiver or modification of rules

The Regulatory Authority may, on the Application of a Person in the QFC, or on its own initiative, by means of a written notice provide that one or more provisions of the Rules made pursuant to Article 15(1) either:

- (A) shall apply to such Person with such modifications as may be specified in the written notice; or
- (B) shall not apply in relation to such Person.

### 7.2 Application to Waive or Modify Rules

**7.2.1** If an *Applicant* or *Authorised Firm* wishes to apply for a *Waiver or Modification Notice*, it must apply in writing.

**7.2.2** The application for a *Waiver or Modification Notice* must contain:

- (A) the *Authorised Firm's* name and *QFC Number*;
- (B) the *Rule* or *Rules* to which the application relates;
- (C) a clear explanation of the *Rule* waiver or modification that is being applied for and the reason why the *Authorised Firm* is requesting it;
- (D) details of any other requirements; for example, if there is a specific period for which the *Waiver or Modification Notice* is required;
- (E) any reasons the *Authorised Firm* may have as to why the *Waiver or Modification Notice* should not be published or why it should be published without disclosing the identity of the *Authorised Firm* or the confidential or propriety nature of certain information; and
- (F) all relevant facts to support the application.

**7.2.3** An application for a *Waiver or Modification Notice* must be signed by the individual performing the *Senior Executive Function* or a *Director* of the *Authorised Firm*.

**7.2.4** An *Authorised Firm* must immediately notify the *Regulatory Authority* if it becomes aware of any material change in circumstances which may affect the application for a *Waiver or Modification Notice*.

**Guidance**

1. Where possible, an *Authorised Firm* should use the QFC Form Q05 to submit an application for a *Waiver or Modification Notice*.
2. An *Applicant* may also submit an application for a *Waiver or Modification Notice*, but the notice will not be granted until the *Applicant* is authorised.

### 7.3 Procedure on Receipt of an Application

**Guidance**

1. The *Regulatory Authority* will acknowledge an application for a *Waiver or Modification Notice* and may request further information.
2. The time taken to determine the application will depend upon the issues it raises.
3. An *Authorised Firm* may withdraw its application for a *Waiver or Modification Notice* at any time up until the giving of the *Waiver or Modification Notice*. In doing so, an *Authorised Firm* should provide reasons for withdrawing the application.

### 7.4 Conditions for Granting a Waiver or Modification

**Financial Services Regulations**

Article 16(2) of the *FSR* states:

**Waiver or modification of rules**

The *Regulatory Authority* must be satisfied, when giving a notice under Article 16(1) in relation to a *Person*, that:

- (A) either:
  - (i) the burden experienced by that *Person* in complying with the relevant *Rule* would significantly outweigh the benefits that the *Rule* was intended to achieve; or
  - (ii) compliance with the *Rule* would not achieve or further the purpose for which the relevant *Rule* was made; and
- (B) the notice would not result in undue risk to *Persons* whose interests the *Rule* is intended to protect.

### 7.5 Applicability of a Waiver or Modification Notice

**Guidance**

1. If a *Waiver or Modification Notice* directs that a *Rule* is to apply to an *Authorised Firm* with modifications, then failure to comply with the modified rule constitutes a contravention under the *FSR*.
2. If a *Waiver or Modification Notice* is given subject to a condition, then failure to comply with the terms and conditions constitutes a contravention under the *FSR*.

## 7.6 Continuing Relevance of a Written Notice

- 7.6.1** An *Authorised Firm* must immediately notify the *Regulatory Authority* if it becomes aware of any material change in circumstances which could affect the continuing relevance of a *Waiver or Modification Notice*.

## 7.7 Publication of a Waiver or Modification Notice

### Financial Services Regulations

Article 16(4) of the *FSR* states:

#### Waiver or modification of rules

Unless the *Regulatory Authority* is satisfied that it is inappropriate or unnecessary to do so, it must publish a *Waiver or Modification Notice* given under Article 16 in such a way (including publication on its website) as it considers appropriate for bringing the notice to the attention of:

- a. those likely to be affected by it; and
- b. others who may be likely to become subject to a similar notice.

## 7.8 Revocation or Variation of a Waiver or Modification Notice

### Financial Services Regulations

Article 16(5) and (6) of the *FSR* states:

#### Waiver or modification of rules

- (5) The *Regulatory Authority* may on the Application of the Person to whom it applies, or on its own initiative:
  - (A) revoke a written notice; or
  - (B) vary a written notice.
- (6) With respect to the publication of a revocation or variation, Article 16(4) applies analogously.

## 7.9 Referral of the Regulatory Authority's decisions in relation to a Waiver or Modification Notice

### Guidance

Article 16(8) of the *FSR* allows for any decision of the *Regulatory Authority* with respect to the granting or refusal of a waiver or modification of *Rules* pursuant to Article 16 to be referred to the *Appeals Body* by the *Person* to whom the waiver or modification relates (or would relate if granted).

## 8 Controllers

### 8.1 Application

8.1.1 This chapter applies to:

- (A) *Persons* who acquire, or change their level or type of *Control* over an *Authorised Firm*; and
- (B) *Authorised Firms*.

### 8.2 General Provisions

#### Financial Services Regulations

Article 37 of the FSR states the definition of *Control*:

#### Acquiring and changing control

- (1) For the purposes of this Part, a Person acquires control over an Authorised Firm where he first:
  - (A) holds 10% or more of the shares in the Authorised Firm, or is entitled to exercise or control the exercise of 10% or more of the voting power in the Authorised Firm;
  - (B) holds 10% or more of the shares in a Parent Entity of the Authorised Firm or is entitled to exercise or control the exercise of 10% or more of the voting power in a Parent Entity of the Authorised Firm; or
  - (C) is able to exercise significant influence over the management of the Authorised Firm or a Parent Entity of the Authorised Firm by virtue of his shareholding or voting power, or by contractual or other arrangements.
- (2) The Regulatory Authority may issue Rules specifying the levels and type of control, and of change in control which will give rise to a notification requirement under Article 36 or require approval under Article 35.
- (3) For the purposes of this Article:
  - (A) shares -
    - (i) in relation to an Authorised Firm or relevant Parent Entity with a share capital, means allotted shares;
    - (ii) in relation to an Authorised Firm or relevant Parent Entity with capital but no share capital, means rights to share in the capital of the Authorised Firm or relevant Parent Entity; and
    - (iii) in relation to an Authorised Firm or relevant Parent Entity without capital, means interests conferring any right to share in the profits, or liability to contribute to the losses, of the Authorised Firm or relevant Parent Entity; or giving rise to any obligation to contribute to the debts or expenses of the Authorised Firm or relevant Parent Entity in the event of a winding-up; and
  - (B) voting power, in relation to an Authorised Firm or relevant Parent Entity which does not have general meetings at which matters are decided by the exercise of voting rights, means the right under the constitution of the Authorised Firm or relevant Parent Entity to direct the overall policy of the Authorised Firm or relevant Parent Entity or alter the terms of its constitution.
- (4) References in this Part to a change of control include any of the matters referred to in Article 36(1)(B) and reference to a Person acquiring or changing control shall be to a Person acquiring or changing control either alone or together with one or more Associate(s).

**8.2.1** An *Authorised Firm* must establish and maintain systems and controls to enable it to:

- (A) be advised of any proposed or actual acquisitions or changes in *Control*; and
- (B) monitor any proposed or actual acquisition or changes in *Control*.

### **8.3 Requirement to Seek Approval and Notify the Regulatory Authority**

#### **Approval – Local Firms**

**8.3.1** A *Controller Notice* must be submitted to the *Regulatory Authority* to request approval to acquire *Control* in a *Local Firm*.

#### **Notification – Local Firms**

**8.3.2** A *Controller Notice* must be submitted to the *Regulatory Authority* to notify the *Regulatory Authority* of a cessation in *Control* in a *Local Firm*.

#### **Notification – Non-Local Firms**

**8.3.3** A *Controller Notice* must be submitted to the *Regulatory Authority* to notify the *Regulatory Authority* of a proposed or actual acquisition or cessation of *Control* in a *Non-Local Firm*.

#### **Guidance**

*Authorised Firm's* are reminded of their obligation under Rule 4.4.1(F) to advise the *Regulatory Authority* immediately it becomes aware, or has reasonable grounds to believe, that any proposed restructuring or acquisitions (which includes a material change in its *Controllers*) has or is about to occur.

### **8.4 Controller Notice**

**8.4.1** A *Controller Notice* must be in writing on the relevant *QFC Form*.

**8.4.2** A *Controller Notice* must be accompanied by the information and documents as specified in the relevant *QFC Form*.

**8.4.3** The *Regulatory Authority* may request such additional information or documents as it reasonably considers necessary in order to enable it to determine what action it should take in response to the *Controller Notice*.

**8.4.4** A *Controller Notice* must be submitted by:

- (A) the *Authorised Firm* in question; or
- (B) where the *Authorised Firm* is not aware of the acquisition or change in *Control*, the *Person* who is proposing to acquire or cease *Control* or has acquired or ceased *Control*.



**8.4.5** Where a *Controller Notice* is submitted by the *Authorised Firm* it must be signed by the individual performing the *Senior Executive Function*, or a *Director* of the *Authorised Firm*.

**8.4.6** A *Controller Notice* must be submitted to the *Regulatory Authority* in line with the provisions for notifications outlined in chapter 5.

**8.4.7** A *Controller Notice* must be submitted to the *Regulatory Authority* not less than 30 days in advance of the proposed acquisition or change in *Control*. Where this is not reasonably practicable, the *Controller Notice* must be submitted immediately upon becoming aware of the proposed or actual acquisition or change in *Control*.

## **8.5 Consideration of Controller Notices**

### **Guidance**

Article 38 of the *FSR* sets out the decision making process of the *Regulatory Authority* with regard to a *Controller Notice*.

## **8.6 Annual Controllers Report**

**8.6.1** (1) An *Authorised Firm* must submit a controllers report to the *Regulatory Authority* annually within four months of its financial year end.

(2) The controllers report in (1) must include:

- (A) the name of each *Person* having *Control* over the *Authorised Firm*;
- (B) the level and type of *Control* of each *Person* in (A);
- (C) if the *Person* in (A) is a *Body Corporate*, its country of incorporation, address and registered number; and
- (D) if the *Person* in (A) is an individual, his date and place of birth.

## 9 Accounting and Auditing

### 9.1 Application

**9.1.1** This chapter applies to every *Authorised Firm*.

#### Guidance

1. *Authorised Firms* that are *QFC Firms* are subject to the Accounting and Audit Requirements set out in the *Companies Regulations* (Section 11) and the *Limited Liability Partnership Regulations* (Part 9) as appropriate.
2. Article 123 of the *Companies Regulations* and Article 52 of the *Limited Liability Partnership Regulations* contain record keeping requirements for branches.
3. The *Financial Services Regulations* contain provisions relating to:
  - a. disclosure of information by auditors; and
  - b. rights and obligations regarding cooperation with auditors and an auditor's right of access to an *Authorised Firm's* book, accounts and material records.
4. This chapter provides additional provisions relating to audit and accounting requirements as they apply to *Authorised Firms*.

### 9.2 Accounting Records

**9.2.1** An *Authorised Firm* must keep accounting records with respect to all sums of money received and expended by the *Authorised Firm* and all sales and purchases of goods and services and other transactions by the *Authorised Firm* and the assets and liabilities of the *Authorised Firm*. Such accounting records must be sufficient to show and explain all transactions by the *Authorised Firm* and must be such to:

- (A) disclose with reasonable accuracy the financial position of the *Authorised Firm* at any time;
- (B) enable the *Authorised Firm* to ensure that any accounts prepared by the *Authorised Firm* comply with the requirements in these *Rules*; and
- (C) record the financial position of the *Authorised Firm* as at its financial year end.

**9.2.2** An *Authorised Firm* must maintain the accounting records, financial accounts and statements and auditors reports required under the *Companies Regulations*, the *Limited Liability Partnership Regulations* and this chapter for at least six years from the date to which they relate.

### 9.3 Accounting Standards

- 9.3.1** Subject to Rules 9.3.2 and 9.3.3, an *Authorised Firm* must prepare and maintain all financial accounts and statements in accordance with *IFRS, US GAAP, UK GAAP* or such other principles or standards approved in writing by the *Regulatory Authority*.
- 9.3.2** An *Authorised Firm* which is an *Islamic Financial Institution* must prepare and maintain all financial accounts and statements in accordance with the accounting standards of *AAOIFI*.
- 9.3.3** An *Authorised Firm* which operates an *Islamic Window* must prepare and maintain all financial accounts and statements in accordance with one of those standards referred to in Rule 9.3.1 as supplemented by *AAOIFI FAS 18* in respect of its *Islamic Financial Business*.

#### Guidance

*AAOIFI FAS 18* sets out the accounting rules for conventional financial institutions offering Islamic financial services. It provides rules for the recognition, measurement and presentation of assets managed, funds held and income earned on the basis of Shari'a principles. It also sets out the necessary disclosures required to be made in the course of conducting *Islamic Financial Business*.

### 9.4 Financial Accounts and Statements

- 9.4.1** Within four months of the end of the financial year, an *Authorised Firm* must:
- (A) have its accounts and financial statements examined and reported upon by the *Authorised Firm's* auditor in accordance with the requirements of the *Companies Regulations* or *Limited Liability Partnership Regulations* and this chapter; and
  - (B) file a copy of the financial statements and auditor's report with the *Regulatory Authority*.

### 9.5 Auditors Report

- 9.5.1** An *Authorised Firm* must in addition to the requirements contained in the *Companies Regulations* and the *Limited Liability Partnership Regulations*, ensure that its auditor:
- (A) conducts an audit of the *Authorised Firm's* accounts and financial statements in accordance with the requirements of the relevant standards published by:
    - (i) the *International Auditing and Assurance Standards Board (IAASB)* in respect of conventional financial business; or
    - (ii) the *Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI)* in respect of any *Islamic Financial Business* undertaken;
  - (B) produce a report on the audited accounts and financial statements which states:

- (i) whether, in the auditor's opinion, the accounts have been properly prepared in accordance with the requirements imposed by this chapter;
  - (ii) in particular, whether the accounts give a true and fair view of the financial position of the *Authorised Firm* for the financial year and of the state of the *Authorised Firm's* affairs at its financial year end; and
  - (iii) any other matter or opinion relating to the requirements of this chapter;
- (C) produce an auditor's report which states whether:
- (i) the auditor has audited the *Authorised Firm's* annual financial statements in accordance with the IAASB or AAOIFI in respect of *Islamic Financial Business*;
  - (ii) the auditor has carried out any other procedures considered necessary, having regard to the IAASB and to AAOIFI auditing standards in respect of *Islamic Financial Business*;
  - (iii) the auditor has received all necessary information and explanations for the purposes of preparing this report to the *Regulatory Authority*;
  - (iv) in the auditor's opinion, the *Authorised Firm's* prudential returns have been properly prepared by the *Authorised Firm* and provide a true and fair representation of the financial position of the *Authorised Firm*, as at the date of the *Authorised Firm's* financial year end;
  - (v) in the auditor's opinion, the *Authorised Firm's* prudential returns to the *Regulatory Authority* have been properly reconciled with the appropriate audited accounts;
  - (vi) in the auditor's opinion, that an *Authorised Firm* which is subject to an expenditure based capital requirement has calculated the expenditure based capital requirement in accordance with the *Rules*;
  - (vii) in the auditor's opinion, the *Authorised Firm's* financial resources as at its financial year end have been properly calculated in accordance with the *Rules* and are sufficient to meet the relevant prudential requirements; and
  - (viii) in the auditor's opinion, the *Authorised Firm* has kept proper accounting records, in compliance with the applicable *Rules*;

#### **Client Money Report**

- (D) produce, if the *Authorised Firm* controls or holds *Client Money*, a report which states whether, in the opinion of the *Auditor*:
- (i) the *Authorised Firm* has maintained throughout the year systems and controls to enable it to comply with the relevant provisions of the *ASSET Rulebook*;

- (ii) the *Authorised Firm's* controls are such as to ensure that *Client Money* is identifiable and secure at all times;
- (iii) any of the requirements of *ASET* have not been met;
- (iv) if applicable, *Client Money* that has been segregated has been segregated in accordance with the *Rules* in *ASET*;
- (v) if applicable, the *Authorised Firm* was holding and controlling an appropriate amount of *Client Money* in accordance with *ASET* as at the date on which the *Authorised Firm's* audited balance sheet was prepared; and
- (vi) if applicable, there have been any material discrepancies in the reconciliation of *Client Money*;

### **Insurance Money Report**

- (E) produce, if the *Authorised Firm* controls or holds *Insurance Money*, a report which states whether, in the opinion of the auditor:
  - (i) the *Authorised Firm* has maintained throughout the year systems and controls to enable it to comply with the relevant provisions of *ASET* chapter 7;
  - (ii) the *Authorised Firm's* controls are such as to ensure that *Insurance Money* is identifiable and secure at all times;
  - (iii) any of the requirements in *ASET* chapter 7 have not been met;
  - (iv) if applicable, the *Authorised Firm* was holding and controlling an appropriate amount of *Insurance Money* in accordance with *ASET* chapter 7 as at the date on which the *Authorised Firm's* audited balance sheet was prepared; and
  - (v) if applicable, there have been any material discrepancies in the reconciliation of *Insurance Money*; and

### **Providing Custody Report**

- (F) produce, if the *Authorised Firm* is, or has been, *Providing Custody* in or from the *QFC*, a report in respect of such business which states whether, in the opinion of the auditor:
  - (i) the *Authorised Firm* has, throughout the year, maintained systems and controls to enable it to comply with the *Rules* in *ASET*;
  - (ii) the investments in respect of which the *Authorised Firm* is, or has been, *Providing Custody* are registered, recorded or held in accordance with the *Rules* in *ASET*;
  - (iii) there have been any material discrepancies in the reconciliation of investments; and

- (iv) any of the requirements of *ASET* have not been met.

## 9.6 Change in the Financial Year End

### Guidance

Under Article 81(3) of the *Companies Regulations* and Article 34 of the *Limited Liability Partnership Regulations* an *LLC* and a *Limited Liability Partnership* must notify the *CRO* of a new financial year end date.

### QFC Entity

- 9.6.1** (1) An *Authorised Firm* which is *QFC Entity* must obtain the prior written consent of the *Regulatory Authority* before specifying a new financial year end relating to:
- (A) the *QFC Entity's* current financial year and subsequent financial years; or
  - (B) the *QFC Entity's* previous financial year and all financial years subsequent to that previous financial year

where a *QFC Entity's* previous financial year means the year immediately preceding its current financial year.

- (2) A change to the financial year end of an *Authorised Firm* that is a *QFC Entity* will not be approved by the *Regulatory Authority* in respect of a previous financial year if the period allowed for laying and delivering accounts in relation to that year has already expired.

### Non-QFC Entity

- 9.6.2** An *Authorised Firm* which is not a *QFC Entity* must provide the *Regulatory Authority* with reasonable advance notice prior to changing its financial year end.

## 9.7 Appointment and Removal of Auditor

### Appointment

- 9.7.1** An *Authorised Firm* must notify the *Regulatory Authority* of the appointment of an auditor, including the name and business address of the auditor and the date of the commencement of the appointment.

## Qualification and Approval of Auditors

**9.7.2** In addition to the provisions in the *Companies Regulations* and the *Limited Liability Partnership Regulations*, an *Authorised Firm* must not appoint an auditor unless the auditor:

- (A) has, prior to the appointment, consented in writing to the appointment;
- (B) has the required skills, resources and experience to audit the business of the relevant *Authorised Firm*; and
- (C) has satisfied the *Authorised Firm* that it and its relevant audit staff are independent of, and not subject to any conflict of interest with respect to, the *Authorised Firm*.

**9.7.3** Where an auditor appointed by an *Authorised Firm* is not suitable in the opinion of the *Regulatory Authority*, or where an auditor has not been appointed, the *Regulatory Authority* may direct an *Authorised Firm* to replace or appoint an auditor.

### Guidance

Under Article 85 of the *Companies Regulations* and Article 37 of the *Limited Liability Partnerships*, a *QFC Firm's* auditors must be approved by the *QFC Authority* and entered onto the register of approved auditors maintained by the *CRO*.

## Notification of Cessation of Appointment to the Regulatory Authority

**9.7.4** Where an auditor ceases for any reason to be appointed by the *Authorised Firm*, the *Authorised Firm* must notify the *Regulatory Authority* in writing including the reason for the cessation of the appointment.

### Guidance

Auditors are required separately under the *FSR* to notify the *Regulatory Authority* of its cessation of appointment by an *Authorised Firm* including any matters connected with its ceasing to act for the *Authorised Firm*, which it thinks ought to be drawn to the *Regulatory Authority's* attention.

## 9.8 Record Keeping

- 9.8.1**
- (1) An *Authorised Firm* must make and retain sufficient records to display compliance with Rule 9.7.2.
  - (2) The records in (1) must be maintained for at least six years following the cessation of the appointment of the auditor.

## 10 Fees

### 10.1 Application

**10.1.1** This chapter applies to an *Authorised Firm*, or an *Applicant* for *Authorised Firm* status.

### 10.2 General Provisions

**10.2.1** Where a fee is payable for any application to the *Regulatory Authority*, the application may not be regarded as submitted until the fee has been paid in full.

**10.2.2** Where an annual fee or supplementary fee in relation to ongoing supervision is due from an *Authorised Firm* under a provision of these *Rules*, it must be paid by the date upon which it falls due. Should an *Authorised Firm* fail to pay by the due date then, without limiting the right of the *Regulatory Authority* to take any other action, the sum due will be increased by 1% for each calendar month, or part of a calendar month, that it remains outstanding beyond the due date.

#### Guidance

If a fee is not paid by the date on which it becomes due, the *Authorised Firm* is in breach of a *Rule* and the *Regulatory Authority* is entitled to take action including, but not limited to, taking steps to withdraw *Authorisation* to conduct one or more *Regulated Activities*.

**10.2.3** The *Regulatory Authority* may reduce, waive or refund all or part of any fee if, having considered the exceptional circumstances of a particular case, it deems it would be equitable to do so.

### 10.3 Supplementary Fees

**10.3.1** (1) The *Regulatory Authority* may require an *Authorised Firm* or *Applicant* to pay a supplementary fee to the *Regulatory Authority* in circumstances where it expects to incur substantial additional costs in dealing with an application or conducting ongoing supervision.

(2) In such cases the *Regulatory Authority* will notify the *Applicant* as soon as reasonably practicable of the amount of the supplementary fee.

#### Guidance

1. A supplementary fee may be levied by the *Regulatory Authority* because it expects that certain applications will require more intensive scrutiny than others. For example, where the entity is a branch from a jurisdiction where there are not or are not expected to be in place arrangements for co-operation between the *Regulatory Authority* and the relevant regulators in that jurisdiction. Equally, where the entity is incorporated in the *QFC*, a full analysis of the prudential and systems arrangements will be required.



2. A supplementary fee may also be levied by the *Regulatory Authority* in cases where the ongoing supervision of the *Authorised Firm* appears to the *Regulatory Authority* to be likely to cause it to incur substantial additional costs.

## 10.4 Application Fees

**10.4.1** An *Applicant* seeking to conduct *Regulated Activities* in or from the *QFC* and an *Authorised Firm* applying for *Authorisation* to conduct additional *Regulated Activities* must pay to the *Regulatory Authority*:

- (A) the application fees specified in Appendix 4; and
- (B) any supplementary fee required by the *Regulatory Authority*.

**10.4.2** Any application fees paid, whether in respect of an *Applicant*, *Authorised Firm* or *Approved Individual*, are non-refundable, regardless of whether the application is successful or not.

## 10.5 Annual Fees

**10.5.1** An *Authorised Firm* must pay to the *Regulatory Authority*:

- (A) the annual fee specified in Appendix 4; and
- (B) any supplementary fee required by the *Regulatory Authority*.

**10.5.2** (1) The initial annual fee must be paid in full to the *Regulatory Authority* within 21 days of the date of *Authorisation*.

- (2) Subsequent annual fees must be paid in full to the *Regulatory Authority* on or before 1 January of every calendar year.

### Guidance

With regard to the payment of an annual fee on or before 1 January, invoices will be issued at least 21 days before that date.

## 10.6 Fees for Extracts of Information from the Registers of Public Information

**10.6.1** *Persons* seeking extracts of information in accordance with Rule 3.5.1 maintained in the public registers by the *Regulatory Authority* in relation to an *Authorised Firm* or *Approved Individual* must, upon application pay the fee prescribed in Appendix 4.

## 11 Restrictions in Relation to Specified Products

### 11.1 Purpose

#### Guidance

Pursuant to Part 2 of Schedule 3, of the *FSR* the *Regulatory Authority* may make *Rules* in connection with certain specified products. These *Rules* or additional guidance are set out below.

### 11.2 Futures and Options

#### Financial Services Regulations

- Options are defined under paragraph 7.1 of part 2 of Schedule 3 of the *FSR* as follows:

#### Options

- 7.1 Options to acquire or dispose of:
- a Share, Debt Instrument, Warrant, Securities Receipt, Unit in a Collective Investment Fund, Future, or Contract for Differences;
  - currency of any country or territory;
  - metals / commodities; or
  - an option of the kind specified in paragraphs 7.1(1), (2) or (3).

- Paragraph 7.2 of part 2 of Schedule 3 of the *FSR* states in respect of *Options* that:

#### Options

- 7.2 The *Regulatory Authority* may issue *Rules* excluding from the scope of paragraph 7.1 options which are entered into for commercial and not investment purposes and setting out circumstances in which a contract is to be regarded as made for commercial or investment purposes for the purposes of paragraph 7.2.

- A *Future* is defined under paragraphs 8.1 to 8.3 of part 2 of Schedule 3 of the *FSR* as follows:

#### Futures

- 8.1 Subject to paragraphs 8.2 and 8.3 rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made and which is made for investment and not commercial purposes.
- 8.2 A contract is not a *Future* for the purposes of paragraph 8.1 if the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of the property.
- 8.3 The *Regulatory Authority* may issue *Rules* as to the circumstances in which a contract is to be regarded as made for commercial or investment purposes for the purposes of paragraph 8.1.

**11.2.1** The circumstances in which either an *Option* or a *Futures* contract is regarded as being made for commercial purposes and therefore excluded from the respective definition of a *Specified Product*; and conversely, the circumstances in which it is considered to be made for investment purposes and therefore included within the respective definition, are set out below:

- (A) a contract is regarded as made for investment purposes if it is made or traded on a *Designated Exchange*, or is made otherwise than on a *Designated Exchange*, but is expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange;
- (B) a contract not falling within (A) is regarded as made for commercial purposes if under the terms of the contract delivery is to be made within seven days, unless it can be shown that there existed an understanding that (notwithstanding the express terms of the contract) delivery would not be made within seven days;
- (C) the following are indications that a contract not falling within (A) or (B) is made for commercial purposes (the absence of them is an indication that it is made for investment purposes):
  - (i) one or more of the parties produces, or uses in his business the commodity or other property;
  - (ii) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it; or
  - (iii) the price, the lot size, the delivery date and other terms are determined by the parties for the purposes of the particular contract and not by reference (or not solely by reference) to regularly published prices, to standard lots or delivery dates or to standard terms;
- (D) the following are indications that a contract is made for investment purposes:
  - (i) it is expressed to be as traded on an investment exchange;
  - (ii) performance of the contract is ensured by an investment exchange or a clearing house; or
  - (iii) there are arrangements for the payment or provision of margin; and
- (E) for the purposes of (A), a price is to be taken to be agreed on when a contract is made:
  - (i) notwithstanding that it is left to be determined by reference to the price at which a contract could be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
  - (ii) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

## 11.3 Qualifying Contracts of Insurance

### Financial Services Regulations

1. *Contracts of Insurance* are defined under section 10.1 of Part 2 of Schedule 3 of the *FSR* as follows:

**Contract of Insurance**

10.1 Rights under a qualifying contract of insurance or reinsurance that is either a *General Insurance Contract* within the scope of paragraph 10.3 or a *Long Term Insurance Contract* within the scope of paragraph 10.4.

2. Paragraphs 10.3 and 10.4 go on to list the categories of insurance which fit within the scope of a *General Insurance Contract* or a *Long Term Insurance Contract*.
3. Paragraph 10.2 of Part 2 of Schedule 3 prescribes that:

The Regulatory Authority shall make Rules prescribing the circumstances in which a contract is a qualifying contract of insurance for the purposes of paragraph 10.1.

**11.3.1** A contract of insurance is a qualifying insurance contract if it falls within the categories of insurance contract contained within the definitions of either *General Insurance Contracts* or *Long Term Insurance Contracts* under paragraphs 10.3 and 10.4 of Part 2 of Schedule 3 of *FSR*.

### Guidance

*Contracts of Insurance* are further sub-defined in *INAP* into those constituting *Non-Investment Insurance Contracts*, *Pure Protection Contracts* and *Long Term Care Insurance Contracts* and the restrictions surrounding activities conducted in relation to them are detailed in *PINS*.

## App1 Guidance on Fitness and Propriety of Authorised Firms

### A1.1 Introduction

#### Guidance

1. This appendix provides guidance on the criteria the *Regulatory Authority* may take into account when assessing for the purposes of Article 29 of the *FSR* and chapter 2 the *Fitness and Propriety* of:
  - a. an *Applicant* to be an *Authorised Firm*; and
  - b. an *Authorised Firm*.
2. In considering any specific matters, the *Regulatory Authority* may request reviews by any appropriately skilled third party on any aspect of the *Authorised Firm's* proposed or actual activities or the environment in which it predominantly operates.
3. The *Regulatory Authority* may request or require any information which it considers relevant to its consideration of an application.

### A1.2 Fitness and Propriety Criteria

1. Further to Article 29 of *FSR* and chapter 2 of this rulebook, the *Regulatory Authority* may consider the following matters in assessing the fitness and propriety of an *Applicant* or an *Authorised Firm*.

#### Controllers, close links and other connections

2. Pursuant to Rule 2.3.1(A) and (B) the *Regulatory Authority* must be satisfied that an *Applicant's* or *Authorised Firm's* *Controllers, Close Links* and other connections, are not likely to prevent effective supervision of the *Authorised Firm* by the *Regulatory Authority*.
3. The *Regulatory Authority* will also have regard to:
  - a. the *Authorised Firm's* position within its *Group*, including any other relationships that may exist between the *Authorised Firm's* affiliates, *Controllers* or other *Close Links*;
  - b. any information provided by other regulators in relation to the *Authorised Firm* or any entity within its *Group*;
  - c. the background, history and principal activities of the *Authorised Firm's* *Controllers*, including that of the *Controller's* *Directors, Partners* or other officers associated with the *Group*, and the degree of influence that they are, or may be, able to exert over the *Authorised Firm* or its activities; and
  - d. whether the *Authorised Firm* or its *Group* is subject to any adverse effect or considerations arising from its country of incorporation or the country (or countries) of incorporation of its *Controllers*. In considering such matters, the *Regulatory Authority* will also have regard to the type and level of regulatory oversight in the country or countries of incorporation referred to above, the regulatory infrastructure and adherence to any internationally held conventions and standards.
4. The *Regulatory Authority* may request that an *Applicant* or *Authorised Firm* submit a report on its *Controllers, Close Links* or other connections at anytime.

### Location of Offices

5. Under Rule 2.3.1(E), an *Applicant* or an *Authorised Firm* will need to satisfy the *Regulatory Authority* that the location of its and its *Parent Entity's* head office and registered office will not prevent the effective supervision of the *Authorised Firm*.
6. The *Regulatory Authority* will consider the head office of an *Authorised Firm* to be where the firm's mind and management is and will have regard to the location of its directors, partners and senior management with respect to its strategic, operational and administrative arrangements.

### Background and History

7. The *Regulatory Authority* will have regard to:
  - a. any matter affecting the propriety of the *Authorised Firm's* conduct, whether or not such conduct may have resulted in the commission of a criminal offence or the contravention of the law or the institution of legal or disciplinary proceedings of whatever nature;
  - b. whether an *Authorised Firm* has ever been the subject of disciplinary procedures by a government body or agency or any self regulating organisation or other professional body;
  - c. any contravention of any provision of financial services legislation or of rules, regulations, statements of principle or codes of practice made under it or made by a recognised self regulatory organisation, exchange or clearing house;
  - d. whether an *Authorised Firm* has been refused, or had a restriction placed on, the right to carry on a trade, business or profession requiring a licence, registration or other permission;
  - e. any adverse finding or an agreed settlement in a civil action by any court or tribunal of competent jurisdiction resulting in an award against or payment by an *Authorised Firm* in excess of \$10,000 or awards that total more than \$10,000;
  - f. whether an *Authorised Firm* has been censured, disciplined, publicly criticised or the subject of a court order at the instigation of any regulatory authority, or any officially appointed inquiry, or any other *Overseas Regulator*; or
  - g. whether an *Authorised Firm* has been open and truthful in all its dealings with the *Regulatory Authority*.

### Resources, Systems and Controls

8. The *Regulatory Authority* will have regard to whether the *Authorised Firm* has sufficient resources of all types, including:
  - a. the *Authorised Firm's* financial resources and whether it complies, or will comply, with any applicable financial *Rules*, and whether the *Authorised Firm* appears in a position to be able to continue to comply with such rules;
  - b. the extent to which the *Authorised Firm* is or may be able to secure additional capital in a form acceptable to the *Regulatory Authority* where this appears likely to be necessary at any stage in the future;
  - c. the availability of sufficient competent human resources to conduct and manage the *Authorised Firm's* affairs, in addition to having a sufficient type and number of *Approved Individuals* to conduct and manage the *Authorised Firm's Regulated Activities*;
  - d. whether the *Authorised Firm* has sufficient and appropriate systems and controls in order to support, monitor and manage its affairs, resources and regulatory obligations in a sound and prudent manner;

- e. whether the *Authorised Firm* has appropriate anti money laundering procedures and systems designed to ensure full compliance with applicable money laundering legislation, including arrangements to ensure all relevant staff are aware of their obligations; and
- f. the impact of other members of the *Authorised Firm's Group* on the adequacy of the *Authorised Firm's* resources and in particular, though not exclusively, the extent to which the *Authorised Firm* is or may be subject to consolidated prudential supervision by the *Regulatory Authority* or another *Overseas Regulator*.

**Collective Suitability of Individuals or other Persons Connected to the Authorised Firm**

- 9. Notwithstanding that individuals performing *Controlled Functions* must be *Approved Individuals* and that an *Authorised Firm* must appoint certain *Approved Individuals* to certain functions as stated in the *INDI Rulebook*, in assessing the *Fitness and Propriety* of an *Authorised Firm* the *Regulatory Authority* will also consider:
  - a. the collective suitability of all of the *Authorised Firm's* staff taken together, and whether there is a sufficient range of individuals with appropriate skills and experience to understand, operate and manage the *Authorised Firm's* affairs in a sound and prudent manner;
  - b. the individual or collective suitability of any *Person* or *Persons* connected with the *Authorised Firm*;
  - c. the extent to which the *Authorised Firm* has robust human resources policies designed to ensure high standards of conduct and integrity in the conduct of its activities; and
  - d. whether the *Authorised Firm* has appointed auditors, actuaries and advisers with sufficient experience and understanding in relation to the nature of the *Authorised Firm's* activities.

## App2 Reporting Table

### A2.1 The Reporting Table

#### Guidance

1. The aim of the Reporting Table is to provide an *Authorised Firm* with an overview of the relevant periodic reporting requirements throughout the *Rulebooks*.
2. The table is not a complete statement of all requirements and should not be relied upon as such.

Reference	Report	Freq.	Due date	Firm
AMLR section 3.7	<i>MLRO</i> Report	Annually	Promptly	<i>Authorised Firm</i>
GENE section 9.4	Financial Statements and Auditors Annual Report	Annually	Within 4 months of the end of its financial year	<i>Authorised Firm</i>
GENE Rule 9.5.1(D)	<i>Client Money</i> Auditors Report	Annually	Within 4 months of the end of its financial year	<i>Authorised Firm</i> that holds <i>Client Money</i>
GENE Rule 9.5.1(F)	Custody Report	Annually	4 months of the end of its financial year	<i>Authorised Firm</i> that Provides <i>Custody</i>
GENE Rule 9.5.1(E)	<i>Insurance Money</i> Auditors Report	Annually	4 months of the end of its financial year	<i>Authorised Firm</i> that holds <i>Insurance Money</i>
GENE Rule 8.6.1	<i>Controllers</i> Report	Annually	Within 4 months of the end of its financial year	<i>Authorised Firm</i>
ISFI Rule 16.2.2	Shari'a Supervisory Board Report	Annually	Within 14 days of receipt	<i>Authorised Firm</i> that has an endorsement to conduct <i>Islamic Financial Business</i>
PIIB App7	<i>PIIB</i> quarterly Returns	Quarterly	Within 1 month of the end of each standard quarter	<i>Authorised Firms</i> conducting <i>Investment Business, Insurance Mediation Business</i> or <i>Banking Business</i>
PIIB App7	<i>PIIB</i> annual Returns	Annually	Within 4 months of the end of the financial year	<i>Authorised Firms</i> conducting <i>Investment Business, Insurance Mediation Business</i> or <i>Banking Business</i>
PIIB App7	<i>PIIB</i> consolidated Return	Six monthly	Within 1 month of the end of each standard quarter	<i>Authorised Firms</i> conducting <i>Investment Business, Insurance Mediation Business</i> or <i>Banking Business</i> reporting on a consolidated basis



## App3 Record Keeping Requirements

### A3.1 Record Keeping Table

#### Guidance

1. The aim of the guidance in the Record Keeping Table is to provide an *Authorised Firm* with an overview of some of the record keeping requirements throughout the *Rulebooks*.
2. The table is not a complete statement of all requirements and should not be relied on as such.

#### General Rulebook

Reference	Subject of record	When	Retention Period
9.2.2	Accounting records, financial accounts and statements and auditor reports	On making the record	Six months from the date to which they relate
9.7.5	Auditors qualification and approval	On appointment of the auditor	Six years following the cessation of appointment of the auditor

#### Controls Rulebook

Reference	Subject of record	When	Retention Period
2.2	Periodic reports regarding allocation of responsibility and systems and controls	On making the report to the <i>Authorised Firm's Governing Body</i>	Six years from the date on which the report is made
3.2	Allocation of responsibilities	On making the arrangements	Six years from the date on which any such procedures are revoked or superseded.
4.1	Review of systems and controls	On making the report to the <i>Authorised Firm's Governing Body</i> , at least annually.	Six years from the date on which the report is made.

#### Individuals Rulebook

Reference	Subject of record	When	Retention Period
5.1.5	Suitability and competence of individual to conduct <i>Controlled Functions</i>	When assessing suitability and competence	Six years after the individual ceases to perform the relevant <i>Controlled Function</i>
5.3.1	Assessment of competency	When assessing competency	Six years from the date on which the steps were taken

**Anti Money Laundering Rulebook**

Reference	Subject of record	When	Retention Period
3.1.1(G)	AML training (Who, timing and how provided)	When training is given	Six years from the date the training was provided
3.1.1(H)	Confirming the identify of <i>Customer</i>	As soon as reasonably practicable after contact	Six years from the date on which the business relationship with the customer has ended
3.1.1(H)	<i>Transactions</i> undertaken for those <i>Customers</i> that provide the audit trail for funds handled on their behalf	On effecting a transaction	Six years from the date on which the transaction was completed
3.1.1(H)	Records of all internal suspicious activity reports submitted	When the report is made	Six years from the date on which the report was made
3.1.1(H)	Disclosures made to the <i>FIU</i> .	When the report is made	Six years from the date on which the report was made

**Islamic Finance Rulebook**

Reference	Subject of record	When	Retention Period
6.1.3(A)	Assessment of the competency of the <i>Shari'a Supervisory Board</i> members	When the assessment is undertaken	Six years following the date on which the individual ceases to be a member of the <i>Shari'a Supervisory Board</i>
6.1.3(B)	The agreed terms of engagement of each member of the <i>Shari'a Supervisory Board</i>	On the engagement of the member	Six years following the date on which the individual ceases to be a member of the <i>Shari'a Supervisory Board</i>

**Interim Prudential Investment, Insurance Mediation and Banking Rulebook**

Reference	Subject of record	When	Retention Period
1.4.10	Identification of transfers between <i>Trading Book</i> and <i>Non-Trading Book</i>	When the transfer is made	Six years from date on which the transfer is made
A4.2 Guidance note 34	Credit records	From the date of the exposure, decision or assessment as applicable	Six years from the date on the exposure, decision or assessment as applicable

Assets Rulebook

Reference	Subject of record	When	Retention Period
2.2.1(E)	Cheques received and forwarded under ASET Rule 2.2.1	On receipt	Six years from receipt
2.5.8	Receipt of <i>Client Money</i>	On receipt	Six years from receipt
2.13.1	Demonstrate compliance with <i>Client Money Provisions</i> and to demonstrate and explain all entries of money	As appropriate	Six years from the relevant date
2.13.2	Proper books and accounts	On the transaction	Six years from the date of the transaction
2.13.3	Master list of all <i>Client Bank Accounts &amp; Third Party Accounts</i>	On the opening of the relevant account	Six years following the closure of the relevant <i>Client Bank Account</i> or <i>Third Party Account</i>
2.13.4	Cheques and payment orders received under ASET Rule 2.5.7(A)	Date of receipt	Six years from the date of receipt

## App4 Fees Table

### A4.1 The Fees Table.

**A4.1.1** Base fees are determined by the *Regulated Activities* the *Authorised Firm* conducts or intends to conduct, as set out below:

Application Fee by Regulated Activities	(US \$)
Deposit Taking	40,000
Providing Credit Facilities	40,000
Effecting a Contract of Insurance or Carrying out a Contract of Insurance	40,000
Dealing in Investments (as principal)	25,000
Dealing in Investments (as agent)	10,000
Operating a Collective Investment Fund	10,000
Managing Investments	10,000
Arranging Deals in Investments	10,000
Arranging Credit Facilities	10,000
Advising on Investments	10,000
Providing Custody Services	10,000
Arranging the Provision of Custody Services	10,000

### A4.2 Application Fees

**A4.1.2** An *Applicant* seeking *Authorisation* to conduct one or more *Regulated Activities* specified in the fees table must pay:

- (A) the highest of the corresponding fees in the fees table; plus
- (B) US\$500 for each individual for whom *Approved Individual* status is sought.

#### Guidance

1. These fees relate only to the *Applicant Firm's* initial application.
2. No separate application fee is payable for registration with the *CRO* or for the grant of a *Licence* by the *QFC Authority*.

**A4.2.2** An *Authorised Firm* submitting applications on behalf of additional individuals seeking *Approved Individual* status must pay an application fee of \$500 in respect of each additional *Approved Individual* application.

### **A4.3 Applications to Conduct Additional Regulated Activities**

**A4.3.1** An *Authorised Firm* seeking *Authorisation* to conduct additional *Regulated Activities* specified must pay a fee equal to the difference between:

- (A) the basic fee which would be payable under Rule A4.2.1(A) if it were an *Applicant Firm* seeking *Authorisation* to conduct the *Regulated Activities* in the terms of the *Authorisation* sought; and
- (B) the basic fee which would be payable under Rule A4.2.1(A) if it were an *Applicant Firm* seeking *Authorisation* to conduct the *Regulated Activities* in the terms of the *Authorisation* currently held.

### **A4.4 Annual Fees**

#### **Initial Annual Fee**

- A4.4.1** (1) An *Authorised Firm* must pay to the *Regulatory Authority* an initial annual fee for the initial period of regulation after the grant of *Authorised Firm* status.
- (2) The initial annual fee is calculated as the fee which was payable at the time of application for *Authorisation*, pro-rated over the whole months remaining between the date of *Authorisation* and the end of the year.

#### **Subsequent Annual Fees**

- A4.4.2** (1) An *Authorised Firm* must pay to the *Regulatory Authority* a standard annual fee for any period of regulation after the period described in Rule A4.4.1.
- (2) The standard annual fee is:
- (A) the highest of the fees specified in the fees table corresponding to the *Regulated Activities* which the *Authorised Firm* is authorised to carry on; plus
  - (B) US\$500 for each *Approved Individual* employed by the *Authorised Firm* at 30 September in the previous year, or on the date of the grant of *Authorisation*, whichever is the later.

#### **Provision of Extracts of Information from the Registers of Public Information**

**A4.4.3** In accordance with Rule 10.6.1, *Persons* must upon application for extracts of information from the registers of public information maintained by the *Regulatory Authority*, whether relating to either an *Authorised Firm* or an *Approved Individual*, pay to the *Regulatory Authority* the prescribed fee of US\$50 for each specific information request.

## 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

#### General Rulebook (GENE)

made by

#### General Rulebook Rule Making Instrument No. 8, 2005 (RM8/2005)

Made 5 December 2005

Commenced 5 December 2005

Version No. 1

as amended by

#### Conduct of Business Rulebook Rule Making Instrument 2007 (RM2007/01 att D)

Made 28 June 2007

Commenced 1 July 2007

Version No. 2

#### Collective Investment Funds Rulebook Rule Making Instrument 2007 (RM2007/02 att C)

Made 28 June 2007

Commenced 15 July 2007

Version No. 3

### 3 Amendment history

#### s 4.2 Provision of Notifications

r 4.2.4 ins RM2007/02

#### s 11.3 Qualifying Contracts of Insurance

r 11.3.1g am RM2007/01

#### App 3 Record Keeping Requirements

##### s A3.1 Record Keeping Table

A3.1 am RM2007/01