



qatar

FINANCIAL CENTRE  
REGULATORY AUTHORITY

# A Guide to the Financial Services Regulations

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# A Guide to the Financial Services Regulations

# Chapter 1

## Introduction to the Financial Services Regulations

### **Legislative Background**

The QFC Law provides a framework for regulating, authorising and supervising banking, financial and insurance-related businesses carried on in or from the QFC by the Regulatory Authority.

The QFC Financial Services Regulations (“FSR”) are the primary Regulations which define the management, objectives, duties, functions, powers and constitution of the Regulatory Authority.

The FSR are issued with the consent of the Council of Ministers and may only be varied or revoked with the consent of the Council of Ministers.

The following is an outline of the content of the FSR. For full details, please refer to the text of the FSR.

# Chapter 2

## Overview of FSR

The FSR elaborate on the basic requirements contained in the QFC Law as to management and constitution of the Regulatory Authority and the Appeals Body, which is established to hear appeals against the decisions of the Regulatory Authority. The FSR also contain a description of the QFC Tribunal, which functions as the QFC Court, and has powers to adjudicate commercial disputes and issue orders, directions and determinations within the QFC.

### Regulated Activities

As envisaged by the QFC Law, the FSR set out the activities which constitute Regulated Activities, the Specified Products to which they relate, and the exceptions that will apply.

The Regulatory Authority has power to issue Rules determining the details of when an activity will be deemed to be carried on by way of business (activities will only be Regulated Activities if they are carried on by way of business). This will include defining the circumstances in which a person will be considered to be undertaking activities as a customer to the market, and accordingly not undertaking them by way of business for the purposes of the FSR. The precise scope of the exemption applying to project finance special purpose vehicles ("SPVs") in relation to the characteristics of an SPV and any financing or related activities undertaken by those entities may also be determined by the Regulatory Authority. The extent to which registered Collective Investment Funds will be considered to be carrying on the Regulated Activities of dealing in investments and managing investments will also be set out in Rules issued by the Regulatory Authority.

The Regulatory Authority also has the power to issue Rules which clarify and delimit certain categories of Specified Product to which Regulated Activities relate. The Regulatory Authority may issue Rules which specify the circumstances where particular arrangements which would otherwise fall within the definition of Collective Investment Fund, but which in the Regulatory Authority's view should not fall to be regarded as such will not constitute a Collective Investment Fund for the purposes of the FSR. The Regulatory Authority may also issue Rules which set out the circumstances in which Futures, Options and Contracts for Differences are to be regarded as made for commercial rather than investment purposes and should not, therefore fall within the scope of the regulatory regime. The Regulatory Authority is also given the power to make Rules prescribing the circumstances in which a contract which falls within one of the categories of Insurance Contract listed in the FSR is to be regarded a qualifying Contract of Insurance subject to regulation under the FSR. In all other cases, the list of Regulated Activities may only generally be altered through amendment to the FSR, which would require the consent of the Council of Ministers.

### Authorisation of Firms

The FSR describe procedures for the granting, variation and withdrawal of Authorisations.

### Approval of Individuals

Under the FSR, Individuals performing certain functions (so called Controlled Functions), on behalf of Authorised Firms are required to be "approved" by the Regulatory Authority as Approved Individuals.

### Prohibition of Market Abuse

Provision is also made under the FSR for a regime to prevent Market Abuse.

### Regulation of Financial Communications

The FSR contain a regime for the regulation of Financial Communications made by entities established within the QFC. The Regulatory Authority also has powers to place restrictions on Financial Communications coming into the QFC in due course, should this be considered appropriate.

### Registration of Collective Investment Funds

The FSR create a regime relating to the registration of Collective Investment Funds.

# Chapter 3

## Supervision and Investigations, Enforcement and Discipline

The FSR set out the Regulatory Authority's powers in respect of supervision, investigations, enforcement and discipline.

### International Relations and Cooperation

The Regulatory Authority is under an obligation to foster relations with Overseas Regulators and International Regulatory Associations outside the QFC.

### Powers Deriving from other Regulations

In addition to its role in relation to banking, financial and insurance related business, the Regulatory Authority is given power:

- to monitor, supervise, investigate and enforce matters relating to the prevention and detection of money laundering under the Anti-Money Laundering Regulations. The Regulatory Authority may also issue Rules and Guidance relating to the application of the Anti-Money Laundering Regulations; and
- to initiate insolvency proceedings in certain circumstances.

# Chapter 4

## Regulatory Objectives and Principles of Good Regulation

### Regulatory Objectives

The FSR elaborate on the QFC Law by setting out a number of Regulatory Objectives as well as Principles of Good Regulation. The FSR describe the Regulatory Authority's eight objectives as:

- (i) the promotion and maintenance of efficiency, transparency and the integrity of the QFC;
- (ii) the promotion and maintenance of confidence in the QFC of users and prospective users of the QFC;
- (iii) the maintenance of the financial stability of the QFC, including the reduction of systemic risk relating to the QFC;
- (iv) the prevention, detection and restraint of conduct which causes or may cause damage to the reputation of the QFC, through appropriate means including the imposition of fines and other sanctions;
- (v) the provision of appropriate protection to those licensed to carry on business at the QFC and their clients or customers;

In considering what constitutes appropriate protection, the Regulatory Authority shall take into account:

- the financial integrity of Authorised Firms through appropriate financial resources requirements complemented by a robust system of internal controls;
  - the differing degrees of protection which may be appropriate for clients or customers as a result of their experience, expertise, business and means and the differing degree of information which it may be appropriate to give such clients or customers;
  - the differing degree of risk involved in different kinds of investment or transaction;
  - the general principle that clients or customers should take responsibility for their own decisions;
- (vi) the promotion of understanding of the objectives of the QFC amongst users and prospective users of the QFC and other interested Persons;
  - (vii) ensuring the Regulatory Authority is run with a view to:
    - it operating at all times in accordance with best international standards for financial and business centres of a similar kind;
    - establishing and maintaining the QFC as a leading financial and business centre in the Middle East; and
  - (viii) minimising the extent to which the business carried on by a Person carrying on Regulated Activities can be used for the purposes of or in connection with Financial Crime.

### **Principles of Good Regulation**

The Regulatory Authority must perform its functions under the QFC Law and the FSR with reference to a set of Principles of Good Regulation.

These principles are set out in the FSR and are designed to guide the Regulatory Authority in its approach to regulation. The Regulatory Authority must take account of the following principles:

- (i) the need to use its resources in the most efficient and economic way;
- (ii) the desirability of facilitating innovation and fostering the international competitiveness of the QFC;
- (iii) the desirability of fostering competition between those who are subject to regulation by the Regulatory Authority;
- (iv) the principle that the Regulatory Authority should exercise its powers and functions in a fair and transparent manner;
- (v) the need to comply with such generally accepted principles of good governance as it is reasonable to regard as applicable to it;
- (vi) the need to balance the burdens and restrictions on firms with the benefits of regulation; and
- (vii) the need to act in accordance with all laws and Regulations to which it is subject.

These principles act as a check on the operations of the Regulatory Authority and provide a benchmark against which it can be assessed.

### **Accountability**

The Regulatory Authority is accountable to the public, to those it regulates and to the Council of Ministers. It is required to establish a complaints procedure for the timely resolution of complaints against it and must file with the Council of Minister a report on its activities and an audited financial statement on at least an annual basis.

### **Conflicts**

The directors, officers, employees and agents of the Regulatory Authority must act to manage conflicts of interest and are prohibited from having any role in any decision on matters in which they are subject to a material conflict of interest.

### **Confidentiality**

The Regulatory Authority and any other Person who comes into possession of confidential information in the exercise of their regulatory functions are prohibited from disclosing such information except in specified prescribed circumstances.

### **Transparency**

The Regulatory Authority is required to operate transparently and to make public, among other things, Regulations, Rules, waivers, guidance, identity of Authorised Firms and Approved Individuals, public censures and the results of disciplinary actions and the decisions of the Appeals Body.

# Chapter 5

## Regulated Activities

### Activities

In broad terms, Regulated Activities are defined to include the following (subject to certain exclusions set out in the FSR):

- (i) Deposit Taking
- (ii) Effecting a Contract of Insurance
- (iii) Carrying out a Contract of Insurance
- (iv) Dealing in Investments
- (v) Arranging Deals in Investments
- (vi) Providing Credit Facilities
- (vii) Arranging Credit Facilities
- (viii) Providing Custody Services
- (ix) Arranging the Provision of Custody Services
- (x) Managing Investments
- (xi) Advising on Investments
- (xii) Operating a Collective Investment Fund

### Specified Products

The categories of Specified Products to which Regulated Activities are variously expressed to relate are:

- (i) Shares
- (ii) Debt Instruments
- (iii) Credit Facilities
- (iv) Warrants
- (v) Securities Receipts
- (vi) Unit in a Collective Investment
- (vii) Funds
- (viii) Options
- (ix) Futures
- (x) Contracts for Differences
- (xi) Contracts of Insurance
- (xii) Deposits
- (xiii) Rights in Investments

These Specified Products are defined further in the FSR.

### Regulated Activities in Respect of Retail Customers

The Regulatory Authority may authorise Persons to carry on Regulated Activities with or for retail customers in the State after it has put in place measures to ensure appropriate customer protections commensurate with the needs of such customers.

For these purposes retail customers are individuals having such characteristics as may be specified in Rules issued by the Regulatory Authority or other types or category of Persons specified in those Rules.

### Exclusions

There are a number of exclusions set out in the FSR. These include, broadly speaking, activities within the following categories:

- (i) Group exemption
- (ii) Trustee exemption
- (iii) Professional business exemption
- (iv) Collective investment fund exemption
- (v) Sale of body corporate exemption
- (vi) Employee share scheme exemption
- (vii) Special purpose vehicle exemption

The group exemption and trustees exemption are not applicable to Effecting a Contract of Insurance or Carrying out a Contract of Insurance.

# Chapter 6

## Authorisation and Approval

### Authorisation of Firms

#### Process and requirements

The FSR set out various requirements relating to the Authorisation process and the circumstances in which Authorisations may be granted (or rejected), varied or withdrawn. The Application process is explained further in the Guide to the Application Process.

The Regulatory Authority is permitted to make rules setting out the criteria which an Application must satisfy, to include:

- the fitness and propriety of an Applicant Firm having regard to all the circumstances, the nature of any Regulated Activity to be carried on and the need to ensure that his affairs are conducted soundly and prudently;
- the legal form of Applicant Firms;
- the resources of the Applicant Firm whether financial or otherwise;
- the Applicant Firm's systems and controls;
- the location of the Applicant Firm's office;
- in the case of an application for a withdrawal, the interest of the clients or customers of the Authorised Firm and the need for effective supervision of the Financial System; and
- the Regulatory Authority's ability to effectively supervise the firm in question.

#### Imposition of Conditions, etc

The Regulatory Authority, in granting an Application for Authorisation, variation or withdrawal may impose conditions, restrictions or requirements as it considers appropriate.

#### Own initiative actions

The Regulatory Authority is also permitted to take own initiative action in certain circumstances where it considers it appropriate to do so. The steps which the Regulatory Authority may take care to:

- impose or vary conditions, restrictions and requirements;
- require a person subject to a condition, restriction or requirement to take or refrain from taking such action as the Regulatory Authority considers appropriate; or
- withdraw the Authorisation of an Authorised Firm or vary its Authorisation.

The Regulatory Authority is generally required to afford the relevant Authorised Firm an appropriate opportunity to make representations, but need not do so where the Regulatory Authority concludes that any delay likely to arise will be prejudicial to the interests of clients or customers of the Authorised Firm or the Financial System (in which case the Regulatory Authority is required to afford the Authorised Firm an opportunity to make representations promptly after the relevant powers have been exercised). Similarly, the Regulatory Authority is not required to give an opportunity to make representations where the actions taken follow a determination of the Regulatory Authority pursuant to the Disciplinary and Enforcement Powers or a decision by the Appeals Body or Tribunal.

### Approved Individuals

Individuals undertaking so called "Controlled Functions" on behalf of Authorised Firms are required to obtain approval as Approved Individuals.

The Regulatory Authority is also permitted to make Rules setting out the criteria which an applicant for approval must satisfy, including requirements as to suitability, qualifications and competence.

The Regulatory Authority may issue principles or other requirements to which Approved Individuals are required to adhere. In addition to its general enforcement and disciplinary powers, the Regulatory Authority may take action against any person who is (or has previously been) an Approved Individual in certain circumstances. These circumstances are where he performs any function in contravention of a prohibition order or breaches any of the principles issued by the Regulatory Authority, or has been knowingly involved in a contravention of a requirement imposed on an Authorised Firm by the Regulatory Authority.

As with Authorised Firms, the Regulatory Authority may take own initiative actions against Approved Individuals in certain circumstances.

# Chapter 7

## Approval of Controllers and Notification Requirements

### Requirement for Approval

The FSR contain provisions requiring an Authorised Firm to notify the Regulatory Authority when a person becomes, or ceases to be, a Controller of an Authorised Firm or where increases or decreases in the level of control, or change in the type of control, occur.

There is also a general restriction on any person assuming control, (or an increased level of control) unless that person has been approved by the Regulatory Authority.

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 or approval requirement.

The primary obligation to notify is that of the Authorised Firm but where the Authorised Firm is not aware of the acquisition or change of control or is not able to obtain sufficient information to submit the control or notice, the obligation is deemed to be that of the proposed Controller. Authorised Firms are also required to submit to the Regulatory Authority annual returns relating to their Controllers.

### Meaning of Controller

A Controller is broadly speaking, someone who:

- (i) holds 10% or more of the shares in any Authorised Firm (or a parent of the Authorised Firm), or is entitled to exercise or control the exercise of 10% or more of the voting power in an Authorised Firm (or a parent); or
- (ii) is able to exercise significant influence over the management of the Authorised Firm (or a parent of the Authorised Firm) by virtue of his shareholding or voting power, or by virtue of contractual or other arrangements.

### Own Initiative Powers

The Regulatory Authority is given certain own initiative powers to cancel, impose conditions applying to an approval, vary conditions or withdraw approval altogether. The Regulatory Authority may exercise the powers where it has reason to believe that a Controller is not fit and proper, or where so called “close links” the Controller has with other persons are such as to prevent effective supervision of an Authorised Firm. These powers may also be exercised by the Regulatory Authority where it has reason to believe its Regulatory Objectives will no longer be satisfied.

The Regulatory Authority is also given certain powers to withdraw an Authorisation or to apply to the Tribunal for an order restricting the transfer of voting rights in respect of shares, or the issue or transfer of further shares or payments made in respect of the shares. The Regulatory Authority may also apply to the Tribunal for an order requiring the sale of relevant shares.

## Chapter 8

# Investment Funds

The Regulatory Authority may make Rules relating to the registration of Collective Investment Funds. The Rules may provide that all or certain categories of Collective Investment Fund may not be established or promoted in or from the QFC unless they have been registered. The Rules may make provision as to the constitution, management and operation of Collective Investment Funds, their investment and borrowing powers and various related matters.

The Regulatory Authority has the power to give various directions where one or more of the registration requirements of a Collective Investment Fund is no longer satisfied or is likely to be breached or where it is desirable to protect investors.

## Chapter 9

# Rules, Guidance and Waivers

### Rules

The Regulatory Authority is granted wide powers to issue rules which it considers necessary or appropriate to facilitate the pursuit, achievement and furtherance of the Regulatory Objectives or to aid it to implement, or carry out or enforce its duties, functions and powers.

The Regulatory Authority in addition issues standards, principles or codes of practice which will generally have the effect of Rules.

The Regulatory Authority will normally be required to publish the proposed Rules on its website, together with an invitation to make comments and the day by which comments must be received. This will not apply where the Regulatory Authority determines that the delay in bringing the Rules into force would be contrary to the interests of the QFC.

Rules are binding on those to whom they are expressed to apply. In certain circumstances, therefore, this may extend beyond Authorised Firms and Approved Individuals.

The Regulatory Authority may also issue consultative documents, open letters, policy statements, information notices, discussion documents and undertake such other forms of consultation and discussion as it thinks appropriate.

The Regulatory Authority may waive Rules if it is satisfied that either the burden experienced by the person applying for the waiver and complying with the relevant Rule significantly outweighs the benefits that the Rules are intended to achieve, or compliance with a Rule would not achieve or further the purpose for which the relevant Rule was made. In addition, the Regulatory Authority must be satisfied that a waiver would not result in an undue risk to persons whose interests the Rules are intended to protect.

The types of Rules which it is envisaged the Regulatory Authority will issue include Rules relating to the conduct of business by Authorised Firms, their systems and controls and other prudential requirements, and requirements in respect of Client Money and the safeguarding of customer assets.

### Guidance

The Regulatory Authority may issue Guidance, either on an individual basis or generally. Guidance issued generally will normally follow a similar consultation process to that applying to the issuance of Rules.

# Chapter 10

## Supervision and Investigations

The Regulatory Authority is given a variety of powers to obtain information as part of its normal supervisory activities as well as certain additional powers. These powers include:

### **Report by a Nominated Person**

The Regulatory Authority may require the production of a report by a person nominated or approved by the Regulatory Authority in respect of a particular entity.

### **Appointment of Investigators**

The Regulatory Authority may appoint investigators (who may be internal or external). The Regulatory Authority may also exercise its power to appoint investigators where requested by shareholders who hold 10% or more of the nominal value of the issue of share capital of a QFC Company, or in certain other enumerated circumstances warranting the investigation of the affairs of a QFC Company or LLP or branch of an overseas entity registered in the QFC.

### **Privileged Materials**

The obligation to produce, or disclose, or permit the inspection of material, either as part of an investigation or otherwise, does not extend, broadly speaking, to material which is subject to legal privilege.

# Chapter 11

## Disciplinary and Enforcement Powers

### Contravention

The Regulatory Authority is entitled to exercise disciplinary measures where there is a contravention of a so-called “relevant requirement”.

A person contravenes a relevant requirement if he:

- (i) fails to comply with any prohibition or requirement imposed by the Regulatory Authority or any undertaking given to the Regulatory Authority;
- (ii) does any act or thing that is prohibited under, or breaches any requirement of, or omits to do any act or thing required under, the QFC Law, the FSR or the Rules or other relevant Regulations (for example the Companies Regulations, the LLP Regulations or the AML Regulations);
- (iii) commits an act of fraud or abuses any fiduciary duty which he owes to his clients or customers;
- (iv) commits one of the other contraventions described as such in the FSR (for example the prohibition of Market Abuse or requirements in respect of Financial Communications);
- (v) knowingly or recklessly provides the Regulatory Authority with any information which is false, misleading or deceptive or conceals relevant information in certain circumstances, or conducts Regulated Activities in or from the QFC in breach of Article 11.2 of the QFC Law; or
- (vi) falsifies, conceals, destroys or otherwise disposes of a relevant document where he knows or suspects the Regulatory Authority is taking action pursuant to stipulated powers, unless he can show he had no intention of concealing relevant facts.

### Secondary Contravention

The FSR provide for a number of secondary contraventions, for example, where a person is “knowingly concerned” in a contravention or aids, abets, counsels or procures the contravention.

### Sanctions

The Regulatory Authority has various powers at its disposal where a contravention has taken place, notably:

#### Public Censure

The Regulatory Authority may “name and shame” persons who have contravened relevant requirements.

#### Financial Penalties

The Regulatory Authority may impose financial penalties.

#### Appointment of Managers

The Regulatory Authority may appoint individuals to act as managers of a business.

#### Undertakings

The Regulatory Authority may require written undertakings from Individuals or Authorised Firms. In the case of breach of the undertaking, the Regulatory Authority may apply to the Tribunal for an order directing compliance or any other order considered appropriate.

#### Prohibitions and Restrictions

The Regulatory Authority may by written notice prohibit an Authorised Firm or Approved Individual from acting in certain ways or require them to carry on business or conduct themselves in a specified manner or prohibit a person from performing a specified function.

#### Injunctions

The Regulatory Authority may apply to the Tribunal for injunctive relief either to restrain a particular contravention or to require certain steps to be taken to remedy a contravention or restrain a person from disposing or otherwise dealing with any of his assets.

#### Restitution Orders

The Regulatory Authority may also apply to the Tribunal for a restitution order where the Regulatory Authority is satisfied that a person has contravened a relevant requirement (or been knowingly concerned in the contravention) and profits have accrued to him, or one or more persons have suffered loss or otherwise been adversely affected as a result of the contravention.

# Chapter 11

## Disciplinary and Enforcement Powers

contd.

### Enforcement Procedure

#### Notices and Representations

The FSR contain certain procedural requirements in respect of the disciplinary powers of the Regulatory Authority. In particular, the Regulatory Authority is generally required to serve a notice on persons when it is proposing to exercise its disciplinary powers, giving the person in question an opportunity to make written representations. This requirement will not apply where the Regulatory Authority seeks an injunction or restitution order from the Tribunal, or where the Regulatory Authority concludes that any delay likely to arise might be prejudicial to the interests of clients or customers of the relevant person or the Financial System.

#### Decision Notices

Once the Regulatory Authority has made a decision it is required to serve a Decision Notice on the persons to whom the decision relates. In certain circumstances this obligation also applies in respect of stipulated third parties. The Decision Notice must give an indication of any rights to appeal within a reasonable time specified in the notice and the relevant procedure for appeal.

#### Policy on Financial Penalties

The Regulatory Authority is required to prepare and issue a statement of its policy in respect of the imposition and amount of financial penalties.

The Regulatory Authority's policy must have regard to the seriousness of the contravention, the extent to which the contravention is deliberate or reckless, whether the person on whom the penalty is to be imposed is an individual, and the effect on third parties, clients or customers and/or investors and the best interests of the Financial System.

# Chapter 12

## Financial Communications

The Regulatory Authority is authorised to issue Rules relating to the circumstances in which Financial Communications may be made or approved by Authorised Firms and the form and content of such Financial Communications. A Communication is, broadly speaking, any form of communication the purpose or effect of which is to promote or advertise Specified Products or any Regulated Activity or invite or induce any person to enter into an agreement in relation to a Specified Product or to engage in a Regulated Activity.

There is a general restriction on persons in the QFC other than an Authorised Firm making any Financial Communication unless that person is an Authorised Firm or the content has been approved by an Authorised Firm. There are certain exceptions to this, namely in respect of financial communications made to other QFC Licensed Firms, or Financial Communications made to recipients falling within categories set out in Rules made by the Regulatory Authority.

The Regulatory Authority may, in addition, set out Rules restricting persons outside the QFC from making Financial Communications into the QFC, but in the meantime, there is no restriction in relation to such Financial Communications.

# Chapter 13

## Market Abuse

### General Prohibition

The FSR set out certain contraventions relating to Market Abuse, namely, that a person may not behave in relation to an Investment or anything which is the subject matter of (or whose price or value is expressed by reference to the price or value of) an Investment where such behaviour consists of that person:

- (i) acquiring or disposing of, or attempting to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, an Investment, on the basis of inside information relating to the Investment;
- (ii) disclosing inside information to another person otherwise than in the proper course of the exercise of his employment, profession or duties;
- (iii) recommending or inducing any person, on the basis of inside information, to acquire or dispose of an Investment to which that information relates;
- (iv) effecting, or participating in effecting, transactions or orders to trade (otherwise than for legitimate reasons in conformity with accepted market practice on the relevant market) which:
  - give, or are likely to give a false or misleading impression as to the supply of, or demand for, or as to the price or value of, one or more Investments; or
  - secure the price of one or more Investments at an abnormal or artificial level;
- (v) effecting, or participating in effecting, transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance; or
- (vi) disseminating, or causing the dissemination of, information by any means which gives, or is likely to give, a false or misleading impression as to an Investment by a person who knew or could reasonably be expected to have known that the information was false or misleading.

### Rules Relating to Market Abuse

The Regulatory Authority is entitled to issue Rules in respect of the scope and effect of the Market Abuse restriction.

## Chapter 14

# The Control of Business Transfers

The FSR set out various required procedures for Insurance Business Transfers and Banking Business Transfers. The FSR also envisage that parties to other types of Relevant Business Transfers may elect to adopt the procedures set out in the FSR.

The Control of Business Transfers provisions require an order to be obtained from the Tribunal sanctioning a relevant scheme and also establishes other requirements as to the production of reports and publicity.

## Chapter 15

# Auditors and Actuaries

The Regulatory Authority is authorised to make rules requiring Authorised Firms (or particular classes of Authorised Firms) to appoint an Auditor or Actuary if it is not already subject to a requirement to do so.

The Rules may set out various requirements as to the appointment, qualification, duties, functions and powers of the Auditors or Actuaries, together with requirements relating to the approval by the Regulatory Authority of the Auditors or Actuaries.

Relevant Auditors or Actuaries are required to disclose to the Regulatory Authority matters concerning an Authorised Firm which suggest a breach of the QFC Law, the FSR, Rules, or other relevant Regulations and also permit the Auditors or Actuaries to inform the Regulatory Authority of other matters concerning an Authorised Firm and express opinions in respect of those matters.

# Chapter 16

## Protection of Customers

### **The Regulatory Environment**

The regime set out by the FSR will allow the Regulatory Authority to issue Rules appropriate to achieve or further the Regulatory Objectives. As described above, these will include Rules relating to the conduct of business, the safeguarding of client money and assets and the prudential status of the Authorised Firms.

### **Complaints and Compensation**

In addition to the protection implicit in the regime created by the FSR, the Regulatory Authority is authorised to make Rules relating to the manner in which Authorised Firms deal with complaints received from their clients or customers and establishing an independent body to hear complaints and require compensation to be paid where appropriate.

The FSR also entitles the Regulatory Authority to issue rules establishing a compensation funds for clients or customers where their Authorised Firm is in default.

### **Rights of Action**

The Regulatory Authority is authorised to make Rules giving certain persons (either generally or particular categories) who have suffered loss as a result of the contravention of a relevant requirement the right to apply to the Tribunal for a restitution order against such person.

### **Unenforceability**

The FSR provides that agreements made by a person in the course of carrying on a Regulated Activity who has not, but who should have, obtained an Authorisation will generally be unenforceable against the other party to the agreement. The other party to the agreement is entitled to apply to the Tribunal to recover money paid over, or property transferred, and to seek compensation for loss suffered.

# Chapter 17

## Accountability of the Regulatory Authority

The FSR establishes a framework to ensure the accountability of the Regulatory Authority. This includes the following measures:

### Reports and Accounts

The Regulatory Authority is required to provide an annual report to the Council of Ministers (which is to be made public). The Regulatory Authority is also required to prepare annual audited accounts.

### Internal Procedures

The FSR sets out a number of significant actions which must be decided on by the board of the Regulatory Authority as a whole, rather than individual offices or divisions within the Regulatory Authority, namely:

- (i) approving the annual accounts of the Regulatory Authority;
- (ii) approving the annual report of the Regulatory Authority and otherwise approving reports to the Council of Ministers on the activities of the Regulatory Authority as required by the QFC Law and the FSR;
- (iii) approving the policy of the Regulatory Authority with respect to fees and penalties;
- (iv) approving the annual budget of the Regulatory Authority;
- (v) approving regulations to be proposed to the Minister for approval by the Council of Ministers;
- (vi) issuing Rules on behalf of the Regulatory Authority; and
- (vii) issuing Decision Notices. As an exception to this, Decision Notices may be issued by a committee of the Regulatory Authority Board or the Chief Executive Officer (or to the extent permitted by internal procedures of the Regulatory Authority, other executive officers) to the extent they relate to routine matters or minor contraventions in accordance with policies issued and approved by the Regulatory Authority Board.

The approval of Guidance of general application may also be delegated to a committee of the Regulatory Authority Board.

### Inquiries

The Council of Ministers may arrange for an independent inquiry to be undertaken where it believes there may have been a serious failure in the operation of the Financial System posing a serious risk to the QFC or the Regulatory Objectives and it is in the public interest to hold such an enquiry.

### Complaints Against the Regulatory Authority

The Regulatory Authority is required 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 to the Council of Ministers).

### Public Records

The Regulatory Authority is obliged to make various information available to the public, including Regulations enacted under the QFC Law, as well as Rules, general Guidance, consultative and other related documents issued under the FSR as well as details of Authorised Firms and Approved Individuals. In addition, details of disciplinary actions and related matters (subject to completion of any applicable appeal or expiry or any right to appeal) will generally be published.

### Confidential Information

The FSR also contain provisions imposing obligations on the Regulatory Authority and other entities performing functions under the FSR (for example, persons undertaking investigations on behalf of the Regulatory Authority) to keep confidential certain information provided to them. The FSR do, however, set out a number of circumstances where relevant information can be disclosed. For example, the Regulatory Authority can disclose information in good faith as part of the performance of its functions, duties and powers under the QFC Law or the FSR.

## Appeals

The FSR provides that the following decisions of the Regulatory Authority are subject to appeal at the Appeals Body:

- (i) decisions relating to the variation or withdrawal and rejection of an application for Authorisation) and own initiative action by the Regulatory Authority in respect of Authorisation;
- (ii) decisions relating to the approval of Controllers, own initiative actions with respect to a Controller, and withdrawal of Authorisation in consequence of improperly acquired shares;
- (iii) decisions with respect to the granting or refusal of a waiver or modification of Rules;
- (iv) decisions relating to the grant of approval or variation of approval of Individuals, misconduct by Approved Individuals or own initiative action by the Regulatory Authority in respect of Approved Individuals;
- (v) the exercise by the Regulatory Authority of any of its stipulated disciplinary powers;
- (vi) any decision taken by the Regulatory Authority permitting it to remove, disqualify or refuse to approve an Auditor or Actuary;
- (vii) decisions affecting Third Parties in certain circumstances; or
- (viii) determinations made in respect of Collective Investment Funds.

Powers such as commissioning reports, appointing investigators etc may not be appealed. The granting of injunctions and restitution orders are decisions of the Tribunal, rather than the Regulatory Authority and similarly may not be appealed to the Appeals Body.

# Contact Information

The Regulatory Authority's Regulatory Processes Rulebook contains rules and guidance which provide further detail in respect of the important regulatory approaches explained in this guide.

For further information please visit the Regulatory Authority website at [www.qfcra.com](http://www.qfcra.com) or contact the Regulatory Authority directly at:

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FINANCIAL CENTRE  
REGULATORY AUTHORITY