

**FINANCIAL SERVICES REGULATORY AUTHORITY**  
**سلطة تنظيم الخدمات المالية**

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## **General Rulebook (GEN)**

\*In this attachment underlining indicates new text and striking through indicates deleted text.

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## 1. INTRODUCTION

### 1.1 Application

1.1.1 This ~~module~~ Rulebook ("**GEN**") applies to every Person to whom the Financial Services and Markets Regulations 2015 ("**FSMR**") or Market Infrastructure Rules ("**MIR**") applies and to the same extent as those Regulations or Rules, except to the extent that a provision of GEN provides for a narrower application. This ~~module~~ Rulebook does not apply to Remote Bodies.

### 1.2 Overview of the ~~module~~ Rulebook

#### Guidance

1. Chapter 2 sets out the Principles for Authorised Persons, Approved Persons and Recognised Persons.
2. Chapter 3 specifies the requirements upon senior management to implement effective systems and controls. There are also requirements upon the Authorised Person to apportion material responsibility among its senior management.
3. Chapter 4 contains mainly guidance in respect of: interpretation of the Rulebook, emergency procedures, disclosure, the location of offices, Close Links, Complaints against the Regulator and the public records maintained by the Regulator in accordance with section 196 of the FSMR.
4. Chapter 5 specifies the Regulator's authorisation requirements for any applicant intending to become an Authorised Person, the threshold conditions required for such authorisation and requirements relating to Approved Persons and Recognised Persons.
5. Chapter 6 specifies, in relation to Authorised Persons and Recognised Bodies, the auditing and accounting requirements which deal with such matters as the appointment and termination of auditors, accounts and ~~#Regulatory #Returns~~ and the functions of an auditor.

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#### Business plan and strategy

- 3.3.16 (1) An Authorised Person must produce a business plan which enables it, amongst other things, to manage the risks to which it and its Customers are exposed.
- (2) The business plan must take into account the Authorised Person's current business activities and the business activities forecast for the next twelve months and inform the IRAP and the ICAAP where the Authorised Person is required to undertake them.

- (3) The business plan must be documented and updated as appropriate to take account of changes in the business environment and to reflect changes in and the complexities of the business of the Authorised Person.

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### **Corporate Governance**

- 3.3.41 (1) An Authorised Person must have a Governing Body and senior management that meet the requirements in (2) and (3) respectively.

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### **Guidance**

#### **Scope of corporate governance**

1. Corporate governance is a framework of systems, policies, procedures and controls through which an entity:
  - a. promotes the sound and prudent management of its business;
  - b. protects the interests of its Customers and stakeholders; and
  - c. places clear responsibility for achieving Rule 3.3.41(2)(a) and (3) on the Governing Body and its members and the senior management of the Authorised Person.
2. Many requirements designed to ensure sound corporate governance of companies, such as those relating to shareholder and minority protection and responsibilities of the Board of Directors of companies, are found in the company laws and apply to Authorised Persons. Additional disclosure requirements also apply if they are listed companies. The requirements in this ~~module~~ Rulebook are tailored to Authorised Persons and are designed to augment and not to exclude the application of those requirements.
3. Whilst Rule 3.3.41 deals with two aspects of corporate governance, the requirements included in other provisions under Rules 3.2 and 3.3 also go to the heart of sound corporate governance by promoting prudent and sound management of the Authorised Person's business in the interest of its Customers and stakeholders. These requirements together are designed to promote sound corporate governance practices in Authorised Persons whilst also providing a greater degree of flexibility for Authorised Persons in establishing and implementing a corporate governance framework that are both appropriate and practicable to suit their operations.

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## 4. GENERAL PROVISIONS

### 4.1 Application

- 4.1.1 (1) Rules ~~4.1, 4.2, 4.3~~ and 4.8 apply to every Person to whom any provision in the Rulebook applies.

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### 4.3 Emergency

- 4.3.1 (1) If an Authorised Person or Recognised Body is unable to comply with a particular Rule due to an emergency which is outside its or its Employees' control and could not have been avoided by taking all reasonable steps, the Authorised Person or Recognised Body will not be in Contravention of that Rule to the extent that, in consequence of the emergency, compliance with that Rule is impractical.
- (2) This Rule applies only for so long as the consequences of the emergency continue and the Authorised Person or Recognised Body is able demonstrate that it is taking all practical steps to deal with those consequences, to comply with the Rule, and to mitigate losses and potential losses to its Customers or users.
- (3) An Authorised Person ~~and~~ or Recognised Body must notify the Regulator as soon as practical of the emergency and of the steps it is taking and proposes to take to deal with the consequences of the emergency.

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## 5. AUTHORISATION AND THRESHOLD CONDITIONS

### 5.1 Application

- 5.1.1 (1) This Chapter applies, subject to (2), to every Person who is:
- (a) an Authorised Person;

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#### Guidance

1. This Chapter outlines the authorisation requirements for an Authorised Person, an Approved Person and a Recognised Person
2. The Regulator's requirements for authorisation of:
  - a. Recognised Bodies are covered by MIR; and
  - b. Representative Offices are covered by Chapter 9.

3. This Chapter should be read in conjunction with the GPM which sets out the Regulator's general regulatory policy and processes. Some additional processes may be outlined in other Chapters of this ~~module~~ Rulebook.
4. The GPM sets out the Regulator's approach to the authorisation of Undertakings and individuals to conduct Regulated Activities, Controlled Functions or Recognised Functions, as the case may be.

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#### **5.4 Recognised Functions and Recognised Persons**

- 5.4.1 Pursuant to Part 5 of FSMR, the functions as listed in Rules 5.4.5 to 5.4.9 are Recognised Functions.
- 5.4.2 Performance of Recognised Functions shall be subject to approval by the relevant Authorised Person in respect of which the Recognised Function is to be performed.
- 5.4.3 Where an individual is approved pursuant to Rule 5.4.2 or has his Recognised Function ~~withdrawn or~~ varied, the Authorised Person must notify the Regulator in writing within 10 days of such approval, ~~withdrawal~~ or variation.

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#### **6.3 Accounting records and ~~Regulatory~~ Returns**

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- 6.3.4 All ~~Regulatory~~ Returns prepared by the Authorised Person must be prepared and submitted in accordance with the requirements set out in PRU or PIN as applicable.

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- 6.4.5 (1) Each Authorised Person and Recognised Body must take reasonable steps to ensure that the Auditor and the relevant audit staff of the Auditor are independent of and not subject to any conflict of interest with respect to the Authorised Person or Recognised Body.
- (2) Each Authorised Person and Recognised Body must notify the Regulator if it becomes aware, or has reason to believe, that the Auditor or the relevant audit staff of the Auditor are no longer independent of the Authorised Person or Recognised Body, or have a conflict of interest which may affect their judgement in respect of the Authorised Person or Recognised Body.

#### **Guidance**

1. Each Authorised Person and Recognised Body should consider whether there is any financial or personal relationship between it or any of its relevant Employees and the Auditor or any of the relevant Employees of the Auditor that may affect the judgement of the Auditor when conducting an audit of the Authorised Person or Recognised Body or complying with all its legal

obligations, including the FSMR, AML and other relevant ~~modules of the~~ Rulebooks.

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6.6.2 Each Authorised Person and Recognised Body must submit any reports produced by its Auditor in accordance with this Chapter to the Regulator annually within four months of the Authorised Person or Recognised Body's financial year end.

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### **Regulatory Returns Auditor's Report**

6.6.4 An Authorised Person or Recognised Body must, in procuring the production of a Regulatory Returns Auditor's Report for a Domestic Firm, ensure that the Auditor states whether:

- (1) it has received all the necessary information and explanations for the purposes of preparing the report to the Regulator;
- (2) the Authorised Person or Recognised Body's ~~Regulatory Returns~~, specified in PRU, PIN or MIR to the Regulator have been properly reconciled with the appropriate audited financial statements;
- (3) the Authorised Person or Recognised Body's ~~Regulatory Returns~~, specified in PRU PIN or MIR to the Regulator on a quarterly basis have been properly reconciled with the appropriate annual returns;
- (4) the Authorised Person or Recognised Body's financial resources as at its financial year end have been properly calculated in accordance with the applicable Rules in PRU, PIN or MIR (as the case may be) and are sufficient to meet the relevant requirements;
- (5) (in the case of an Authorised Person other than an Insurer) the Capital Resources have been calculated in accordance with the applicable Rules in PRU;
- (6) (in the case of an Authorised Person other than an Insurer) the Capital Resources maintained exceed the Capital Requirement in accordance with the applicable Rules in PRU;
- (7) (in the case of an Authorised Person) the ~~Regulatory Returns~~ specified in PRU or PIN have been properly prepared by the Authorised Person in accordance with the applicable rules in PRU or PIN;
- (8) (in the case of an Authorised Person) the Authorised Person has kept proper Accounting Records in accordance with the applicable Rules in PRU or PIN;

- (9) (in the case of an Authorised Person which is subject to Expenditure Based Capital Minimum) the Expenditure Base Capital Minimum has been calculated in accordance with the applicable Rules in PRU; and
- (10) (in the case of an Authorised Person in Category 3B, 3C or 4, and which is subject to Expenditure Based Capital Minimum) the Capital Requirement maintained exceeds its Expenditure Based Capital Minimum and has been maintained in the form of liquid assets in accordance with the applicable Rules in PRU.

6.6.5 An Authorised Person or Recognised Body must ensure that, in procuring the production of a Regulatory Returns Auditor's Report for a Branch, an Auditor states whether:

- (1) the Authorised Person or Recognised Body's ~~Regulatory~~ ~~Returns~~ have been properly reconciled with the Branch's financial statements; and
- (2) in the case of an Authorised Person only:
  - (a) the ~~Regulatory~~ ~~Returns~~ specified in PRU or PIN have been properly prepared by the Authorised Person in accordance with the applicable rules in PRU or PIN; and
  - (b) the Authorised Person has kept proper Accounting Records in accordance with the applicable Rules in PRU or PIN.

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## **8.2 Waivers or Modification**

- 8.2.1 This Rule applies to every Authorised Person and Recognised Body, Foreign Fund Manager, Person making a Public Offer of Securities or Reporting Entity.
- 8.2.2 Throughout the Rulebook reference to the written notice under the FSMR will be referred to as a "Waiver or Modification".
- 8.2.3 If an Authorised Person, Recognised Body, Foreign Fund Manager, Person making a Public Offer of Securities or Reporting Entity wishes to apply for a Waiver or Modification, it must apply in writing and the application must be delivered to the Regulator as outlined in Rule 8.2.4.

### **Guidance**

Applications for a Waiver or Modification must be made in such form as the Regulator shall prescribe and the GPM sets out the Regulator's approach to considering a Waiver or Modification.

8.2.4 The application must contain:

- (1) the name and Financial Services Permission/Recognition Order/FSRA identification number of the Authorised Person, Recognised Body, Foreign Fund Manager, Person making a Public Offer of Securities or Reporting Entity;
- (2) the Rule to which the application relates;
- (3) a clear explanation of the Waiver or Modification that is being applied for and the reason why the Authorised Person, Recognised Body, Foreign Fund Manager, Person making a Public Offer or Reporting Entity is requesting the Waiver or Modification;
- (4) details of any other requirements; for example, if there is a specific period for which the Waiver or Modification is required;
- (5) the reason, if any, why the Waiver or Modification should not be published or why it should be published without disclosing the identity of the Authorised Person, Recognised Body, Foreign Fund Manager, Person making a Public Offer or Reporting Entity; and
- (6) all relevant facts to support the application.

8.2.5 An Authorised Person and Recognised Body must immediately notify the Regulator if it becomes aware of any material change in circumstances which may affect the application for or the continuing relevance of a Waiver or Modification.

**Revocation and variation of Waivers or Modification**

8.2.6 The Regulator may revoke or vary a Waiver or Modification at any time. In deciding whether to revoke or vary a Waiver or Modification, the Regulator will consider whether the conditions in Rules 8.2.1 to 8.2.3 are no longer satisfied, and whether the Waiver or Modification is otherwise no longer appropriate.

8.2.7 If the Regulator proposes to revoke or vary a Waiver or Modification, or revokes or varies a Waiver or Modification with immediate effect, it will:

- (1) give the Authorised Person or Recognised Body written notice either of its proposal, or of its action, and may give reasons for such proposal or action; and
- (7) state in the notice a reasonable period within which the Authorised Person or Recognised Body can make representations about the proposal or action.

8.2.8 If the Authorised Person or Recognised Body wishes to make oral representations in accordance with its rights under Rule 8.2.7(2), it should:

- (1) inform the Regulator as soon as possible;
- (2) specify who will make the representations; and
- (3) specify which matters will be covered.

- 8.2.9 Upon receipt of information from the Authorised Person or Recognised Body under Rule 8.2.8, the Regulator will inform the Authorised Person or Recognised Body of the time and place for hearing the representations and may request a written summary of such representations.
- 8.2.10 After considering any representations made by an Authorised Person or Recognised Body under Rule 8.2.8:
- (1) in the case of a proposed revocation or variation, the Regulator will give the Authorised Person or Recognised Body written confirmation of its decision to revoke or vary the Waiver or Modification or not, as the case may be; or
  - (2) in the case of a revocation or variation that has already taken effect, either confirm the revocation or variation or seek the Authorised Person or Recognised Body's consent to a new Waiver or Modification.
- 8.2.11 Alternatively, the Regulator may vary a Waiver or Modification with the Authorised Person or Recognised Body's consent, or upon the application of an Authorised Person or Recognised Body.
- 8.2.12 If an Authorised Person or Recognised Body wishes the Regulator to vary a Waiver or Modification, or the Regulator wishes to vary a Waiver or Modification with the consent of the relevant Authorised Person or Recognised Body, both the Authorised Person or Recognised Body and the Regulator should follow the procedures in this Rule.
- 8.2.13 If the Waiver or Modification that has been revoked or varied, as the case may be, has previously been published, the Regulator may publish the variation unless it is satisfied that it is inappropriate or unnecessary to do so, having regard to any representations made by the Authorised Person or Recognised Body.

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## **9. REPRESENTATIVES OFFICES**

### **9.1 Application**

- 9.1.1 (1) This Chapter applies to every Person who carries on, or intends to carry on, the Regulated Activity of Operating a Representative Office in or from the ADGM.
- (1) Unless otherwise stated, the Rules apply to a Representative Office only with respect to activities carried on from an establishment maintained by it in the ADGM.

#### **Guidance**

1. Because of the limited nature of the Regulated Activity of Operating a Representative Office, much of the ADGM Rulebook has been disapplied for Representative Offices. While most of the key provisions applying to a Representative Office are contained in these Rules, a Representative Office should ensure that it complies with and has regard to other relevant provisions

in other applicable ADGM Rulebooks ~~modules~~ including AML. The application section of each Rulebook ~~module~~ sets out which chapters, if any, apply to a Representative Office.

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## **9.5 Application of core principles**

- 9.5.1 (1) The four Principles for Representative Offices set out in 9.6 apply to every Representative Office in accordance with Rule 9.1.1.

### **Guidance**

1. Under Rule 9.1.1(2), the principles apply, unless otherwise stated, only to the Representative Office in the ADGM and not to the institution as a whole.
2. The Principles for Representative Offices have the status of Rules and are a general statement of fundamental regulatory requirements which apply alongside the other Rules including in relation to new or unforeseen situations which may not be covered elsewhere by a specific Rule. Rules in other areas of this ~~module Rulebook or the Rulebook~~ build upon these fundamental principles. Consequently the Rules and Guidance elsewhere should not be seen as exhausting the implications of the Principles.

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## **APP1 BEST PRACTICE RELATING TO CORPORATE GOVERNANCE AND REMUNERATION**

### **A1.1 Best practice relating to corporate governance**

#### **Guidance**

##### **Roles of the Governing Body and the senior management**

1. The Governing Body should adopt a rigorous process for setting and approving and overseeing the implementation of, the Authorised Person or Recognised Body's overall business objectives and risk strategies, taking into account the long term financial safety and soundness of the Authorised Person or Recognised Body as a whole, and the protection of its Customers and stakeholders. These objectives and strategies should be adequately documented and properly communicated to the Authorised Person or Recognised Body's senior management, Persons Undertaking Key Control Functions (such as the heads of risk management and compliance) and all the other relevant Employees. Senior management should ensure the effective implementation of such strategies in carrying out the day-to-day management of the Authorised Person or Recognised Body's business.
2. The Governing Body, with the support of the senior management, should take a lead in setting the "tone at the top", including by setting the fundamental corporate values that should be pursued by the Authorised Person or

Recognised Body. These should, to the extent possible, be supported by professional standards and codes of ethics that set out acceptable and unacceptable conduct. Such professional standards and codes of ethics should be clearly communicated to those individuals involved in the conduct of business of the Authorised Person or Recognised Body.

3. The Governing Body should review the overall business objectives and strategies at appropriate intervals and in any event, at least annually to ensure that they remain suitable in light of any changes in the internal or external business and operating conditions. The Governing Body should also approve the approach and oversee the implementation of key policies pertaining to risk identification and management, capital and liquidity plans, compliance policies and obligations, and the internal control systems.
4. The Governing Body should also ensure that the senior management is effectively discharging the day-to-day management of the Authorised Person or Recognised Body's business in accordance with the business objectives and strategies that have been set or approved by the Governing Body. For this purpose, the Governing Body should ensure that there are clear and objective performance goals and measures (and an objective assessment against such criteria at reasonable intervals), for the Authorised Person, Recognised Body and the members of their Governing Bodies and the senior management to ascertain whether the Authorised Person or Recognised Body's business objectives and risk strategies are implemented effectively and as intended.

#### **Internal governance of the Governing Body**

5. The Governing Body should also ensure that the senior management is responsible for carrying out regular stress testing on credit, operational, market, and liquidity risks. The Governing Body should annually review the stress scenarios and take action to address any perceived issues arising from those reviews.
- ~~56.~~ The Governing Body should have appropriate practices and procedures for its own internal governance, and ensure that these are followed, and periodically reviewed to ensure their effectiveness and adequacy. These policies and procedures should cover a formal and transparent process for nomination, selection, and removal of the members of the Governing Body (see the GPM), and a specified term of office as appropriate to the roles and responsibilities of the member, particularly to ensure the objectivity of his decision making and judgment. Appropriate succession planning should also form part of the Governing Body's internal governance practices.
- ~~67.~~ The Governing Body should meet sufficiently regularly to discharge its duties effectively. There should be a formal schedule of matters specifically reserved for its decision. The working procedures of the Governing Body should be well defined.

- ~~78.~~ The Governing Body should also ensure that when assessing the performance of the members of the Governing Body and its Senior Managers and Persons Undertaking Key Control Functions, the independence and objectivity of that process is achieved through appropriate mechanisms, such as the assignment of the performance assessment to an independent member of the Governing Body or a committee of the Governing Body comprising a majority of independent members. See the GPM for the independence criteria for Authorised Persons and the GPM for the independence criteria for Recognised Bodies.

### **Committees of the Governing Body**

- ~~89.~~ To support the effective discharge of its responsibilities, the Governing Body should establish its committees as appropriate. The committees that a Governing Body may commonly establish, depending on the nature, scale and complexity of its business and operations, include the audit, Remuneration, ethics/compliance, nominations and risk management committees. Where committees are appointed, they should have clearly defined mandates, authority to carry out their respective functions, and the degree of independence and objectivity as appropriate to the role of the committee. If the functions of any committees are combined, the Governing Body should ensure such a combination does not compromise the integrity or effectiveness of the functions so combined. In all cases, the Governing Body remains ultimately responsible for the matters delegated to any such committees.

### **Independence and objectivity**

- ~~910.~~ The Governing Body should establish clear and objective independence criteria which should be met by a sufficient number of members of the Governing Body to promote objectivity and independence in decision making by the Governing Body. See the GPM for independence criteria.

### **Powers of the Governing Body**

- ~~110.~~ To be able to discharge its role and responsibilities properly, the Governing Body should have adequate and well-defined powers, which are clearly set out either in the legislation or as part of the constituent Documents of the Authorised Person or Recognised Body (such as the constitution, articles of incorporation and organisational rules). These should, at a minimum, include the power to obtain timely and comprehensive information relating to the management of the Authorised Person or Recognised Body, including direct access to relevant persons within the organisation for obtaining information such as its senior management and Persons Undertaking Key Control Functions (such as the head of compliance, risk management or internal audit).

### **Role of user committees**

- ~~124.~~ A Recognised Body should consider all relevant stakeholders' interests, including those of its Members and other participants, and Issuers, in making major decisions, such as those relating to its system's design, overall business

strategy and rules and procedures. A Recognised Body which has cross-border operations should ensure that full range of views across jurisdictions in which it operates is appropriately considered in its decision-making process.

- ~~132.~~ In some instances, a Recognised Body may be required under the applicable Rules to undertake public consultation in relation to certain matters, such as any proposed amendments to its Business Rules under MIR Rule 2.11.
- ~~143.~~ Effective mechanisms for obtaining stakeholder input to the Recognised Body's decision-making process, including where such input is mandatory, include the establishment of, and consultation with, user committees. As opinions among interested parties are likely to differ, a Recognised Body should have clear processes for identifying and appropriately managing the diversity of stakeholder views and any conflicts of interest between stakeholders and the Recognised Body.
- ~~154.~~ Where a Recognised Body establishes user committees to obtain stakeholder input to its decision making, to enable such committees to be effective, a Recognised Body should structure such committees to:
- a. have adequate representation of the Recognised Body's Members and other participants, and stakeholders including Issuers. The other stakeholders of a Recognised Body may include Clients of its Members or participants, custodians and other service providers;
  - b. have direct access to the members of the Recognised Body's Governing Body and members of the senior management as appropriate;
  - c. not be subject to any direct or indirect influence by the senior management of the Recognised Body in carrying out their functions;
  - d. have clear terms of reference (mandates) which include matters on which the advice of user committees will be sought. For example, the criteria for selecting Members, setting service levels and pricing structures and for assessing the impact on Members and other stakeholders of any proposed material changes to the Recognised Body's existing arrangements (MIR Rule 2.11) and any amendments to its Business Rules (MIR Rule 2.11); and
  - e. have adequate internal governance arrangements (such as the regularity of committee meetings and the quorum and other operational procedures).

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