



**GENERAL RULEBOOK (GEN) 2026  
(Version 1.0)**

## TABLE OF CONTENTS

The contents of this Rulebook are divided into the following Chapters, Rules and Appendices:

<b>1. INTRODUCTION</b>	<b>4</b>
1.1 Application	4
1.2 Overview of the Rulebook	4
<b>2. CORE PRINCIPLES</b>	<b>4</b>
2.1 Principles for Licensed Firms – Application	4
2.2 The Principles for Licensed Firms Principle 1 - Integrity	3
2.3 Principles for Approved Persons– Application	5
2.4 The Principles for Approved Persons	5
<b>3. MANAGEMENT, SYSTEMS AND CONTROLS</b>	<b>6</b>
3.1 Application	6
3.2 Allocation of significant responsibilities	7
3.3 Systems and controls	8
3.4 Whistleblowing Policies and Procedures	23
<b>4. GENERAL PROVISIONS</b>	<b>25</b>
4.1 Application	25
4.2 Interpreting the Rulebook Guidance	25
4.3 Emergency	26
4.4 Disclosure of regulatory status	27
4.5 Location of offices	27
4.6 Close Links	28
4.7 Public records	29
4.8 Communication with the Regulator	29
5.1 Application	29
5.2 Application for a Financial Service License	30
5.3 Controlled Functions and Approved Persons	36
5.5 Mandatory appointments	39
5.6 Application for Approved Person status	41
<b>6. ACCOUNTING AND AUDITING</b>	<b>44</b>
6.1 Application	44
6.2 Financial statements and financial reporting standards	44
6.3 Accounting Records and Regulatory Returns	45
6.4 Appointment and termination of Auditors	46

<b>6.5</b>	<b>Co-operation with Auditors</b>	<b>47</b>
<b>6.6</b>	<b>Audit reports</b>	<b>48</b>
<b>7.</b>	<b>COMPLAINTS HANDLING AND DISPUTE RESOLUTION</b>	<b>52</b>
<b>7.1</b>	<b>Application</b>	<b>52</b>
<b>7.2</b>	<b>Complaints handling procedures for Retail Clients</b>	<b>52</b>
<b>7.3</b>	<b>Complaints recording procedures for Professional Clients</b>	<b>55</b>
<b>8.1</b>	<b>Information gathering and the Regulator's access to information</b>	<b>56</b>
<b>8.2</b>	<b>Waivers and Modifications</b>	<b>57</b>
<b>8.3</b>	<b>Application to change the scope of a Financial Services Permission</b>	<b>59</b>
<b>8.4</b>	<b>Withdrawal of a Financial Services Permission at a Licensed Firm's request</b>	<b>60</b>
<b>8.5</b>	<b>Changes to an Approved Person status Guidance</b>	<b>60</b>
<b>8.6</b>	<b>Temporary cover</b>	<b>61</b>
<b>8.7</b>	<b>Withdrawal of Approved Person status</b>	<b>61</b>
<b>8.8</b>	<b>Changes relating to control</b>	<b>62</b>
<b>8.9</b>	<b>Creation of additional Cell of a Protected Cell Company or an Incorporated Cell Company for an Insurer</b>	<b>72</b>
<b>8.10</b>	<b>Notifications</b>	<b>73</b>
	<b>APP1 BEST PRACTICE RELATING TO CORPORATE GOVERNANCE AND REMUNERATION</b>	<b>92</b>
	<b>A1.1 Best practice relating to corporate governance</b>	<b>92</b>

## **1. INTRODUCTION**

### **1.1 Application**

1.1.1 This Rulebook applies to every Person to whom FSA or 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 Rulebook does not apply to Remote Bodies.

### **1.2 Overview of the Rulebook**

#### **Guidance**

1. Chapter 2 sets out the Principles for Licensed Firms and Approved Persons.
2. Chapter 3 specifies the requirements upon senior management to implement effective systems and controls. There are also requirements upon the Licensed Firm 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 FSA.
4. Chapter 5 specifies the Regulator's license requirements for any applicant intending to become a Licensed Firm, the threshold conditions required for such license and requirements relating to Approved Persons.
5. Chapter 6 specifies, in relation to Licensed Firms 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.
6. Chapter 7 prescribes the manner in which a Licensed Firm must handle Complaints made against it by Retail Clients or Professional Clients.
7. Chapter 8 specifies the Regulator's supervisory requirements for any Licensed Firm being regulated by the Regulator.
8. Chapter 9 specifies requirements relating to operators of Representative Offices and contains related guidance.

## **2. CORE PRINCIPLES**

### **2.1 Principles for Licensed Firms – Application**

- 2.1.1 (1) The twelve Principles for Licensed Firms, set out in Rule 2.2, apply subject to (2) and (3) to every Licensed Firm in accordance with Rules 2.1.2 and 2.1.3.
- (2) The twelve Principles for Licensed Firms, set out in Rule 2.2, do not apply to a Licensed Firm which is a Representative Office.

- (3) A Licensed Firm which is a Credit Rating Agency does not have to comply with the Principles set out in Rules 2.2.6, 2.2.7, 2.2.8 and 2.2.9.

2.1.2 (1) For the purposes of this Rule and Rule 2.1.3 the term 'Activities' means:

- (a) a Regulated Activity;
  - (b) activities carried on in connection with a Regulated Activity;
  - (c) activities held out as being for the purpose of a Regulated Activity; and
  - (d) in relation to any particular Principle, any activity specified in 2.1.3(2), (3) and (4).
- (2) Principles 3 and 4 also apply in a Prudential Context to a Licensed Firm with respect to the carrying on of all its Activities.
  - (3) Principles 3 and 4 also take into account any Activities of other members of the Group of which the Licensed Firm is a member.
  - (4) Principles 10 and 11, to the extent that it relates to disclosing to the Regulator, also applies to a Licensed Firm with respect to the carrying on of all its Activities, and takes into account any Activities of other members of the Group of which the Licensed Firm is a member.

2.1.3 (1) The Principles apply to a Licensed Firm only with respect to Activities carried on from an establishment maintained by it in GMC, unless an extension in (2), (3), (4) or (5) applies.

- (2) Where another applicable Rule, which is relevant to the Activity, has a wider territorial scope than that in (1), any related Principle applies with that wider scope in relation to the Activity described in the Rule.
- (3) Principles 1, 2 and 3 apply in a Prudential Context to a Licensed Firm with respect to Activities wherever they are carried on.
- (4) Principles 4 and 11 apply to a Licensed Firm with respect to Activities wherever they are carried on.
- (5) Principle 5 also applies to a Licensed Firm with respect to the Activities carried on in or from any place outside GMC if and to the extent that the Activities have, or might reasonably be regarded as likely to have, a negative effect on confidence in the GMC Financial System.

## **Guidance**

1. The Principles for Licensed Firms have the status of Rules and are a general statement of fundamental regulatory requirements which apply alongside the other Rules and also in new or unforeseen situations which may not be covered elsewhere by a specific Rule. Rules in other areas of the Rulebook build upon these fundamental principles. Consequently, the Rules and Guidance elsewhere in the Rulebook should not be seen as exhausting the implications of the Principles.
2. Breaching a Principle for Licensed Firms makes a Licensed Firm liable to disciplinary action, and may indicate that it is no longer fit and proper to carry on a Regulated Activity or to hold a Financial Services License and the Regulator may consider withdrawing License or the Financial Services License on that basis.
3. The onus will be on the Regulator to show that the Licensed Firm has been at fault in some way, taking into account the standard of conduct required under the Principle in question.

### **2.2 The Principles for Licensed Firms Principle 1 - Integrity**

- 2.2.1 A Licensed Firm must observe high standards of integrity and fair dealing.

#### **Principle 2 - Due skill, care and diligence**

- 2.2.2 In conducting its business activities, a Licensed Firm must act with due skill, care and diligence.

#### **Principle 3 - Management, systems and controls**

- 2.2.3 A Licensed Firm must ensure that its affairs are managed effectively and responsibly by its senior management. A Licensed Firm must have adequate systems and controls to ensure, as far as is reasonably practical, that it complies with the Regulations and Rules.

#### **Principle 4 - Resources**

- 2.2.4 A Licensed Firm must maintain and be able to demonstrate the existence of adequate resources to conduct and manage its affairs. These include adequate financial and system resources as well as adequate and competent human resources.

#### **Principle 5 - Market conduct**

- 2.2.5 A Licensed Firm must observe proper standards of conduct in the GMC Financial System.

### **Principle 6 – Information and interests**

- 2.2.6 A Licensed Firm must pay due regard to the interests of its Clients and communicate information to them in a way which is clear, fair and not misleading.

### **Principle 7 – Conflicts of Interest**

- 2.2.7 A Licensed Firm must take all reasonable steps to ensure that conflicts of interest between itself and its Customers, between its Employees and Clients and between one Client and another are identified and then prevented or managed, or disclosed, in such a way that the interests of a Client are not adversely affected.

### **Principle 8 - Suitability**

- 2.2.8 A Licensed Firm must take reasonable care to ensure the suitability of its Advice and discretionary decisions for Clients who are entitled to rely upon its judgment.

### **Principle 9 - Client assets and money**

- 2.2.9 Where a Licensed Firm has control of or is otherwise responsible for assets or money belonging to a Client which it is required to safeguard, it must arrange proper protection for them in accordance with the responsibility it has accepted.

### **Principle 10 - Relations with Regulators**

- 2.2.10 A Licensed Firm must deal with Regulators in an open and co-operative manner and keep the Regulator promptly informed of significant events or anything else relating to the Licensed Firm of which the Regulator would reasonably expect to be notified.

### **Principle 11 - Compliance with high standards of corporate governance**

- 2.2.11 A Licensed Firm must have a corporate governance framework as appropriate to the nature, scale and complexity of its business and structure, which is adequate to promote the sound and prudent management and oversight of the Licensed Firm's business and to protect the interests of its Clients and stakeholders.

### **Guidance**

Corporate governance framework encompasses structural and procedural arrangements such as systems, policies and practices that are put in place to promote good governance and include the specific measures required under Rule 3.3.41.

## **Principle 12 – Remuneration practices**

- 2.2.12 A Licensed Firm must have a Remuneration structure and strategies which are well aligned with the long-term interests of the Licensed Firm, and are appropriate to the nature, scale and complexity of its business.

### **2.3 Principles for Approved Persons– Application**

- 2.3.1 The six Principles for Licensed Firms set out in Rule 2.4 apply to every Approved Person and in respect of every Controlled Function.

#### **Guidance**

1. The Principles for Approved Persons do not apply to an Approved Person in respect of any other functions they may carry out, although their conduct in those functions may be relevant to their fitness and propriety.
2. Breaching a Principle for Approved Persons may indicate that an Approved Person is no longer fit and proper to perform a Controlled Function. The Regulator may consider suspending or withdrawing Approved Person status on that basis.
3. In those circumstances, the onus is on the Regulator to show that the Approved Person is culpable, taking into account the standard of conduct required under the Principle in question. In determining whether or not the particular conduct of an Approved Person complies with the Principles for Approved Persons, the Regulator will take account of whether that conduct is consistent with the requirements and standards relevant to their Licensed Firm, their own role and the information available to them.
4. An Approved Person breaching a Principle may indicate that an Approved Person is no longer fit and proper to perform the related function. The Licensed Firm should consider suspending or withdrawing their status as an Approved Person on that basis and whether disciplinary action is warranted.

### **2.4 The Principles for Approved Persons**

#### **Principle 1 – Integrity**

- 2.4.1 Each Approved Person must observe high standards of integrity and fair dealing in carrying out every Controlled Function.

#### **Principle 2 - Due skill, care and diligence**

- 2.4.2 Each Approved Person must act with due skill, care and diligence in carrying out every Controlled Function.

#### **Principle 3 - Market conduct**

- 2.4.3 Each Approved Person must observe proper standards of conduct in the GMC Financial System in carrying out every Controlled Function.

#### **Principle 4 – Relations with the Regulator**

- 2.4.4 Each Approved Person must deal with the Regulator in an open and co-operative manner and must disclose appropriately any information of which the Regulator would reasonably be expected to be notified.

#### **Principle 5 - Management, systems and control**

- 2.4.5 Each Approved Person who has significant responsibility must take reasonable care to ensure that the business of the Licensed Firm for which they are responsible is organised so that it can be managed and controlled effectively.

#### **Principle 6 - Compliance**

- 2.4.6 Each Approved Person who has significant responsibility must take reasonable care to ensure that the business of the Licensed Firm for which they are responsible complies with any Regulations or Rules.

### **3. MANAGEMENT, SYSTEMS AND CONTROLS**

#### **3.1 Application**

- 3.1.1 (1) This Chapter applies to every Licensed Firm with respect to the Regulated Activities carried on in or from GMC.
- (2) It also applies in a Prudential Context to a Domestic Firm with respect to all its activities wherever they are carried on.
- (3) Rule 3.3 also applies to a Licensed Firm in a Prudential Context with respect to its entire GMC Branch's activities wherever they are carried on.
- (4) This Chapter does not apply to a Representative Office.
- (5) Rules 3.3.13, 3.3.14 and 3.3.15 do not apply to a Fund Manager of a Venture Capital Fund.

#### **Guidance**

1. The purpose of this Chapter is to set out the requirements for the Governing Body and the senior management within a Licensed Firm who are to take direct responsibility for the Licensed Firm's arrangements on matters likely to be of interest to the Regulator wherever they may give rise to risks to the Regulator's objectives or they affect the Regulator's functions under the Regulations and Rules. See also the requirements relating to organisation in Rules 3.3.2 and 3.3.3.

2. In relation to a Licensed Firm which is a Fund Manager or the Trustee, this Chapter should be read in conjunction with FUNDS and construed to take into account any Fund which the Licensed Firm operates or for which it acts as the Trustee.

## **3.2 Allocation of significant responsibilities**

### **Apportionment of significant responsibilities**

- 3.2.1 A Licensed Firm must apportion significant responsibilities among the members of its Governing Body and its senior management and maintain such apportionment in such a way that:
  - (1) it meets the corporate governance requirements in Rule 3.3.41;
  - (2) it is appropriate with regard to:
    1. the nature, scale and complexity of the business of the Licensed Firm; and
    2. the ability and qualifications of the responsible individuals;
    3. it is clear who is responsible for which matter; and
    4. the business of the Licensed Firm can be adequately monitored and controlled by the Licensed Firm's Governing Body and senior management.
- 3.2.2 A Licensed Firm must allocate to the Senior Executive Officer or to the individual holding equivalent responsibility for the conduct for the Licensed Firm's business or the Governing Body, the functions of:
  - (1) dealing with the apportionment of responsibilities; and
  - (2) overseeing the establishment and maintenance of systems and controls.

### **Guidance**

Rules 3.2.1 and 3.2.2 do not derogate from the overall responsibility of the Governing Body in Rule 3.3.41(2).

## **Recording of apportionment**

- 3.2.3 (1) A Licensed Firm must establish and maintain an up-to-date record of the arrangements it has made to comply with Rules 3.2.1 and 3.2.2.
- (2) The record must show that the members of the Governing Body and the senior management are aware of and have accepted the responsibilities apportioned in accordance with Rule 3.2.1.
- (3) Where a responsibility has been allocated to more than one individual, the record must show clearly how that responsibility is allocated between the individuals.
- (4) The record must be retained for six years from the date on which it was established or superseded by a more up-to-date record.

## **3.3 Systems and controls**

### **General requirement**

- 3.3.1 (1) A Licensed Firm must establish and maintain systems and controls, including but not limited to financial and risk systems and controls, that ensure that its affairs are managed effectively and responsibly by its senior management.
- (2) A Licensed Firm must undertake regular reviews of its systems and controls.

### **Guidance**

The nature and extent of the systems and controls of a Licensed Firm will depend upon a variety of factors including the nature, scale and complexity of its business. While all Licensed Firms, irrespective of the nature, scale, and complexity of their business and legal structure or organisation need to comply with this Chapter, the Regulator will take into account these factors and the differences that exist between Licensed Firm when assessing the adequacy of a Licensed Firm's systems and controls.

Nevertheless, neither these factors nor the differences receive a Licensed Firm from compliance with its regulatory obligations.

### **Organisation**

- 3.3.2 (1) A Licensed Firm must establish and implement, taking due account of the nature, scale and complexity of its business and structure, adequate measures to ensure that:
- (a) the roles and responsibilities assigned to its Governing Body and the members of that body, senior management and Persons Undertaking Key Control Functions are clearly defined;

- (b) there are clear reporting lines applicable to the individuals undertaking those functions; and
  - (c) the roles, responsibilities and reporting lines referred to in (a) and (b) are documented and communicated to all relevant Employees.
- (2) A Licensed Firm must ensure that any Employee who will be delivering Regulated Activities to its Clients is clearly identified, together with his respective lines of accountability and supervision.
- (3) A Licensed Firm which is conducting Investment Business or the Regulated Activities of Acting as the Administrator of a Collective Investment Fund or Providing Trust Services must ensure it makes publicly available details of any Employee who delivers Regulated Activities to its Clients, by including such information:
  - (a) in a register, maintained by the Licensed Firm at its place of business and open for inspection during business hours; or
  - (b) on the website of the Licensed Firm.
- (4) A Licensed Firm referred to in (3), must have complete and up to date information on its register or website, including:
  - (a) the date on which the relevant Employee commenced delivering of Regulated Activities to Customers; and
  - (b) the Regulated Activities which that Employee is permitted by the Licensed Firm to deliver to Customers.

## **Guidance**

1. The term Employee is defined in the Glossary ("**GLO**") widely and includes members of the Governing Body or Directors and Senior Managers of the Licensed Firm. Therefore, the requirements relating to Employees in Rules 3.3.19, 3.3.20, 3.3.21 and 3.3.42 apply to all Employees including those across the organisation.
2. The division of responsibilities between the Governing Body and the Senior management should be clearly established and set out in writing. In assigning duties, the Governing Body should take care that no one individual has unfettered powers in making material decisions.

3. Members of the Governing Body may include individuals undertaking senior management functions (such as the chief executive of the firm) and Persons undertaking Key Control Functions. In assigning specific functions to such individuals, care should be taken to ensure that the integrity and effectiveness of the functions they are to perform are not compromised. For example, if the chairperson of the Governing Body is also the chief executive officer of the Licensed Firm, the Governing Body should ensure that the performance assessment of that individual in his roles should be undertaken by a senior non-executive member of the Governing Body or a skilled person.
  4. Persons Undertaking Key Control Functions are defined in GLO in an inclusive manner to encompass Persons such as the heads of risk control, compliance and internal audit functions. In the case of an Insurer, the Actuary also is a Person who undertakes a Key Control Function.
  5. An example of an Employee providing Regulated Activities to a Client is a client relationship manager employed by a Licensed Firm providing wealth management services. In contrast, an Employee who may be employed in the back office of a Licensed Firm with responsibility for setting up Client Accounts would not be client facing.
- 3.3.3 A Licensed Firm must ensure that key duties and functions are segregated. Such segregation must ensure that the duties and functions to be performed by the same individual do not conflict with each other, thereby impairing the effective discharge of those functions by the relevant individuals (such as undetected errors or any abuse of positions) and thus exposing the Licensed Firm or its Clients or users to inappropriate risks.

### **Risk management**

- 3.3.4 A Licensed Firm must establish and maintain risk management systems and controls to enable it to identify, assess, mitigate, control and monitor its risks.
- 3.3.5 A Licensed Firm must develop, implement and maintain policies and procedures to manage the risks to which the Licensed Firm and where applicable, its Clients or users, are exposed.
- 3.3.6 (1) A Licensed Firm must appoint an individual to advise its Governing Body and senior management of such risks.
- (2) A Licensed Firm which is part of a Group should be aware of the implications of any Group wide risk policy and systems and controls regime.

## **Compliance**

- 3.3.7 A Licensed Firm must establish and maintain compliance arrangements, including processes and procedures that ensure and evidence, as far as reasonably practicable, that the Licensed Firm complies with all Regulations and Rules.
- 3.3.8 A Licensed Firm must document the organisation, responsibilities and procedures of the compliance function.
- 3.3.9 A Licensed Firm must ensure that the Compliance Officer has access to sufficient resources, including an adequate number of competent staff, to perform his duties objectively and independently of operational and business functions.
- 3.3.10 A Licensed Firm must ensure that the Compliance Officer has unrestricted access to relevant records and to the Licensed Firm's Governing Body and senior management.
- 3.3.11 A Licensed Firm must establish and maintain monitoring and reporting processes and procedures to ensure that any compliance breaches are readily identified, reported and promptly acted upon.
- 3.3.12 A Licensed Firm must document the monitoring and reporting processes and procedures as well as keep records of breaches of any of Regulations and Rules.

## **Internal audit**

- 3.3.13 (1) A Licensed Firm must establish and maintain an internal audit function with responsibility for monitoring the appropriateness and effectiveness of its systems and controls.  
(2) The internal audit function must be independent from operational and business functions.
- 3.3.14 A Licensed Firm must ensure that its internal audit function has unrestricted access to all relevant records and recourse when needed to the Licensed Firm's Governing Body or the relevant committee, established by its Governing Body for this purpose.
- 3.3.15 A Licensed Firm must document the organisation, responsibilities and procedures of the internal audit function.

## **Business plan and strategy**

- 3.3.16 (1) A Licensed Firm must produce a business plan which enables it, amongst other things, to manage the risks to which it and its Clients are exposed.  
(2) The business plan must take into account the Licensed Firm's current business activities and the business activities forecast for the next twelve months and, additionally, inform the IRAP and the ICAAP where the Licensed Firm is required to undertake them under Chapter 10 of PRU.

- (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 Licensed Firm.

### **Management information**

- 3.3.17 A Licensed Firm must establish and maintain arrangements to provide its Governing Body and senior management with the information necessary to organise, monitor and control its activities, to comply with the Regulations and Rules and to manage risks. The information must be relevant, accurate, comprehensive, timely and reliable.

### **Staff and agents**

- 3.3.18 A Licensed Firm must establish and maintain systems and controls that enable it to satisfy itself of the suitability of anyone who acts for it.

- 3.3.19 (1) A Licensed Firm must ensure, as far as reasonably practical, that its Employees are:

- (a) fit and proper;
- (b) competent and capable of performing the functions which are to be assigned to those Employees; and
- (c) trained in the requirements of the Regulations and Rules.

- (2) A Licensed Firm must establish and maintain systems and controls to comply with (1). A Licensed Firm must be able to demonstrate that it has complied with these requirements through appropriate measures, including the maintenance of relevant records.

### **Guidance**

1. When considering whether an Employee is fit and proper, competent and capable, a Licensed Firm should consider any training undertaken or required by an Employee, the nature of the Clients to whom an Employee provides Regulated Activities, and the type of activities performed by an Employee in the provision of such Regulated Activities including any interface with Clients.
2. When assessing the fitness and propriety of Employees, a Licensed Firm should be guided by the matters set out in the GPM and should also monitor conflicts or potential conflicts of interest arising from all of the individual's links and activities.
3. When assessing the competence and capability of an Employee, a Licensed Firm should:
  - a. obtain details of the skills, knowledge and experience of the Employee

- relevant to the nature and requirements of the role;
- b. take reasonable steps to verify the relevance, accuracy and authenticity of any information obtained;
  - c. determine, in light of the Employee's relevant skills, knowledge and experience, that the Employee is competent and capable of fulfilling the duties of the role; and
  - d. consider the level of responsibility that the Employee will assume within the Licensed Firm, including whether the Employee will be providing Regulated Activities to Retail Clients in an interfacing role.
4. A Licensed Firm should also satisfy itself that an Employee:
- a. continues to be competent and capable of performing the role;
  - b. has kept abreast of market, product, technology, legislative and regulatory developments that are relevant to the role, through training or other means; and
  - c. is able to apply his knowledge.
5. Refer to the GPM for criteria for suitability of members of the Governing Body of the Licensed Firm.

## **Conduct**

- 3.3.20 A Licensed Firm must establish and maintain systems and controls that ensure, as far as reasonably practical, that the Licensed Firm and its Employees do not engage in conduct, or facilitate others to engage in conduct, which may constitute:
- (1) market misconduct; or
  - (2) a Financial Crime under any applicable Bhutan laws.

## **Conflicts of Interest**

- 3.3.21 A Licensed Firm must comply with Principle 7 as outlined in Rule 2.2.7, taking all reasonable steps to identify conflicts of interest between:
- (1) the Licensed Firm, including its managers, Employees, or any person directly or indirectly linked to the Licensed Firm by control, and a Client of the Licensed Firm; or
  - (2) one Client of the Licensed Firm and another Client,

that arise or may arise in the course of the Licensed Firm carrying on any Regulated Activity.

3.3.22 For the purpose of identifying the types of conflict of interest that arise, in the course of providing a service and whose existence may entail a material risk of damage to the interests of a Client, a Licensed Firm must take into account, as a control to Licensed Firm:

- (1) is likely to make a financial gain, or avoid a financial loss, at the expense of the Client;
- (2) has an interest in the outcome of a service provided to the Client or of a Transaction carried out on behalf of the Client, which is distinct from the Client's interest in that outcome;
- (3) has a financial or other incentive to favour the interest of another Client or group of Clients over the interests of the Client;
- (4) carries on the same business as the Client; or
- (5) receives or will receive from a person other than the Client an inducement in relation to a service provided to the Client, in the form of monies, goods or services, other than the standard Commission or Fee for that service.

3.3.23 If arrangements made by a Licensed Firm to manage conflicts of interest in accordance with Principle 7 are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a Client will be prevented, the Licensed Firm must clearly disclose the general nature and/or sources of conflicts of interest to the Client before undertaking business for the Client.

3.3.24 The disclosure in Rule 3.3.23 must:

- (1) be made in a durable medium; and
- (2) include sufficient detail, taking into account the nature of the Client, to enable that Client to take an informed decision with respect to the service in the context of which the conflict of interest arises.

### **Information barriers**

3.3.25 When a Licensed Firm establishes and Maintains an information barrier (that is, an arrangement that requires information held by a Licensed Firm in the course of carrying on one part of the business to be withheld from, or not to be used for, persons with or for whom its acts in the course of carrying on another part of its business) it may:

- (1) withhold or not use the information held; and
- (2) for that purpose, permit persons employed in the first part of its business to

withhold the information held from those employed in that other part of the business, but only to the extent that the business of one of those parts involves the carrying on of Regulated Activities or ancillary activities.

- 3.3.26 Information may also be withheld or not used by a Licensed Firm when this is required by an established arrangement maintained between different parts of the business (of any kind) in the same group. The provision does not affect any requirement to transmit or use information that may arise apart from the rules in COBS.
- 3.3.27 For the purposes of this Rule, "Maintains" includes taking reasonable steps to ensure that the arrangements remain effective and are adequately monitored, and must be interpreted accordingly.
- 3.3.28 Acting in conformity with Rule 3.3.25 does not amount to Market Abuse.
- 3.3.29 When any of the rules of COBS apply to a Licensed Firm that acts with knowledge, the Licensed Firm will not be taken to act with knowledge for the purposes of that rule if none of the relevant individuals involved on behalf of the Licensed Firm acts with that knowledge as a result of arrangements established under Rule 3.3.25.
- 3.3.30 When a Licensed Firm manages a conflict of interest using the arrangements in Rule 3.3.25 which take the form of an information barrier, individuals on the other side of the wall will not be regarded as being in possession of knowledge denied to them as a result of the information barrier.

### **Outsourcing**

- 3.3.31 (1) A Licensed Firm which outsources any of its functions or activities directly related to Regulated Activities to service providers (including within its Group) is not relieved of its regulatory obligations and remains responsible for compliance with the Regulations and Rules.
- (2) The outsourced function under this Rule shall be deemed as being carried out by the Licensed Firm itself.
- (3) A Licensed Firm which uses such service providers must ensure that it:
- (a) has undertaken due diligence in choosing suitable service providers;
  - (b) effectively supervises the outsourced functions or activities; and
  - (c) deals effectively with any act or failure to act by the service provider that leads, or might lead, to a breach of any Regulations or Rules.
- 3.3.32 (1) A Licensed Firm must inform the Regulator about any material outsourcing arrangements.
- (2) A Licensed Firm which has a material outsourcing arrangement must:
- (a) establish and maintain comprehensive outsourcing policies, contingency

- plans and outsourcing risk management programmes;
  - (b) enter into an appropriate and written outsourcing contract; and
  - (c) ensure that the outsourcing arrangements neither reduce its ability to fulfil its obligations to Clients and the Regulator, nor hinder supervision of the Licensed Firm by the Regulator.
- (3) A Licensed Firm must ensure that the terms of its outsourcing contract with each service provider under a material outsourcing arrangement require the service provider to:
- (a) provide for the provision of information under Rule 8.1 in relation to the Licensed Firm and access to their business premises; and
  - (b) deal in an open and cooperative way with the Regulator.

### **Guidance**

1. A Licensed Firm's outsourcing arrangements should include consideration of:
  - a. applicable guiding principles for outsourcing in financial services issued by the Basel Committee on Banking Supervision, IOSCO or any other international body promulgating standards for outsourcing by Financial Institutions; or
  - b. any equivalent principles or regulations the Licensed Firm is subject to in its home country jurisdiction.
2. An outsourcing arrangement would be considered to be material if it is a service of such importance that weakness or failure of that service would cast serious doubt on the Licensed Firm's continuing ability to remain fit and proper or to comply with the Regulator's administered Regulations and Rules.

### **Business continuity and disaster recovery**

- 3.3.33 (1) A Licensed Firm must have in place adequate arrangements to ensure that they can continue to function and meet their obligations under the Regulations and Rules in the event of an unforeseen interruption.
- (2) These arrangements must be kept up to date and regularly tested to ensure their effectiveness.

### **Guidance**

1. In considering the adequacy of a Licensed Firm's business continuity arrangements, the Regulator will have regard to the Licensed Firm's

management of Specific Risks arising from interpretations to its business including its crisis management and disaster recovery plans.

2. The Regulator expects a Licensed Firm to have:
  - a. arrangements which establish and maintain the Licensed Firm's physical security and protection for its information systems for business continuity purposes in the event of planned or unplanned information system interruption or other events that impact on its operations;
  - b. considered its primary data centres' and business operations' reliance on infrastructure components, for example transportation, telecommunications networks and utilities and made the necessary arrangements to minimise the risk of interruption to its operations by arranging backup of infrastructure components and service providers; and
  - c. considered, in its plans for dealing with a major interruption to its primary data centre or business operations, its alternative data centres' and business operations' reliance on infrastructure components and made the necessary arrangements such that these do not rely on the same infrastructure components and the same service provider as the primary data centres and operations.

## **Records**

- 3.3.34 (1) A Licensed Firm must make and retain records of matters and dealings, including Accounting Records and corporate governance practices which are the subject of requirements and standards under the FSA and Rules.
- (2) Such records, however stored, must be capable of reproduction on paper within a reasonable period not exceeding three Business Days.
- 3.3.35 If Licensed Firm's records relate to business carried on from an establishment in a country or territory outside GMC, an official language of that country or territory may be used instead of the English language.
- 3.3.36 Subject to Rule 3.3.36, the records required by Rule 3.3.34 or by any other Rule in this Rulebook must be maintained by the Licensed Firm in the English language.
- 3.3.37 A Licensed Firm must have systems and controls to fulfil the Licensed Firm's legal and regulatory obligations with respect to adequacy, access, period of retention and security of records.

## **Fraud and other Financial Crimes**

3.3.38 A Licensed Firm must establish and maintain effective systems and controls to:

- (1) deter and prevent suspected fraud and other Financial Crimes against the Licensed Firm and its Clients; and
- (2) report suspected fraud and other Financial Crimes to the relevant authorities.

3.3.39 A Licensed Firm must ensure that the systems and controls established and maintained in accordance with Rule 3.3.38:

- (1) enable it to identify, assess, monitor and manage Financial Crimes risks; and
- (2) are comprehensive and proportionate to the nature, scale and complexity of its activities.

3.3.40 In identifying its exposure to risks arising from fraud and other Financial Crimes and implementing the necessary systems and controls to manage and reduce those risks, a Licensed Firm must consider a range of factors, including

- (1) its Clients, product and activity profiles;
- (2) its distribution channels;
- (3) the complexity and volume of its Transactions;
- (4) its processes and systems; and
- (5) its operating environment.

### **Guidance**

A Licensed Firm should observe best practices when establishing the systems and controls required under Rule 3.3.38, given the evolving nature of Financial Crime. Such practices may include, but are not limited to, incorporating secure authentication, biometrics and the monitoring of customer behaviour metrics into anti-fraud and anti-Financial Crime systems and controls.

### **Corporate Governance**

- 3.3.41 (1) A Licensed Firm must have a Governing Body and senior management that meet the requirements in (2) and (3) respectively.
- (2) The Governing Body of the Licensed Firm must:
    - (a) be clearly responsible for setting or approving (or both) the business objectives of the Licensed Firm and the strategies for achieving those objectives and for providing effective oversight of the management of the Licensed Firm;

- (b) comprise an adequate number and mix of individuals who have, among them the relevant knowledge, skills, expertise and time commitment necessary to effectively carry out the duties and functions of the Governing Body; and
  - (c) have adequate powers and resources, including its own governance practices and procedures, to enable it to discharge those duties and functions effectively.
- (3) The senior management of Licensed Firm must be clearly responsible for the day-to-day management of the Licensed Firm's business in accordance with the business objectives and strategies approved by the Governing body.

3.3.41A (1) This Rule applies to:

- (a) Banks;
  - (b) Insurers other than Captive Insurers or Licensed ISPVs;
  - (c) other Licensed Firms or Recognised Bodies who by written notice are deemed subject to this Rule by the Regulator.
- (2) A majority of the Governing Body must be Non-Executive Directors, and at least one of those Non-Executive Directors must be an Independent Non-Executive Director.
- (3) The chair of the Governing Body must be a Non-Executive Director or an Independent Non-Executive Director.
- (4) The Regulator may require that the Governing Body increase the proportion or number of Non-Executive Directors and Independent Non-Executive Directors.
- (5) The Regulator may require the Governing Body to establish one or more of:
- (a) an audit committee;
  - (b) a risk committee;
  - (c) a nomination committee;
  - (d) a remuneration committee;
- or a committee that oversees the mandate of one or more of such committees.
- (6) The Regulator may require that any committee of the Governing Body have:
- (a) a certain number or proportion of Non-Executive Directors and Independent Non-Executive Directors;

- (b) a chair that is a Non-Executive Director or an Independent Non-Executive Director; and
  - (c) a chair that is not the chair of the Governing Body or any other committee of the Governing Body.
- (7) The Regulator may require a Licensed Firm that is subject to this Rule and operating as a Branch to establish a committee to implement corporate governance responsibilities in relation to the Branch's operations in GMC.

## **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 Clients and stakeholders; and
  - c. places clear responsibility for achieving compliance with Rule 3.3.41(2)(a) and (3) on the Governing Body and its members and the senior management of the Licensed Firm.
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 Licensed Firms. Additional disclosure requirements also apply if they are listed companies. The requirements in this Rulebook are tailored to Licensed Firms 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 Licensed Firm's business in the interest of its Clients and stakeholders. These requirements together are designed to promote sound corporate governance practices in Licensed Firms whilst also providing a greater degree of flexibility for Licensed Firms in establishing and implementing a corporate governance framework that are both appropriate and practicable to suit their operations.
4. Stakeholder groups of a Licensed Firm, who would benefit from the sound and prudent management of Licensed Firms, can be varied but generally encompass its owners (e.g. its shareholders), Clients, creditors, Counterparties and Employees, whose interests may not necessarily be mutually coextensive. A key objective in enhancing corporate governance standards applicable to Licensed

Firm is to ensure that they are soundly and prudently managed, with the primary regard being had to its Clients.

### **Proportionate application to Licensed Firms depending on the nature of their business**

5. One of the key considerations that underpins how the corporate governance requirements set out in Rule 3.3.41 and Rule 3.3.41A apply to a Licensed Firm is the nature, scale and complexity of the Licensed Firm's business, and its organisational structure. When deciding whether to exercise its powers under Rule 3.3.41A, the Regulator may have regard to a Licensed Firm's systemic importance, size, risk profile, complexity, stage of operations and whether the Licensed Firm is a Domestic Firm or a Branch.
6. While requiring Banks, Insurers and dealers to have more detailed and complex corporate governance systems and controls, simpler systems and procedures could be required for other Licensed Firms, depending on the nature and scale of their Regulated Activities. For example, in the case of certain types of Category 4 Regulated Activity providers such as arranging or advising only Licensed Firms, less extensive and simpler corporate governance systems and procedures may be sufficient to meet their corporate governance obligations.
7. For example, a Licensed Firm which is a small scale operation with a tightly held ownership structure may not be able to constitute a Governing Body which comprises members who are fully independent of the Licensed Firm's business and from each other, nor be sufficiently large to be able to form numerous committees of the Governing Body to undertake various functions such as nomination and Remuneration. Similarly, it may not be necessary for a Bank or Insurer to have a majority of Non-Executive Directors, or an Independent Non-Executive Director, appointed to its Governing Body where it is a Subsidiary or at an early stage of its operations. If that is the case, the Licensed Firm should apply for a waiver or modification of the relevant requirements in Rule 3.3.41A, providing appropriate justification.
8. In such cases, whilst strict adherence to such aspects of best practice would not be required, overall measures as appropriate to achieve the sound and prudent management of the business would be needed. For example, a Licensed Firm with no regulatory track record would be expected to have additional corporate governance controls in place to ensure the sound and prudent management of its business, such as the appointment of an independent Director (who has relevant regulatory experience) to its Governing Body.

### **Application to Branches and Groups**

9. As part of the flexible and proportionate application of corporate governance standards to Licensed Firms, whether a Licensed Firm is a Branch or a Subsidiary within a Group is also taken into account. A Licensed Firm which is a member of a Group may, instead of developing its own corporate governance policies, adopt

Group-wide corporate governance standards. However, the Governing Body of the Licensed Firm should consider whether those standards are appropriate for the Licensed Firm, and to the extent possible, make any changes as necessary.

10. In the case of a Branch, corporate governance practices adopted at the head office would generally apply to the Branch and are expected to be adequate. The Regulator considers, as part of its license of a Branch and on-going supervision, the adequacy of regulatory and supervisory arrangements applicable in the home jurisdiction, including a corporate governance framework adopted and implemented by the head office (see the GPM). The Regulator is empowered to require a dedicated committee to act for the Governing Body in relation to corporate governance practices of Banks and certain Insurers that are Branches.

### **Best practice relating to corporate governance**

11. In addition to the considerations noted above, best practice that a Licensed Firm may adopt to achieve compliance with the applicable corporate governance standards is set out in Guidance at Appendix 1.1. A Licensed Firm may, where the best practice set out in Appendix 1.1 is not suited to its particular business or structure, deviate from such best practice or any aspects thereof. The Regulator will expect the Licensed Firm to demonstrate to the Regulator, upon request, what the deviations are and why such deviations are considered by the Licensed Firm to be appropriate. A Licensed Firm should periodically undertake a review of its corporate governance, and its effectiveness against best practice. The Regulator may request a copy of the output of such periodic reviews.

### **Remuneration structure and strategies**

- 3.3.42 (1) The Governing Body of a Licensed Firm must ensure that the Remuneration structure and strategy of that Licensed Firm:
  - (a) are consistent with the business objectives and strategies and the identified risk parameters within which the Licensed Firm's business is to be conducted;
  - (b) provide for effective alignment of risk outcomes and the roles and functions of the Employees, taking account of:
    - (i) the nature of the roles and functions of the relevant Employees; and
    - (ii) whether the actions of the Employees may expose the Licensed Firm to unacceptable financial, reputational and other risks;
  - (c) at a minimum, include the members of its Governing Body, the senior management, Persons Undertaking Key Control Functions and any Major Risk-Taking Employees; and
  - (d) are implemented and monitored to ensure that they operate, on an on-going basis, effectively and as intended.

- (2) The Governing Body must provide to the Regulator and relevant stakeholders sufficient information about its Remuneration structure and strategies to demonstrate that such structure and strategies meet the requirements in (1) on an ongoing basis.
- (3) For the purposes of this Rule, "Major Risk-Taking Employees" are Employees whose actions have a material impact on the risk exposure of the Licensed Firm.

### **3.4 Whistleblowing Policies and Procedures**

3.4.1 A Licensed Firm must implement and maintain appropriate and effective arrangements to:

- (a) facilitate persons making Protected Disclosures;
- (b) assess and, where appropriate, escalate concerns arising from information received in a Protected Disclosure; and
- (c) protect the identity of a person who makes a Protected Disclosure,

that are proportionate to the size and complexity of its business and operations.

3.4.2 The arrangements required under Rule 3.4.2 must be set out in written policies and procedures.

3.4.3 A Licensed Firm must periodically review the appropriateness and effectiveness of its policies and procedures to ensure they are appropriate, proportionate, effective and up to date.

### **Records of Protected Disclosures**

3.4.4 A Licensed Firm must maintain the following records in writing:

- (a) each Protected Disclosure received and all relevant supporting documents; and
- (b) information, including internal findings and analysis, relating to the Licensed Firm's investigation, assessment and determination of matters relevant to the Protected Disclosure.

3.4.5 The records referred to in Rule 3.4.5 must be maintained for a period of at least six years from the date that determination of all matters relevant to the Protected Disclosure have been completed and closed.

### **Guidance**

#### **Proportionate application to Licensed Firms depending on the nature of their business**

1. Those considerations set out in Guidance items 5 – 7 under Rule 3.3.41 apply equally to the way in which the Remuneration structure and strategies related requirement in Rule 3.3.42 is designed to apply to a Licensed Firm. Accordingly, whilst most Category 4 Licensed Firms may have simple arrangements to achieve the outcome of aligning performance outcomes and risks associated with Remuneration structure and strategies, Banks, Insurers and dealers are expected to have more stringent measures to address such risks.

### **Application to Branches and Groups**

2. As part of the flexible and proportionate application of corporate governance standards to Licensed Firms, whether a Licensed Firm is a Branch or a Subsidiary within a Group is also taken into account. As such, the considerations noted in Guidance items 8 – 9 under Rule 3.3.41 apply equally to the application of the Remuneration related requirements for Branches and Groups. For example, where a Licensed Firm is a member of a Group, its Governing Body should consider whether the Group wide policies, such as those relating to the Employees covered under the Remuneration strategy and the disclosure relating to Remuneration made at the Group level are adequate to meet its obligations under Rule 3.3.42.

### **Best Practice relating to corporate governance**

3. In addition to the considerations noted above, best practice that a Licensed Firm may adopt to promote sound Remuneration structure and strategies within the Licensed Firm is set out as Guidance at Appendix 1.2. Where such best practice or any aspects thereof are not suited to a particular Licensed Firm's business or structure, it may deviate from such best practice. The Regulator will expect the Licensed Firm to demonstrate, upon request, what the deviations are and why such deviations are considered appropriate.

### **Disclosure of information relating to Remuneration structure and strategy**

4. The information which a Licensed Firm provides to the Regulator relating to its Remuneration structure and strategies should be included in the annual report or accounting statements. The Regulator expects the annual report of Licensed Firms to include, at a minimum, information relating to:
  - a. the decision-making process used to determine the Licensed Firm-wide Remuneration policy (such as by a Remuneration committee or an external consultant if any, or by the Governing Body);
  - b. the most important elements of its Remuneration structure (such as, in the case of performance-based Remuneration, the link between pay and performance and the relevant assessment criteria); and
  - c. aggregate quantitative information on Remuneration of its Governing Body, the senior management, Persons Undertaking Key Control Functions and any Major Risk-Taking Employees.

5. The Regulator may, pursuant to its supervisory powers, require additional information relating to the Remuneration structure and strategy of a Licensed Firm to assess whether the general elements relating to Remuneration under Rule 3.3.42(1) are met by the Licensed Firm. Any significant changes to the Remuneration structure and strategy should also be notified to the Regulator before being implemented.
6. The information included in the annual report is made available to the Regulator and the shareholders, and in the case of a listed company, to the public. The Governing Body of the Licensed Firm should also consider what additional information should be included in the annual report. In the case of Banks, Insurers and dealers, more detailed disclosure of Remuneration structure and strategy and its impact on the financial soundness of the Licensed Firm would be required. When providing disclosure relating to Remuneration in its annual report, Licensed Firms should take account of the legal obligations that apply to them including the confidentiality of information obligations.

## **4. GENERAL PROVISIONS**

### **4.1 Application**

- 4.1.1 (1) Rules 4.3, 4.4 and 4.8 apply to every Licensed Firm and Recognised Body.
  - (2) Rules 4.5 and 4.6 apply to every Licensed Firm, Recognised Body and Person who has submitted an application for license to carry on one or more Regulated Activities.
  - (3) Rule 4.7 applies to the Regulator.
  - (4) This Chapter does not apply to a Representative Office.

### **4.2 Interpreting the Rulebook Guidance**

#### **Interpretation**

1. Every provision in the Rulebook must be interpreted in the light of its purpose. The purpose of any provision is to be gathered first and foremost from the text of the provision in question and its context among other relevant provisions.
2. When this Rule refers to a provision, this means every type of provision, including Rules and Guidance.
3. Where reference is made in the Rulebook to another provision of the Rulebook or other Regulations and Rules, it is a reference to that provision as amended from time

to time.

4. Unless the contrary intention appears:
  - a. words in the Rulebook importing the masculine gender include the feminine gender and words importing the feminine gender include the masculine; and
  - b. words in the Rulebook in the singular include the plural and words in the plural include the singular.
5. If a provision in the Rulebook refers to a communication, notice, agreement, or other Document 'in writing' then, unless the contrary intention appears, it means in legible form and capable of being reproduced on paper, irrespective of the medium used. Expressions related to writing must be interpreted accordingly.
6. Any reference to 'dollars' or '\$' is a reference to United States Dollars unless the contrary intention appears.
7. References to sections made throughout the Rulebook are references to sections in FSA unless otherwise stated.
8. If any obligation falls on a calendar day which is not a Business Day, the obligation must take place on the next calendar day which is a Business Day.

### **Defined Terms**

9. Defined terms are identified throughout the Rulebook by the capitalisation of the initial letter of a word or of each word in a phrase and are defined in GLO, however where a word or phrase is used only in a prudential context in PRU then for convenience purposes it is also defined under Rule 1.2.1 of PRU. Unless the context otherwise requires, where capitalization of the initial letter is not used an expression has its natural meaning.

## **4.3 Emergency**

- 4.3.1 (1) If a Licensed Firm 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 Licensed 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 Licensed Firm 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) A Licensed Firm 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.

### **Guidance**

1. Procedures for notification to the Regulator are set out in Rule 8.11.
2. The provisions in Rule 4.3.1 do not affect the powers of the Regulator under section 1(1) and (2) of FSA.

## **4.4 Disclosure of regulatory status**

4.4.1 Neither a Licensed Firm nor a Recognised Body must misrepresent its status expressly or by implication.

- (1) Each Licensed Firm and Recognised Body must take reasonable care to ensure that every key business Document which is made available to third parties in connection with the Licensed Firm or Recognised Body carrying on a Regulated Activity, or activity set out under a Recognition Order, in or from GMC includes one of the disclosures under this Rule.
- (2) A key business Document includes letterhead whether issued by post, fax or electronic means, terms of business, Client Agreements, written promotional materials, business cards, Prospectuses and websites but does not include compliment slips, account statements or text messages.
- (3) The disclosure required under this Rule is “Regulated by the GMC Gelephu Financial Services Office”.
- (4) The Regulator’s logo must not be reproduced without express written permission from the Regulator and in accordance with any conditions for use.
- (5) Rules 4.4.1(1) to (4) also apply to the operation and administration of an Official List of Securities by a Recognised Body.

## **4.5 Location of offices**

- 4.5.1 (1) Where a Licensed Firm or a Recognised Body is a Body Corporate incorporated in GMC, its head office and registered office must be in GMC.
- (2) Where a Licensed Firm or a Recognised Body is a Partnership established under the Limited Liability Partnership Regulations of GMC, its head office must be in GMC.

- (3) An Applicant for a Financial Services Permission or for a Recognition Order must satisfy the FSA that it will meet the requirements in this Rule when the Financial Services License is granted.

### **Guidance**

1. In considering the location of a Licensed Firm or Recognised Body's head office, the Regulator will judge matters on a case by case basis, having regard to the location of its Directors, Partners and Senior Management and to the main location of its day-to-day operational, control, management and administrative arrangements.
2. A Licensed Firm, Recognised Body or Applicant for a Financial Services License which does not satisfy the Regulator with respect to the location of its offices will, on this point alone, not be considered fit and proper or able to satisfy the Recognition Requirements.

## **4.6 Close Links**

- 4.6.1 (1) Where a Licensed Firm, Recognised Body or a Person who has submitted an application for license to carry on one or more Regulated Activities has Close Links with another Person, the Regulator must be satisfied that those Close Links are not likely to prevent the effective supervision by the Regulator of the Licensed Firm or Recognised Body.
- (2) In assessing whether the Close Links between a Licensed Firm, Recognised body or a Person who has submitted an application under (1), with another person will not prevent the effective supervision by the Regulator of that Licensed Firm, Recognised Body or Person, the Regulator will consider:
  - (a) the nature of the relationship between the Licensed Firm, Recognised Body or Person and the person with whom they have Close Links;
  - (b) whether those Close Links are, or that relationship is, likely to prevent the Regulator's effective supervision of the Licensed Firm, Recognised Body or Person; and
  - (c) if the person with whom the Licensed Firm, Recognised Body or Person has Close Links is subject to the laws, regulations or administrative provisions of a country, territory or jurisdiction other than GMC, (the "Foreign Provisions"), whether those Foreign Provisions, or any deficiency in their enforcement, would prevent the Regulator's effective supervision of the Licensed Firm, Recognised Body or Person.
- (3) If requested by the Regulator the Licensed Firm or Recognised Body must submit a Close Links report or notification, in a form specified by the Regulator. This may be requested on an ad hoc or periodic basis.

### **Guidance**

1. Procedures for notification to the Regulator are set out in Rule 8.11.

2. Under the fit and proper test for Licensed Firms and the requirements for a Financial Services Permission to be granted to Recognised Bodies, a Licensed Firm or Recognised Body which does not satisfy the Regulator with respect of its Close Links will, on this point alone, not be considered fit and proper or able to satisfy the Recognition Requirements.

#### **4.7 Public records**

##### **Maintenance and publication**

- 4.7.1 The records required to be maintained and published by the Regulator pursuant to section 196 of FSA shall be published and maintained in either or both of the following manners:
  - (i) by maintaining hard copy records which are made available for inspection at the premises of the Regulator during normal business hours; or
  - (ii) by maintaining an electronic version of the records and making the information from those records available through the Regulator's website.

#### **4.8 Communication with the Regulator**

- 4.8.1 A Licensed Firm and Recognised Body must ensure that any communication with the Regulator is conducted in the English language.

### **5. LICENSE AND THRESHOLD CONDITIONS**

#### **5.1 Application**

- 5.1.1 (1) This Chapter applies, subject to (2), to every Person that is:
  - (a) a Licensed Firm;
  - (b) an applicant for a Financial Services License;
  - (c) an Approved Person;
  - (d) an applicant for Approved Person status; or
  - (e) a Controller of a Person referred to in (a) or (b).
- (2) This Chapter does not apply to Recognised Bodies or operators of a Representative Office.
- (3) Upon the granting of a Financial Services License to an applicant, such applicant will be required to satisfy the requirements of the provisions in this Chapter on an on-going basis.

#### **Guidance**

1. This Chapter outlines the requirements for Licensed Firm and Approved Persons.

2. The Regulator's requirements for license 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 Rulebook.
4. The GPM sets out the Regulator's approach to the authorisation of Undertakings and individuals to conduct Regulated Activities or Controlled Functions, as the case may be.

## **5.2 Application for a Financial Service License**

- 5.2.1 A Person who intends to carry on one or more Regulated Activities in or from GMC must apply to the Regulator for a Financial Services License, in accordance with the provisions in this Rule. Where the Person becomes aware of a material change in circumstances that is reasonably likely to be relevant to such an application whilst it is under consideration by the Regulator, then it must inform the Regulator in writing of the change without delay.
- 5.2.2 (1) The Regulator will only consider an application for a Financial Services License from a Person who, subject to (2), (3) and (4), is:
- (a) a Body Corporate; or
  - (b) a Partnership;
- and who is not a Recognised Body.
- (2) If the application is in respect of either or both of the following Regulated Activities:
- (a) Effecting Contracts of Insurance; or
  - (b) Carrying Out Contracts of Insurance as Principal; the applicant must be a Body Corporate.
- (3) If the application is in respect of the Regulated Activity of Accepting Deposits, the applicant must be a Body Corporate or a Partnership.
- (4) If the application is in respect of the Regulated Activity of Acting as the Trustee of an Investment Trust, the applicant must be a Body Corporate.

### **Guidance**

The GPM sets out matters which the Regulator takes into consideration when making an assessment under Rule 5.2.2.

### **Carrying on service with or for a Retail Client**

- 5.2.3 The following requirements must be met by a Licensed Firm applying for a Financial Services License to carry on a Regulated Activity with or for a Retail Client:
- (1) the applicant must have adequate systems and controls for carrying on Regulated Activities with or for a Retail Client;
  - (2) the applicant must have adequate systems and controls (including policies and procedures) to ensure compliance with the requirements in COBS relevant to Retail Clients; and
  - (3) the applicant must have adequate Complaints handling policies and procedures.

### **Acting as a Trade Repository**

- 5.2.4 The requirements in Appendix 2 must be met by a Licensed Firm whose Financial Services License, or Recognised Body whose Recognition Order, includes a designation permitting the Licensed Firm or Recognised Body to maintain a Trade Repository.

#### **Guidance**

1. Maintaining a Trade Repository is not a separate Regulated Activity but may be carried on by a Licensed Firm or Recognised Body which has a Financial Services License, or Recognition Order with a designation permitting it to do so. A Licensed Firm or Recognised Body maintaining a Trade Repository is subject to some specific requirements relating to that activity, which are set out in Appendix 2.
2. The functions of a Trade Repository promote increased transparency and integrity of information, particularly for centrally cleared OTC Derivatives. Transaction reporting requirements in GMC exist in section 146 of FSA which require reporting to Trade Repositories. These requirements are yet to be triggered by the Regulator.
3. A Licensed Firm or Recognised Body does not carry on the activities of a Trade Repository to the extent that it maintains records of transactions pursuant to the record keeping requirements applicable to that Licensed Firm or Recognised Body (such as those relating to transactions carried out on behalf of the Licensed Firm's Clients, or transactions carried out on the facilities of a Recognised Body).

### **Persons Licensed by the Royal Monetary Authority of Bhutan**

- 5.2.5 A Person licensed by the Royal Monetary Authority of Bhutan to trade on a Royal Securities Exchange of Bhutan will not be granted a Financial Services License by the Regulator unless that Person has the prior approval of the Royal Monetary Authority of Bhutan.

- 5.2.6 A Person applying for a Financial Services License must make an application in such form as the Regulator shall prescribe.

### **Guidance**

A Person submitting an application under Rule 5.2.6 is required to:

- a. pay the appropriate application fee; and
- b. include information relating to its Controllers, completed by the relevant Controllers themselves, in such form as the Regulator shall prescribe.

### **Consideration and assessment of applications**

- 5.2.7 In order to become licensed to carry on one or more Regulated Activities, the applicant must demonstrate to the satisfaction of the Regulator that it:
- (1) has adequate and appropriate resources, including financial resources;
  - (2) is fit and proper;
  - (3) is capable of being effectively supervised; and
  - (4) has adequate compliance arrangements, including policies and procedures, that will enable it to comply with all the applicable legal requirements, including the Rules.

### **Adequate and appropriate resources**

- 5.2.8 (1) In assessing whether an applicant has adequate and appropriate financial resources, the Regulator will consider:
- (a) how the applicant will comply with the applicable provisions of PRU, COBS and PIN;
  - (b) the provision the applicant makes, or, if the applicant is a member of a Group, which other members of the Group make, in respect of any liabilities, including contingent and future liabilities;
  - (c) the means by which the applicant or, if the applicant is a member of a Group, which other members of the Group manage the incidence of risk in connection with their business;
  - (d) the rationale for, and basis of, the applicant's business plan;
  - (e) whether the applicant's assets are appropriate given the applicant's liabilities;
  - (f) the liquidity of the applicant's financial resources;

- (g) the nature and scale of the business which will be carried on by the applicant;
  - (h) the risks to the continuity of the services which will be provided by the applicant;
  - (i) the applicant's membership of a Group and any effect which that membership may have;
  - (j) whether the applicant is capable of meeting its debts as they fall due; and
  - (k) any other relevant matters.
- (2) In assessing whether an applicant has adequate and appropriate non-financial resources, the Regulator will consider:
- (a) the skills and experience of those who will manage the applicant's affairs;
  - (b) the applicant's willingness and ability to value its assets and liabilities and its resources to identify, monitor, measure and take action to remove or reduce risks as to the accuracy of such valuation;
  - (c) the applicant's resources to identify, monitor, measure and take action to remove or reduce risks as to its safety and soundness;
  - (d) the effectiveness of the applicant's business management;
  - (e) whether the applicant's non-financial resources are sufficient to enable the applicant to comply with:
    - (i) requirements imposed or likely to be imposed on the applicant by the Regulator in the exercise of its functions; or
    - (ii) any other requirement in relation to whose Contravention the Regulator would be concerned for the purpose of any provision of Part 19 of FSA; and
  - (f) any other relevant matters.

### **Guidance**

1. A Credit Rating Agency is not subject to PRU including capital requirements.
2. A Fund Manager of a Venture Capital Fund is not subject to PRU except 6.12 (professional indemnity insurance).
3. However, both are required, pursuant to GEN Rules 2.2.4 and 5.2.8, to have and maintain adequate financial resources to manage its affairs prudently and soundly.

## **Fitness and propriety**

- 5.2.9 (1) In assessing whether an applicant is fit and proper, the Regulator will consider:
- (a) the fitness and propriety of the members of its Governing Body;
  - (b) the applicant's connection with any person or membership of any Group;
  - (c) the suitability of the applicant's Controllers or any other Person;
  - (d) the impact a Controller might have on the applicant's ability to comply with the applicable requirements;
  - (e) the Regulated Activities concerned and the risks to their continuity;
  - (f) the nature (including the scale and complexity) of the activities of the applicant and any associated risks that those activities pose to the Regulator's objectives described under section 1(3) of FSA;
  - (g) whether the applicant's business model will allow for its affairs and business to be conducted and managed in a sound and prudent manner, having regard in particular to the interests of consumers and the integrity of GMC;
  - (h) whether those who manage the applicant's affairs in accordance with (g) will have adequate skills and experience and will act with probity;
  - (i) any matter which may harm or may have harmed the integrity or the reputation of the Regulator or GMC, including through the carrying on of a business by the applicant for a purpose connected with a Financial Crime; and
  - (j) any other relevant matters.
- (2) The Regulator will, in assessing the matters in (1), consider the cumulative effect of factors which, if taken individually, may be regarded as insufficient to give reasonable cause to doubt the fitness and propriety of an applicant.

## **Effective supervision**

- 5.2.10 In assessing whether an applicant is capable of being effectively supervised by the Regulator, the Regulator will consider:
- (a) the nature, including the complexity, of the Regulated Activities that the applicant will carry on;
  - (b) the complexity of any product that the applicant will provide in carrying on those activities;
  - (c) the way in which the applicant's business is organised;

- (d) if the applicant is a member of a Group, whether membership of the Group is likely to prevent the Regulator's effective supervision of the applicant;
- (e) whether the applicant is subject to consolidated supervision; and
- (f) any other relevant matters.

### **Compliance arrangements**

5.2.11 In assessing whether an applicant has adequate compliance arrangements, the Regulator will consider whether it has:

- (1) clear and comprehensive policies and procedures relating to compliance with all applicable legal requirements including the Rules; and
- (2) adequate means to implement those policies and procedures and monitor that they are operating effectively and as intended.

5.2.12 In assessing an application for a Financial Services License, the Regulator may:

- (1) make any enquiries which it considers appropriate, including enquiries independent of the applicant;
- (2) require the applicant to provide additional information;
- (3) require the applicant to provide information on how it intends to ensure compliance with a particular Rule;
- (4) require any information provided by the applicant to be verified in any way that the Regulator specifies; and
- (5) take into account any information which it considers relevant in determining whether the applicant will ensure compliance with requirements imposed by the Regulator in the exercise of its functions.

5.2.13 (1) In assessing an application for a Financial Services License, the Regulator may, by means of written notice, indicate the legal form that the applicant may adopt to enable authorisation to be granted.

- (2) Where the Regulator considers it appropriate, it may treat an application made by one legal form or Person as having been made by the new legal form or Person.

5.2.14 In assessing an application for a Financial Services License authorising the applicant to Operate a Multilateral Trading Facility or an Organised Trading Facility, the Regulator will have regard to, but is not limited to, considering the following matters:

- (a) whether the establishment of a Multilateral Trading Facility or Organised Trading Facility is, or is likely to be, in the interests of the Financial Services and Markets industry;

- (b) whether the Multilateral Trading Facility or Organised Trading Facility will or is likely to lead to more efficient price discovery of, or deepen liquidity in, an Investment; and
- (c) whether there is any risk of market fragmentation, loss of liquidity or inefficiency in price discovery as a result of the proposed Multilateral Trading Facility or Organised Trading Facility operation.

### **5.3 Controlled Functions and Approved Persons**

- 5.3.1 (1) Pursuant to Part 5 of FSA, the functions specified in Rules 5.3.2 to 5.3.9 are Controlled Functions.
- (2) Performance of Controlled Functions are subject to approval by the Regulator.
  - (3) Where an individual who has been approved pursuant to Rule 5.3.1(2) has his Controlled Function withdrawn or varied, the Licensed Firm must notify the Regulator in writing within 10 days of such withdrawal or variation.
  - (4) A Controlled Function shall not include a function performed by a registered insolvency practitioner (subject to the restrictions defined within section 289 of the Insolvency Regulations) if the practitioner is:
    - (a) appointed as a receiver or administrative receiver within the meaning of Part 2 of the Insolvency Regulations;
    - (b) appointed as a liquidator in relation to a members' voluntary Winding-Up within the meaning of Chapter 3 of Part 3 of the Insolvency Regulations;
    - (c) appointed as a liquidator in relation to a creditors' voluntary Winding-Up within the meaning of Chapter 4 of Part 3 of the Insolvency Regulations; or
    - (d) appointed as a liquidator or provisional liquidator in relation to a compulsory Winding-Up within the meanings of Chapter 6 of Part 3 of the Insolvency Regulations.
  - (5) A Controlled Function shall not include a function performed by an individual appointed to act as manager of the business of a Licensed Firm or Recognised Body.

#### **Guidance**

The Regulator will approve an Approved Person for the performance of Controlled Functions. However, the Regulator expects that the Licensed Firm will carry out proper due diligence to satisfy itself that the individual will be able to carry out his role effectively, is fit and proper to do so, and that there are no conflicts of interest or that any actual or potential conflicts of interest are appropriately managed.

### **Senior Executive Officer**

5.3.2 The Senior Executive Officer function is carried out by an individual who:

- (1) has, either alone or jointly with other Approved Persons, ultimate responsibility for the day-to-day management, supervision and control of one or more (or all) parts of a Licensed Firm's Regulated Activities carried on in or from GMC; and
- (2) is a Director, Partner or Senior Manager of the Licensed Firm.

### **Licensed Director**

5.3.3 Subject to Rule 5.5.4, the Licensed Director function is carried out by an individual who is a Director of a Licensed Firm which is a Body Corporate.

### **Licensed Partner**

5.3.4 The Licensed Partner function is carried out, in the case of a Licensed Firm which is a Partnership, by an individual specified in Rule 5.5.5.

### **Finance Officer**

5.3.5 The Finance Officer function is carried out by an individual who is a Director, Partner or Senior Manager of a Licensed Firm who has responsibility for the Licensed Firm's compliance with the applicable Rules in PRU or PIN.

### **Compliance Officer**

5.3.6 The Compliance Officer function is carried out by an individual who is a Director, Partner or Senior Manager of a Licensed Firm who has responsibility for compliance matters in relation to the Licensed Firm's Regulated Activities.

### **Senior Manager**

5.3.7 The Senior Manager function is carried out by an individual who is responsible either alone or jointly with other individuals for the management, supervision or control of one or more parts of a Licensed Firm's Regulated Activities who is:

- (1) an Employee of the Licensed Firm; and
- (2) not a Director or Partner of the Licensed Firm.

### **Guidance**

1. In respect of a Fund, the Regulator expects the Fund Manager to appoint at least one individual other than the Senior Executive Officer to carry out Senior Manager functions in relation to the Fund such as managing operational risk and other internal controls.

2. In respect of a Bank or an Insurer other than Captive Insurers or Licensed ISPVs, the Regulator expects the appointment of at least one individual other than the Senior Executive Officer as a Senior Manager to advise its Governing Body and senior management of relevant risks in accordance with Rule 3.3.6(1).

### **Money Laundering Reporting Officer**

5.3.8 The Money Laundering Reporting Officer function is carried out by an individual who is a Director, Partner or Senior Manager of a Licensed Firm and who has responsibility for the implementation of a Licensed Firm's anti-money laundering policies, procedures, systems and controls and day to day oversight of its compliance with the Rules in AML and any relevant anti-money laundering Rules.

### **Responsible Officer**

5.3.9 The Responsible Officer function is carried out by an individual who:

- (1) has significant responsibility for the management of one or more aspects of a Licensed Firm's affairs;
- (2) exercises a significant influence on the Licensed Firm as a result of (1); and
- (3) is not an Employee of the Licensed Firm.

### **Guidance**

1. The Controlled Function of a Responsible Officer applies to an individual employed by a Controller or other Group company who is not an Employee of the Licensed Firm, but who has significant responsibility for, or for exercising a significant influence on, the management of one or more aspects of the Licensed Firm's business.
2. Examples of a Responsible Officer might include an individual responsible for the overall strategic direction of a Licensed Firm or a regional manager to whom a Senior Executive Officer reports and from whom he takes direction.

5.3.10 An Approved Person may perform one or more Controlled Functions for one or more Licensed Firms.

### **Guidance**

1. In considering whether to grant an individual Approved Person status with respect to more than one Licensed Firm, the Regulator will consider each Controlled Function to be carried out and the allocation of responsibility for that individual among the relevant Licensed Firms. In this situation the Regulator will need to be satisfied that the individual will be able to carry out his roles effectively, is fit and proper to do so, and that there are no conflicts of interest or that any actual or potential conflicts of interest are appropriately managed.

5.4 [Not-in-use]

## 5.5 Mandatory appointments

- 5.5.1 (1) A Licensed Firm must, subject to (2), make the following appointments and ensure that they are held by one or more Approved Persons at all times:
- (a) Senior Executive Officer;
  - (b) Finance Officer (for banks and insurers only);
  - (c) Compliance Officer; and
  - (d) Money Laundering Reporting Officer.
- (2) A Licensed Firm which is a Credit Rating Agency:
- (a) need not make the appointments referred to in (1)(b) and (d); and
  - (b) must ensure that the appointments referred to in (1)(a) and (c) are held by separate persons at all times.
- (3) A Licensed Firm which a Fund Manager of a Venture Capital Fund need not make the appointment referred to in (1)(b).

### Guidance

1. This Guidance addresses a range of circumstances:
  - a. one individual performing more than one function in a single Licensed Firm, as contemplated in Rule 5.5.1;
  - b. more than one individual performing one function in a single Licensed Firm, not addressed by that Rule; and
  - c. one individual performing a single function in more than one Licensed Firm, also not addressed by that Rule.
2. The Regulator or relevant Licensed Firm, as applicable, will only license an individual to perform more than one Controlled Function or combine Controlled Functions where it is satisfied that the individual is fit and proper to perform each Controlled Function or combination of Controlled Functions.
3. In the above situation the Regulator or relevant Licensed Firm, as applicable, will need to be satisfied that the individual will be able to carry out his role effectively, is fit and proper to do so, and that there are no conflicts of interest or that any actual or potential conflicts of interest are appropriately managed.
4. Notwithstanding this Rule, a Licensed Firm would generally be expected to separate the roles of Compliance Officer and Senior Executive Officer. In addition, the roles of Compliance Officer, Finance Officer and Money Laundering Reporting Officer would not be expected to be combined with any other Controlled Functions unless appropriate monitoring and control arrangements independent of the individual concerned will be implemented by the Licensed

Firm. This may be possible in the case of a Branch, where monitoring and controlling of the individual (carrying out more than one role in the Branch) is conducted from the Licensed Firm's home state by an appropriate individual for each of the relevant Controlled Functions as applicable. However, it is recognised that, on a case by case basis, there may be exceptional circumstances in which this may not always be practical or possible.

5. In what it considers to be exceptional circumstances, the relevant Licensed Firm may register more than one individual to perform the Controlled Function of Compliance Officer in respect of different internal business divisions within that Licensed Firm, particularly where it is large in size. In this regard the relevant Licensed Firm may consider, amongst other things, the nature, scale and complexity of its activities, the clarity of demarcation between areas of responsibility, the potential for gaps in responsibility, and processes of communication with the Regulator.
6. More than one Licensed Firm may also register the same individual as its Compliance Officer. This will only be performed where the Licensed Firms concerned are satisfied that the individual is able to carry out his functions effectively in each Licensed Firm taking into consideration factor such as the amount and nature of business conducted by the Licensed Firms. Each Licensed Firm has a duty under Rules 3.3.7 to 3.3.12 to monitor its compliance arrangements to ensure, as far as reasonably practicable, that it complies with all Regulations and Rules.

5.5.2 The Licensed Firms referred to in Rule 5.5.1(1)(a), (c) and (d) must be resident in the GMC/Bhutan.

### **Guidance**

1. In appropriate circumstances, the Regulator may waive the requirement for a Compliance Officer or Money Laundering Reporting Officer to be resident in the GMC/Bhutan. In determining whether to grant a Waiver, the Regulator will consider a range of factors on a case by case basis focused on whether the Licensed Firm can demonstrate that it has appropriate compliance arrangements (see Rules 3.3.7 to 3.3.12). These factors may include, but are not limited to: the nature, scale and complexity of the activities of the Licensed Firm; the ability of a remote officer to carry out his functions in differing time zones and a differing working week; the size, resourcing and capabilities of a remote compliance function; the ability of a remote officer to liaise and communicate readily with the Regulator; and the competency and capability of a remote officer and whether the remote officer is able effectively to undertake or supervise regular compliance monitoring and keep up to date with applicable Rules.
2. The Regulator will also take into account factors such as the relevant regulatory experience of the proposed Approved Person, and whether the Applicant has previously been subject to financial services regulation.

3. A Licensed Firm should also be aware of the residency requirement for an MLRO under AML 12.1.1(2).
- 5.5.3 In the case of a Trust Service Provider, the Approved Persons referred to in Rule 5.5.1(1)(c) and (d) must not act also as trustees on behalf of the Trust Service Provider.
- 5.5.4 A Licensed Firm which is a Body Corporate whose head office and registered office are located in GMC, must register with the Regulator all of its Directors as Licensed Directors.
- 5.5.5 In the case of a Licensed Firm which is a Partnership established under either the Limited Liability Partnership Regulations or the Partnership Act, the Licensed Partner function must be carried out by:
- (a) each individual Partner who must be registered as a Licensed Partner; and
  - (b) in the case of a Partner which is a Body Corporate, by an individual nominated by that Body Corporate and registered as a Licensed Partner to act on its behalf.

### **Guidance**

A Licensed Firm that is a Branch is not required to register its Directors as Licensed Directors under Rule 5.5.4 or its Partners as Licensed Partners under Rule 5.5.5.

### **5.6 Application for Approved Person status**

- 5.6.1 In submitting applications to the Regulator for Approved Person status in respect of the Controlled Functions, the Licensed Firm must make applications in such form as the Regulator shall prescribe.
- 5.6.2 Applicants for Approved Person status must countersign or otherwise consent to an application.
- 5.6.3 When a Licensed Firm applies to the Regulator, for that individual to be an Approved Person, the individual must satisfy the Regulator and the Licensed Firm that he is a fit and proper person to carry out the role.

### **Consideration and assessment of applications**

- 5.6.4 An individual will only be licensed to carry on one or more Controlled Functions if the Regulator is satisfied that the individual is fit and proper to be an Approved Person. In making this assessment, the Regulator will consider:
- (1) the individual's integrity;
  - (2) the individual's competence and capability;
  - (3) the individual's financial soundness;
  - (4) the individual's proposed role within the Licensed Firm; and

- (5) any other relevant matters.

### **Guidance**

The GPM sets out matters which the Regulator takes into consideration when making an assessment of the kind under Rule 5.6.4.

5.6.5 In Rule 5.6.4, an individual may not be considered as fit and proper where:

- (1) he is bankrupt;
- (2) he has been convicted of a serious criminal offence; or
- (3) he is incapable, through mental or physical incapacity, of managing his affairs.

5.6.6 In assessing an application for Approved Person status, the Regulator may:

- (1) make any enquiries which it considers appropriate, including enquiries independent of the applicant;
- (2) require the individual or Licensed Firm to provide additional information;
- (3) require any information provided in accordance with (b) or otherwise to be verified in any way specified by the Regulator; and
- (4) take into account any information which it considers appropriate.

5.6.7 A Licensed Firm must not permit an individual to perform a Controlled Function on its behalf, except as permitted by Rule 8.6, unless that individual is an Approved Person who has been assessed by the Licensed Firm as competent to perform that Controlled Function in accordance with Rule 5.6.8.

5.6.8 In assessing the competence of an individual, a Licensed Firm must:

- (1) obtain details of the knowledge and skills of the individual in relation to the knowledge and skills required for the role;
- (2) take reasonable steps to verify the relevance, accuracy and authenticity of any information acquired;
- (3) determine whether the individual holds any relevant qualifications with respect to the Controlled Function or Controlled Functions performed, or proposed to be performed, within the Licensed Firm;
- (4) determine the individual's relevant experience; and
- (5) determine the individual's knowledge of the Licensed Firm's relevant systems and procedures with respect to the type of business that is to be, or is being, conducted by the individual on behalf of the Licensed Firm.

5.6.9 A Licensed Firm must be satisfied that an Approved Person:

- (1) continues to be competent in his proposed role;
- (2) has kept abreast of relevant market, product, technology, legislative and regulatory developments; and
- (3) is able to apply his knowledge.

5.6.10 The Licensed Firm is responsible for the conduct of its Approved Persons and for ensuring that they remain fit and proper to carry out their role.

### **Guidance**

In considering whether an Approved Person remains fit and proper, the Licensed Firm should consider the factors outlined in section 2.3 of the GPM. The Licensed Firm must also comply with the notification requirements in Rule 8.10 where it considers that an Approved Person is no longer fit and proper to perform their role.

5.6.11 Before lodging an application with the Regulator to perform a Controlled Function, a Licensed Firm must make reasonable enquiries as to an individual's fitness and propriety to carry out a Controlled Function.

5.6.12 A Licensed Firm must not lodge an application in accordance with Rule 5.6.1 if it has reasonable grounds to believe that the individual is not fit and proper to carry out the Controlled Function.

### **Systems and controls**

5.6.13 A Licensed Firm must have appropriate arrangements in place to ensure that an individual assessed as being competent under Rule 5.6.8 maintains his competence.

5.6.14 A Licensed Firm must ensure, in the case of individuals seeking to perform the Controlled Functions of Senior Executive Officer, Money Laundering Reporting Officer or Compliance Officer that such individuals are able to demonstrate sufficient knowledge of relevant anti-money laundering requirements.

### **Guidance**

In considering whether individuals have sufficient knowledge of relevant anti-money laundering requirements, the Licensed Firm may be satisfied where the individual can demonstrate receipt of appropriate training specifically relevant to such requirements.

5.6.15 A Licensed Firm must establish and maintain systems and controls which will enable it to comply with Rules 5.6.7 to 5.6.10.

5.6.16 (1) A Licensed Firm must keep records of the assessment process undertaken for each individual under this Chapter.

- (2) These records must be kept for a minimum of six years from the date of the assessment.

## 6. ACCOUNTING AND AUDITING

### 6.1 Application

- 6.1.1 This Chapter applies to every Licensed Firm and Recognised Body other than a Representative Office.
- 6.1.2 A Licensed Firm or Recognised Body which is a Representative Office is hereby exempt from the requirements in section 189 of FSA relating to the appointment of an Auditor.

#### Guidance

The Regulator has exercised its power under section 189 of FSA to exempt a Licensed Firm or Recognised Body which is a Representative Office from the requirements in that section. As a result, in accordance with the terms of section 189 FSA, the Representative Office also does not need to comply with other requirements in Part 15 of FSA.

### 6.2 Financial statements and financial reporting standards

- 6.2.1 Each Licensed Firm and Recognised Body must prepare financial statements for each financial year of the Licensed Firm or Recognised Body.

#### Guidance

The financial statements prepared by a Licensed Firm or Recognised Body which is a Branch may be the financial statements prepared for the Licensed Firm or Recognised Body's head office.

- 6.2.2 Each Licensed Firm and Recognised Body must, except as provided under Rule 6.2.3, prepare and maintain all financial statements in accordance with the International Financial Reporting Standards ("IFRS").
- 6.2.3 (1) A Licensed Firm specified in (2) may prepare and maintain its financial statements in accordance with IFRS for Small and Medium Sized Entities (SMEs) where that standard applies to it.
- (2) Licensed Firms specified for the purposes of (1) are:
- (a) a Licensed Firm in Category 3B, Category 3C or Category 4, which does not hold or control Client Assets or Insurance Monies; and
  - (b) a Licensed Firm in Category 4 which is not licensed under its Financial Services License to carry on the Regulated Activity of Operating a Multilateral Trading Facility or Organised Trading Facility.
- (3) The Regulator may by written notice direct that a particular Licensed Firm or a specified class of Licensed Firm specified in (2) must prepare and maintain

financial statements in accordance with IFRS rather than IFRS for Small and Medium Sized Entities.

- (4) The Regulator may by written notice vary or revoke a direction under (3).
- (5) The procedures in Part 21 of FSA apply to a decision of the Regulator to give a direction under (3) to a particular Licensed Firm.
- (6) If the Regulator decides to give a direction under (3) to a particular Licensed Person, the Licensed Firm may refer the matter to the Appeals Panel for review.

6.2.4 Each Licensed Firm and Recognised Body must:

- (1) if it is a Body Corporate, have its financial statements approved by the Directors and signed on their behalf by at least one of the Directors; or
- (2) if it is a Partnership, have its financial statements approved by the Partners and signed on their behalf by at least one of the Partners.

### **6.3 Accounting Records and Regulatory Returns**

6.3.1 Each Licensed Firm and Recognised Body must keep Accounting Records which are sufficient to show and explain Transactions and are such as to:

- (1) be capable of disclosing the financial position of the Licensed Firm or Recognised Body on an ongoing basis; and
- (2) record the financial position of the Licensed Firm or Recognised Body as at its financial year end.

6.3.2 Accounting Records must be maintained by a Licensed Firm and Recognised Body such as to enable its Governing Body to ensure that any financial statements prepared by the Licensed Firm or Recognised Body comply with the Regulations and Rules.

6.3.3 Each Licensed Firm or Recognised Body's Accounting Records must be:

- (1) retained by the Licensed Firm or Recognised Body for at least six years from the date to which they relate;
- (2) at all reasonable times, open to inspection by the Regulator or the Auditor of the Licensed Firm or Recognised Body; and
- (3) if requested by the Regulator capable of reproduction, within a reasonable period not exceeding three Business Days, in hard copy.

6.3.4 All Regulatory Returns prepared by the Licensed Firm must be prepared and submitted in accordance with the requirements set out in PRU or PIN as applicable.

### **Financial years**

- 6.3.5 (1) The first financial year of a Licensed Firm which is a Domestic Firm starts on the day on which it is incorporated and lasts for such period not exceeding 18 months as may be determined by its Directors or Partners.
- (2) A Licensed Firm which is a Domestic Firm must as soon as practicable after it has made a determination under (1) notify the Regulator of the end date determined for its first financial year.
- (3) The second and any subsequent financial year of a Licensed Firm which is a Domestic Firm shall, except as provided in Rule 6.3.6, start at the end of the previous financial year and shall last for 12 months or such other period which is within seven days either shorter or longer than 12 months as may be determined by its Directors or Partners.
- 6.3.6 (1) A Licensed Firm which is a Domestic Firm may only change its financial year end from a period provided for under Rule 6.3.5(3) with the Regulator's prior consent.
- (2) The application for consent must be in writing and include the reasons for the change.
- (3) The Regulator may require the Licensed Firm to obtain written confirmation from its Auditor that the change of financial year end would not result in any significant distortion of the financial position of the Licensed Firm.
- 6.3.7 If a Licensed Firm is not a Domestic Firm and intends to change its financial year, it must provide the Regulator with reasonable advance notice prior to the change taking effect.

#### **6.4 Appointment and termination of Auditors**

- 6.4.1 Each Licensed Firm and Recognised Body must:
- (1) notify the Regulator of the appointment of an Auditor in such form as the Regulator shall prescribe;
- (2) prior to the appointment of the Auditor, take reasonable steps to ensure that the Auditor has the required skills, resources and experience to audit the business of the Licensed Firm or Recognised Body for which the auditor has been appointed; and
- (3) not enter into, maintain, or permit any business relationship with the Auditor, or any of the Auditor's affiliates, that may give rise to a conflict of interest or impair the auditor's independence.
- 6.4.2 Each Licensed Firm and Recognised Body must notify the Regulator immediately if the appointment of the Auditor is or is about to be terminated, or on the resignation of its Auditor, in such form as the Regulator shall prescribe.
- 6.4.3 Each Licensed Firm and Recognised Body must appoint an Auditor to fill any vacancy in the office of Auditor and ensure that the replacement Auditor can take up office at the time the vacancy arises or as soon as reasonably practicable.

- 6.4.4 Each Licensed Firm and Recognised Body must comply with any request by the Regulator to replace an Auditor previously appointed by that Licensed Firm or Recognised Body.
- 6.4.5 (1) Each Licensed Firm 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 Licensed Firm or Recognised Body.
- (2) Each Licensed Firm 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 Licensed Firm or Recognised Body, or have a conflict of interest which may affect their judgement in respect of the Licensed Firm or Recognised Body.

### **Guidance**

1. Each Licensed Firm 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 Licensed Firm or Recognised Body or complying with all its legal obligations, including FSA, AML and other relevant Rulebooks.
  2. Each Licensed Firm and Recognised Body should consider rotating the appointed relevant staff of the Auditor on a regular basis to ensure that the relevant staff of the Auditor remain independent.
- 6.4.6 If requested by the Regulator, a Licensed Firm or Recognised Body which carries on Regulated Activities through a Branch must provide the Regulator with information on its appointed or proposed Auditor with regard to the Auditor's skills, experience and independence.

### **6.5 Co-operation with Auditors**

- 6.5.1 Each Licensed Firm and Recognised Body must take reasonable steps to ensure that it and its Employees:
- (1) provide any information to its Auditor that its Auditor reasonably requires, or is entitled to receive as Auditor;
  - (2) give the Auditor right of access at all reasonable times to relevant records and information within its possession;
  - (3) allow the Auditor to make copies of any records or information referred to in (2);
  - (4) do not interfere with the Auditor's ability to discharge its duties;

- (5) report to the Auditor any matter which may significantly affect the financial position of the Licensed Firm or Recognised Body; and
- (6) provide such other assistance as the Auditor may reasonably request it to provide.

## **6.6 Audit reports**

6.6.1 Each Licensed Firm and Recognised Body must, in writing, arrange for and ensure the submission of the following by its Auditor:

- (1) a Financial Statement Auditor's Report on the Licensed Firm or Recognised Body's financial statements in accordance with the International Standards on Auditing following the performance of an audit;
- (2) a Regulatory Returns Auditor's Report in accordance with Rules 6.6.4 and 6.6.5 as relevant;
- (3) if the Licensed Firm is permitted to control or hold Client Money, a Client Money Auditor's Report in accordance with Rule 6.6.6;
- (4) if the Licensed Firm is permitted to hold or control Client Investments or Provide Custody in or from GMC, a Safe Custody Auditor's Report in respect of such business as applicable, in accordance with Rule 6.6.7;
- (5) if FUNDS is applicable, a Fund Auditor's Report in accordance with Rule 6.6.8; and
- (6) if the Licensed Firm is a Public Listed Company, a Public Listed Company Auditor's Report in accordance with Rule 6.6.9.

### **Guidance**

For the purposes of Rule 6.6.1(1) and (2) the financial statements of a Licensed Firm or Recognised Body which is a Branch may be the financial statements prepared for the Licensed Firm or Recognised Body's head office or management accounts or reports that are specific to the Branch.

6.6.2 Each Licensed Firm 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 Licensed Firm or Recognised Body's financial year end.

- 6.6.3
- (1) Each Licensed Firm must, subject to (2), upon request by any Person, provide a copy of its most recent audited financial statements, together with the Financial Statement Auditor's report to the Person. If the copy is made available in printed form, the Licensed Firm may make a charge to cover reasonable costs incurred in providing the copy.
  - (2) The requirement in (1) does not apply to a Licensed Firm which:
    - (a) is in Category 3B, Category 3C or Category 4; and

- (b) does not hold or control Client Assets or Insurance Monies.

### **Guidance**

A Licensed Firm and Recognised Body should be aware that there may be other legislation applicable to it that may require the Licensed Firm or Recognised Body to provide access to all or part of its financial statements.

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

6.6.4 A Licensed Firm 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 Licensed Firm or Recognised Body's Regulatory Returns, specified in PRU, PIN, COBS or MIR to the Regulator have been properly reconciled with the appropriate audited financial statements;
- (3) the Licensed Firm or Recognised Body's Regulatory Returns, specified in PRU, PIN, COBS or MIR to the Regulator on a quarterly basis have been properly reconciled with the appropriate annual returns;
- (4) the Licensed Firm 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, COBS or MIR (as the case may be) and are sufficient to meet the relevant requirements;
- (5) (in the case of a Licensed Firm other than an Insurer) the Capital Resources have been calculated in accordance with the applicable Rules;
- (6) (in the case of a Licensed Firm other than an Insurer) the Capital Resources maintained exceed the Capital Requirement in accordance with the applicable Rules;
- (7) (in the case of a Licensed Firm) the Regulatory Returns specified in PRU or PIN have been properly prepared by the Licensed Firm in accordance with the applicable Rules;
- (8) (in the case of a Licensed Firm) the Licensed Firm has kept proper Accounting Records in accordance with the applicable Rules;
- (9) (in the case of a Licensed Firm which is subject to Expenditure Based Capital Minimum) the Expenditure Base Capital Minimum has been calculated in accordance with the applicable Rules; and
- (10) (in the case of a Licensed Firm 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.

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

#### **Client Money Auditor's Report**

- 6.6.6 A Licensed Firm must, in procuring the production of a Client Money Auditor's Report, ensure that an Auditor states, as at the date of which the Licensed Firm's audited statement of financial position was prepared:
- (1) the amount of Client Money a Licensed Firm was holding and controlling in accordance with COBS Chapter 14; and
  - (2) whether:
    - (a) the Licensed Firm has maintained throughout the year systems and controls to enable it to comply with the relevant provisions of COBS Chapter 14;
    - (b) the Licensed Firm's controls are such as to ensure that Client Money is identifiable and secure at all times;
    - (c) any of the requirements in COBS Chapter 14 have not been met;
    - (d) Client Money has been pooled in a single client Account or segregated in Client Accounts maintained for individual Clients in accordance with COBS Chapter 14;
    - (e) if applicable, the Licensed Firm is holding and controlling the appropriate amount of Client Money in accordance with COBS Chapter 14 as at the date on which the Licensed Firm's audited statement of financial position was prepared;
    - (f) the Auditor has received all necessary information and explanations for the purposes of preparing the report to the Regulator; and

- (g) if applicable, there have been any material discrepancies in the reconciliation of Client Money.

### **Guidance**

Where a Licensed Firm does not hold or control any Client Money as at the date on which the Licensed Firm's audited statement of financial position was prepared, the Regulator expects that a nil balance be stated to comply with Rule 6.6.6.

### **Safe Custody Auditor's Report**

6.6.7 A Licensed Firm must, in procuring the production of a Safe Custody Auditor's Report by its Auditor, ensure that the Auditor states, as at the date on which the Licensed Firm's audited statement of financial position was prepared:

- (1) the extent to which the Licensed Firm was holding and controlling Client Investments, Arranging Custody or Providing Custody; and
- (2) whether:
  - (a) the Licensed Firm has, throughout the year, maintained systems and controls to enable it to comply with the Safe Custody Rules in COBS Chapter 15;
  - (b) the Safe Custody Investments are registered, recorded or held in accordance with the Safe Custody Rules;
  - (c) there have been any material discrepancies in the reconciliation of Safe Custody Investments;
  - (d) the Auditor has received all necessary information and explanations for the purposes of preparing this report to the Regulator; and
  - (e) any of the requirements of the Safe Custody Provisions have not been met.

### **Guidance**

Where a Licensed Firm does not hold or control any Client Investments or Provide Custody as at the date on which the Licensed Firm's audited statement of financial position was prepared, the Regulator expects that such fact be stated to comply with Rule 6.6.7.

### **Fund Auditor's Report**

6.6.8 A Fund Manager must, in procuring the production of a Fund Auditor's Report, ensure that an Auditor states:

- (1) whether the financial statements have been properly prepared in accordance with the financial reporting standards adopted by the Fund in accordance with FUNDS;
- (2) whether the financial statements give a true and fair view of the financial position of the Fund, including the net income and the net gains or losses of the Fund Property, or, as the case may be, the Fund Property attributable to the Sub-Fund for the annual accounting period in question and the financial position of the Fund or Sub-Fund as at the end of the annual accounting period;
- (3) whether proper accounting records for the Fund, or as the case may be, Sub-Fund, have not been kept, or that the financial statements are not in agreement with the accounting records and returns, or that the financial statements do not comply with the applicable financial reporting standards;
- (4) whether it has been given all the information and explanations which, to the best of its knowledge and belief, are necessary for the purposes of its audit;
- (5) whether the information given in the report of the Directors or in the report of the Fund Manager for that period is consistent with the financial statements; and
- (6) any other matter or opinion required by FUNDS.

### **Public Listed Company Auditor's Report**

- 6.6.9 A Licensed Firm or Recognised Body, in procuring the production of a Public Listed Company Auditor's Report, must ensure that an Auditor states whether the financial statements have been properly prepared in accordance with MKT.

## **7. COMPLAINTS HANDLING AND DISPUTE RESOLUTION**

### **7.1 Application**

- 7.1.1 This Chapter applies to every Licensed Firm, other than a Representative Office and a Credit Rating Agency, carrying on a Regulated Activity in or from GMC as follows:

- (1) Rule 7.2 applies to a Licensed Firm carrying on a Regulated Activity with or for a Retail Client; and
- (2) Rule 7.3 applies to a Licensed Firm carrying on a Regulated Activity with or for a Professional Client.

### **7.2 Complaints handling procedures for Retail Clients**

#### **Written Complaints handling procedures**

- 7.2.1 A Licensed Firm must have adequate policies and procedures in place for the investigation and resolution of Complaints made against it by Retail Clients, and the manner of redress (including compensation for acts or omissions of the Licensed Firm).

7.2.2 The policies and procedures for handling Complaints must be in writing and provide that Complaints are handled fairly, consistently and promptly.

#### **Guidance**

1. In establishing adequate Complaints handling policies and procedures, a Licensed Firm should have regard to:
  - a. the nature, scale and complexity of its business; and
  - b. its size and organisational structure.
2. A Licensed Firm should consider its obligations under Rule 3.3.19 and accompanying guidance.
3. The Regulator considers 60 days from the receipt of a Complaint to be an appropriate period in which a Licensed Firm should be able to resolve most Complaints.

7.2.3 On receipt of a Complaint, a Licensed Firm must:

- (1) acknowledge the Complaint promptly in writing;
- (2) provide the complainant with:
  - (i) the contact details of any individual responsible for handling the Complaint;
  - (ii) key particulars of the Licensed Firm's Complaints handling procedures; and  
request in accordance with Rule 7.2.11; and
  - (iii) a statement that a copy of the procedures is available free of charge upon request in accordance with Rule 7.2.11; and
- (3) consider the subject matter of the Complaint.

7.2.4 Where appropriate, a Licensed Firm must update the complainant on the progress of the handling of the Complaint.

#### **Guidance**

1. The Regulator considers seven days to be an adequate period in which a Licensed Firm should be able to acknowledge most Complaints.
2. The Regulator expects an update to be provided to the complainant in circumstances where the resolution of the Complaint is taking longer than 30 days.

#### **Resolution of Complaints**

7.2.5 Upon conclusion of an investigation of a Complaint, a Licensed Firm must promptly:

- (1) advise the complainant in writing of the resolution of the Complaint;
- (2) provide the complainant with clear terms of redress, if applicable; and
- (3) comply with the terms of redress if accepted by the complainant.

7.2.6 If the complainant is not satisfied with the terms of redress offered by the Licensed Firm, the Licensed Firm must inform the complainant of other avenues, if any, for resolution of the Complaint and provide him with the appropriate contact details upon request.

### **Guidance**

Other avenues for resolution of a Complaint may include an external dispute resolution scheme, arbitration, the Appeals Panel or Court in GMC.

### **Employees handling Complaints**

7.2.7 Where appropriate, taking into account the nature, scale and complexity of a Licensed Firm's business, a Licensed Firm must ensure that any individual handling the Complaint is not or was not involved in the conduct of the Regulated Activity about which the Complaint has been made, and is able to handle the Complaint in a fair and impartial manner.

7.2.8 A Licensed Firm must ensure that any individual responsible for handling the Complaint has sufficient authority to resolve the Complaint or has access to individuals with the necessary authority.

### **Complaints involving other Licensed Firms or Recognised Bodies**

7.2.9 If a Licensed Firm considers that another Licensed Firm or a Recognised Body is entirely or partly responsible for the subject matter of a Complaint, it may refer the Complaint, or the relevant part of it, to the other Licensed Firm or Recognised Body in accordance with Rule 7.2.10.

7.2.10 To refer a Complaint, a Licensed Firm must:

- (1) inform the complainant promptly and in writing that it would like to refer the Complaint, either entirely or in part, to another Licensed Firm or Recognised Body, and obtain the written consent of the complainant to do so;
- (2) if the complainant consents to the referral of the Complaint, refer the Complaint to the other Licensed Firm or Recognised Body promptly and in writing;
- (3) inform the complainant promptly and in writing that the Complaint has been referred and include adequate contact details of any individual at the other Licensed Firm or Recognised Body responsible for handling the Complaint; and
- (4) continue to deal with any part of the Complaint not referred to the other Licensed Firm or Recognised Body, in accordance with this Chapter.

### **Retail Client awareness**

- 7.2.11 A Licensed Firm must ensure that a copy of its Complaints handling procedures is available free of charge to any Retail Client upon request.

### **Retention of records**

- 7.2.12 A Licensed Firm must maintain a record of all Complaints made against it for a minimum period of six years from the date of receipt of a Complaint.
- 7.2.13 The record maintained under Rule 7.2.12 must contain the name of the complainant, the substance of the Complaint, a record of the Licensed Firm's response, and any other relevant correspondence or records, and the action taken by the Licensed Firm to resolve each Complaint.

### **Systems and controls**

- 7.2.14 In accordance with Rules 3.3.4 and 3.3.5, a Licensed Firm must put in place adequate systems and controls in order for it to identify and remedy any recurring or systemic problems identified from Complaints.

### **Guidance**

A Licensed Firm should consider whether it is required to notify the Regulator, pursuant to Rule 8.10.6, of any recurring or systemic problems identified from Complaints.

### **Outsourcing**

#### **Guidance**

A Licensed Firm may outsource the administration of its Complaints handling procedures in accordance with Rules 3.3.31 and 3.3.32.

## **7.3 Complaints recording procedures for Professional Clients**

- 7.3.1 A Licensed Firm must have adequate policies and procedures in place for the recording of Complaints made against it by Professional Clients.
- 7.3.2 A Licensed Firm must maintain a record of any Complaint made against it for a minimum period of six years from the date of receipt of the Complaint.

### **Guidance**

Depending on the nature, scale and complexity of its business, it may be appropriate for a Licensed Firm to have in place a suitable Complaints handling procedure for Professional Clients in order to ensure that such Complaints are properly handled and remedial action is taken promptly. Such Complaints handling procedures would be expected to include provisions about the independence of staff investigating the Complaint and bringing the matter to the attention of senior management.

## 8. SUPERVISION

### Introduction

### Guidance

1. This Chapter outlines the Regulator's supervisory requirements for a Licensed Firm and Recognised Body.
2. This Chapter should be read in conjunction with the GPM which sets out the Regulator's general regulatory policy and processes.

### 8.1 Information gathering and the Regulator's access to information

8.1.1 This Rule applies to a Licensed Firm and Recognised Body other than a Representative Office with respect to the carrying on of all of its activities.

8.1.2 A Licensed Firm and Recognised Body must where reasonable:

- (1) give or procure the giving of specified information, Documents, files, tapes, computer data or other material in the Licensed Firm or Recognised Body's possession or control to the Regulator;
- (2) make its Employees readily available for meetings with the Regulator;
- (3) give the Regulator access to any information, Documents, records, files, tapes, computer data or systems, which are within the Licensed Firm or Recognised Body's possession or control and provide any facilities to the Regulator;
- (4) permit the Regulator to copy Documents or other material on the premises of the Licensed Firm or Recognised Body at the Licensed Firm or Recognised Body's expense;
- (5) provide any copies as requested by the Regulator; and
- (6) answer truthfully, fully and promptly, all questions which are put to it by the Regulator.

8.1.3 A Licensed Firm and Recognised Body must take reasonable steps to ensure that its Employees act in the manner set out in this Chapter.

8.1.4 A Licensed Firm and Recognised Body must take reasonable steps to ascertain if there is any secrecy or data protection legislation that would restrict access by the Licensed Firm, Recognised Body or the Regulator to any data required to be recorded under the Regulator's Rules. Where such legislation exists, the Licensed Firm or Recognised Body must keep copies of relevant Documents or material in a jurisdiction which does allow access in accordance with Regulations and Rules.

## **Lead regulation**

- 8.1.5 (1) If requested by the Regulator, a Licensed Firm and Recognised Body must provide the Regulator with information that the Licensed Firm or Recognised Body or its Auditor has provided to a Non-GMC Financial Services Regulator.
- (2) If requested by the Regulator, a Licensed Firm and Recognised Body must take reasonable steps to provide the Regulator with information that other members of the Licensed Firm or Recognised Body's Group have provided to a Non-GMC Financial Services Regulator.

## **8.2 Waivers and Modifications**

8.2.1 This Rule applies to every Licensed Firm, Recognised Body, Remote Body, Remote Member, Foreign Fund Manager, Person making an Offer of Securities or Reporting Entity.

8.2.2 [Deleted]

### **Guidance**

Throughout the Rulebooks and non-Rulebook guidance a Direction given under section 9 of FSA will be referred to as a "Waiver" or a "Modification" as appropriate.

8.2.3 If a Licensed Firm, Recognised Body, Remote Body, Remote Member, Foreign Fund Manager, Person making an 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 an application for a Waiver or Modification.

8.2.4 The application must contain:

- (1) the name and Financial Services Permission/Recognition Order/GFSO identification number of the Licensed Person, Recognised Body, Remote Body, Remote Member, Foreign Fund Manager, Person making an 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 Licensed Firm, Recognised Body, Remote Body, Remote Member, 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 Licensed Firm, Recognised Body, Remote Body, Remote Member, Foreign Fund Manager, Person making a Public Offer or Reporting Entity; and
  - (6) all relevant facts to support the application.
- 8.2.5 A Licensed Firm, Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity 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 Licensed Firm, Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity written notice either of its proposal, or of its action, and may give reasons for such proposal or action; and
  - (2) state in the notice a reasonable period within which the Licensed Firm, Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity can make representations about the proposal or action.
- 8.2.8 If the Licensed Person, Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity 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 Licensed Firm, Recognised Body, Remote Body or Remote Member, Person making a Public Offer or Reporting Entity under Rule 8.2.8, the Regulator will inform the Licensed Firm, Recognised Body, Remote Body or Remote Member, Person making a Public Offer or Reporting Entity 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 a Licensed Firm, Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity under Rule 8.2.8:

- (1) in the case of a proposed revocation or variation, the Regulator will give the Licensed Firm, Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity 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 Licensed Firm, Recognised Body's, Remote Body's, Remote Member's, Person making a Public Offer's or Reporting Entity's consent to a new Waiver or Modification.

8.2.11 Alternatively, the Regulator may vary a Waiver or Modification with the Licensed Firm's, Recognised Body's, Remote Body's, Remote Member's, Person making a Public Offer's or Reporting Entity's consent, or upon the application of the Licensed Firm, Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity.

8.2.12 If a Licensed Firm, Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity 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 Licensed Firm, Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity each of the Licensed Firm Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity (as applicable), 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 Licensed Firm, Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity.

### **8.3 Application to change the scope of a Financial Services Permission**

8.3.1 This Rule applies to a Licensed Firm applying to change the scope of its Financial Services Permission or, where a condition or restriction has previously been imposed, to have the condition or restriction varied or withdrawn.

8.3.2 The provisions relating to permitted legal forms, fitness and propriety, adequate and appropriate resources, compliance arrangements, effective supervision, enquiries and the provision of additional information set out in Rule 5.2 also apply to a Licensed Firm making an application under this Chapter, and are to be construed accordingly.

8.3.3 A Licensed Firm applying to change the scope of its Financial Services Permission, or to have a condition or restriction varied or withdrawn, must provide the Regulator with written details of the proposed changes.

## **8.4 Withdrawal of a Financial Services Permission at a Licensed Firm's request**

8.4.1 A Licensed Firm seeking to have its Financial Services License withdrawn must submit a request in writing stating:

- (1) the reasons for the request;
- (2) that it has ceased or will cease to carry on Regulated Activities in or from GMC;
- (3) the date on which it ceased or will cease to carry on Regulated Activities in or from GMC;
- (4) that it has discharged, or will discharge, all obligations owed to its Customers in respect of whom the Licensed Firm has carried on, or will cease to carry on, Regulated Activities in or from GMC; and
- (5) if it is Providing Trust Services, that it has made appropriate arrangements for the transfer of business to a new Trust Service Provider and the appointment, where necessary, of new trustees.

### **Guidance**

When considering a withdrawal of a Financial Services License, the Regulator takes into account a number of matters including those outlined in the GPM.

## **8.5 Changes to an Approved Person status Guidance**

This Rule addresses applications or requests regarding Approved Persons with respect to Parts 3, 4 and 5 of FSA.

8.5.1 An application to extend the scope of an Approved Person status to other Controlled Functions may be made by the Licensed Firm by submitting an application in such form as the Regulator shall prescribe. Applicants for extension of scope of Approved Person status must countersign or otherwise consent to an application.

8.5.2 A Licensed Firm requesting:

- (1) the imposition, variation or withdrawal of a condition or restriction;
- (2) withdrawal of Approved Person status; or
- (3) withdrawal of authorisation in relation to one or more Controlled Functions;

must, subject to Rule 8.5.3, for (1) submit such request in writing to the Regulator and for (2) and (3) submit a request in such form as the Regulator as applicable, shall prescribe.

8.5.3 A request for the variation or withdrawal of a condition or restriction may only be made after the expiry of any period within which a reference to the Court relating to the relevant condition or restriction may commence under Part 19 of FSA.

## **8.6 Temporary cover**

- 8.6.1 (1) A Licensed Firm may, subject to (2), appoint an individual who is not an Approved Person to carry out the functions of an Approved Person, where the following conditions are met:
- (a) the absence of the Approved Person is temporary or reasonably unforeseen;
  - (b) the functions are carried out for a maximum of twelve weeks in any consecutive twelve months; and
  - (c) the Licensed Firm has assessed that the individual has the relevant skills and experience to carry out these functions.
- (2) A Licensed Firm may not appoint under (1) an individual to carry out the Controlled Functions of a Licensed Director or Licensed Partner.
- (3) The Licensed Firm must take reasonable steps to ensure that the individual complies with all the Rules applicable to Approved Persons.
- (4) Where an individual is appointed as an Approved Person under this Rule, the Licensed Firm must notify the Regulator in writing of the name and contact details of the individual appointed.
- 8.6.2 Where an individual is appointed under this Rule, the Regulator may exercise any powers it would otherwise be entitled to exercise as if the individual held Approved Person status.

## **8.7 Withdrawal of Approved Person status**

- 8.7.1 A Licensed Firm must request the withdrawal of an Approved Person status within seven days of the Approved Person ceasing to be employed by the Licensed Firm to perform a Controlled Function.
- 8.7.2 In requesting the withdrawal of an Approved Person status in respect of an Approved Person performing any Controlled Functions, the Licensed Firm must also submit a request to the Regulator in such form as the Regulator shall prescribe. This request shall include details of any circumstances where the Licensed Firm may consider that the individual is no longer fit and proper.
- 8.7.3 A Licensed Firm must ensure that the responsibilities of the vacated controlled function are appropriately reassigned on an interim basis to a suitably qualified and competent individual until a permanent appointment is made.
- 8.7.4 The Licensed firm must complete the appointment of a replacement to the vacated controlled function within three (3) months from the date of cessation, in accordance with the applicable requirements of this Rulebook.

8.7.5 If an Approved Person is dismissed or requested to resign in accordance with Rule 8.7.2, a statement of the reason, or reasons, for the dismissal or resignation must be given to the Regulator by the Licensed Firm.

## **8.8 Changes relating to control**

8.8.1 (1) This Rule applies, subject to (2) and (3), to:

- (a) a Licensed Firm or Recognised Body; or
  - (b) a Person who is, or is proposing to become, a Controller specified in Rule 8.8.2.
- (2) This Chapter does not apply to a Representative Office or a Person who is a Controller of such a Representative Office.
- (3) A Credit Rating Agency must comply with the requirements in this Rule as if it were a non-GMC established company.

### **Guidance**

The requirements in respect of notification of changes relating to control of Branches (i.e. non-GMC established companies) are set out in Rule 8.8.10. Although some Credit Rating Agencies may be companies established in GMC, such companies will only be subject to the notification requirements relating to their Controllers. Accordingly, regardless of whether a Credit Rating Agency is a company established in GMC or a Branch operation, it is subject to the notification requirements only and not to the requirement for prior approval by the Regulator of changes relating to its Controllers.

### **Definition of a Controller**

8.8.2 (1) A Controller is a Person who, either alone or with any Associate:

- (a) Holds 10% or more of the Shares in either the Licensed Firm or a Holding Company of that Licensed Firm;
- (b) is entitled to exercise, or controls the exercise of, 10% or more of the voting rights in either the Licensed Firm or a Holding Company of that Licensed Firm; or
- (c) is able to exercise significant influence over the management of the Licensed Firm as a result of Holding Shares or being able to exercise voting rights in the Licensed Firm or a Holding Company of that Licensed Firm or having a current exercisable right to acquire such Shares or voting rights.

(2) A reference in this Chapter to the term:

- (d) "Share" means:

- (i) in the case of a Licensed Firm, or a Holding Company of a Licensed Firm, with capital but no share capital, rights to a share in its capital; and
    - (ii) in the case of a Licensed Firm, or a Holding Company of a Licensed Firm, without capital, any interest conferring a right to share in its profits or losses or any obligation to contribute to a share of its debt or expenses in the event of its Winding-Up; and
  - (e) "Holding" means, in respect of a Person, Shares, voting rights or a right to acquire Shares or voting rights in a Licensed Firm or a Holding Company of that Licensed Firm held by that Person either alone or with any Associate.
- (3) The Regulator may make additional rules which:
- (a) provide for exemptions from the obligations to notify imposed by Rules 8.8.5, 8.8.9 and Part 10 of FSA; or
  - (b) amend the cases in this Chapter where a Person is deemed to be:
    - (i) acquiring control over a Licensed Firm or Recognised Body;
    - (ii) increasing control over a Licensed Firm or Recognised Body;
    - (iii) reducing or ceasing to have control over a Licensed Firm or Recognised Body;
    - (iv) a Controller of a Licensed Firm.

### **Guidance**

1. For the purposes of these Rules, the relevant definition of a Holding Company is found in the Companies Regulations. That definition describes when one Body Corporate is considered to be a Holding Company or a Subsidiary of another Body Corporate and extends that concept to the ultimate Holding Company of the Body Corporate.
2. Pursuant to Rule 8.8.2(1)(c), a Person becomes a Controller if that Person can exert significant management influence over a Licensed Firm. The ability to exert significant management influence can arise even where a Person, alone or with his Associates, controls less than 10% of the Shares or voting rights of the Licensed Firm or a Holding Company of that Licensed Firm. Similarly, a Person may be able to exert significant management influence where such Person does not Hold Shares or voting rights but has current exercisable rights to acquire Shares or voting rights, such as under Options.

### **Disregarded holdings**

8.8.3 For the purposes of determining whether a Person is a Controller, any Shares, voting rights or rights to acquire Shares or voting rights that a Person Holds, either alone or with any Associate with whom they are acting in concert, in a Licensed Firm or a Holding Company of that Licensed Firm are disregarded if:

- (1) they are Shares held for the sole purpose of clearing and settling within a short settlement cycle;
- (2) they are Shares held in a custodial or nominee capacity and the voting rights attached to the Shares are exercised only in accordance with written instructions given to that Person by another Person;
- (3) they are Shares representing no more than 5% of the total voting power and are Held by a Licensed Firm with a Financial Services License to deal as principal, who:
  - (i) Holds the Shares in the capacity of a market maker; and
  - (ii) neither intervenes in the management of the Licensed Firm in which it Holds the Shares, nor exerts any influence on that Licensed Firm to buy the Shares or back the Share price; or
- (4) the Person is a Licensed Firm and it:
  - (i) acquires the Shares as a result of an Underwriting of a Share issue or a placement of Shares on a firm commitment basis;
  - (ii) does not exercise the voting rights attaching to the Shares or otherwise intervene in the management of the Issuer; and
  - (iii) retains the Shares for a period less than one year.

### **Requirement for prior approval of Controllers of Domestic Firms**

8.8.4 (1) In the case of a Licensed Firm which is a Domestic Firm, a Person must not:

- (a) become a Controller; or
- (b) increase the level of control which that Person has in the Domestic Firm beyond a threshold specified in (2),

unless that Person has obtained the prior written approval of the Regulator to do so.

(2) For the purposes of (1)(b), the thresholds at which the prior written approval of the Regulator is required are when the relevant Holding is increased:

- (c) from below 20% to 20% or more;
- (d) from below 50% to 50% or more.

## **Guidance**

1. See Rules 8.8.2 and 8.8.3 for the circumstances in which a Person becomes a Controller of a Licensed Firm.
2. The Regulator recognises that Licensed Firms acting as Investment Managers may have difficulties in complying with any prior notification requirements in these Rules as a result of acquiring or disposing of listed Shares in the course of that Fund management activity. To ameliorate these difficulties, the Regulator may accept pre-notification of proposed changes in control and may grant approval of such changes for a period lasting up to a year.

## **Approval process**

- 8.8.5 (1) A Person who is required to obtain the prior written approval of the Regulator pursuant to Rule 8.8.4(1) must provide written notice to the Regulator in such form as the Regulator shall prescribe.
- (2) The written notice provided under (1) must be in such form, include such information and be accompanied by such Documents as the Regulator may require.
  - (3) Where the Regulator receives an application under (1), it may:
    - (a) approve the proposed acquisition or increase in the level of control;
    - (b) approve the proposed acquisition or increase in the level of control subject to such conditions as it considers appropriate; or
    - (c) object to the proposed acquisition or increase in the level of control.
  - (4) The Regulator may request such further information from the notice-giver as it deems necessary for the purposes of making its decision under (3).
  - (5) Any approval of an application under (3)(a) or (b) will be effective for such period as the Regulator may specify, and subsequently vary, in writing.

## **Guidance**

1. A Person intending to acquire or increase control in a Licensed Firm should submit an application for approval in such form as the Regulator shall prescribe sufficiently in advance of the proposed acquisition to be able to obtain the Regulator approval in time for the proposed acquisition. The GPM sets out the matters which the Regulator will take into consideration when exercising its powers under Rule 8.8.5 to approve, object to or impose conditions of approval relating to a proposed Controller or a proposed increase in the level of control of an existing Controller.
2. The Regulator will exercise its powers relating to Controllers in a manner proportionate to the nature, scale and complexity of a Licensed Firm's business, and the impact a proposed change in control would have on that Licensed Firm and its Clients. For example, the Regulator would generally be less

likely to impose conditions requiring a proposed acquirer of control of a Licensed Firm whose financial failure would have a limited systemic impact or impact on its Clients to provide prudential support to the Licensed Firm by contributing more capital. Most advisory and arranging Licensed Firms will fall into this class.

- 8.8.6 (1) Where the Regulator proposes to approve a proposed acquisition or an increase in the level of control in a Licensed Firm pursuant to Rule 8.8.5(3)(a), it must:
- (a) do so as soon as practicable and in any event within 90 days of the receipt of a duly completed application, unless a different period is considered appropriate by the Regulator and notified to the applicant in writing; and
  - (b) issue to the applicant, and where appropriate to the Licensed Firm, an approval notice as soon as practicable after making that decision.
- (2) An approval pursuant to Rule 8.8.5(3)(a), including a conditional approval granted by the Regulator pursuant to Rule 8.8.5(3)(b), is valid for a period of one year from the date of the approval, unless an extension is granted by the Regulator in writing.

### **Guidance**

1. If the application for approval lodged with the Regulator does not contain all the required information, then the 90 days period runs from the date on which all the relevant information has been provided to the Regulator.
2. If a Person who has obtained prior Regulator approval for an acquisition or an increase in the control of a Licensed Firm is unable to effect the acquisition before the end of the period referred to in Rule 8.8.6(2), it will need to obtain fresh approval from the Regulator.

### **Objection or conditional approval process**

- 8.8.7 (1) Where the Regulator proposes to exercise its conditional approval or objection power pursuant to Rule 8.8.5(3)(b) or (c) respectively, in respect of a proposed acquisition of, or an increase in the level of control in, a Licensed Firm, it must, as soon as practicable and in any event within 90 days of the receipt of the duly completed application form, provide to the applicant:
- (a) a written notice stating:
    - (i) the Regulator's reasons for objecting to that Person as a Controller or to the Person's proposed increase in control; and
    - (ii) any proposed conditions subject to which that Person may be approved by the Regulator; and
  - (b) an opportunity for the Person to make representations within 14 days of the receipt of such notice in (a) or such other longer period as agreed to by the Regulator.

- (2) The Regulator must, as soon as practicable after receiving representations or, if no representations are received, after the expiry of the period for making representations referred to in (1)(b), issue a final notice stating that:
- (a) the proposed objections and any conditions are withdrawn and the Person is an approved Controller;
  - (b) the Person is approved as a Controller subject to conditions specified in the notice; or
  - (c) the Person is not approved and therefore is an unacceptable Controller with respect to that Person becoming a Controller of, or increasing the level of control in, the Licensed Firm.
- (3) If the Regulator decides to exercise its power under this Rule not to approve a Person as a Controller or to impose conditions on an approval, the Person may refer the matter to the Appeals Panel for review.

- 8.8.8 (1) A Person who has been approved by the Regulator as a Controller of a Licensed Firm subject to any conditions must comply with the relevant conditions of approval.
- (2) A Person who has been notified by the Regulator pursuant to Rule 8.8.7(2)(c) as an unacceptable Controller must not proceed with the proposed acquisition of control of the Licensed Firm.

### **Guidance**

1. A Person who acquires control of or increases the level of control in a Licensed Firm without the prior Regulator approval or breaches a condition of approval is in breach of the Rules. See Rules 8.8.13 and 8.8.14 for the actions that the Regulator may take in such circumstances.
2. In assessing a proposed acquisition or increase in control, the Regulator may generally consider the suitability of the notice-giver, the financial soundness of the acquisition in order to ensure the sound and prudent management of the Licensed Firm, and the likely influence that the notice-giver will have on the Licensed Firm.
3. In determining whether to object to a proposed acquisition, the Regulator may consider:
  - a. the reputation of the notice-giver or of any person who will direct the business of the Licensed Firm as a result of the acquisition;
  - b. the financial soundness of the notice-giver;
  - c. whether the Licensed Firm will be able to comply with its prudential requirements;

- d. where the Licensed Firm is to become part of a Group as a result of the acquisition, whether the structure of such a Group will allow for effective supervision and the exchange of information with the Regulator where required;
- e. whether there are reasonable grounds to suspect that money laundering or terrorist financing has been, or may be, committed in connection with the proposed acquisition; and
- f. whether the proposed acquisition is contrary to one or more of the Regulator's objectives.

**Notification for decrease in the level of control of Domestic Firms**

- 8.8.9 (1) A Controller of a Licensed Firm which is a Domestic Firm must submit, in such form as the Regulator shall prescribe, a written notification to the Regulator where that Person:
- (a) proposes to cease being a Controller;
  - (b) proposes to decrease that Person's Holding from:
    - (i) more than 50% to 50% or less;
    - (ii) more than 30% to 30% or less; or
    - (iii) more than 20% to 20% or less.
- (2) A written notice provided under (1) must be in such form, include such information and be accompanied by such Documents as the Regulator may reasonably require.

**Requirement for notification of changes relating to control of Branches**

- 8.8.10 (1) In the case of a Licensed Firm which is a Branch, a written notification to the Regulator must be submitted by a Controller or a Person proposing to become a Controller of that Licensed Firm in accordance with (3) in respect of any one of the events specified in (2).
- (2) For the purposes of (1), a notification to the Regulator is required when:
- (a) a Person becomes a Controller;
  - (b) an existing Controller proposes to cease being a Controller; or
  - (c) an existing Controller's Holding is:
    - (i) increased from below 30% to 30% or more;
    - (ii) increased from below 50% to 50% or more; or
    - (iii) decreased from more than 50% to 50% or less.

- (3) The notification required under (1) must be made by a Controller or Person proposing to become a Controller of a Branch in such form as the Regulator shall prescribe as soon as possible, and in any event, before making the relevant acquisition or disposal.

### **Obligations of Licensed Persons relating to its Controllers**

8.8.11 (1) A Licensed Firm must have adequate systems and controls to monitor:

- (a) any change or proposed change of its Controllers; and
  - (b) any significant changes in the conduct or circumstances of existing Controllers which might reasonably be considered to impact on the fitness and propriety of the Licensed Firm, or on its ability to conduct business soundly and prudently.
- (2) A Licensed Firm must, subject to (3), notify the Regulator in writing of any event specified in (1) as soon as possible after becoming aware of that event.
  - (3) A Licensed Firm need not comply with the requirement in (2) if it is satisfied on reasonable grounds that a proposed or existing Controller has either already obtained the prior approval of the Regulator or notified the event to the Regulator as applicable.

#### **Guidance**

Steps which a Licensed Firm may take in order to monitor changes relating to Controllers include the monitoring of any relevant regulatory disclosures, press reports, public announcements, share registers and entitlements to vote or the control of voting rights at general meetings.

- 8.8.12 (1) A Licensed Firm must submit to the Regulator an annual report on its Controllers within four months of its financial year end.
- (2) The Licensed Firm's annual report on its Controllers must include:
    - (a) the name of each Controller; and
    - (b) the current holding of each Controller, expressed as a percentage.

#### **Guidance**

1. A Licensed Firm may satisfy the requirements of Rule 8.8.12 by submitting a corporate structure diagram containing the relevant information.
2. A Licensed Firm must take account of the Holdings which the Controller, either alone or with any Associate, has in the Licensed Firm or any Holding Company of the Licensed Firm (see the definition of a Controller in Rule 8.8.2(1)).

### **Other Powers relating to Controllers**

- 8.8.13 (1) Without limiting the generality of its other powers, the Regulator may, subject only to (2), object to a Person as a Controller of a Licensed Firm where such a Person:
- (a) has acquired or increased the level of control that Person has in a Licensed Firm without the prior written approval of the Regulator as required under Rule 8.8.4;
  - (b) has breached the requirement in Rule 8.8.8(1) to comply with the conditions of approval applicable to that Person; or
  - (c) is no longer acceptable to the Regulator as a Controller.
- (2) Where the Regulator proposes to object to a Person as a Controller of a Licensed Firm under (1), the Regulator must provide such a Person with:
- (a) a written notice stating:
    - (i) the Regulator's reasons for objecting to that Person as a Controller; and
    - (ii) any proposed conditions subject to which that Person may be approved by the Regulator; and
  - (b) an opportunity for the Person to make representations within 14 days of the receipt of such objections notice in (a) or such other longer period as agreed to by the Regulator.
- (3) The Regulator must, as soon as practicable after receiving representations, or if no representations are made, after the expiry of the period for making representations referred to in (2)(b), issue a final notice stating that:
- (a) the proposed objections and any conditions are withdrawn and the Person is an approved Controller;
  - (b) the Person is approved as a Controller subject to conditions specified in the notice; or
  - (c) the Person is an unacceptable Controller and accordingly, must dispose of that Person's Holdings.
- (4) Where the Regulator has issued a final notice imposing any conditions subject to which a Person is approved as a Controller, that Person must comply with those conditions.
- (5) Where the Regulator has issued a final notice declaring a Person to be an unacceptable Controller, that Person must dispose of the relevant Holdings within such period as specified in the final notice.

- (6) The Regulator may apply to the Court for the order of the sale or disposition of shares held in Contravention to a final notice, in accordance with (5).
- (7) The Regulator must also notify the Licensed Firm of any decision it has made pursuant to (3).
- (8) The Regulator may give a restriction notice directing that, Shares or voting power Held by a Controller in respect of which a final notice has been given, are subject to one or more of the following restrictions:
  - (a) any agreement to transfer or a transfer of any such Shares or voting power is void;
  - (b) no voting power is to be exercisable;
  - (c) no further Shares are to be issued in pursuance of any right of the Holder of any such Shares or voting power or in pursuance of any offer made to their Holder; and
  - (d) save for in instances of liquidation, no payment is to be made of any sums due in respect of any such Shares.
- (9) If the Regulator decides to exercise its power under this Rule to object to a Person as a Controller, to impose conditions or restrictions on an approval or to require a Person to dispose of their Holdings, the Person may refer the matter to the Appeals Panel for review.

## **Guidance**

The GPM sets out the matters which the Regulator takes into consideration when exercising its powers under Rule 8.8.13.

## **Contraventions of the Rules under this Chapter**

8.8.14 (1) A Person commits a Contravention of the Rules under this Chapter where it:

- (a) fails to comply with any obligation of notification under Rules 8.8.5 and 8.8.9;
- (b) makes the proposed acquisition to which the notice it has provided to the Regulator relates, prior to the receipt of any approval, whether conditional or unconditional, from the Regulator;
- (c) Contravenes any conditions imposed by the Regulator upon its giving of a conditional approval to the proposed acquisition under Rule 8.8.7;
- (d) makes the proposed acquisition after the period for which the Regulator has deemed the approval to be effective under Rule 8.8.5(5);

- (e) breaches a direction in a restriction notice given under Rule 8.8.13(8); or
  - (f) provides false information to the Regulator.
- (2) Any Contravention in (1) will entitle the Regulator to exercise its powers in Part 19 of FSA.

## **8.9 Creation of additional Cell of a Protected Cell Company or an Incorporated Cell Company for an Insurer**

8.9.1 This Rule applies to Insurers that are Protected Cell Companies or Incorporated Cell Companies.

### **Guidance**

1. An Insurer that is a Protected Cell Company is a company incorporated as, or converted into, a Protected Cell Company in accordance with the provisions of the Companies Regulations.
  2. An Insurer that is an Incorporated Cell Company is a company incorporated as, or converted into, an Incorporated Cell Company in accordance with the provisions of the Companies Regulations.
- 8.9.2 A Protected Cell Company and an Incorporated Cell Company cannot be established in GMC without the consent of the Regulator.
- 8.9.3 An application to the Regulator in connection with the proposed establishment of a Protected Cell Company and an Incorporated Cell Company must be made in such form, and be accompanied by such Documents, as the Regulator may from time to time prescribe.
- 8.9.4 An Insurer that is a Protected Cell Company or an Incorporated Cell Company may not create a new Cell unless approval has been granted by the Regulator.
- 8.9.5 An application to the Regulator for the approval for the creation of a new Cell must be made in such form as the Regulator shall prescribe, and shall be accompanied by such Documents and information and verified in such manner, as the Regulator may require.
- 8.9.6 (1) The Regulator may:
- (a) grant approval;
  - (b) grant approval with conditions or restrictions; or
  - (c) refuse approval;
- for the creation of a new Cell.
- (2) The procedures in Part 21 of FSA apply to a decision of the Regulator under (1)(b) and (1)(c).

- (3) If the Regulator decides to exercise its power under (1)(b) and (c), the Insurer may refer the matter to the Appeals Panel for review.

## **8.10 Notifications**

- 8.10.1(1) This Rule applies to every Licensed Firm and Recognised Body, unless otherwise provided, with respect to the carrying on of Regulated Activities and any other activities whether or not financial.
  - (2) This Rule does not apply to a Representative Office.

### **Guidance**

1. This Chapter sets out Rules on specific events, changes or circumstances that require notification to the Regulator and outlines the process and requirements for notifications.
2. The list of notifications outlined in this Chapter is not exhaustive. Other areas of the Rulebook may also detail additional notification requirements.
3. Each Licensed Firm, Recognised Body and its Auditors is also required under Part 16 and section 193 of FSA respectively, to disclose to the Regulator any matter which may indicate a breach or likely breach of, or a failure or likely failure to comply with, Regulations or Rules. Each Licensed Firm and Recognised Body is also required to establish and implement systems and procedures to enable its compliance and compliance by its Auditors with notification requirements.

### **Core information**

- 8.10.2 Each Licensed Firm must provide the Regulator with reasonable advance notice of a change in:
  - (1) its name;
  - (2) any business or trading name under which it carries on a Regulated Activity in or from GMC;
  - (3) the address of its principal place of business in GMC;
  - (4) in the case of a Branch, its registered office or head office address;
  - (5) its legal structure; or
  - (6) an Approved Person's name or any material matters relating to his fitness and propriety.
- 8.10.3 A Domestic Firm must provide the Regulator with reasonable advance notice of the establishment or closure of a branch office anywhere outside the jurisdiction of GMC from which it carries on Regulated Activities.

- 8.10.4 When giving notice under Rule 8.10.3 in relation to the establishment of a branch, a Domestic Firm must at the same time submit to the Regulator a detailed business plan in relation to the activities of the proposed branch.
- 8.10.5 (1) The Regulator may object to the establishment by a Domestic Firm of a branch office elsewhere outside the jurisdiction of GMC.
- (2) If the Regulator objects to the Domestic Firm establishing a branch anywhere outside the jurisdiction of GMC, the Domestic Firm may not proceed with establishment of such a branch.
- (3) The procedures in Part 21 of FSA apply to a decision of the Regulator under (1).
- (4) If the Regulator decides to exercise its power under (1), the Domestic Firm may refer the matter to the Appeals Panel for review.

### **Regulatory impact**

- 8.10.6 Each Licensed Firm and Recognised Body must advise the Regulator immediately if it becomes aware, or has reasonable grounds to believe, that any of the following matters may have occurred or may be about to occur:
- (1) the Licensed Firm or Recognised Body's failure to satisfy the fit and proper requirements;
- (2) any matter which could have a significant adverse effect on the Licensed Firm or Recognised Body's reputation;
- (3) any matter in relation to the Licensed Firm or Recognised Body which could result in serious adverse financial consequences to the GMC Financial System or to other Licensed Firms or Recognised Bodies;
- (4) a significant breach of a Rule by the Licensed Firm, Recognised Body or any of their Employees;
- (5) a breach by the Licensed Firm, Recognised Body or any of their Employees of any requirement imposed by any applicable law;
- (6) prior to any proposed restructuring, merger, acquisition, reorganisation, divestiture or business expansion which could have a significant impact on the Licensed Firm or Recognised Body's risk profile or resources;
- (7) any significant failure in the Licensed Firm or Recognised Body's systems or controls, including a failure reported to the Licensed Firm or Recognised Body by its auditors;
- (8) any action that would result in a material change in the capital adequacy or solvency of the Licensed Firm;

- (9) non-compliance with Rules due to an emergency outside the Licensed Firm or Recognised Body's control and the steps being taken by the Licensed Firm or Recognised Body; or
- (10) an Approved Person is no longer fit and proper to perform a Controlled Function.

#### 8.10.6A Major acquisition or establishment of subsidiary

- (1) A Licensed Firm in Category 1 or 2 must notify the Regulator in writing prior to:
  - (a) establishing or acquiring a subsidiary, regardless of its type of activity, other than an entity which is to be used purely as a special purpose vehicle to provide finance to the Licensed Firm;
  - (b) committing to any proposal to acquire or invest, whether directly or indirectly, in an entity, where the value of that acquisition is greater than or equal to 10% of the Licensed Firm's Capital Resources; or
  - (c) committing to any proposal to acquire, whether directly or indirectly, 20% or more of the equity interest in an entity.
- (2) A Licensed Firm which is a Domestic Firm, in Category 1, 2 must:
  - (a) notify the Regulator in writing of the proposed acquisition or investment, in accordance with 8.10.6A(1), at least 45 days prior to the proposed date for effecting the transaction; and
  - (b) give to the Regulator all the relevant information relating to that acquisition or investment to enable the Regulator to assess the impact of the proposed transaction on the Licensed Firm.
- (3) A Licensed Firm which is a Branch in Category 1 or 2, must:
  - (a) notify the Regulator in writing in advance of any proposed acquisition or investment in accordance with 8.10.6A(1); and
  - (b) provide to the Regulator a copy of any information that their head office provided to their Non-GMC Financial Services Regulator or any further information that the Regulator may request.
- (4) If the Regulator is not satisfied with any aspects related to a proposed transaction following a notification in accordance with Rule 8.10.6A(1), the Regulator may:
  - (a) require a Licensed Firm not to proceed with the transaction; or
  - (b) impose conditions on the proposed transaction or additional prudential requirements on the Licensed Firm.

- (5) The procedures in Part 21 of the FSA apply to a decision of the Regulator under 8.10.6A(4).
- (6) If the Regulator decides to exercise its power under 8.10.6A(4), the Licensed Firm may refer the matter to the Appeals Panel for review.

## **Guidance**

1. Rule 8.10.6A(1) does not apply to:
  - a. any interest held by way of security for the purposes of a transaction entered into in the ordinary course of the business of the Licensed Firm;
  - b. any shareholding or interest acquired or held by a Licensed Firm in the course of satisfaction of debts due in accordance with the terms of a contract entered into by the Licensed Firm as an incidental part of its ordinary business; or
  - c. a routine transaction for managing the Licensed Firm's own investment portfolio, such as investments included in the trading book or those intended to be disposed of within a short term, which can reasonably be regarded as made for a purpose other than acquiring management or control of an entity either directly or indirectly.
2. When considering whether to exercise its powers under Rule 8.10.6A(4), the Regulator may have regard to:
  - a. whether the Licensed Firm has the financial, managerial and organisational capacity to handle the proposed investment or acquisition, this being particularly important where the entity being acquired or to which the investment relates is involved in non-banking related activities;
  - b. the adequacy of the Licensed Firm's systems, controls and resources to identify, measure, monitor, manage and, as required, report exposures and risks arising from the activity;
  - c. whether the proposed acquisition or investment will expose the Licensed Firm to undue risks;
  - d. whether the transaction exposes the Licensed Firm to substantial contagion risks or hinders effective supervision, including the ability of the Regulator to exercise supervision on a consolidated basis, if applicable;
  - e. whether the proposed acquisition will hinder effective implementation of corrective measures in the future, including whether the proposed acquisition creates an obstacle to the orderly resolution of the Licensed Firm; and
  - f. any other factors the Regulator considers to be relevant.

3. Prior notification in Rule 8.10.6A, and where relevant in 8.10.6(6), applies regardless of the type of activity the relevant subsidiary or entity is or will be carrying out, whether financial services or otherwise.

### **Fraud and errors**

- 8.10.7 Each Licensed Firm and Recognised Body must notify the Regulator immediately if one of the following events arises in relation to its activities in or from GMC:
- 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 Licensed Firm or Recognised Body's Regulated Activities may be guilty of serious misconduct concerning his honesty or integrity.

### **Other Regulators**

- 8.10.8 Each Licensed Firm and Recognised Body must advise the Regulator immediately of:
- (a) the granting or refusal of any application for or revocation of license to carry on financial services in any jurisdiction outside GMC;
  - (b) the granting, withdrawal or refusal of an application for, or revocation of, membership of the Licensed Firm or Recognised Body of any regulated exchange or clearing house;
  - (c) the Licensed Firm or Recognised Body becoming aware that a Non-GMC Financial Services Regulator has started an investigation into the affairs of the Licensed Firm or Recognised Body;
  - (d) the appointment of inspectors, howsoever named, by a Non-GMC Financial Services Regulator to investigate the affairs of the Licensed Firm or Recognised Body; or
  - (e) the imposition of disciplinary measures or disciplinary sanctions on the Licensed Firm or Recognised Body in relation to its financial services by any regulator or any regulated exchange or clearing house.

### **Guidance**

The notification requirement in Rule 8.10.8(c) extends to investigations relating to any Employee or agent of a Licensed Firm, Recognised Body or a member of its Group,

provided the conduct investigated relates to or impacts on the affairs of the Licensed Firm or Recognised Body.

### **Action against a Licensed Firm**

8.10.9 Each Licensed Firm must notify the Regulator immediately if:

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

### **Winding-Up, bankruptcy and insolvency**

8.10.10 Each Licensed Firm must notify the Regulator immediately on:

- (1) the calling of a meeting to consider a resolution for Winding-Up the Licensed Firm;
- (2) an application to dissolve the Licensed Firm or to strike it from the register maintained by the Registration Bureau, or a comparable register in another jurisdiction;
- (3) the presentation of a petition for the Winding-Up of the Licensed Firm;
- (4) the making of, or any proposals for the making of, a composition or arrangement with creditors of the Licensed Firm; or
- (5) the application of any person against the Licensed Firm for the commencement of any insolvency proceedings, appointment of any receiver, administrator or provisional liquidator under the law of any country, territory or jurisdiction outside GMC.

### **Accuracy of information**

8.10.11 Each Licensed Firm and Recognised Body must take reasonable steps to ensure that all information that it provides to the Regulator in accordance with any Regulations and Rules is:

- (1) factually accurate or, in the case of estimates and judgements, fairly and properly based; and
- (2) complete, in that it should include anything of which the Regulator would reasonably expect to be notified.

8.10.12 (1) Each Licensed Firm and Recognised Body must notify the Regulator immediately when it becomes aware, or has information that reasonably suggests, that it:

- (a) has or may have provided the Regulator with information which was or may have been false, misleading, incomplete or inaccurate; or
  - (b) has or may have changed in a material particular.
- (2) Subject to (3), the notification in (1) must include details of the information which is or may be false or misleading, incomplete or inaccurate, or has or may have changed and an explanation why such information was or may have been provided and the correct information.
- (3) If the correct information in (2) cannot be submitted with the notification, it must be submitted as soon as reasonably possible.

8.10.13 In the case of an Insurer which is a Protected Cell Company or an Incorporated Cell Company, an Insurer must advise the Regulator immediately when it becomes aware of any actual or prospective significant change in the type or scale of the business conducted through a Cell, or the ownership of the Cell Shares.

#### **Information relating to corporate governance and Remuneration**

- 8.10.14 (1) Subject to (2), a Licensed Firm must provide to the Regulator notice of any significant changes to its corporate governance framework or the Remuneration structure or strategy as soon as practicable.
- (2) A Licensed Firm which is a Branch must provide notice of any significant changes to its corporate governance framework or the Remuneration structure or strategy only if the changes are relevant to the activities and operations of the Branch.

#### **Guidance**

1. The purpose of these notifications is to ensure that the Regulator is informed of any significant changes to the Licensed Firm's corporate governance framework and Remuneration structure and strategies.
2. Significant changes that the Regulator expects Licensed Firms to notify to the Regulator pursuant to Rule 8.10.14 generally include:
  - a. any major changes to the composition of the Governing Body;
  - b. any changes relating to Persons Undertaking Key Control Functions, such as their removal or new appointments or changes in their reporting lines; and
  - c. significant changes to the Remuneration structure that apply to the members of the Governing Body, senior management, Persons Undertaking Key Control Functions and Major Risk-Taking Employees.
3. The Regulator expects Branches to provide to the Regulator notification of significant changes that are relevant to the Branch operations.

## **8.11 Provision of notifications and reports**

8.11.1 (1) Unless a Rule states otherwise, each Licensed Firm must ensure that each notification or report it provides to the Regulator is:

- (a) in writing and contains the Licensed Firm's name and Financial Services Permission number; and
- (b) addressed for the attention of the department relevant to Licensed Firms and delivered to the Regulator by:
  - (i) post to the current address of the Regulator;
  - (ii) hand delivery to the current address of the Regulator;
  - (iii) electronic mail to an address provided by the Regulator; or
  - (iv) fax to a fax number provided by the Regulator.

(2) In (1)(b) confirmation of receipt must be obtained.

## **8.12 Requirement to provide a report**

8.12.1 This Rule applies to every Licensed Firm and Recognised Body other than a Representative Office.

### **Guidance**

1. Under section 203 of FSA, the Regulator may require a Licensed Firm or Recognised Body to provide it with a report on any matter. The Person appointed to make a report must be a Person nominated or approved by the Regulator. This Person will be referred to throughout the Rulebook as a "Skilled Person".
2. When requesting a report under section 203 of FSA, the Regulator may take into consideration the matters set out in the GPM.

### **Skilled person**

- 8.12.2 (1) The Regulator may, by sending a notice in writing, require a Licensed Firm or Recognised Body to provide a report by a Skilled Person. The Regulator may require the report to be in whatever form it specifies in the notice.
- (2) The Regulator will give written notification to the Licensed Firm or Recognised Body of the purpose of its report, its scope, the timetable for completion and any other relevant matters.
  - (3) The Skilled Person must be appointed by the Licensed Firm or Recognised Body and be nominated or approved by the Regulator.

- (4) The Licensed Firm or Recognised Body must pay for the services of the Skilled Person.

### **Guidance**

1. If the Regulator decides to nominate the Skilled Person, it will notify the Licensed Firm or Recognised Body accordingly. Alternatively, if the Regulator is content to approve the Skilled Person selected by the Licensed Firm or Recognised Body it will notify it of that fact.
  2. The Regulator will only approve a Skilled Person that in the Regulator's opinion has the necessary skills to make a report on the matter concerned.
- 8.12.3 When a Licensed Firm or Recognised Body appoints a Skilled Person, the Licensed Firm or Recognised Body must ensure that:
- (1) the Skilled Person co-operates with the Regulator; and
  - (2) the Licensed Firm or Recognised Body provides all assistance that the Skilled Person may reasonably require.
- 8.12.4 When a Licensed Firm or Recognised Body appoints a Skilled Person, the Licensed Firm or Recognised Body must, in the contract with the Skilled Person:
- (1) require and permit the Skilled Person to co-operate with the Regulator in relation to the Licensed Firm or Recognised Body and to communicate to the Regulator information on, or his opinion on, matters of which he has, or had, become aware in his capacity as a Skilled Person reporting on the Licensed Firm or Recognised Body in the following circumstances:
    - (i) the Skilled Person reasonably believes that, as regards the Licensed Firm or Recognised Body concerned:
      - (A) there is or has been, or may be or may have been, a Contravention of any relevant requirement that applies to the Licensed Firm or Recognised Body concerned; and
      - (B) that the Contravention may be of material significance to the Regulator in determining whether to exercise, in relation to the Licensed Firm or Recognised Body concerned, any powers conferred on the Regulator under any provision of FSA;
    - (ii) the Skilled Person reasonably believes that the information on, or his opinion on, those matters may be of material significance to the Regulator in determining whether the Licensed Firm or Recognised Body concerned satisfies and will continue to satisfy the fit and proper requirements; or
    - (iii) the Skilled Person reasonably believes that the Licensed Firm is not, may not be, or may cease to be, a going concern;

- (2) require the Skilled Person to prepare a report within the time specified by the Regulator; and
- (3) waive any duty of confidentiality owed by the Skilled Person to the Licensed Firm or Recognised Body which might limit the provision of information or opinion by that Skilled Person to the Regulator in accordance with (1) or (2).

8.12.5 A Licensed Firm and Recognised Body must ensure that the contract required under Rule 8.12.4:

- (1) is governed by the Regulations and Rules of GMC;
- (2) expressly provides that the Regulator has a right to enforce the provisions included in the contract under Rule 8.12.4;
- (3) expressly provides that, in proceedings brought by the Regulator for the enforcement of those provisions, the skilled person is not to have available by way of defense, set-off or counter claim any matter that is not relevant to those provisions;
- (4) if the contract includes an arbitration agreement, expressly provides that the Regulator is not, in exercising the right in (2) to be treated as a party to, or bound by, the arbitration agreement; and
- (5) provides that the provisions included in the contract under Rule 8.12.4 are irrevocable and may not be varied or rescinded without the Regulator's consent.

### **8.13 Imposing Restrictions on a Licensed Firm or Recognised Body's business or on a Licensed Firm or Recognised Body's dealing with property**

8.13.1 The Regulator has the power to impose a prohibition or requirement on a Licensed Firm or Recognised Body in relation to its business or in relation to its dealing with property in circumstances where:

- (1) there is a reasonable likelihood that it will Contravene a requirement of any Regulations or Rules;
- (2) it has contravened a relevant requirement and there is a reasonable likelihood that the Contravention will continue or be repeated;
- (3) there is loss, risk of loss, or other adverse effect on its Customers;
- (4) an investigation is being carried out in relation to an act or omission by it that constitutes or may constitute a Contravention of any applicable Regulation or Rule;
- (5) an enforcement action has commenced against it for a Contravention of any applicable Regulation or Rule;
- (6) civil proceedings have commenced against it;

- (7) it or any of its Employees may be or has been engaged in Market Abuse;
- (8) it is subject to a merger;
- (9) a meeting has been called to consider a resolution for its Winding-Up;
- (10) an application has been made for the commencement of any insolvency proceedings or the appointment of any receiver, administrator or provisional liquidator under the law of any country, territory or jurisdiction outside GMC for it;
- (11) there is a notification to dissolve it or strike it from the register maintained by the Registration Bureau, or a comparable register in another jurisdiction;
- (12) there is information to suggest that it is involved in Financial Crime; or
- (13) the Regulator considers that this prohibition or requirement is necessary to ensure Customers, Licensed Firms, Recognised Bodies, or the GMC Financial System, are not adversely affected.

## 9. REPRESENTATIVE 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 GMC.
- (2) Unless otherwise stated, the Rules apply to a Representative Office only with respect to activities carried on from an establishment maintained by it in GMC.

#### Guidance

- 1. Because of the limited nature of the Regulated Activity of Operating a Representative Office, much of the GMC 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 GMC Rulebooks including AML. The application section of each Rulebook sets out which chapters, if any, apply to a Representative Office.
- 2. A Representative Office should also ensure that it complies with and has regard to relevant provisions of FSA and MKT. FSA gives the Regulator a number of important powers in relation to Licensed Firms including powers of supervision and enforcement.
- 3. The Regulated Activity of Operating a Representative Office is defined in Schedule 1 of FSA. By virtue of this Schedule, the Regulated Activity of Operating a Representative Office is a stand-alone Regulated Activity.

4. Whilst much Representative Office activity will not involve a continuing relationship with the Persons to whom marketing is directed, where such a relationship is necessary, the Representative Office will need to be careful to ensure that it does not carry on any activities other than the activity of Operating a Representative Office.
5. A Representative Office which undertakes a Regulated Activity which is outside the scope of its Financial Services License will be in breach of Part 4 of FSA. If the Regulator believes that a Representative Office is in breach of Part 4 of FSA, it may take steps which may include withdrawal of license and formal enforcement action under FSA.

## **9.2 Financial Services License application**

- 9.2.1 A Person, referred to in this chapter as an applicant, who intends to carry on the Regulated Activity of Operating a Representative Office must apply to the Regulator for a Financial Services License in such form as the Regulator shall prescribe.
- 9.2.2 (1) An application to Operate a Representative Office may only be made by a Person who is:
  - a. incorporated; and
  - b. regulated by a Non-GMC Financial Services Regulator in a jurisdiction other than GMC.
- (2) The Regulator will not consider an application for the activity of Operating a Representative Office from an applicant who intends to operate in GMC as a Domestic Firm.

## **9.3 Consideration and assessment of application**

- 9.3.1 An Applicant will only be licensed to carry on the Regulated Activity of Operating a Representative Office if the Regulator is satisfied that:
  - (a) the Applicant is fit and proper to hold a Financial Services License;
  - (b) the Applicant's proposed activity will be limited to that of marketing, as defined in paragraph 67 of Schedule 1 of FSA, and it will not engage in any other Regulated Activity; and
  - (c) licensing the Applicant to carry on the Regulated Activity of Operating a Representative Office furthers one or more of the Regulator's objectives as outlined in section 1(3) of FSA.
- 9.3.2 In making the assessment under paragraph 1(a), the Regulator may consider:
  - (a) whether the applicant is subject to supervision by a Non-GMC Financial Services Regulator;

- (b) whether the applicant's Non-GMC Financial Services Regulator in its home state has been made aware of the proposed application and has expressed itself as having no objection to the establishment by the applicant of a Representative Office in GMC; and
- (c) any other relevant matters.

### **Guidance**

The GPM sets out matters which the Regulator takes into consideration when making an assessment of the kind under Rule 9.3.1.

9.3.3 In relation to the assessment under Rule 9.3.1, amongst other considerations:

- (1) the applicant must demonstrate to the Regulator's satisfaction that it is fit and proper;
- (2) the applicant must demonstrate to the Regulator's satisfaction that its Principal Representative is fit and proper;
- (3) the Regulator will consider any matter which may harm or may have harmed the integrity or the reputation of the Regulator or GMC;
- (4) the Regulator will consider the activities of the applicant and the associated risks, and accumulation of risks, that those activities pose to the Regulator's objectives described under section 1(3) of FSA; and
- (5) the Regulator will consider the cumulative effect of factors which, if taken individually, may be regarded as insufficient to give reasonable cause to doubt the fitness and propriety of an applicant.

9.3.4 A Representative Office applying to change the scope of its Financial Services Permission, or to have a condition or restriction varied or withdrawn, must provide the Regulator with written details of the proposed changes.

### **Guidance**

A Representative Office applying to change the scope of its Financial Services License should bear in mind that it may have to change its legal structure. The process will involve a fundamental review of the Representative Office by the Regulator to ascertain whether the Representative Office meets all the relevant criteria to enable the proposed change in scope of its Financial Services License.

## **9.4 Withdrawal of a Financial Services License**

9.4.1 A Representative Office seeking to have its Financial Services License withdrawn must submit a request in writing stating:

- (1) the reasons for the request;

- (2) that it has ceased or will cease to carry on the Regulated Activity of Operating a Representative Office in or from GMC; and
- (3) the date on which it ceased or will cease to carry on the Regulated Activity of Operating a Representative Office in or from GMC.

### **Guidance**

The Regulator may act on its own initiative to withdraw a Representative Office's Financial Services License.

## **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 GMC 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 Rulebook build upon these fundamental principles. Consequently, the Rules and Guidance elsewhere should not be seen as exhausting the implications of the Principles.
3. Breaching a Principle for Representative Offices makes a Representative Office liable to disciplinary action, and may indicate that it is no longer fit and proper to carry on a Regulated Activity or to hold a Financial Services Permission. The Regulator may consider withdrawing the Financial Services Permission on that basis.
4. The onus will be on the Regulator to show that the Representative Office has been at fault in some way, taking into account the standard of conduct required under the Principle in question.

## **9.6 Principles for Representative Offices**

### **Principle 1 - Integrity**

- 9.6.1 A Representative Office must observe high standards of integrity and fair dealing.

### **Principle 2 – Due skill, care and diligence**

- 9.6.2 In conducting its business activities, a Representative Office must act with due skill, care and diligence.

### **Principle 3 – Resources**

- 9.6.3 A Representative Office must maintain and be able to demonstrate the existence of adequate resources to conduct and manage its affairs

#### **Principle 4 – Relations with Regulators**

- 9.6.4 A Representative Office must deal with Regulators in an open and cooperative manner and keep the Regulator promptly informed of significant events or anything else relating to the Representative Office of which the Regulator would reasonably expect to be notified.

#### **9.7 General provisions**

- 9.7.1 A Representative Office must have a place of business within the geographical boundaries of GMC.

- 9.7.2 A Representative Office must not:

- (1) share an office with another Licensed Firm;
- (2) represent anyone other than itself or a member of its Group; or
- (3) permit any staff member to be an Employee of another Licensed Firm or Recognised Body.

#### **Guidance**

The Regulator would generally not consider a Representative Office to be sharing an office with a Licensed Firm if that Representative Office were located in serviced offices which were also the place of business of a Licensed Firm.

#### **9.8 Fitness and Propriety**

- 9.8.1 A Representative Office must at all times be fit and proper to hold a Financial Services License.

- 9.8.2 (1) A Representative Office must at all times have a Principal Representative who is resident in the Bhutan and who has satisfied the Regulator as to fitness and propriety.

(2) If the Principal Representative leaves the employment of a Representative Office, the Representative Office must designate a successor as soon as possible, and in any event within 28 days.

(3) If the Regulator considers that a Principal Representative designated under (1) or (2) is not fit and proper to fulfil the role for which he has been designated, it will give the Representative Office written notice to this effect.

(4) On receipt of a notice under (3), a Representative Office must within 28 days designate a new Principal Representative and notify the Regulator accordingly.

- 9.8.3 A Representative Office must ensure, as far as reasonably practical, that its Employees are fit and proper.

#### **Guidance**

1. The GPM sets out matters which the Regulator takes into consideration when making an assessment of the kind under Rule 9.8.3.
2. Where a Representative Office is no longer fit and proper or where its Principal Representative is no longer fit and proper, it will be in breach of these Rules and the Regulator may take steps to withdraw its Financial Services License. The GPM sets out matters which the Regulator takes into consideration when assessing the fitness and propriety of a Principal Representative.

### **9.9 Dealing with property**

- 9.9.1 A Representative Office must not hold or control money or other property belonging to another Person except to the extent that this is necessary to deal with its ordinary business operating expenses.

### **9.10 Solvency**

- 9.10.1 A Representative Office must notify the Regulator immediately upon becoming aware that it is unlikely to remain solvent in the near future or that it is insolvent.

#### **Guidance**

The requirement to notify is in respect of the institution of which the Representative Office forms a part.

### **9.11 Disclosure of regulatory status**

- 9.11.1 A Representative Office must not:

- (1) hold itself out as able to carry on a Regulated Activity other than Operating a Representative Office; or
- (2) otherwise misrepresent its status expressly or by implication.

- 9.11.2 (1) A Representative Office must take reasonable care to ensure that every key business Document which is in connection with the Representative Office carrying on the Regulated Activity of Operating a Representative Office includes one of the disclosures under this Rule.

- (2) A key business Document includes letterhead whether issued by post, fax or electronic means, written promotional materials, business cards, and websites but does not include compliment slips, or text messages.
- (3) The disclosure required under (1) is that the Representative Office is regulated by the Regulator as a Representative Office.

9.11.3 The Regulator's logo must not be reproduced by a Representative Office without express written permission from the Regulator, and can only be used in accordance with any conditions for use.

## **9.12 Clear, fair and not misleading**

### **General**

9.12.1 When communicating information to a Person in relation to a financial product or financial service, a Representative Office must take reasonable steps to ensure that the communication is clear, fair and not misleading.

9.12.2 A Representative Office must not, in any form of communication with a Person, attempt to limit or avoid any duty or liability it may have to that Person or any other Person under FSA, MKT or any other relevant legislation.

### **Marketing Material**

9.12.3 In Rule 9.12 and 9.13, "Marketing Material" means any material communicated to a Person in the course of marketing financial services or financial products or effecting introductions.

9.12.4 (1) A Representative Office must ensure that any Marketing Material communicated to a Person contains the following information:

- (a) the name of the Representative Office communicating the Marketing Material and on whose behalf the Marketing Material is being communicated;
- (b) the Representative Office's regulatory status as required under Rule 9.11.1; and
- (c) if the Marketing Material is directed at a specific class or category of investor, a clear statement to that effect and that no other Person should act upon it.

(2) If the Marketing Material is in the form of an insurance proposal, banking services proposal, Prospectus or other offering Document, which is capable of acceptance in due course, it must contain in a prominent position, or have attached to it, a statement that clearly:

- (a) describes the foreign jurisdiction and the legislation in that jurisdiction that applies to the financial product;
- (b) states the name of the relevant Non-GMC Financial Services Regulator in that jurisdiction;
- (c) describes the regulatory status accorded to the financial product by that regulator; and
- (d) includes the following warning:

"This document relates to a financial product which is not subject to any form of regulation or approval by the Regulator.

The Regulator has no responsibility for reviewing or verifying any Prospectus or other Documents in connection with this financial product. Accordingly, the Regulator has not approved this document or any other associated Documents nor taken any steps to verify the information set out in this document, and has no responsibility for it.

The financial product to which this document relates may be illiquid and/or subject to restrictions on its resale. Prospective purchasers should conduct their own due diligence on the financial product.

If you do not understand the contents of this document you should consult a licensed financial adviser".

- (3) A Representative Office must not distribute such marketing material if it becomes aware that the Person offering the financial product or financial service to which the Marketing Material relates is in breach of a regulatory or legal requirement that applies to that Person in relation to that product or service.

9.12.5 A Representative Office must take reasonable steps to ensure that no Person communicates or otherwise uses the Marketing Material on behalf of the Representative Office in a manner that amounts to a breach of the requirements in this Rule.

### **Past performance and forecasts**

9.12.6 A Representative Office must ensure that any Marketing Material containing information or representations relating to past performance, or any future forecast based on past performance or other assumptions, which is provided to a Person is clear, fair and not misleading and contains a prominent warning that past performance is not necessarily a reliable indicator of future results.

### **9.13 Record keeping**

9.13.1 A Representative Office must, for a minimum of six years, maintain sufficient records in relation to each activity and function of the Representative Office. These must include, where applicable, any Marketing Material issued, distributed or otherwise communicated by, or on behalf of, the Representative Office.

### **9.14 Communication with the Regulator**

9.14.1 A Representative Office must ensure that any communication with the Regulator is conducted in the English language.

## **9.15 Regulatory Processes**

### **Notifications**

9.15.1 A Representative Office must notify the Regulator as soon as reasonably practical of any change in its:

- (1) name;
- (2) legal status;
- (3) Controller(s); or
- (4) address.

9.15.2 A Representative Office must notify the Regulator as soon as reasonably practical of:

- (1) any breach of a Rule or of a provision of Regulations or Rules by the Representative Office; and
- (2) any materially adverse information which would on reasonable grounds be considered likely to affect the fitness and propriety of the Representative Office or Principal Representative.

### **Lead regulation**

9.15.3 If requested by the Regulator, a Representative Office must provide the Regulator with information that it or another member of its Group has provided to a Non-GMC Financial Services Regulator.

### **Guidance**

Under sections 215 to 217 of FSA the Regulator may exercise its powers for the purpose of assisting other Regulators or agencies.

## **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 Licensed Firm or Recognised Body's overall business objectives and risk strategies, taking into account the long-term financial safety and soundness of the Licensed Firm 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 Licensed Firm 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 Licensed Firm 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 Licensed Firm 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 Licensed Firm 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 Licensed Firm 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 Licensed Firm, Recognised Body and the members of their Governing Bodies and the senior management to ascertain whether the Licensed Firm 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. The Governing Body may delegate certain responsibilities to designated senior management committees where appropriate, for example an Asset and Liability Committee (ALCO), as contemplated in PRU.

6. 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 their decision making and judgment (see paragraph 11 of this Appendix). Appropriate succession planning should also form part of the Governing Body's internal governance practices.
7. 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.
8. 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 (see paragraph 11 of this Appendix, and the GPM) of the Governing Body or a committee of the Governing Body (see paragraph 9A(c)).

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

9. 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, risk nomination, remuneration and ethics/compliance committees. In some cases, an ALCO, as referenced in paragraph 5, will be a committee of the Governing Body rather than a management committee. 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. Committees should be made up of members with the knowledge, skills, experience and independence appropriate to the nature of the committee.

9A 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.

- d. **Audit Committee** - An audit committee should include members with relevant skills and experience, including in the areas of audit practice, financial reporting and accounting and is responsible for, among other things:

- i. monitoring the integrity of the financial statements and reviewing significant financial reporting judgements contained in them;
  - ii. reviewing internal financial controls and, unless expressly addressed by a separate risk committee or by the Governing Body itself, internal controls and risk management systems;
  - iii. monitoring and reviewing the effectiveness of the internal audit function;
  - iv. making recommendations to the Governing Body in relation to the appointment, re-appointment, removal and terms of engagement, including remuneration, of the external auditor;
  - v. reviewing and monitoring the external auditor's independence and objectivity and the effectiveness of the audit process;
  - vi. developing and implementing policy on the engagement of the external auditor to supply non-audit services; and
  - vii. reviewing the adequacy of arrangements by which staff may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action.
- e. **Risk committee** - a risk committee is responsible for, among other things:
- i. advising the Governing Body on the overall risk appetite, overseeing senior management's implementation of the risk management strategy, reporting on the risk culture, and interacting with and overseeing the risk management function;
  - ii. overseeing the strategy of the Licensed Firm or Recognised Body for:
    - the management of capital and liquidity; and
    - dealing with all the relevant risks;
  - iii. ensuring that the strategy is consistent with the established risk appetite; and
  - iv. receiving and reviewing regular reports about:
    - the Licensed Firm's or Recognised Body's risk profile;
    - the risk profile in the light of the approved risk appetite and risk limits; and
    - any limit breaches and actions taken as a result of such breaches.

- f. **Nomination committee** - a nomination committee is responsible for making recommendations to the Governing Body for the appointment of new Directors, having assessed such individuals to ensure they are fit and proper with relevant knowledge, skills and expertise. The committee may also assess individuals to be appointed to senior management, including Approved Persons and Key Individuals. It should aim to ensure that the Governing Body is appropriately balanced with a view to the best interests of the entity. The committee may also assess the performance of the Governing Body and senior management.
- g. **Remuneration committee** - a remuneration committee is responsible for developing, adopting and overseeing a written Remuneration policy; see Appendix 1.2.
- h. **Ethics/compliance committee** - an ethics/compliance committee is responsible for overseeing the arrangements that are in place to support appropriate conduct of business by a Licensed Firm or Recognised Body in line with the corporate values, professional standards and code of ethics referred to in paragraph 2 of this Appendix. This can include promoting proper decision-making, compliance with laws, regulations and internal rules relating to the conduct of business and due consideration of reputational risks associated with these that may arise.

### **Independence and objectivity**

10. The Governing Body should establish clear and objective independence criteria which should be met by a sufficient number of members of the Governing Body and any committees it establishes to promote objectivity and independence in decision making by the Governing Body, particularly the independence of the relevant chair.
11. A Non-Executive Director will not be considered to be an Independent Non- Executive Director where one or more of the following criteria are met:
  - a. they have already served as a member of the Governing Body for a significant period;
  - b. they have been an Employee of the Licensed Firm or Recognised Body or its Group within the last five years;
  - c. they have or have had, within the last three years, a material business relationship with the Licensed Firm or Recognised Body, either directly or as a Partner, Shareholder, Director or senior Employee of another body that has such a relationship with that entity;
  - d. they receive or have received, in the last three years, additional remuneration or payments from the Licensed Firm or Recognised Body apart from a Director's fee, or participate in the Licensed Firm's or Recognised Body's share option or performance-related pay scheme, or are a member of the Licensed Firm's or Recognised Body's pension scheme;

- e. they are or have been a Director, Partner or Employee of a firm which is the Licensed Firm's or Recognised Body's external auditor;
- f. they have close family ties with any of the Licensed Firm's or Recognised Body's advisers, Directors or senior Employees;
- g. they hold cross Directorships or have significant links with other Directors through involvement in other Companies or bodies;
- h. they represent a significant Shareholder.

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

12. 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 Licensed Firm 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 Licensed Firm 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**

13. 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.
14. 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.
15. 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.
16. 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).

## **A1.2 Best practice relating to Remuneration**

### **Guidance**

#### **Development and monitoring of the Remuneration structure**

1. To ensure that the Remuneration structure and strategies of the Licensed Firm or Recognised Body are appropriate to the nature, scale and complexity of the Licensed Firm or Recognised Body's business, the Governing Body should take account of the risks to which the Licensed Firm or Recognised Body could be exposed as a result of the conduct or behaviour of its Employees. The Governing Body should play an active role in developing the Remuneration strategy and policies of the Licensed Firm or Recognised Body. A Remuneration committee of the Governing Body could play an important role in the development of the Licensed Firm or Recognised Body's Remuneration structure and strategy.
2. For this purpose, particularly where Remuneration structure and strategies contain performance-based Remuneration (see also Guidance points 7 and 8 below), consideration should be given to various elements of the Remuneration structure such as:
  - a. the ratio and balance between the fixed and variable components of Remuneration and any other benefits;
  - b. the nature of the duties and functions performed by the relevant Employees and their seniority within the Licensed Firm or Recognised Body;
  - c. the assessment criteria against which performance-based components of Remuneration are to be awarded; and
  - d. the integrity and objectivity of the process of performance assessment against the set criteria.

3. Generally, not only the senior management but also the Persons Undertaking Key Control Functions should be involved in the Remuneration policy-setting and monitoring process to ensure the integrity and objectivity of the process.

### **Who should be covered by Remuneration policy**

4. A Licensed Firm or Recognised Body's Remuneration policy should, at a minimum, cover those specified in Rule 3.3.42(1)(c). Accordingly, the members of the Governing Body, the senior management, the Persons Undertaking Key Control Functions and any Major Risk-Taking Employees should be included in the Licensed Firm or Recognised Body's Remuneration policy. With the exception of the 'senior management', all the other three categories attract their own definitions. Although the expression "senior management" carries its natural meaning, Rule 3.3.41(3) describes the senior management's role as the "day-to-day management of the Licensed Firm or Recognised Body's business...". Guidance point 3 under Rule 3.3.3 gives further clarification as to who may perform senior management functions.

### **Remuneration of Persons Undertaking Key Control Functions**

5. Any performance based component of Remuneration of Persons Undertaking Key Control Functions as well as other Employees undertaking activities under the direction and supervision of those Persons should not be linked to the performance of any business units which are subject to their control or oversight. For example, where risk and compliance functions are embedded in a business unit, a clear distinction should be drawn between the Remuneration structure applicable to those Persons Undertaking Key Control Functions and the Employees undertaking activities under their direction and supervision on the one hand and the other Employees in the business unit on the other hand. This may be achieved by separating the pools from which Remuneration is paid to the two groups of Employees, particularly where such Remuneration comprises performance based variable Remuneration.

### **Use of variable Remuneration**

6. Where a Licensed Firm Person or Recognised Body includes in its Remuneration structure performance based variable components (such as bonuses, equity participation rights such as share based awards or other benefits), especially if they form a significant portion of the overall Remuneration structure, or Remuneration of any particular Employees or class of Employees, the Governing Body should ensure that there are appropriate checks and balances relating to their award. This is because, while such performance based Remuneration is an effective tool in aligning the interests of the Employees with the interests of the Licensed Firm or Recognised Body, if used without necessary checks and balances, it could lead to inappropriate risk taking by Employees.
7. Therefore, the Governing Body should, when using any performance based variable component in the Licensed Firm or Recognised Body's Remuneration structure, ensure that:

- a. the overall Remuneration structure contains an appropriate mix of fixed and variable components. For example, if the fixed component of Remuneration of an Employee is very small relative to the variable (e.g. bonus) component, it may become difficult for the Licensed Firm or Recognised Body to reduce or eliminate bonuses even in a poor performing financial year;
- b. there are clear and objective criteria for allocating performance-based Remuneration (see below in Guidance point 8);
- c. there are appropriate adjustments for the material 'current' and 'future' risks associated with the performance of the relevant Employee, as the time horizon in which risks could manifest themselves may vary. For example, where practicable, the measurement of performance should be set in a multi-year framework. If this is not practicable, there should be deferral of vesting of the benefits or retention or claw-back arrangements applicable to such components as appropriate;
- d. there are appropriate prudential limits, consistent with the Licensed Firm or Recognised Body's capital management strategy and its ability to maintain a sound capital base taking account of the internal capital targets or regulatory capital requirements;
- e. in the case of Employees involved in the distribution of financial products whose Remuneration is Commission based, there are adequate controls and monitoring to mitigate marketing which is solely Commission driven; and
- f. the use of guaranteed bonuses is generally avoided as such payments are not consistent with sound risk management and performance-based rewards. However, there may be circumstances where such guaranteed bonuses may be paid to attract new Employees (for example to compensate bonuses forfeited from the previous employer).

### **Performance assessment**

8. The performance criteria applicable, particularly relating to the variable components of Remuneration, as well as the performance assessment against such criteria, contribute to the effectiveness of the use of performance-based Remuneration. Therefore, the Governing Body should ensure that such criteria:
  - a. are clearly defined and objectively measurable;
  - b. include not only financial but also non-financial elements as appropriate (such as compliance with regulation and internal rules, achievement of risk management goals as well as compliance with market conduct standards and fair treatment of Customers);
  - c. take account of not only the individual's performance, but also the performance of the business unit concerned and the overall results of the Licensed Firm or Recognised Body and, if applicable, the Group; and

- d. do not treat growth or volume as an element in isolation from other performance measurements included in the criteria.

## **Severance payments**

9. Where a Licensed Firm or Recognised Body provides discretionary payouts on termination of employment ("severance payments", also called "golden parachutes"), such payment should generally be subject to appropriate limits or shareholder approval. In any case, such payouts should be aligned with the Licensed Firm or Recognised Body's overall financial condition and performance over an appropriate time horizon and should not be payable in the case of failure or threatened failure of the Licensed Firm or Recognised Body, particularly to an individual whose actions may have contributed to the failure or potential failure of the Licensed Firm or Recognised Body.

## **APP2 TRADE REPOSITORY**

### **A2.1 Requirements applicable to Trade Repositories**

#### **Disclosure of market data by Trade Repositories**

- A2.1.1** A Trade Repository must provide data in line with regulatory and industry expectations to relevant regulatory authorities and the public. Such information must be comprehensive and at a level of detail sufficient to enhance market transparency and support other public policy objectives.

#### **Guidance**

1. At a minimum, a Trade Repository should provide aggregate data on open positions and transaction volumes and values and categorised data (for example, aggregated breakdowns of trading counterparties, Reference Entities, or currency breakdowns of products), as available and appropriate, to the public.
2. Relevant regulatory authorities should be given access to additional data recorded in a Trade Repository, including participant-level data, as relevant to the respective mandates and legal responsibilities of the relevant regulatory authority (such as market regulation and surveillance, oversight of exchanges, and prudential supervision or prevention of market misconduct).

#### **Processes and procedures**

- A2.1.2** A Trade Repository must have effective processes and procedures to provide data to relevant authorities in a timely and appropriate manner to enable them to meet their respective regulatory mandates and legal responsibilities.

#### **Guidance**

A Trade Repository should have procedures to facilitate enhanced monitoring, special actions, or official proceedings taken by relevant authorities in relation to data on

troubled or failed participants by making relevant information in the Trade Repository available in a timely and effective manner. The provision of data from a Trade Repository to relevant authorities should be supported from a legal, procedural, operational, and technological perspective.

### **Information systems**

- A2.1.3 A Trade Repository must have robust information systems that enable it to provide accurate current and historical data. Such data should be provided in a timely manner and in a format that permits it to be easily analysed.

### **Guidance**

A Trade Repository should collect, store, and provide data to participants, regulatory authorities, and the public in a timely manner and in a format that can facilitate prompt analysis. Data should be made available that permits both comparative and historical analysis of the relevant markets.