



QATAR FINANCIAL CENTRE

**REGULATORY
AUTHORITY**

Enforcement Policy Statement 2012

QFCRA Policy 2012-03

The Board of the Qatar Financial Centre Regulatory Authority issues the following statement of policy prepared under the *Financial Services Regulations*, articles 78 and 79 and schedule 1, paragraph 19.3.

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PHILLIP THORPE

Chairman

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FOREWORD

Since the launch of the Qatar Financial Centre Regulatory Authority (the “Regulatory Authority”) in 2005 there has been a continued expansion of activity in the QFC. The Regulatory Authority has successfully established an effective principles-based regulatory regime which supports such expansion and offers firms, customers and investors a financial services environment in which they can have confidence.

A necessary component of an effective regulatory regime is a framework that enables the Regulatory Authority to take appropriate enforcement action where breaches of the Rules and Regulations occur. This serves to reinforce the Regulatory Authority’s commitment to maintaining the highest standards of behaviour in the QFC and addressing conduct which may cause damage to the reputation of the QFC.

While such breaches are rare, unfortunately they do, at times, occur. When they do, the Regulatory Authority will act swiftly and decisively, and in a manner that is consistent with its stated policies and procedures, to achieve an effective and proportionate outcome.

Much of what follows in this publication will therefore not apply to the vast majority of the QFC regulated community. It is, however, intended that this Policy Statement will assist those firms and individuals that are subject to enforcement action by the Regulatory Authority. Perhaps more importantly, it is intended that this Policy Statement will provide assurance that, irrespective of whether they dislike a particular decision, those affected by enforcement actions will be treated in a way that is fair and transparent.

CHAPTER 1 – INTRODUCTION

Introduction

- 1.1 This Policy Statement contains information on the policies, processes and procedures of the Regulatory Authority in relation to its use of its enforcement powers.
- 1.2 The Regulatory Authority strives to follow and apply this Policy Statement consistently. However, as no two enforcement matters are the same, the information is general and is not to be taken to bind the Regulatory Authority.

The legal basis of the Regulatory Authority and its enforcement powers

- 1.3 The Qatar Financial Centre and its agencies are established by Law No. 7 of 2005 of the State of Qatar (as amended) (the "QFC Law"). In particular, Article 8 of the QFC Law establishes the Regulatory Authority "... for the purposes of regulating, licensing and supervising banking, financial and insurance-related businesses carried on in or from the QFC ...". The constitution of the Regulatory Authority is set out in Schedule 4 to the QFC Law. Article 9 of the QFC Law confers on the Minister of Economy and Finance of the State of Qatar the power to make Regulations "... to achieve [inter alia, the Regulatory Authority's] objectives or to aid it to implement, carry out and enforce its powers and functions ...". Pursuant to that Article, the Minister, with the consent of the Council of Ministers, has enacted the Financial Services Regulations (the "FSR").
- 1.4 The powers and procedures of the Regulatory Authority in relation to investigation and enforcement are principally set out in Parts 8, 9 and 10 (respectively, articles 48 to 57, 58 to 69, and 70 to 79) of the FSR. A reference in this Policy Statement to an article by number is a reference to the article by that number in the FSR, unless the contrary is stated.
- 1.5 Article 8 of the QFC Law also establishes:
 - a. a Tribunal called The Qatar Financial Center Regulatory Tribunal (the "Regulatory Tribunal"); and
 - b. as a court of the QFC, a court called the Civil and Commercial Court of The Qatar Financial Center (the "Civil and Commercial Court").
- 1.6 The FSR refer to the Regulatory Tribunal as "the Appeals Body" and the Civil and Commercial Court as "the Tribunal", as the QFC Law formerly did. An amendment of the FSR to change references in the FSR to "the Appeals Body" and "the Tribunal" to references to the Regulatory Tribunal and the Civil and Commercial Court respectively has been prepared, but has not yet been signed by the Council of Ministers. Consequently, this Policy Statement speaks of the Regulatory Tribunal and the Civil and Commercial Court although the FSR continue to refer to them as "the Appeals Body" and "the Tribunal".

- 1.7 Article 15 gives the Regulatory Authority the power to make rules in relation to the various matters set out in that article. Article 15(6) specifically gives the Regulatory Authority the power to make policy statements as it thinks appropriate.
- 1.8 This Policy Statement is issued under article 15(6) and paragraph 19.3 of schedule 1 to the FSR. This Policy Statement also relies on article 79 to the extent that it sets out the Regulatory Authority’s policy with respect to the imposition, and amount, of financial penalties under article 59. It replaces the Regulatory Authority’s Financial Services (Financial Penalties and Public Censures) Policy Statement 2009, which was issued on 27 September 2009.
- 1.9 Expressions used in this Policy Statement and in the FSR have the same meaning in this Policy Statement as in the FSR, unless the contrary is stated.
- 1.10 Although this Policy Statement gives information on the policies, processes and procedures of the Regulatory Authority and, to the extent possible, will be followed consistently by the Regulatory Authority, article 69 provides that any procedure under the FSR or related regulations is not invalidated because of any procedural irregularity (unless the Civil and Commercial Court declares the procedure to be invalid).
- 1.11 For the purposes of article 69:
- a. **procedure** includes the making of a decision, the conduct of a hearing, the giving of a notice, and any proceedings (legal or otherwise); and
 - b. **procedural irregularity** includes a reference to a defect, irregularity or deficiency of notice or time.

Structure of the Enforcement Policy Statement

- 1.12 The Chapters of this Policy Statement are structured to provide the information set out in the following table:

Chapter	Contents
Chapter 1	General introduction and overview of this Policy Statement
Chapter 2	The Regulatory Authority’s general approach to enforcement and how it exercises its disciplinary and enforcement powers
Chapter 3	The criteria that the Regulatory Authority applies when assessing misconduct and deciding what cases to investigate
Chapter 4	The Regulatory Authority’s approach to conducting investigations and exercising its information-gathering and investigation

	powers under the FSR
Chapter 5	The Regulatory Authority's decision-making processes in relation to enforcement investigations and disciplinary action
Chapter 6	The Regulatory Authority's policy in relation to the imposition of financial penalties and the publication of public censures
Chapter 7	The Regulatory Authority's policy in relation to Enforceable Undertakings
Chapter 8	The Regulatory Authority's policy in relation to settlement
Chapter 9	The Regulatory Authority's policy in relation to taking action on its own initiative
Chapter 10	The Regulatory Authority's policy in relation to prohibitions and restrictions
Chapter 11	Contains information about other powers available to the Regulatory Authority and other matters that may arise in relation to enforcement investigations, for example, injunctions and restitution orders
Chapter 12	The Regulatory Authority's policy in relation to publicity about enforcement and disciplinary action

1.13 This Policy Statement will be kept under review and amended as appropriate in the light of further experience and developing law and practice.

CHAPTER 2 — APPROACH TO ENFORCEMENT

Introduction

- 2.1 The purpose of this Chapter is to set out the Regulatory Authority's approach to the exercise of its enforcement and disciplinary powers and the fundamental considerations that apply to the exercise of those powers.
- 2.2 The Regulatory Authority uses its enforcement powers in an efficient and flexible manner to support its objectives, which are set out in article 12(3). For example, the Regulatory Authority's objectives of maintaining the integrity of the QFC and the provision of appropriate protection to customers of those licensed to carry on business in the QFC are met by taking enforcement action against firms who mislead their clients. The Regulatory Authority also has regard to the 'Principles of Good Regulation' in article 13 when using its enforcement powers. In particular, it has regard to the need to use its resources in the most efficient and economic way and the principle that the Regulatory Authority should exercise its powers in a fair and transparent manner.

Risk-based approach

- 2.3 The Regulatory Authority adopts a risk-based approach to regulation. This is set out in more detail in the Regulatory Authority's guide entitled *A Guide to our Approach to Good Regulation*. This risk-based approach ensures that its resources are focused on those areas that present the greatest risk to the achievement of its objectives. As such, it is not considered appropriate or necessary to use the Regulatory Authority's enforcement powers in relation to every contravention of relevant requirements.
- 2.4 Enforcement is one of a range of regulatory tools available to the Regulatory Authority. The rigorous authorisation process, the expected culture of compliance and the risk-based approach to supervision reduce the risk of conduct requiring enforcement action.
- 2.5 If enforcement action is necessary or appropriate, the Regulatory Authority exercises its powers only to the extent necessary to achieve its regulatory objectives in a way that ensures that the legitimate activities of participants in the QFC are not interfered with unnecessarily.

Enforcement principles

- 2.6 The Regulatory Authority's risk-based approach to enforcement is based on the following principles:
- a. **Proportionality:** The Regulatory Authority adopts a flexible approach to enforcement in keeping with its risk-based approach to regulation, focusing on reducing the risk of non-compliance wherever possible and applying its resources in the most efficient way.

- b. **Acting decisively:** When the Regulatory Authority detects conduct that may threaten the integrity of the QFC, it acts swiftly and decisively to stop that conduct, minimise the effects and prevent similar conduct recurring. However, in doing so, it acts fairly, openly and accountably.
- c. **Procedural fairness and integrity:** The Regulatory Authority takes enforcement action in accordance with its policies and procedures only when necessary to ensure that the QFC is operating efficiently and transparently, and that its participants are operating in a way that promotes confidence in the financial services community and its customers. The Regulatory Authority's procedures respect the rights of those with whom it deals. The Regulatory Authority recognises the rules of procedural fairness and the right of appeal.
- d. **Keeping the QFC financial services community informed:** The Regulatory Authority ordinarily publicises outcomes arising from an enforcement action taken. This public accountability and transparency helps maintain the integrity of the QFC by deterring contraventions of the QFC Regulations and Rules and ensures the fair and transparent use of the Regulatory Authority's enforcement powers. The Regulatory Authority does not generally publicise the commencement of investigations or provide information on their progress.
- e. **Cooperation and mutual assistance:** The Regulatory Authority works closely with other regulators in Qatar and international regulators and regulatory associations to ensure the effective exchange of information and adherence to the highest common standards. This is of particular significance in respect of enforcement in the light of the increasing importance of being able to obtain information from other jurisdictions to complete an investigation or take disciplinary action.

Principles-based actions for authorised firms and approved individuals

- 2.7 The law governing the Regulatory Authority's approach to regulation is set out in the FSR and the rules made and guidance given under those Regulations. The Rules contain principles to be observed by authorised firms and approved individuals: in particular, the principles applicable to authorised firms in the conduct of regulated activities are set out in the Principles Rulebook ("PRIN") and the principles applicable to approved individuals are set out in the Individuals Rulebook ("INDI").
- 2.8 The Regulatory Authority generally takes enforcement action on the basis of contraventions of these high level principles: for example, where a person has contravened several relevant requirements and the evidence also supports a contravention of one or more principles, the Regulatory Authority tends to use its enforcement powers on the basis of the contraventions of principles. The Regulatory Authority considers that giving more prominence to high level principles in its enforcement actions provides clear examples of how the principles

work in practice and emphasises the importance of having a principles-based compliance culture in firms that focuses on reducing systemic risks. A principles-based approach to enforcement supports the Regulatory Authority in achieving its regulatory objectives.

Guidance and other materials

- 2.9 The Regulatory Authority provides guidance under article 17 to assist persons in meeting their regulatory obligations under specific principles and rules: for example, the Regulatory Authority may write to authorised firms providing practical guidance on a particular regulatory requirement regarding the preparation of prudential returns.
- 2.10 Such guidance does not replace any rules and regulations that are applicable to a person and is only intended to illustrate ways (but not the only ways) in which a person may comply with the relevant principles and rules. Guidance does not set out the minimum standard of conduct needed to comply with a rule, nor is there any presumption that departing from guidance indicates any contravention of relevant requirements.
- 2.11 Where guidance is relevant to a matter, the Regulatory Authority may take it into account in assessing whether it is appropriate to use its enforcement powers. The extent to which guidance is relevant in a particular case depends on the nature and timing of the guidance and the circumstances of the case. The Regulatory Authority applies the standards of conduct expected under such guidance at the time the guidance was given. There are many ways in which the Regulatory Authority may take into account such guidance. Some examples are:
- a. to explain the regulatory context in which the conduct took place;
 - b. to consider the overall seriousness of conduct: for example, where a firm had been previously advised of the standards expected of it in relation to the conduct that resulted in a contravention; or
 - c. to assess any extenuating circumstances and defences raised by a person.

Senior management obligations

- 2.12 The Regulatory Authority expects the senior management of a firm to satisfy their obligations to the firm and to the Regulatory Authority. The Regulatory Authority expects senior managers to ensure that the firm's policies, procedures, systems and controls identify and manage risks to the firm appropriately and adequately, particularly in relation to the firm's regulatory obligations.
- 2.13 Where a firm has been involved in contraventions and its senior managers are themselves complicit in the misconduct of the firm, the Regulatory Authority, where it considers it appropriate to do so, takes enforcement action against individuals as well as the firm: for example, where an authorised firm's

compliance systems have failed and the approved individuals of the firm are complicit in those failures, the Regulatory Authority takes action against the firm and the individuals. In such cases, the Regulatory Authority believes that enforcement action emphasises the importance of the obligations of the senior managers of firms and supports our regulatory objectives, particularly by deterring future similar misconduct by other individuals.

- 2.14 However, the Regulatory Authority will only take disciplinary or enforcement action against a senior manager, or any other person, where there is evidence of personal culpability or knowing concern, as set out in article 85, on the part of the individual concerned. Personal culpability arises where the behaviour was deliberate or reckless or where the standard of behaviour was below that which would be reasonable in all the circumstances at the time the conduct occurred.
- 2.15 The Regulatory Authority does not discipline a person on the basis of vicarious liability (that is, holding them responsible for the acts of others), provided appropriate delegation and supervision has taken place.
- 2.16 The Regulatory Authority will not take action against a senior manager simply because a regulatory failure has occurred in an area of the business for which he is responsible. Rather, the Regulatory Authority will consider whether the individual's conduct was below the standard which would be reasonable in all the circumstances at the time the conduct occurred. Accordingly, a senior manager, or any other person, will not be considered by the Regulatory Authority to have contravened a relevant requirement if he has exercised due skill, care and diligence when assessing information, has reached a reasonable conclusion and has acted reasonably on it.
- 2.17 In determining whether or not the conduct of a person who has managerial responsibilities at a firm fell short of the standard reasonably to be expected of him, the Regulatory Authority takes into account:
- a. whether he exercised reasonable care when considering the information available to him;
 - b. whether he reached a reasonable conclusion and acted reasonably on it;
 - c. the nature, scale and complexity of the firm's business;
 - d. his role and responsibility as an approved individual performing a controlled function;
 - e. the knowledge he had, or should have had, of regulatory concerns, if any, arising in the business under his control.
- 2.18 Where disciplinary or enforcement action is taken against a senior manager, or any other person, the onus is on the Regulatory Authority to show that the individual contravened a relevant requirement or was otherwise knowingly

concerned in such a contravention.

Cooperation

- 2.19 Authorised firms, under Principle 13 of PRIN, and approved individuals, under Principle 4 of INDI, are obliged to maintain a cooperative relationship with the Regulatory Authority. As such, the Regulatory Authority gives credit to a person for cooperating with the Regulatory Authority only when the cooperation offered by the person goes above and beyond the person's obligations to the Regulatory Authority: for example, simply doing any of the following is not considered to be cooperation beyond what a person is obliged to do:
- a. complying with a notice from the Regulatory Authority under article 48 or 52 by providing the information required in the notice;
 - b. providing the Regulatory Authority with a report required by the Regulatory Authority under article 49; or
 - c. reporting a contravention to the Regulatory Authority to comply with reporting obligations to the Regulatory Authority under Principle 13 of PRIN.
- 2.20 The Regulatory Authority considers the cooperation offered by a person in assessing the person's overall relationship with the Regulatory Authority, and whether in that context it is appropriate for the Regulatory Authority to exercise its enforcement powers. The Regulatory Authority also considers cooperation offered by a person in deciding what enforcement action is appropriate in a particular matter.
- 2.21 Generally, a firm is given recognition for being open and cooperative with the Regulatory Authority: for example, where a firm and its senior managers have established a strong compliance history with the Regulatory Authority by being conscientious in performing their regulatory obligations to be communicative and cooperative, the Regulatory Authority takes this into account in exercising its enforcement powers in relation to that firm.
- 2.22 The assessment of the level of cooperation offered by a party depends on the particular circumstances of the matter. Generally, the Regulatory Authority expects a person to cooperate voluntarily from an early stage of the enforcement process. The Regulatory Authority also considers any assistance and cooperation offered by the person to the Regulatory Authority and to persons affected by the conduct of the person. However, cooperation is only one of many factors that the Regulatory Authority considers in deciding to use its enforcement powers and even cooperation by a person does not guarantee that enforcement action will not be taken against him.
- 2.23 There are many ways in which a person can proactively cooperate with the Regulatory Authority. By way of example, in assessing an appropriate regulatory

response, the Regulatory Authority would take into account cooperation demonstrated by a person in any of the following (non-exhaustive) ways:

- a. spontaneously and promptly reporting to the Regulatory Authority the occurrence of any apparent contravention, including details of material facts and the firm's immediate action in addressing the contravention or issues;
- b. taking responsibility for the matter and being open and communicative with the Regulatory Authority in discussions about the matter. A person should provide the Regulatory Authority not only with information requested or required by it but also with other relevant information which the Regulatory Authority might not otherwise have known about;
- c. identifying the effect of the firm's actions on its customers and clients and agreeing with the Regulatory Authority on remedies, including any appropriate restitution to customers and clients;
- d. accepting disciplinary liability for the matter at an early stage in the investigation or in the disciplinary process;
- e. being proactive in bringing the matter to an early conclusion (for example by admitting the facts of the matter);
- f. taking all practicable steps to limit any damage to the interests of other participants in the QFC;
- g. undertaking external audits and independent expert reviews of the firm's systems, policies and processes and sharing the findings with the Regulatory Authority;
- h. implementing steps identified by the firm's investigation into the causes of apparent contraventions and keeping the Regulatory Authority informed of the firm's action plan and progress in the implementation of those steps;
- i. taking appropriate steps in respect of individuals involved in the apparent contravention, including disciplinary action or dismissal in accordance with the firm's employment processes;
- j. waiving legal professional privilege attaching to any document provided to the Regulatory Authority; and
- k. devoting resources and manpower, including that of senior managers of the firm, to assist the Regulatory Authority in its assessment or investigation of the matter.

2.24 The Regulatory Authority considers that taking into account cooperation offered by a person in decisions about the use of its enforcement powers helps the Regulatory Authority to meet its regulatory objectives. Cooperation offered by

persons is likely to reduce the resources and time required to deal with a matter and helps the Regulatory Authority to use its resources more efficiently in mitigating risks to the regulatory system. Cooperation by persons also supports a culture of compliance within the QFC and encourages firms to accept responsibility for the detrimental consequences of their conduct by, for example, paying restitution and providing remedies to customers.

CHAPTER 3 – ASSESSMENT OF ALLEGATIONS

Introduction

- 3.1 This Chapter sets out the Regulatory Authority’s initial assessment process to identify those matters where some form of enforcement or disciplinary action is likely to be appropriate, including those cases where it is appropriate to appoint investigators.
- 3.2 As part of the assessment process, the Regulatory Authority considers allegations of misconduct against certain criteria to ensure consistency and transparency in deciding what action, if any, should be taken in response to allegations.
- 3.3 After assessing an allegation, the Regulatory Authority may decide to take no action, to commence an investigation (with or without the appointment of investigators), to refer the matter to another agency or to take some other appropriate action.

Sources of allegations

- 3.4 There are a number of ways in which the Regulatory Authority may become aware of a matter that warrants enforcement action.
- 3.5 The Regulatory Authority may become aware of potential misconduct or contraventions through its normal regulatory operations, such as the conduct of risk assessments as part of its supervision of authorised firms. Possible contraventions may also be brought to the attention of the Regulatory Authority through a firm’s breach-reporting obligations under principle 13 of PRIN.
- 3.6 The Regulatory Authority may also become aware of possible misconduct through complaints received from various external sources (such as employees or clients of authorised firms), or referrals from other government agencies or by participants in the QFC.

Assessment

- 3.7 The Regulatory Authority’s Enforcement Department is responsible for assessing allegations of misconduct and the Regulatory Authority’s Director of Enforcement decides whether a matter should be investigated.
- 3.8 The assessment of allegations involves a review of the information available to the Regulatory Authority, the law, the assessment criteria described below and the objectives of the Regulatory Authority to determine how the Regulatory Authority’s discretion should be exercised and what action, if any, is required.
- 3.9 The steps taken during the course of an assessment may vary depending on the nature, complexity and circumstances of the allegations.

Information-gathering in the assessment process

- 3.10 The Regulatory Authority may request further information by way of correspondence or an interview with the complainant to help it assess the allegation. The Regulatory Authority may also approach the person who is the subject of the Regulatory Authority's concerns to seek further information.
- 3.11 At the assessment stage the Regulatory Authority is flexible about how it seeks information. The Regulatory Authority generally obtains information voluntarily. An authorised firm may be contacted by the Regulatory Authority's staff responsible for supervising the firm, or staff from the Regulatory Authority's Enforcement Department, to obtain further information.
- 3.12 The Regulatory Authority may consider that it is appropriate or necessary to use its compulsory information-gathering powers to obtain further information about an allegation. At the assessment stage the Regulatory Authority may use the general information-gathering powers available to it under articles 48 and 49 to:
- a. require a person within the QFC to produce specified information;
 - b. seek an order of the Civil and Commercial Court requiring a person outside the QFC to provide specified information;
 - c. enter premises in the QFC and inspect and take copies of information or documents on the premises; or
 - d. require the production of a report under article 49 (see paragraphs 4.31 to 4.36 of this Policy Statement).

Assessment criteria

- 3.13 In assessing an allegation, the Regulatory Authority is guided by the objectives set out in article 12(3) and the Principles of Good Regulation in article 13.
- 3.14 To ensure consistency and transparency in decision-making, the Regulatory Authority assesses allegations against certain criteria. These assessment criteria are designed to deliver outcomes consistent with the priorities and objectives of the Regulatory Authority and the Principles of Good Regulation. The application of the criteria depends on the particular circumstances of a matter and not all the criteria are relevant to the assessment of every allegation. The criteria include:
- a. whether the Regulatory Authority has jurisdiction in the matter;
 - b. whether the alleged misconduct relates to a matter of strategic importance or significance to the Regulatory Authority or the QFC;
 - c. the nature of the alleged misconduct, including whether it was deliberate, reckless, minor or routine;

- d. the seriousness of the alleged misconduct, including whether it indicates problems of a widespread or systemic nature;
- e. the effect of the alleged misconduct, including whether it resulted in a benefit to the person concerned and actual or potential loss or detriment to others;
- f. the frequency and duration of the alleged misconduct, including whether it is ongoing and the time that has elapsed since it occurred;
- g. the likelihood of the alleged misconduct being proven, having regard to the availability, reliability and quality of the evidence of the alleged misconduct;
- h. the disciplinary record and compliance history of the person concerned, including whether the person has previously been warned about similar misconduct;
- i. the person's subsequent conduct after the alleged misconduct occurred, including whether they brought it to the Regulatory Authority's attention or sought to conceal the alleged misconduct, and any steps taken to address the causes and effects of the alleged misconduct;
- j. whether the person has offered or is likely to offer any assistance to the Regulatory Authority or persons affected by the alleged misconduct;
- k. the remedies and regulatory actions available to the Regulatory Authority;
- l. any remedies available to the persons affected by the alleged misconduct;
- m. whether another authority is able to take action against the alleged misconduct and the likelihood of such action being taken;
- n. whether any other authority (in Qatar or elsewhere) has sought the cooperation of the Regulatory Authority in relation to the alleged misconduct;
- o. whether the alleged misconduct undermines or damages the efficiency, transparency, integrity, financial stability, or reputation of, or confidence in, the QFC or the financial system; and
- p. whether, in all the circumstances, it would be appropriate for the Regulatory Authority to investigate the alleged misconduct to further its aims and objectives.

Outcomes of assessment

- 3.15 It is not necessarily appropriate to commence an investigation in response to every allegation made to the Regulatory Authority and the Regulatory Authority

has discretion to decide whether an investigation should be commenced in relation to allegations.

3.16 Depending on the outcome of the assessment, the Regulatory Authority's Director of Enforcement will determine how the Regulatory Authority's discretion should be exercised and what action, if any, is required. The possible outcomes of an assessment include:

- a. immediately taking disciplinary or enforcement action: for example, this might be appropriate where the facts and contraventions do not appear to be in dispute or where the person has indicated a willingness to resolve the matter by way of settlement;
- b. commencing an investigation (which may or may not involve the appointment of investigators under article 50);
- c. referring the alleged misconduct to another authority, in Qatar or elsewhere;
- d. taking no further action. The Regulatory Authority might decide this is the appropriate outcome where, for example:
 - i. there is no evidence that contraventions have occurred;
 - ii. although there is evidence of a contravention, any detriment caused by the contravention has been fully remedied and the persons responsible for the misconduct are no longer in the jurisdiction of the QFC;
 - iii. the complaint or allegation of misconduct is too vague or general to be satisfactorily investigated; or
 - iv. the Regulatory Authority considers that the issues raised or concerns identified relate to matters which would not be appropriate for the Regulatory Authority to become involved in.
- e. other action — the Regulatory Authority may consider any other action that is available or appropriate to the circumstances of the matter. This may include outcomes such as:
 - i. sending a private warning to the person responsible for the misconduct; or
 - ii. accepting an enforceable undertaking.

3.17 The Regulatory Authority records the outcome of its assessment of alleged misconduct in accordance with its internal procedures.

Financial crime and anti-money laundering

- 3.18 The Regulatory Authority has no criminal jurisdiction and, accordingly, any conduct it identifies which could constitute a breach of criminal law will be referred to the relevant Qatari or international authority in accordance with its obligations under Article 33 of the Criminal Procedure Code (Law No.(23) of 2004).
- 3.19 However, where the Regulatory Authority becomes aware of conduct which indicates that financial crime may have been, or may be about to be, committed, it will assess the allegation to ascertain whether there is any urgent or preventative action it can take to restrain the particular conduct. The Regulatory Authority will inform the relevant Qatari or international authorities of any action it is proposing to take and provide any such assistance as may be reasonably requested of the Regulatory Authority by the relevant authority.
- 3.20 This might arise if the Regulatory Authority were to become aware of conduct which suggests a breach of the law relating to anti-money laundering and combating terrorist financing.
- 3.21 Paragraph 2 of Schedule 2 to the FSR specifies that “[t]he Regulatory Authority is responsible for the detection and prevention of money laundering and terrorist financing in or from the QFC and, in particular, for ensuring, by monitoring, supervision, investigation, enforcement, and other ways, that Authorised Firms and other QFC Licensed Firms comply with requirements relating to the combating of money laundering and terrorist financing”.
- 3.22 As a “supervisory authority” under Article 42(2) of Law No. (4) of 2010 on Combating Money Laundering and Terrorism Financing, the Regulatory Authority has a statutory mandate to monitor QFC Designated Non-Financial Businesses and Professionals (“DNFBPs”) and the financial institutions it regulates.
- 3.23 Therefore, while the Regulatory Authority has no criminal jurisdiction, and will refer appropriate matters to the relevant Qatari or international authority, it does have jurisdiction to take regulatory action against DNFBPs, as well other persons falling within the Regulatory Authority’s jurisdiction, in respect of contraventions of relevant requirements set out in the Regulatory Authority’s Anti-Money Laundering and Combating Terrorist Financing Rules 2010 (AML/CFTR).

CHAPTER 4 – CONDUCT OF INVESTIGATIONS AND REGULATORY POWERS

Introduction

- 4.1 This Chapter sets out the Regulatory Authority’s general policy on conducting investigations and exercising its investigation and information-gathering powers under Part 8 of the FSR.
- 4.2 In any particular case, the Regulatory Authority decides what action to take, which powers to use and how to conduct the investigation having regard to all the circumstances of the matter.

Investigations by the Regulatory Authority

- 4.3 The commencement of an enforcement investigation is only one of the options available to the Regulatory Authority when it becomes aware of a matter that gives it cause for concern.
- 4.4 Having decided that it is appropriate to commence an investigation, the Regulatory Authority decides whether it is appropriate to appoint investigators under article 50.
- 4.5 It is possible that the Regulatory Authority will “investigate” a matter without formally appointing investigators under article 50. This might be appropriate, for example, where the facts and contraventions do not appear to be in dispute and the firm concerned has indicated very early on that it is prepared to resolve an issue by way of settlement; or where the matter can be investigated sufficiently and comprehensively without the need to exercise any formal powers over and above the Regulatory Authority’s general information-gathering powers.
- 4.6 The appointment of investigators under article 50 provides those investigators with additional powers over and above the general information-gathering powers available to the Regulatory Authority. These investigation powers are described in more detail in paragraphs 4.37 to 4.58 below.
- 4.7 In most cases, however, where the Regulatory Authority’s Enforcement Department decides to investigate a matter, investigators will be appointed and the start of the investigation is indicated by that appointment. It will be made clear to persons subject to investigation the basis on which the investigation is being conducted.

Appointment of investigators

- 4.8 Having decided that it is appropriate to appoint investigators, the Regulatory Authority must ensure that the grounds for appointing investigators are satisfied.
- 4.9 Article 50 sets out the general circumstances in which the Regulatory Authority may appoint an employee, or another competent person, to conduct an investigation and report to it. Those general circumstances are that it appears to

the Regulatory Authority that there may have been, may be or may be about to be a contravention of a relevant requirement, as defined in article 84, or that there is any other good reason for doing so.

- 4.10 It would not be helpful to try to specify in advance what amounts to "good reason" for appointing an investigator, since it depends upon the circumstances of the particular matter. In determining whether there is "good reason" in a particular case, the Regulatory Authority takes into consideration the same assessment criteria that it applies when considering allegations of misconduct, as well as any other factors relevant in the case.
- 4.11 Article 51 provides that the Regulatory Authority may also appoint investigators where, in relation to a company incorporated or branch registered under the Companies Regulations or a limited liability partnership (LLP) incorporated under the Limited Liability Partnership Regulations, there are circumstances suggesting that:
- a. the affairs of the company, branch or LLP are being or have been conducted with intent to defraud the creditors of the company or of any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner unfairly prejudicial to some part of its members;
 - b. any actual or proposed act or omission by or on behalf of the company, branch or LLP is or could be prejudicial to some part of its members;
 - c. any person concerned with the formation or management of the company, branch or LLP or its affairs has in connection therewith been guilty of fraud, misfeasance or other misconduct toward it or towards its members;
 - d. the members of the company, branch or LLP (or any of them) have not been given all the information with respect to its affairs to which they are entitled or which they might reasonably expect; or
 - e. the company has been carrying on, in or from the QFC, a business which is not permitted to be carried on in the QFC.
- 4.12 Under article 51(2), if the investigator considers it necessary for the purposes of the investigation, they may also investigate and report on the affairs of any subsidiary or branch, or any subsidiary of a parent entity, of the company, branch or LLP whose affairs they have been appointed to investigate.
- 4.13 Under article 51(1)(A), the Regulatory Authority may also appoint investigators to investigate a company incorporated in the QFC where it has been asked to do so by the company itself or by the members of the company holding not less than ten per cent in nominal value of its issued share capital. Article 51(1)(A) requires the request to be in writing and to set out the reasons for the request. However, the making of such a request does not oblige the Regulatory Authority to undertake the investigation.

Commencement of an investigation

Scoping discussions

- 4.14 The Regulatory Authority's Enforcement Department normally contacts persons that are subject to investigation shortly after a matter has been referred to it with a view to having "scoping" discussions. The purpose of these discussions is to explain why the Regulatory Authority has appointed investigators, or is considering appointing investigators. These discussions also give the person concerned an early indication of the nature of, and the reasons for, the Regulatory Authority's concerns, the scope of the investigation, an explanation of the relevant processes and what sort of information or documents the Regulatory Authority is likely to require. The discussions also present a useful opportunity for the subject of the investigation to indicate whether they intend to resolve the issue promptly, perhaps by way of settlement, as well as any other matters they feel should be raised at an early stage.
- 4.15 It would not be appropriate to hold scoping discussions in all cases: for example, where the circumstances warrant urgent action on the part of the Regulatory Authority. The Regulatory Authority therefore decides, in each case, whether (and at what stage) scoping discussions should take place.
- 4.16 Scoping discussions are also useful opportunities to explain to persons how their ongoing relationship with the Regulatory Authority is likely to be affected by the enforcement investigation. As a general rule, Regulatory Authority supervisors of a firm are not directly involved in an enforcement investigation. This ensures there is a clear division between the conduct of an investigation on the one hand and the maintenance of an ongoing supervisory relationship with the firm on the other.
- 4.17 However, there may be times during the course of an investigation when it is appropriate for the firm's supervisor to be involved. This might be, for example, to assist with aspects of the investigation which may have implications for the day-to-day supervisory approach to or relationship with the firm, to make the Enforcement Department case team aware of the firm's regulatory history and compliance record or to act as a sounding board on issues that emerge from the investigation about industry practices and standards. Where Supervisory colleagues are involved in an investigation, the Enforcement Department works collaboratively with them and matters of common interest are discussed internally within the Regulatory Authority.

Notice of appointment of investigators

- 4.18 Article 50(2) requires that, when the Regulatory Authority appoints investigators, the persons subject to investigation are normally given written notice. This written notice must specify the purpose of the investigation and also identify who has been appointed to conduct the investigation. However, where the Regulatory Authority believes that the giving of notice would risk frustrating the investigation

in a material way, the Regulatory Authority may decide not to give it.

- 4.19 Where there is a subsequent change in the scope or direction of an investigation, and if in the Regulatory Authority's opinion that change is material and likely to have significant implications for the persons subject to the investigation, the Regulatory Authority generally gives the persons written notice of the change.
- 4.20 In some investigations, the Regulatory Authority may appoint additional investigators. If this occurs, and the Regulatory Authority has previously informed the person that it has appointed investigators, the Regulatory Authority normally gives the person written notice of the additional appointment. This is normally given when the additional investigator is seeking to exercise a power under the FSR.
- 4.21 There may also be occasions where an investigation is ongoing but, for a variety of reasons, a particular investigator ceases to be involved in the investigation: for example, where an investigator leaves the employment of the Regulatory Authority. Where this occurs, the Regulatory Authority does not normally inform the person subject to investigation unless there are good reasons for doing so.
- 4.22 Where the Regulatory Authority decides to discontinue an investigation without taking any action, the Regulatory Authority is not obliged to inform the subject of the investigation that it is discontinuing it. However, despite there being no obligation to do so, in cases where the Regulatory Authority has previously informed the person that they were subject to investigation, but it has decided to discontinue, or cease actively pursuing, the investigation the Regulatory Authority will confirm this to the person concerned as soon as it considers it appropriate to do so, having regard to the circumstances of the case.

Publicity about investigations

- 4.23 The Regulatory Authority is aware of the potential effect of an investigation becoming publicly known. Accordingly, the Regulatory Authority does not generally make public the fact that it is, or is not, investigating a particular matter or any of the findings or conclusions of an investigation. There may, however, be exceptional circumstances where the Regulatory Authority considers that it would be appropriate to announce whether it is investigating a particular matter. For example, such an announcement may be appropriate:
- a. to help to maintain the integrity of and confidence in the QFC or the Regulatory Authority;
 - b. to prevent or constrain public speculation or rumour about a possible investigation;
 - c. to prevent widespread malpractice or misconduct; or
 - d. to assist the investigation itself by, for example, encouraging witnesses to

come forward.

- 4.24 There may be circumstances in which disclosure of the existence of an investigation is unavoidable: for example, where it is necessary to do so in the course of investigators speaking to witnesses. In such circumstances, the investigation is disclosed only so far as necessary. Further, the restrictions on disclosure of confidential information in article 19 apply at all times to the Regulatory Authority and to any person coming into possession of confidential information.

The Regulatory Authority's information-gathering powers

General information-gathering powers

- 4.25 Both authorised firms and approved individuals have specific obligations to deal with the Regulatory Authority in an open and cooperative manner and to disclose appropriately to the Regulatory Authority any information of which the Regulatory Authority would reasonably expect notice. Each authorised firm is obliged to keep the Regulatory Authority promptly informed of anything relating to it of which the Regulatory Authority would reasonably expect notice. Accordingly, authorised firms and approved individuals are expected to provide information and documents willingly, proactively and in a timely manner.
- 4.26 However, there may be occasions when it is necessary for the Regulatory Authority to require a person to provide information or documents. The Regulatory Authority does not need to appoint investigators to do so, as it has a general power under article 48 to require the production by a person in the QFC of "... specified information or information of a specified description and / or specified documents or documents of a specified description ...". The Regulatory Authority may also require this information or documents to be provided "... within such timetable and in such form and manner [for example, in electronic format rather than hard copy] as the Regulatory Authority may reasonably require".
- 4.27 These powers cover persons in the QFC but the Regulatory Authority has the power to apply to the Civil and Commercial Court for an order to impose a requirement on a person outside the QFC (whether in Qatar or elsewhere). Where the Regulatory Authority obtains such an order it may request assistance from the appropriate overseas regulator in exercising the power.
- 4.28 The Regulatory Authority also has a general power under article 48(3) to enter the premises of any person in the QFC at any time for the purpose of inspecting and copying information or documents stored in any form on such premises.
- 4.29 There is no obligation on the Regulatory Authority to give notice, written or otherwise, when it exercises its information-gathering or inspection powers under article 48. However, wherever it is practicable to do so, the Regulatory Authority gives written notice specifying the information or documents the person is

required to provide.

- 4.30 Where the Regulatory Authority uses its general information-gathering powers under article 48, the person to which the requirement relates must give the Regulatory Authority "... all such assistance as the Regulatory Authority may reasonably require ...".

The Regulatory Authority's power to require a report

- 4.31 In addition to its general information-gathering powers in article 48, the Regulatory Authority also has the power under article 49 to require a report by a nominated person on any matter about which the Regulatory Authority has required, or could require, information or the production of documents.
- 4.32 While this power can be exercised in respect of a "person", as defined in article 110, the Regulatory Authority will generally only exercise it in relation to authorised firms and not individuals.
- 4.33 The Regulatory Authority does not generally use its power to require a report where the dominant purpose of doing so is to gather evidence to decide whether enforcement action is appropriate. Where this is the case, the Regulatory Authority generally uses its powers under article 52. Where, however, the Regulatory Authority's purpose for requiring the report is of a diagnostic, preventative or remedial nature or to assist the Regulatory Authority in its monitoring of the firm, the use of the power under article 49 may be appropriate. Accordingly, the Regulatory Authority may use the power to require a report to support both its supervision and enforcement functions and a report could identify issues which could lead to the commencement of an investigation and enforcement action.
- 4.34 There are many circumstances in which it may be appropriate for the Regulatory Authority to exercise the power under article 49. However, the following non-exhaustive list provides examples of matters when the Regulatory Authority may consider it appropriate to require the production of a report:
- a. where the Regulatory Authority has identified concerns in respect of a firm's record-keeping and requires an independent assessment of the firm's systems and controls for record-keeping;
 - b. where issues have been identified with a firm's client money calculations and the Regulatory Authority requires independent verification that the client money reconciliations are accurate and compliant with the relevant regulatory requirements;
 - c. where the Regulatory Authority wants independent assurance that responsibilities for overseeing and managing the affairs of a business have been allocated appropriately and that the firm has suitable arrangements to oversee the effectiveness of any delegation of responsibilities;

- d. where the Regulatory Authority considers it appropriate to have an independent and impartial assessment of the robustness and effectiveness of a firm's measures for managing its conflicts of interest;
 - e. where the Regulatory Authority has concerns about the adequacy and accuracy of notifications, reports or returns provided by a firm.
- 4.35 Where the Regulatory Authority exercises its power under article 49 it gives the person concerned written notice of the requirement. If the Regulatory Authority wants the report to be provided in a particular form, it specifies that form in the written notice. The Regulatory Authority may also nominate the person it expects to produce the report but it normally allows a firm to select for itself a suitable person with the requisite experience, skills and expertise to produce the report. In all instances, the person nominated to produce the report must be approved by the Regulatory Authority.
- 4.36 Where the Regulatory Authority exercises its power to require a report, the person who is being reported on must provide all the assistance that the nominated person producing the report requires. Further, under article 49(6), the costs of providing the report are to be borne by the person subject to the requirement.

Investigation powers

- 4.37 Where the Regulatory Authority appoints an investigator or investigators to conduct an investigation, they have additional powers over and above the information-gathering powers described in paragraphs 4.25 to 4.36 above. Those additional powers are also available for use to obtain information or documents from any other person. Investigators' powers are not limited only to persons in the QFC or persons subject to an order of the Civil and Commercial Court.
- 4.38 Investigators' powers are set out in article 52.
- 4.39 In support of an investigation, the Regulatory Authority or an investigator may require any person:
- “(A) to attend before the investigator at a specified time and place and to answer questions;
 - (B) to produce at a specified time and place any specified document or documents of a specified description; and / or
 - (C) to provide such information or assistance as the investigator may require and the person is able to give.”
- 4.40 Persons subject to investigation may provide the Regulatory Authority with information or documents voluntarily. That is, they need not wait to be required by the Regulatory Authority to provide relevant information or documents. Persons should at all times be aware of their obligations under Principle 13 of

PRIN (for authorised firms) and Principle 4 of INDI (for approved individuals) in respect of their relations with the Regulatory Authority.

- 4.41 Where the Regulatory Authority or an investigator exercises the power under article 52 it gives the person written notice of what is required of them. That written notice also sets out a reasonable period in which the person is required to give the information or produce the documents required.
- 4.42 There may be occasions when the Regulatory Authority considers it appropriate to request a person to provide material voluntarily. That is, it expects a person to provide information or documents, or answer questions, but considers that it is inappropriate to compel the person to do so: for example, this might be the case where the Regulatory Authority is seeking information from someone who has been disadvantaged by an authorised firm's or approved individual's misconduct, or where the Regulatory Authority is seeking information or documents pursuant to a request from another regulatory authority or agency.
- 4.43 Under article 52(5), the Regulatory Authority may apply to the Civil and Commercial Court for an order that all or any of the assets, books and records of a person or firm who is under investigation be preserved and not moved or otherwise dealt with.

Interviews

- 4.44 The Regulatory Authority, or an investigator appointed on its behalf, has a specific power under article 52(2)(A) to require persons to attend before an investigator at a specified time and place to answer questions. As already stated, there may be circumstances when the Regulatory Authority wants to interview someone on a voluntary basis. The Regulatory Authority always makes clear whether an interview is voluntary or compulsory.
- 4.45 The type of interview is a decision for the Regulatory Authority and a person required to attend an interview has no right to insist that the interview takes place voluntarily. Similarly, a person asked to attend an interview on a voluntary basis is not entitled to insist that they be compelled to do so.
- 4.46 If someone refuses to be interviewed, or fails to attend an interview or answer questions when they have been served with a notice of a requirement under article 52, the Regulatory Authority considers the person to be obstructing the Regulatory Authority in the exercise of its functions. Further details on the consequences of obstructing the Regulatory Authority and the role of the Civil and Commercial Court in this regard are set out in paragraphs 4.59 to 4.65 below.
- 4.47 Where the Regulatory Authority interviews a person, the interview takes place in private. Most interviews are conducted at the Regulatory Authority's offices. The Regulatory Authority allows the person to be interviewed to be accompanied by a nominated legal adviser, or some other suitable representative, for example to assist with translation, should they wish.

- 4.48 The Regulatory Authority may also wish to have persons other than investigators present in an interview. This may be, for example, where matters of a particularly technical nature are likely to arise and the Regulatory Authority wants to have suitably experienced persons present to ensure appropriate questions are asked, or where the Regulatory Authority wants to have observers present for training purposes. Ultimately, the Regulatory Authority decides who is present in an interview.
- 4.49 At the start of an interview, the Regulatory Authority explains what use can be made of any information the person provides. As set out elsewhere in this Chapter, any statement that is made or information that is given by a person in an interview is admissible as evidence in any proceedings the Regulatory Authority decides to take.
- 4.50 Unless there are compelling reasons not to, all interviews conducted by the Regulatory Authority are recorded. This is to ensure that there is an accurate contemporaneous record of what a person said in the interview and is the most reliable way of capturing their evidence. In most cases, the Regulatory Authority subsequently provides the person with a copy of the recording of the interview. If a transcript of the interview is made, the Regulatory Authority generally gives the person interviewed a copy of that transcript. If the Regulatory Authority provides a transcript, it asks the person to review the transcript and confirm that it is an accurate record of the interview. The Regulatory Authority would consider failure to respond to be confirmation that the person does not dispute the accuracy of the transcript.
- 4.51 In a case where another agency, authority or overseas regulatory authority has asked the Regulatory Authority to assist it with an investigation by conducting interviews, the Regulatory Authority allows a representative of that other agency or authority to attend, and take part in the interview.

Language

- 4.52 Interviews are, in general, conducted in English. Where the interviewee's first language is not English, at the request of the interviewee, the Regulatory Authority will arrange for the questions to be translated into the interviewee's first language and for his answers to be translated back into English.
- 4.53 Where the Regulatory Authority allows a person to be accompanied in an interview by someone of their choice to assist with translation, the Regulatory Authority reserves its right to review the accuracy of any translation by that person. If the Regulatory Authority considers that such a translation is inaccurate or incorrect, the Regulatory Authority adopts its own translation of the interviewee's response or comments in the transcript of the interview, if one is made, as a record of what the interviewee said.

Investigations of individuals – additional considerations

- 4.54 The Regulatory Authority recognises that an enforcement investigation can have a significant effect on individuals. In deciding to commence such an investigation the Regulatory Authority always has regard to the position, role and responsibilities of an individual when deciding whether to investigate their conduct.
- 4.55 The Regulatory Authority also considers whether it is appropriate to vary or withdraw a person's status as an approved individual for the duration of the investigation and related proceedings (insofar as the investigation or proceedings relate to that individual).
- 4.56 This situation is likely to arise where the Regulatory Authority is conducting an investigation into an individual and has reasonable grounds for believing that they may have engaged in conduct that would form the basis for the withdrawal or variation of their status as an approved individual. In this case, the Regulatory Authority has regard to its power to take action on its own initiative, and the grounds for doing so, set out in article 46.
- 4.57 The Regulatory Authority's policy on the assessment of suitability and related requirements in respect of individuals is set out in Chapters 4 and 5, and Appendix 1 of INDI.
- 4.58 Where the Regulatory Authority decides to vary or suspend an approved individual's status under article 52(4), it gives the approved individual and the relevant authorised firm written notice of the suspension or variation. However, unlike the powers available to the Regulatory Authority in articles 43, 45 and 46, any decision to vary or suspend an approved individual's status under article 52(4) cannot be appealed to the Regulatory Tribunal, nor is the Regulatory Authority required to allow the individual and firm concerned the opportunity to make representations in relation to the suspension or variation.

Obstruction of the Regulatory Authority

- 4.59 The Regulatory Authority expects firms and individuals that are subject to investigation to cooperate fully with the Regulatory Authority. Further details on the Regulatory Authority's expectations in terms of "cooperation" are set out in paragraphs 2.19 to 2.24 of this Policy Statement. However, the Regulatory Authority recognises that sometimes firms or individuals fail to respond or do not provide whatever has been asked of them. This may be for a variety of reasons, including being deliberately obstructive or simply unwilling to respond with the required information or in the manner expected by the Regulatory Authority.
- 4.60 Article 57 provides that a person must not do, or fail to do, anything that obstructs or is intended to obstruct, the Regulatory Authority in the exercise of its functions. Examples of conduct that might amount to obstruction include:

- a. destruction of documents;
- b. failure to give or produce information or documents;
- c. failure to attend and answer questions;
- d. giving false or misleading information; and
- e. failure to give assistance in relation to an investigation.

4.61 The Regulatory Authority also regards failing to comply with a requirement imposed by the Regulatory Authority as a serious form of non-cooperation. Therefore, depending on the circumstances of the particular matter, the Regulatory Authority may also decide that it is appropriate to take action against a person for contravention of Principle 4 of INDI or Principle 13 of PRIN.

4.62 If the subject of an investigation obstructs the Regulatory Authority or fails to cooperate, the Regulatory Authority takes their conduct into consideration in deciding whether to take any action and, if so, what form that action should take.

The role of the Civil and Commercial Court

4.63 The Regulatory Authority may apply to the Civil and Commercial Court to assist in the enforcement of the Regulatory Authority's powers under Part 8 of the FSR.

4.64 Article 54(1) provides that the Civil and Commercial Court "... shall provide such assistance as it considers appropriate in the circumstances and in accordance with its powers ...". The Civil and Commercial Court's powers are set out in its Regulations and Procedural Rules dated 15 December 2010 and can be found on its website at www.qfccourt.com. The Civil and Commercial Court's powers include, amongst other things, the following:

- a. the imposition of a financial penalty for a contravention in accordance with the FSR;
- b. the issue of a search order;
- c. an order for the seizure of documents or information;
- d. an order that the Regulatory Authority may make a requirement under article 48(1) in respect of a person outside the QFC (whether in Qatar or elsewhere);
- e. an order that a person under investigation shall pay, in whole or in part, the costs and expenses of an investigation, under article 50(4);
- f. an order for the preservation of assets, books and records under article 52(2);

- g. an order that the Regulatory Authority may recover an unpaid financial penalty as a debt, under article 59(4);
- h. an order in respect of a breach of an undertaking, under article 61(3);
- i. an injunction under article 63;
- j. a restitution order under article 64; and
- k. an Administration Order under paragraph 3.3 of Schedule 2 to the FSR.

4.65 The Civil and Commercial Court is a Court of the State of Qatar and its orders are capable of enforcement and execution like an order of any other Qatari Court. Article 34 of the Civil and Commercial Court's Regulations and Procedural Rules provides more details about the enforcement of judgments and orders of the Civil and Commercial Court.

Admissibility, confidentiality and protection

- 4.66 Any statement that is made, information that is given or document that is produced in compliance with a request under Part 8 of the FSR from the Regulatory Authority or an investigator is admissible as evidence in any proceedings providing it also complies with the requirements governing the admissibility of evidence in the relevant proceedings. Similarly, any statement, document or other information that is given to the Regulatory Authority voluntarily is admissible in any proceedings that the Regulatory Authority decides to take.
- 4.67 The Regulatory Authority owes a general duty of confidentiality in respect of information that comes into its possession, whether as a result of a requirement to provide it or otherwise. Where information is "Confidential" within the definition set out in article 110, the Regulatory Authority treats the information as such and does not disclose it except as permitted by article 19.
- 4.68 The restriction on disclosure of confidential information also applies to any person (other than the person to whom the duty of confidentiality is owed) coming into possession of the information. This includes anyone interviewed by the Regulatory Authority who becomes aware of confidential information relating to another individual or firm.
- 4.69 A person who provides to the Regulatory Authority information or a document, whether voluntarily or in response to a requirement, is protected from liability by article 108. Article 108(3) provides that a person does not incur any liability, and does not breach any duty, only because they provide, voluntarily or otherwise, information or a document to the Regulatory Authority honestly and in the reasonable belief that the information or document is relevant to the Regulatory Authority's functions.

Other matters

Self-incrimination, protected items and legal representation

- 4.70 Where a person is subject to a requirement under Part 8 of the FSR, it is not a reasonable excuse for them to refuse or fail to comply with the requirement on the grounds that the provision, production, disclosure or inspection of any such information, document or answer might tend to incriminate them or make them liable to a financial penalty. Accordingly, persons are expected to provide information or documents to the Regulatory Authority and answer questions even if it is likely to incriminate them.
- 4.71 A person may not be required under the FSR to produce, disclose or permit the inspection of a Protected Item (as defined in article 110). However, a person may voluntarily provide such an item or allow it to be inspected. If a person does so, the Regulatory Authority is entitled to rely on the item as evidence in any proceedings that it decides to take.
- 4.72 Under article 56(2), a communication or item which would otherwise be a Protected Item is not "protected" if it is held with the intention of furthering a criminal purpose.
- 4.73 A person who refuses to comply with a requirement on the grounds that a document sought is a Protected Item must justify their refusal. A claim that something is a Protected Item is not, of itself, a reasonable excuse for failing to comply with a requirement. The person making the claim must satisfy the Regulatory Authority as to the validity of the claim and provide reasonable evidence to support it. What amounts to "reasonable evidence" depends on the circumstances of the matter and the content of the document. Without disclosing the contents of the document it may be appropriate, for example, for the person to identify the parties to the document and details of the time and date on which it was made. In short, the person is expected to provide sufficient information for the Regulatory Authority to decide whether it should apply to the Civil and Commercial Court for an order directing the person to comply with the requirement.
- 4.74 In addition to the protections indicated in the paragraphs above, article 50(3) gives a person under investigation, whether a body corporate or an individual, the right to legal representation during the course of investigation.

Costs of enforcement investigations

- 4.75 Article 50(4) provides that the Regulatory Authority must pay the costs and expenses of an investigation. However, where an investigation is conducted under article 50, and that investigation finds that a person has contravened a relevant requirement, the Regulatory Authority, the Regulatory Tribunal or the Civil and Commercial Court may order the person to pay to the Regulatory Authority, the costs and expenses, in whole or in part, of the investigation.

- 4.76 The Regulatory Authority is likely to require a person to pay the costs and expenses of an investigation in most cases where it decides to take disciplinary action. In deciding whether to exercise its discretion under article 50(4), the Regulatory Authority has regard to the full circumstances of the matter and, in particular, the degree of the person's cooperation. Further guidance on the Regulatory Authority's policy in respect of cooperation is set out in paragraphs 2.19 to 2.24 of this Policy Statement.

Findings of an investigation – investigation reports

- 4.77 Investigators appointed under article 50 must provide the Regulatory Authority with a written report of the investigation (article 52(1)), unless an investigation is discontinued. This report is referred to as an "Investigation Report".
- 4.78 An Investigation Report will be produced in all cases where the Regulatory Authority's Enforcement Department has investigated a matter regardless of whether investigators have been formally appointed.
- 4.79 An Investigation Report sets out the facts which are relevant to the matters under investigation and the findings of the investigation including, where appropriate, any potential contraventions of relevant requirements.
- 4.80 Where an investigation identifies potential contraventions of relevant requirements and the findings of an investigation suggest that it is appropriate to take some form of disciplinary or enforcement action under Part 9 of the FSR, the Regulatory Authority's usual practice is to send the person concerned a copy of the "Preliminary Investigation Report".
- 4.81 The Preliminary Investigation Report does not usually contain any details of what disciplinary or enforcement action the Regulatory Authority's Enforcement Department considers to be appropriate or is considering recommending to the Regulatory Authority's decision-maker. Rather, it sets out the preliminary findings of the investigation and is given to the person to provide them with an opportunity to comment on those preliminary findings and correct any inaccuracies.
- 4.82 The Regulatory Authority makes clear that the findings are preliminary and the person is allowed a limited time to respond, normally 28 days. However, it is entirely a matter for the Regulatory Authority to decide whether it is appropriate to send the person a Preliminary Investigation Report. It might not be appropriate where it is not practicable to send one: for example, where there is a need for urgent action or if the whereabouts of the person are unknown. The Regulatory Authority might also decide not to send a Preliminary Investigation Report where it believes that no useful purpose will be served by doing so: for example, where the Regulatory Authority considers that the person is unlikely to provide any response or anything substantially different to that previously disclosed.

- 4.83 Where the investigation identifies someone other than the subject of the investigation in a manner which, in the opinion of the Regulatory Authority, is prejudicial to that person, the Regulatory Authority may also decide that it is appropriate to give them the opportunity to comment on the Preliminary Investigation Report. Again, this is a matter of discretion for the Regulatory Authority and it is under no obligation to take into account any comments made by a third party.
- 4.84 The Regulatory Authority would consider failure to respond to a Preliminary Investigation Report to be confirmation that the person does not dispute the preliminary findings of the investigation. Where a person does respond, however, it is a matter for the Regulatory Authority to decide how far it takes into consideration any comments that have been provided.
- 4.85 Following its consideration of any response to a Preliminary Investigation Report, if appropriate, the Regulatory Authority produces an Investigation Report.
- 4.86 Where the Regulatory Authority has sent a Preliminary Investigation Report and subsequently decides not to take any action, it communicates that decision to the person at the earliest appropriate opportunity.
- 4.87 If an investigation is discontinued and no further action is taken, the Regulatory Authority returns any original documents or other materials which it obtained for the purposes of the investigation as soon as reasonably practicable after the investigation has concluded.

Firm-commissioned reviews and investigations

- 4.88 The Regulatory Authority recognises that there may be good reasons for firms wishing to carry out their own investigations where issues of concern for the Regulatory Authority have been identified. This might be for, for example, disciplinary purposes, general good management or operational and risk control. The Regulatory Authority supports this proactive approach and does not wish to interfere with a firm's legitimate procedures and controls. However, in commissioning such a review or investigation, firms should bear in mind that the findings may also be useful to the Regulatory Authority, particularly where an enforcement investigation into the same matter is contemplated. Sharing the outcome of an internal investigation can save time and resources for both parties.
- 4.89 Although firms are under no obligation to disclose Protected Items to the Regulatory Authority, there may be occasions when they wish to waive any such "protection" and disclose communications or reports voluntarily. Indeed, the findings of an internal investigation, whether subject to protection by way of legal professional privilege or otherwise, would be welcomed by the Regulatory Authority and regarded as a form of cooperation. Any such disclosure is also taken into consideration when the Regulatory Authority is deciding what action to take, if any. (The Regulatory Authority's approach to deciding whether to take action is described in more detail in Chapter 5 of this Policy Statement.)

- 4.90 Work done or commissioned by a firm does not restrict the Regulatory Authority's ability to use the powers available to it under the FSR, for example to require a report under article 49 or appoint investigators under article 50. Nor can an internal investigation by a firm be a substitute for regulatory action where it is considered appropriate. But a report of an internal investigation conducted by a firm could be used to help the Regulatory Authority decide on the appropriate action to take and may narrow the areas of regulatory concern.
- 4.91 Accordingly, where the Regulatory Authority has indicated to a firm that an issue or concern may result in a referral to the Regulatory Authority's Enforcement Department, the Regulatory Authority expects firms to engage with it before commissioning an internal investigation. This is with a view to discussing the scope and purpose of the investigation and how the work will be carried out. The Regulatory Authority may not wish to become involved in discussing the detailed scope of the work, and would rather just see the end product. The extent of the Regulatory Authority's involvement in commenting on the scope of a firm-commissioned internal investigation depends entirely on the circumstances of the particular matter. But if the firm expects that it will voluntarily disclose to the Regulatory Authority a report of an internal investigation of a matter that is or is likely to be the subject of an Enforcement investigation, then the report is likely to be of greater use and benefit to the Regulatory Authority if it has had the opportunity to comment on its proposed scope and purpose before that internal investigation begins.
- 4.92 There are a number of themes and issues common to any discussion about the potential scope or purpose of a report to the Regulatory Authority. These include:
- a. to what extent the Regulatory Authority would be able to rely on the report in any subsequent proceedings;
 - b. to what extent the Regulatory Authority would have access to the underlying evidence or information that was relied upon in producing the report;
 - c. where legal professional privilege or other professional confidentiality is claimed over the report or any of its underlying material, to what extent such material would be disclosed to the Regulatory Authority and the purposes for which it may be used;
 - d. the approach and techniques to be used to establish the relevant facts;
 - e. how evidence will be recorded and maintained;
 - f. whether there are any conflicts of interest and the proposals for managing them;
 - g. the extent to which the report will identify the role and responsibilities of

individuals involved in the matter;

- h. whether the investigation will be limited to stating findings of fact or whether it will also include opinions about potential breaches of relevant requirements;
- i. how the firm will keep the Regulatory Authority informed of progress and communicate the conclusions of the investigation; and
- j. timing.

4.93 In certain situations, the Regulatory Authority may prefer that a firm does not commission its own investigation. This may be, for example, because any internal enquiry by the firm might prejudice a Regulatory Authority investigation. Firms are therefore encouraged to be aware of this possibility and to engage with the Regulatory Authority at an early stage to minimise the likelihood of any such prejudice occurring.

4.94 Where a firm does carry out or commission an internal investigation, it is useful to the Regulatory Authority for the firm to maintain a comprehensive record of any enquiries it makes. This record informs the Regulatory Authority's judgement about whether any further work is needed and the extent of any further work and minimises unnecessary duplication.

4.95 It is also useful for firms to keep detailed notes of any interviews conducted. The importance of accurate record-keeping and note-taking in this regard cannot be stressed enough.

4.96 While firms may seek to limit the use to which a report of an internal investigation can be put, for example by waiving legal professional privilege on a limited basis, the Regulatory Authority would not accept any condition or stipulation which would purport to restrict its ability to use the report, or underlying information, in the proper exercise of the Regulatory Authority's functions: for example, it cannot and will not ignore information received, or accept that information should only be used for particular purposes, such as supervisory activities but not enforcement.

4.97 The Regulatory Authority regards reports of internal investigations as "confidential information" (as defined in article 110). Accordingly, the provisions in the FSR relating to confidentiality apply to such reports.

CHAPTER 5 – DECISION-MAKING AND DISCIPLINARY ACTION

Introduction

- 5.1 This Chapter sets out the Regulatory Authority’s approach to decision-making in respect of enforcement investigations and the Regulatory Authority’s exercise of its disciplinary powers.
- 5.2 The decision-making procedures to be followed by the Regulatory Authority vary depending on the decision to be made and the circumstances of the particular matter. For example, during the course of an enforcement investigation, the Regulatory Authority might decide to compel a person to provide certain information, or to attend to answer questions. On the other hand, the Regulatory Authority might decide to take action on its own initiative under articles 31 or 46, or impose a financial penalty on a person for contravening a relevant requirement.
- 5.3 Depending on the type of decision, the person concerned may then have the right to refer the matter to the Regulatory Tribunal. For details about the Regulatory Tribunal see the Regulatory Tribunal’s Regulations and Procedural Rules dated 15 December 2010 (the “Regulatory Tribunal Procedural Rules”) and the Regulatory Tribunal’s website at www.gfctribunal.com.

Regulatory Authority decision-makers

- 5.4 The Regulatory Authority’s Board of Directors (the “Board”) is the Regulatory Authority’s principal decision-maker. Section 17 of schedule 1 to the FSR sets out the duties and powers of the Board and sections 18 and 19 set out the extent to which the Board is empowered to delegate certain of those duties and powers.
- 5.5 One of the functions of the Board is arranging for the proper administration and operation of the Regulatory Authority. The Board has delegated this function to the Regulatory Authority’s Chief Executive Officer (“CEO”). Therefore, it is for the CEO to make the necessary arrangements and delegation for the conduct of investigations and administration of the Regulatory Authority’s enforcement function.
- 5.6 The Regulatory Authority’s process for deciding whether to take disciplinary or enforcement action against a person is described in more detail in paragraphs 5.31 to 5.33 below. At the end of the process, the Regulatory Authority may decide to take certain action against the person concerned. Where it does so, the Regulatory Authority gives the person a decision notice. Further details about decision notices are provided in paragraphs 5.38 to 5.45 below.
- 5.7 Except for routine matters or minor contraventions, the Board is the Regulatory Authority’s decision-maker for the purposes of deciding whether to give a person a decision notice under article 71. However, there may be cases where the Regulatory Authority decides it is appropriate for the Board to be involved at an

earlier stage in the decision-making process: for example when the Regulatory Authority is considering giving a person a notice of proposed action. Further details about notices of proposed action are provided in paragraphs 5.34 to 5.37 below.

- 5.8 In the case of a routine matter or minor contravention, the decision whether to give a person a decision notice may be made by a committee of the Board, or the CEO (or, to the extent permitted by the internal procedures of the Regulatory Authority, another executive officer of the Regulatory Authority, including the Deputy CEO).

Routine matters and minor contraventions

- 5.9 In deciding whether a particular matter is a “routine matter” or “minor contravention” for the purposes of deciding the appropriate decision-maker, the Regulatory Authority takes into consideration the matters set out in the following paragraphs.

- 5.10 A contravention is not a routine matter or minor contravention if:

- a. it is a contravention of:
 - i. the QFC Law, Article 11.2, including any contravention of the scope of a firm’s authorisation; or
 - ii. article 41, including any contravention of the scope of an approved individual’s approval;
 - iii. an enforceable undertaking given by a person under article 61; or
 - iv. a prohibition or restriction imposed on a person under article 62unless the Board, a committee of the Board, or the CEO, decides that the contravention should be treated as a routine matter or minor contravention; or
- b. the contravention is:
 - i. an act of fraud; or
 - ii. an abuse of any fiduciary duty of the person; or
- c. in any other case, the Board, a committee of the Board, or the CEO, decides that the contravention should not be treated as a routine matter or minor contravention.

- 5.11 If paragraph 5.10 above does not apply to the contravention, the contravention is a routine matter or minor contravention. However, the Board, a committee of the Board, or the CEO may decide that the contravention should not be treated as a

routine matter or minor contravention if:

- a. the regulatory objectives in article 12(3) require that the contravention should not be dealt with as a routine matter or minor contravention (for example, because any financial penalty imposed for the contravention might exceed the amount that would otherwise apply under paragraph 5.12 below); or
- b. any notice of proposed action or decision notice for the contravention should be given by the Board, having regard to the factors set out in Annex 1 to this Chapter and all the circumstances of the matter. Those circumstances may include:
 - i. the significance of the decision to persons who would be affected by it;
 - ii. its novelty in the light of stated policy and established practice;
 - iii. the complexity of the relevant considerations;
 - iv. the range of alternative options; and
 - v. the extent to which the facts relating to the decision are, or are likely to be, in dispute.

5.12 While there is no limit on the financial penalty that the Regulatory Authority may impose, any financial penalty imposed on a person for a routine matter or minor contravention will not exceed:

- a. if the person is an authorised firm — US\$100,000; or
- b. if the person is not an authorised firm — US\$20,000.

5.13 The Regulatory Authority's policy in respect of imposing financial penalties is set out in Chapter 6 of this Policy Statement.

5.14 The Regulatory Authority's Enforcement Department recommends to the CEO whether a case is to be treated as a routine matter or minor contravention for the purposes of deciding who the appropriate decision-maker should be. The CEO or, in his absence, the Deputy CEO, decides whether a matter should be treated as routine or a minor contravention, or whether the matter should be referred to the Board to decide. The outcome of that decision determines the appropriate decision-maker.

5.15 In most cases where the contravention is a routine matter or minor contravention, the decision whether to take action against the person is made by an Enforcement Committee. The Enforcement Committee is not a committee of the Board. Rather, it is a committee of the Regulatory Authority consisting of at least three executive officers (that is, officers of the level of Director or above).

If it is not possible to convene a meeting of three executive officers of the Regulatory Authority to form an Enforcement Committee, the decision whether to take action in respect of a routine matter or minor contravention is made by an executive officer of the Regulatory Authority of the level of Director or above.

- 5.16 A notice of proposed action or decision notice specifies whether the decision was made by the Board, a committee of the Board, the CEO or another executive officer of the Regulatory Authority (for example, in their capacity as Chairman of an Enforcement Committee).
- 5.17 In every case, the decision-maker makes decisions by applying the relevant tests set out in the QFC Law, the FSR or other relevant regulatory provisions. The decision-maker also has regard to the context and nature of the matter: that is, the relevant facts and law, and guidance and policy statements made by the Regulatory Authority appropriate to the matter.
- 5.18 In every case, the decision-maker:
- a. considers whether the material on which the recommendation or proposed action is based is adequate to support it;
 - b. satisfies itself that the action recommended is appropriate in all the circumstances; and
 - c. decides whether to follow the recommendation or take the action proposed, and the terms of the action.

Day-to-day administration of enforcement investigations

- 5.19 It would be impractical for all matters arising during an enforcement investigation, which require a "decision" to be made, to be considered by the CEO or an Enforcement Committee. Accordingly, under the arrangements made by the CEO, the Regulatory Authority's Director of Enforcement is responsible for matters of an operational or administrative nature, or those relating to the day-to-day conduct of enforcement investigations.
- 5.20 This also applies to certain actions which require a notice or other document to be given to the person to whom the action relates (and third parties, where relevant). The important exception in the context of an enforcement investigation is where the Regulatory Authority is giving written notice of a decision under articles 70 or 71. Further details on decisions under these provisions are set out in paragraphs 5.34 to 5.45 below.
- 5.21 Therefore, where the Regulatory Authority exercises a power which requires a person to be given written notice, an executive officer of the Regulatory Authority can decide to exercise that power. The following table provides a list of those decisions that are likely in the course of an enforcement investigation:

FSR article	Description
49	Requiring the production of a report
50	Appointment of an investigator
52(2)	Requiring a person to attend and answer questions, produce any specified documents or documents of a specified description or to provide such information or assistance as the investigator may require
52(4)	Suspension or variation of an approved individual's status for the duration of an investigation
73	Discontinuance of proceedings

5.22 Article 52(2) also empowers an investigator to require a person "... to attend before the investigator at a specified time and place and to answer questions, to produce at a specified time and place any specified document or documents of a specified description; and/or provide such information or assistance as the investigator may require and the person is able to give ...". Accordingly, an investigator can decide to exercise the power under article 52(2).

5.23 As detailed in Chapter 4 of this Policy Statement, where the Regulatory Authority decides to exercise its information-gathering powers under Part 8 of the FSR, which includes the investigator's powers under article 52(2), it normally gives the person written notice of what is required of them. That notice also sets out a reasonable period within which the person must give the required information or produce the required documents.

5.24 An executive officer of the Regulatory Authority can make the decision to discontinue an investigation without taking any action. The Regulatory Authority has regard to the nature of the investigation and the seriousness of the matter in deciding who the appropriate decision-maker is in such matters.

Deciding whether to take disciplinary action

5.25 Disciplinary action is only one of the options available to the Regulatory Authority. It may be appropriate for the Regulatory Authority to address an instance of non-compliance or regulatory concern without taking disciplinary action. For example, the Regulatory Authority may conclude that it is appropriate to resolve a matter by way of some form of supervisory action or own initiative action, or perhaps with a private warning. Further details on the Regulatory Authority's policy in relation to private warnings are set out in paragraphs 5.74 to 5.80 below.

- 5.26 It should not be assumed that a person who is subject to investigation will be subject to disciplinary action. Equally, it should not be assumed, simply because investigators have not been appointed, that the Regulatory Authority will not take disciplinary action against a person. The Regulatory Authority is not required to appoint investigators before taking action under Part 9 of the FSR. However, in most cases where the Regulatory Authority decides to take disciplinary action against a person, it does so on the basis of the findings of an investigation and investigators are appointed in most investigations.
- 5.27 The following paragraphs deal with the situation where the Regulatory Authority decides to take disciplinary action as a result of an enforcement investigation.

Criteria for deciding whether to take disciplinary action

- 5.28 The disciplinary powers available to the Regulatory Authority are set out in Part 9 of the FSR. Specifically, if the Regulatory Authority considers that a person has contravened a relevant requirement, as defined in articles 84 and 85, it may:
- a. under article 58, publish a statement to the effect that a person has contravened a relevant requirement (“public censure”); or
 - b. under article 59, impose on the person a financial penalty of such amount as it considers appropriate (“financial penalty”).
- 5.29 In deciding whether to take disciplinary action in respect of conduct appearing to the Regulatory Authority to contravene a relevant requirement, the Regulatory Authority considers the full circumstances known to it for each case. Annex 1 to this Chapter provides a list of factors that may be relevant in making this decision in a particular case. The list is indicative only and not all listed factors are relevant in a particular case. In a particular case some factors may be more relevant than others and there may be other factors, not listed, that are relevant.
- 5.30 In addition to taking disciplinary action against a person under articles 58 or 59, the Regulatory Authority may in an appropriate case take action against the person on its own initiative under articles 31 or 46 or under any other provision of Part 9 of the FSR. Other powers available to the Regulatory Authority under Part 9 of the FSR include:
- a. under article 60, the power to appoint one or more individuals to act as managers of a business (further details on the appointment of managers are set out in paragraphs 11.19 to 11.29 of this Policy Statement);
 - b. under article 61, the power to accept a legally enforceable undertaking from a person (further details on enforceable undertakings are set out in Chapter 7 of this Policy Statement);
 - c. under article 62, the power to impose a prohibition or restriction on a person (further details on prohibitions and restrictions are set out in

Chapter 10 of this Policy Statement);

- d. under article 63, the power to apply for an injunction (further details on injunctions are set out in paragraphs 11.2 to 11.8 of this Policy Statement); and
- e. under article 64, the power to apply for a restitution order (further details on restitution orders are set out in paragraphs 11.9 to 11.18 of this Policy Statement).

Procedure for deciding whether to take disciplinary action

- 5.31 Where the Regulatory Authority appoints an investigator under article 50, the investigator must make a report of his investigation to the Regulatory Authority unless the investigation is discontinued. Further information in respect of Investigation Reports is provided in Chapter 4 of this Policy Statement.
- 5.32 An Investigation Report is normally the first stage of the Regulatory Authority's process for deciding whether to take action against a person and plays an important role in establishing the key facts and matters on which any such action is based.
- 5.33 After the Investigation Report, and having decided the appropriate decision-maker in accordance with paragraph 5.14 above, the Regulatory Authority's procedure for deciding whether to take disciplinary action involves the following steps:
 - a. The Enforcement Department recommends to an Enforcement Committee whether any action should be taken against the person concerned and, if so, what that action should be.
 - b. If the matter is routine or a minor contravention, the Enforcement Committee first considers whether it is the appropriate decision-maker for the purposes of considering the recommendation and deciding whether or not to take disciplinary action, or whether it should refer the matter to another decision-maker to decide.
 - c. Where the Enforcement Committee is not the appropriate decision-maker it considers the matter and the recommendation from the Enforcement Department, and provides the appropriate decision-maker with its recommendation as to what the appropriate action should be.
 - d. In considering the recommendation, regardless of whether the recommendation is from the Enforcement Department or an Enforcement Committee, the decision-maker:
 - i. considers the facts and matters set out in the Investigation Report and any comments that the person concerned (and third parties, where appropriate) have provided in response;

- ii. considers whether the material on which the recommendation or proposed action is based is adequate to support it;
 - iii. satisfies itself that the action recommended is appropriate in all the circumstances; and
 - iv. decides whether to follow the recommendation or take the action proposed, and the terms of the action.
- e. The decision-maker may accept the recommendation and decide accordingly; decide on some other form of action; or decide that no action should be taken or that clarification is required (which may lead to further investigative work). Where no action is to be taken, and where the Regulatory Authority has previously informed the person that it is investigating the matter, the Regulatory Authority normally notifies the person concerned that it is taking no action as soon as it is practicable to do so.
- f. Where the decision-maker decides that it is appropriate for the Regulatory Authority to exercise its disciplinary powers under Part 9 of the FSR, it gives the person concerned written notice of the action it is proposing to take. This written notice is known as a "notice of proposed action". More detail is provided in paragraphs 5.34 to 5.37 below.
- g. If the Regulatory Authority gives a person a notice of proposed action, it normally allows the person concerned (and, to the extent necessary, any relevant third parties) access to the material on which it relied in taking the relevant decision (although it is not obliged to do so). The Regulatory Authority will not do so if it is of the opinion that allowing access would not be in the public interest or fair (whether to other parties or to a person to whom the material relates or otherwise).
- h. In most cases, the person concerned is given the opportunity to make written representations to the Regulatory Authority on the action the Regulatory Authority is proposing to take. The notice of proposed action specifies the manner in which and time within which any such written representations must be made. In most cases, the time allowed for making written representations is at least 28 days.
- i. In certain cases, relevant third parties are given the opportunity to make written representations to the Regulatory Authority. Further detail on the Regulatory Authority's approach to Third Parties is provided in paragraphs 5.53 to 5.58 below.
- j. If the Regulatory Authority receives no response or written representations in the manner specified or within the period allowed in a notice of proposed action, the decision-maker regards the allegations or matters in that notice as undisputed. A decision notice, as defined in

article 78, is given accordingly. Paragraphs 5.38 to 5.45 below provide more detail in respect of decision notices.

- k. If the recipient of, or a third party to, a notice of proposed action does make written representations in the manner specified and within the period allowed, the Enforcement Department considers those representations and prepares comments for consideration by the relevant Regulatory Authority decision-maker.
- l. If the Enforcement Department considers that a decision notice should be given, it provides the relevant decision-maker with a recommendation.
- m. The decision-maker at the decision notice stage is normally the decision-maker that decided to give the person the notice of proposed action. However, it is sometimes appropriate for others, not connected with the earlier decision to give the notice of proposed action, to be involved in considering written representations and deciding whether to take the proposed action. This may be the case, for example, where the representations raise issues about the processes of the Regulatory Authority or the role and impartiality of the decision-maker, or where a committee made the earlier decision and it is not possible for the same committee to convene to consider the representations. Where such issues arise, if the decision-maker is a committee it might decide to alter its composition and if the decision-maker is an individual it might decide to refer the decision to another decision-maker.
- n. The decision-maker considers the recommendation from the Regulatory Authority's Enforcement Department and decides what action, if any, the Regulatory Authority is to take. The decision-maker may decide:
 - i. to give the person a decision notice and what the terms of that notice should be;
 - ii. to revoke the notice of proposed action and to give the person a further notice of proposed action and what the terms of that notice should be;
 - iii. that no action be taken; or
 - iv. to postpone making a final decision pending the outcome of some other action, for example, further investigative work by the Regulatory Authority.
- o. In deciding this, the decision-maker reviews the material before it, including any written representations by the person concerned and any third parties, and any comments made by Regulatory Authority staff or others in respect of those representations.

- p. If the decision-maker decides not to take the action proposed in the notice of proposed action, it normally gives the person concerned (and any relevant third parties) a notice of discontinuance, although it is not obliged to do so.
- q. If the decision-maker decides to take action that is substantially different to the action proposed in the relevant notice of proposed action, it may decide to revoke that notice and give the person concerned (and any relevant third parties) a further notice of proposed action. However, this is only likely to happen in exceptional circumstances.
- r. If the decision-maker decides to proceed with action proposed in the notice of proposed action, and that action is the exercise of a disciplinary or enforcement power under articles 58, 59, 61 or 62, it must give the person concerned a decision notice (see paragraphs 5.38 to 5.45 below).
- s. If the Regulatory Authority gives a person a decision notice, it must allow him access to the material on which it relied in making the decision unless the Regulatory Authority is of the opinion that allowing access would not be in the public interest or fair (whether to other parties or to the person to whom the material relates or otherwise).
- t. The person concerned then has the right to refer the Regulatory Authority's decision to the Regulatory Tribunal.

Notice of Proposed Action

5.34 Article 70 provides that, except in certain limited circumstances discussed in paragraph 5.36 below, if the Regulatory Authority proposes to exercise certain disciplinary or enforcement powers under Part 9 of the FSR it must give the person concerned :

- a. a written notice specifying the action which the Regulatory Authority proposes to take (the notice of proposed action); and
- b. an opportunity to make written representations to the Regulatory Authority in relation to the proposed action.

5.35 A notice of proposed action must be given to the person concerned where the Regulatory Authority proposes to exercise any of the following powers:

- a. the publication of a public censure under article 58;
- b. the imposition of a financial penalty under article 59;
- c. the appointment of managers under article 60; or
- d. the imposition of a prohibition or restriction under article 62.

- 5.36 Under article 70(3)(B), the Regulatory Authority may choose not to give a notice of proposed action to a person where it concludes that any delay likely to arise as a result of giving written notice might be prejudicial to the interests or clients of the person concerned, the QFC or the QFC financial system.
- 5.37 The only formal requirements for a notice of proposed action are those set out in paragraph 5.34 above. However, it is the Regulatory Authority's normal practice to set out the following in such a notice:
- a. the facts and matters relied on and the reasons for the Regulatory Authority's decision to take the action proposed in the notice;
 - b. the decision-maker;
 - c. the manner in which and the period within which the person must make any written representations (in most cases, the period allowed for making written representations is at least 28 days);
 - d. whether the person will be allowed access to the material on which the Regulatory Authority relied on in deciding to give the notice of proposed action; and
 - e. any third parties and the extent to which they have any rights in relation to the notice of proposed action.

Decision Notice

- 5.38 Article 71 provides that, if the Regulatory Authority decides to take the action proposed in a notice of proposed action, and that action involves the exercise of a disciplinary or enforcement power described in paragraph 5.40 below, it must give the person a decision notice.
- 5.39 As explained in paragraph 5.7 above, except for routine matters or minor contraventions, the Board is the Regulatory Authority's decision-maker for the purposes of deciding whether to give a person a decision notice under article 71.
- 5.40 A decision notice must be given to the person concerned where the Regulatory Authority decides to exercise any of the following powers:
- a. the publication of a public censure under article 58;
 - b. the imposition of a financial penalty under article 59;
 - c. the appointment of managers under article 60; or
 - d. the imposition of a prohibition or restriction under article 62.
- 5.41 Having regard to the requirements of article 71(3) and the Regulatory Authority's practice, a decision notice must be in writing and:

- a. set out the facts and matters relied on and give the reasons for the Regulatory Authority's decision to take the action to which the notice relates;
- b. include a brief summary of the key representations made and the Regulatory Authority's consideration of those representations;
- c. identify the decision-maker;
- d. state whether article 77 applies (regarding access to the material on which the Regulatory Authority relied in deciding to give the decision notice) and, if so, describe its effect;
- e. identify any third parties and specify the extent to which they have any rights in relation to the decision notice;
- f. state any right to refer the matter to the Regulatory Tribunal (within a reasonable period specified in the notice) and the procedure for making a reference;
- g. in the case of a decision to impose a public censure under article 58, the terms of the public statement;
- h. in the case of a decision to impose a financial penalty under article 59, the amount of the financial penalty and the period within which it is to be paid;
- i. in the case of a decision to appoint managers under article 60, the terms of that appointment; and
- j. in the case of a decision to impose a prohibition or requirement under article 62, the terms of the prohibition or requirement, the date on which it comes into effect and, where the Regulatory Authority decides it should apply for a limited period, the period.

5.42 Article 72 provides that the Regulatory Authority may take the action specified in a decision notice where the party to which it relates does not refer the matter to the Regulatory Tribunal within the period specified for doing so. Articles 10.2 and 10.3 of the Regulatory Tribunal Procedural Rules contain detailed provisions about the time limits in which an appeal must be filed with the Regulatory Tribunal. However, in the vast majority of cases where the Regulatory Authority decides to take disciplinary action, the period for such a referral is 60 days from the date the person receives the decision notice. Therefore, the Regulatory Authority will not take the action specified in such a decision notice before that 60-day period has elapsed.

5.43 Where the person concerned agrees to the action set out in a decision notice being taking and not to refer the decision to the Regulatory Tribunal (for example, by way of settlement), the Regulatory Authority need not wait 60 days

before taking the action set out in the decision notice.

- 5.44 Once the period for referring the matter to the Regulatory Tribunal has passed, it is open to the Regulatory Authority to take the action set out in the decision notice. However, if a person does refer a matter to the Regulatory Tribunal, they may apply to the Regulatory Tribunal under article 73(1) to stay the action pending the outcome of the appeal.
- 5.45 Referral of a decision to the Regulatory Tribunal does not automatically stay the operation of the Regulatory Authority's decision. If a decision is referred to the Regulatory Tribunal, the Regulatory Authority can agree to the action being stayed (or part of it) but is not obliged to do so. Alternatively, depending on the circumstances of the case, the Regulatory Authority may conclude that the action should be taken, or come into effect, immediately upon expiry of the period for making a referral. The Regulatory Tribunal has power to order a stay of the operation of the decision or part of it.

Access to material

- 5.46 Where the Regulatory Authority proposes or decides to exercise its disciplinary powers under Part 9 of the FSR, it will have made the decision to do so on the basis of the material available to it. In enforcement investigations, that material is likely to be voluminous. Not all of the material gathered in an enforcement investigation will be relevant to the Regulatory Authority's decision and some parts of it will be more relevant than others. Accordingly, the Regulatory Authority will identify the material on which it relied in making the relevant decision and give the person (and, where relevant, third parties) a list of that material.
- 5.47 The Regulatory Authority usually provides the person with copies of the material or, where appropriate, allows the person to examine the material. The Regulatory Authority would not allow original material to be taken out of its custody but would normally permit the person to review it and would usually provide copies if the person so requires. However, as explained in paragraph 5.51 below, the Regulatory Authority may refuse a person access to particular material if, in the Regulatory Authority's opinion, allowing access to the material would not be in the public interest or would not be fair (whether to other parties to whom the material relates or otherwise).
- 5.48 Although the Regulatory Authority is not obliged to allow a person to whom it has given a notice of proposed action access to the material on which it relied when deciding to give the person the notice, it must give that access if it subsequently decides to give a person a decision notice. However, in the interests of transparency and to better enable parties to prepare written representations, the Regulatory Authority normally allows such access at both the notice of proposed action and decision notice stages.
- 5.49 The Regulatory Authority also considers that allowing access to material at the

notice of proposed action stage helps to identify any evidential issues that might arise and therefore assists the Regulatory Authority's consideration of a matter.

- 5.50 In practice, this means that a person receives a list of the material that the Regulatory Authority relied on when it decided to give the person a notice of proposed action and a further list of any additional material relied on if the Regulatory Authority decides to give the person a decision notice. Those lists set out the material relied on to which the person concerned is allowed access and, where appropriate, any material to which they will not be allowed access.
- 5.51 Under article 77(2), the Regulatory Authority may refuse a person access to particular material at the decision notice stage if, in the Regulatory Authority's opinion, allowing access to the material would not be in the public interest or would not be fair (whether to other parties to whom the material relates or otherwise). If the Regulatory Authority does not allow a person access to particular material, it gives written notice of the refusal and the reasons for it.
- 5.52 As a matter of policy, the Regulatory Authority treats access to material at the notice of proposed action stage the same as it does at the decision notice stage.

Third Party Rights

- 5.53 In some cases, in order to explain a person's misconduct or actions, or ensure that relevant facts and matters are described in the appropriate context, it is necessary to refer to the actions or involvement of others in a notice of proposed action or decision notice. In the following paragraphs, these persons are referred to as a "third party".
- 5.54 As described above, where the Regulatory Authority is considering taking action against a person, in most cases, it gives them a notice of proposed action. Although it is not obliged to do so, where a notice of proposed action relates to a matter which identifies a person other than the person to which the notice is given (a "third party"), and, in the opinion of the Regulatory Authority, is prejudicial to that third party, the Regulatory Authority will:
- a. give the third party a copy of the notice;
 - b. allow the third party access to the material relating to them on which the Regulatory Authority relied; and
 - c. allow the third party an opportunity to make written representations on the proposed action.
- 5.55 Whether something is "prejudicial" to a third party depends on the circumstances of the particular matter. The decision-maker decides whether a particular person is identified and, if so, whether the identification is prejudicial.
- 5.56 If the Regulatory Authority decides to exercise a disciplinary power under Part 9 of the FSR which gives rise to the obligation to give a person a decision notice,

and the notice relates to a matter which identifies a third party, and, in the opinion of the Regulatory Authority, is prejudicial to that third party, the Regulatory Authority must give a copy of the decision notice to the third party unless the Regulatory Authority considers it impractical to do so.

- 5.57 Article 76(2) provides that a decision notice copied to a third party must specify a reasonable period within which the third party may make representations to the Regulatory Authority. The copy of the notice must give an indication of the third party's right to refer the matter to the Regulatory Tribunal and the procedure for doing so. Given that, in most cases, the Regulatory Authority would have already provided the third party with an opportunity to make written representations in relation to the notice of proposed action, the Regulatory Authority considers that only in limited situations would it be likely that a third party would wish to make representations at the decision notice stage. Should the third party wish to do so, any such representations should be in writing.
- 5.58 In this regard, article 76(4) provides that a third party may refer to the Regulatory Tribunal the decision in question or any aspect of it, so far as it relates to him, or any opinion expressed by the Regulatory Authority in relation to him. A third party has no right to refer a matter to the Regulatory Tribunal unless the decision notice identifies the third party in a manner which is prejudicial to the third party.

“Own initiative action”

- 5.59 Chapter 9 of this Policy Statement sets out the Regulatory Authority's policy on exercising its powers under articles 31 and 46. Those articles relate to the Regulatory Authority's powers to take action on its own initiative against an authorised firm (article 31) or an approved individual (article 46).
- 5.60 The Regulatory Authority may only take steps or exercise powers under either article where it has given the authorised firm or approved individual (as the case may be) beforehand an appropriate opportunity to make representations to the Regulatory Authority in relation to the proposed steps and has given due consideration to those representations, if made, in deciding the steps to be taken. However, the Regulatory Authority is not required to provide the opportunity to make representations if the specific exemptions in articles 31(4) or 46(4) apply.
- 5.61 In relation to article 46, as a matter of policy, the Regulatory Authority will allow the approved individual, as well as the authorised firm, an appropriate opportunity to make written representations, despite being under no obligation to do so.
- 5.62 Therefore, when deciding whether to take action on its own initiative and so far as possible given the circumstances of a particular matter, the Regulatory Authority takes the following steps:
- a. The investigator or Regulatory Authority staff recommends that action

should be taken against the authorised firm (under article 31) or approved individual (under article 46), what that action should be and when it should take effect. The Regulatory Authority may decide that the action should take effect immediately, on a specified date or in the event of a particular occurrence.

- b. A decision to exercise any of the powers, or take any of the steps, set out in articles 31(2) or 46(2) is made by an executive officer of the Regulatory Authority of at least the level of Director. In deciding who the decision-maker will be, the Regulatory Authority has regard to the nature of the decision to be made, the urgency of the matter, and the effect or likely effect the decision will have on the authorised firm or approved individual concerned.
- c. In considering the recommendation and whether to exercise any of the powers or take any of the steps set out in articles 31(2) or 46(2), the decision-maker considers whether it is appropriate to do so in accordance with the regulatory objectives, including whether a ground set out in articles 31(1)(A) to (G) or 46(1)(A) to (G) exists.
- d. Where the decision-maker is satisfied that it is appropriate to take action under articles 31 or 46, the Regulatory Authority will give written notice to the authorised firm or approved individual setting out the powers and steps it is proposing to exercise or take, specifying when it is proposing to exercise or take them, and providing the authorised firm or approved individual with an opportunity to make written representations on the proposed action. This written notice is known as a "first supervisory notice" and it specifies the manner in which and the period within which written representations must be made.
- e. The Regulatory Authority may decide that the circumstances of the matter require action to be taken immediately or urgently: for example, to stop an authorised firm concerned from taking on new business until a particular issue is resolved. If so, the Regulatory Authority may decide not to give the opportunity to make written representations if it concludes that any delay likely to arise as a result of doing so would be prejudicial to the interests of the clients or customers of the authorised firm, or the financial system. However, the Regulatory must provide the authorised firm or approved individual with an opportunity to make written representations promptly after the powers have been exercised or the steps have been taken.
- f. The requirement to provide an authorised firm or approved individual with an opportunity to make written representations in relation to such action does not apply where the proposed exercise of powers or taking of steps follows a determination by the Regulatory Authority pursuant to Part 9 of the FSR or a decision by the Regulatory Tribunal or the Civil and Commercial Court.

- g. Where the authorised firm or approved individual does provide written representations, the relevant Regulatory Authority staff considers those representations and prepares comments for consideration by the Regulatory Authority decision-maker.
- h. The decision-maker considers the matter on the basis of the material before them, including any written representations by the authorised firm or approved individual, as well as any comments made by Regulatory Authority staff or others in respect of those representations.
- i. The decision-maker gives due consideration to that material in deciding:
 - i. whether to exercise the powers or take the steps proposed (where it has provided an authorised firm or approved individual with a first supervisory notice);
 - ii. for the powers exercised or steps taken to continue in effect until such time as specified in the first supervisory notice; or
 - iii. for the Regulatory Authority to take some other action.
- j. If the Regulatory Authority receives no response or written representations, the decision-maker regards the allegations or matters in the first supervisory notice as undisputed and decides the matter accordingly.
- k. Where the Regulatory Authority decides to discontinue or not exercise the powers, or discontinue or not take the steps, proposed in the first supervisory notice, the Regulatory Authority notifies the authorised firm or approved individual of this decision as soon as it is practicable to do so.
- l. If, having considered any written representations, the Regulatory Authority decides to exercise powers or take steps under articles 31(2) or 46(2), or that powers exercised or steps taken by way of a first supervisory notice should continue in effect, the Regulatory Authority gives the authorised firm or approved individual written notice of the decision. That written notice is known as a "second supervisory notice".
- m. The authorised firm or approved individual may then refer the matter to the Regulatory Tribunal.

5.63 The Regulatory Authority is under no obligation to allow access to the material on which it relied in deciding to take action on its own initiative. However, it has the discretion whether to allow the authorised firm or approved individual access to such material according to the circumstances of the case.

Representations

5.64 A notice of proposed action or first supervisory notice informs a person of their

right (and, in the case of a third party, their opportunity) to make written representations in relation to action that is proposed (or, in the case of a first supervisory notice, may have already been taken).

- 5.65 The notice specifies the manner in which, and the period within which, representations may be made. This period is normally at least 28 days but may be longer or shorter if it is appropriate in the circumstances of a particular case.
- 5.66 It is important that a person who receives a notice of proposed action or first supervisory notice ensures that any representations they make address the aspects of the notice which they disagree with. They may disagree entirely with the action the Regulatory Authority is proposing to take or has taken but it will not assist the Regulatory Authority's consideration of their representations if they fail to explain precisely why.
- 5.67 Further as explained in paragraphs 5.46 to 5.52 above, a person or third party who receives a notice of proposed action normally has access to the material on which the Regulatory Authority relied in making the decision which gave rise to the obligation to give the particular notice. A person who is preparing such representations may find it helpful to consider and refer to that material. Where appropriate, reference to this material assists a person in preparing written representations and also assists the decision-maker's consideration of those representations.
- 5.68 Where appropriate, the Regulatory Authority decides whether, and to what extent, a person or third party who has been given an opportunity to make representations should see and have the opportunity to make representations in response to representations made by any other party in the particular matter.
- 5.69 If, after considering the representations, the Regulatory Authority decides to proceed with the action proposed (or for the action to continue, as the case may be) and gives the person a decision notice or second supervisory notice, that notice includes a brief summary of the key representations made and the Regulatory Authority's consideration of those representations.

Procedure if no representations are made

- 5.70 If the Regulatory Authority receives no representations in relation to a notice of proposed action either in the manner specified or within the period allowed or at all, the decision-maker may regard the allegations or matters in that notice as undisputed and gives a decision notice accordingly. The person's right to refer the matter to the Regulatory Tribunal is not affected.
- 5.71 If the Regulatory Authority receives no representations in relation to a first supervisory notice either in the manner specified or within the period allowed in the notice or at all, the action that the Regulatory Authority takes depends on when the action set out in the first supervisory notice took or takes effect:

- a. if the action took effect immediately, or has already taken effect, it will continue to have effect (subject to the decision on any referral to the Regulatory Tribunal);
 - b. if the action was to take effect on a specified future date or upon a specific event which has not happened, the action will take effect on that date or if the event occurs (subject to the decision on any referral to the Regulatory Tribunal).
- 5.72 In exceptional cases, the decision-maker may permit representations from a person who has received a decision notice or second supervisory notice, or against whom action set out in a first supervisory notice has taken effect. However, the Regulatory Authority will only consider allowing this where the person can demonstrate on reasonable grounds that he did not receive the notice of proposed action (or first supervisory notice) or that he had reasonable grounds for not responding in the manner and within the period specified in the notice. In these circumstances, and depending on its consideration of the representations, the Regulatory Authority may decide to give a further decision notice or a second supervisory notice.
- 5.73 If the Regulatory Authority decides to give the person a further decision notice, it will also give the person a notice of discontinuance in respect of the earlier decision notice.

Private warnings

- 5.74 In some cases, the Regulatory Authority may decide that, despite having concerns about a person's conduct or sufficient evidence of contravention of a relevant requirement, in the circumstances of the matter it is not appropriate to take disciplinary or enforcement action against the person. This enables the Regulatory Authority to use its resources on the most significant matters. In such cases, the Regulatory Authority may give the person concerned a private warning.
- 5.75 While a private warning is no different to any other Regulatory Authority communication which criticises, or expresses concern about, a person's conduct, it has more serious implications than concerns that might be communicated in the course of normal supervisory correspondence.
- 5.76 The decision to give a person a private warning can be made at any stage of the enforcement process and for different reasons. For example, the Regulatory Authority might decide to give a private warning where:
- a. the appropriate decision-maker decides that a private warning should be given instead of taking disciplinary or enforcement action against the person;
 - b. the matter gives the Regulatory Authority cause for concern but there is

insufficient evidence to take disciplinary or enforcement action; or

- c. there is sufficient evidence of a contravention but the circumstances of the matter lead the Regulatory Authority to conclude that it is not appropriate to take disciplinary or enforcement action: for example, where the person concerned has taken full and immediate remedial action, or where the matter giving cause for concern is minor in nature or degree.

5.77 In deciding whether to give a private warning, the Regulatory Authority takes into account all the circumstances of the case including, the likely effect of a private warning on the recipient, whether the recipient poses any risk to the Regulatory Authority's regulatory objectives and the factors set out in Annex 1 to this Chapter. Where the Regulatory Authority gives a private warning to an approved individual, the Regulatory Authority generally informs the individual's employer of its decision to do so and gives it a copy of the private warning.

5.78 In most cases, the recipient of a private warning is not given an opportunity to comment on the private warning before it is given by the Regulatory Authority. However, any comments that are provided by the recipient in response to the private warning are recorded as part of the person's disciplinary record and compliance history.

5.79 As private warnings (and any comments provided in response) form part of a person's disciplinary record and compliance history, the Regulatory Authority may take earlier private warnings into consideration when considering whether to take disciplinary action against a person in future. Where action is commenced in those circumstances, earlier private warnings are not relied on to establish whether a contravention has occurred, but are likely to be an aggravating factor for the purposes of determining the size of any financial penalty imposed. In this regard, the Regulatory Authority also takes into consideration the age of, and matters referred to in, a private warning.

5.80 Two or more private warnings to the same person may be considered cumulatively, although they relate to separate areas of the person's business, where the concerns which gave rise to them are considered to be indicative of a person's attitude to compliance. Similarly, where two or more private warnings are given to different subsidiaries of a parent company, they may be considered cumulatively where the concerns which gave rise to those warnings relate to a common management team.

Decision-making in respect of settlement

5.81 The Regulatory Authority's policy in relation to settlement of enforcement investigations and disciplinary action is set out in Chapter 8 of this Policy Statement.

5.82 Either the Regulatory Authority or the person concerned may initiate settlement discussions at any time during the enforcement process. That is, settlement

discussions can commence before or after a notice of appointment of investigators is given under article 50(2), before or after a notice of proposed action is given under article 70, or before or after a decision notice is given under article 71. However, the Regulatory Authority would be unlikely to agree to settle a matter after a decision notice is given, or during the process of appeal to the Regulatory Tribunal unless the person to whom the decision notice was given is prepared to accept the action being taken by the Regulatory Authority or new and compelling evidence comes to light.

- 5.83 Where the Regulatory Authority has given the person concerned a notice of proposed action, the matter may only be settled on behalf of the Regulatory Authority with the agreement of the decision-maker that made the decision to give the person the notice of proposed action or by another decision-maker at a higher level.
- 5.84 One of the main benefits to all parties to a settlement is that it can save a considerable amount of time and resources that would otherwise be spent in taking or opposing the action. Accordingly, the Regulatory Authority's procedures for concluding a matter by way of settlement are less formal than those followed in the normal course of disciplinary action. The procedures to be followed also depend on the stage reached in the disciplinary process. For example, where the Regulatory Authority has already given a person a notice of proposed action, the matter can be settled on terms including that person agreeing not to make any written representations, to being given a decision notice in agreed terms and not to exercise their right to refer the decision notice to the Regulatory Tribunal. Where a matter is settled before a notice of proposed action is given, it would also need to include an agreement by the person concerned to being given a notice of proposed action in agreed terms.
- 5.85 Settlement after a decision notice has been given is possible only if the person agrees either not to exercise their right to refer the matter to the Regulatory Tribunal or to withdraw any appeal they may have already made. In these circumstances, any proceedings before the Regulatory Tribunal are discontinued in accordance with the Regulatory Tribunal's Procedural Rules.
- 5.86 Where the case is not a routine matter or minor contravention, or where the decision-maker is someone other than an Enforcement Committee, then an Enforcement Committee considers the proposed settlement and recommends to the relevant decision-maker whether to accept it. For all other matters, an Enforcement Committee is the decision-maker for the purposes of deciding whether to accept the proposed settlement.
- 5.87 Once the relevant decision-maker receives a recommendation, either from the Regulatory Authority staff or from an Enforcement Committee, the decision-maker decides whether to:
- a. accept the proposed settlement;

- b. decline to settle the matter; or
 - c. propose other terms that the decision-maker is prepared to consider and ask the Regulatory Authority staff to engage in further settlement discussions with the person concerned.
- 5.88 Depending upon the nature of the enforcement action proposed and the position agreed between the Regulatory Authority and the person concerned, a matter may be settled by way of an enforceable undertaking or a settlement agreement and with agreed versions of a notice of proposed action, decision notice or supervisory notice, as the case may be.
- 5.89 Once the relevant decision-maker makes the decision to settle, the matter is referred back to the Enforcement Department for the relevant staff to notify the person concerned of the decision and to put the decision into effect.
- 5.90 Other than in exceptional circumstances, after a settlement is agreed the Regulatory Authority issues an appropriate media release regarding the settlement (subject to the provisions regarding confidentiality in the FSR and articles 74 (Publishing Information) and 75 (Publication of statements)). Such a release ensures transparency and accountability, demonstrates the Regulatory Authority's flexibility and fairness and encourages others to be more receptive to early settlement.

Discontinuance of Regulatory Authority proceedings

- 5.91 Article 73(1) provides that, where the Regulatory Authority decides not to take the action to which a decision notice relates, it must give the person concerned a notice of discontinuance, identifying the proceedings which are being discontinued.
- 5.92 If the action being discontinued involves a third party (as set out in article 76), the Regulatory Authority also gives the third party a copy of the notice of discontinuance.
- 5.93 If the decision-maker decides not to take the action to which a notice of proposed action relates, it gives the person concerned (and any third parties) a notice of discontinuance, although there is no obligation to do so.
- 5.94 It may be appropriate, in exceptional circumstances, to give a person (and any third parties) a notice of discontinuance where the Regulatory Authority is taking some other action against the person. This might arise, for example, where, following consideration of a person's representations, or those of a third party, the Regulatory Authority decides to take action which is substantially different to the action proposed in the notice of proposed action. If this arises, the person concerned (and any third party) is given a further notice of proposed action as well as the notice of discontinuance.

Annex 1 – Factors in deciding whether to take disciplinary action

1. In deciding whether to take disciplinary action in respect of conduct appearing to the Regulatory Authority to contravene a relevant requirement, the Regulatory Authority considers the full circumstances known to it for each case. The following is a list of factors that may be relevant in making this decision in a particular case. The list is indicative only and not all listed factors will be relevant. Some factors may be more relevant than others and there may be other factors, not listed, that are relevant.

The nature, seriousness and effect of the conduct

2. The Regulatory Authority has regard to the following:
 - a. whether the apparent contravention was deliberate or reckless;
 - b. the duration and frequency of the apparent contravention and the length of time that has elapsed since it occurred;
 - c. the amount of any benefit gained or loss avoided as a result of the apparent contravention;
 - d. if the person is or was an authorised firm, whether the apparent contravention happened because:
 - i. of serious or systemic weaknesses in the person's systems, procedures or controls; or
 - ii. the resources (including staffing) allocated to them were inadequate;
 - e. any effect or potential effect of the apparent contravention on the following:
 - i. the efficiency, transparency and the integrity of the QFC;
 - ii. confidence in the QFC by users and potential users of the QFC;
 - iii. the financial stability of the QFC, including systemic risk relating to the QFC;
 - iv. the reputation of the QFC;
 - f. any loss or risk of loss caused to clients, customers and other affected people;
 - g. whether the apparent contravention had an effect on vulnerable people, whether intentionally or otherwise;
 - h. the nature and extent of any financial crime caused or facilitated by, or

otherwise attributable to, the apparent contravention;

- i. the scope for any potential financial crime to be caused or facilitated by the apparent contravention;
- j. whether there are a number of smaller issues, which individually may not justify disciplinary action, but which do so when taken together.

Subsequent conduct

- 3. The person's subsequent conduct, including, for example:
 - a. how quickly, effectively and completely the person brought the apparent contravention to the attention of the Regulatory Authority or another regulatory authority;
 - b. the degree of cooperation the person showed during the investigation of the apparent contravention (further guidance on the Regulatory Authority's policy on cooperation is set out in Chapter 2 of this Policy Statement);
 - c. any remedial steps the person has taken in relation to the apparent contravention, and whether these were taken on the person's own initiative or that of the Regulatory Authority or another regulatory authority;

Examples of remedial steps

- 1. ascertaining whether clients or customers suffered loss and compensating them if they have;
 - 2. correcting any misleading statement or impression;
 - 3. taking disciplinary action against, or providing additional training for, staff involved in the contravention;
 - 4. recruiting new staff so as to have sufficient resources; or
 - 5. introducing new policies and procedures to reduce the likelihood of the contravention happening again.
- d. the likelihood that the same type of contravention (whether by the person or others) will recur if no action is taken;
 - e. whether the person has complied with any requirements or decisions of the Regulatory Authority or another regulatory authority in relation to the apparent contravention;
 - f. the nature and extent of any false, misleading or inaccurate information

given by the person to the Regulatory Authority or another regulatory authority in relation to the contravention and whether any such information appears to have been given carelessly, recklessly or in an attempt to mislead.

Disciplinary record and compliance history

4. The disciplinary record and compliance history of the person, including, for example:
 - a. whether the Regulatory Authority has previously taken any disciplinary or enforcement action against the person;
 - b. whether the Regulatory Authority has previously taken action against the person under articles 31 or 46 (own initiative action);
 - c. whether the person has previously given an undertaking under article 61 (enforceable undertakings);
 - d. whether the Regulatory Authority has previously given the person a notice under article 62 (prohibitions and restrictions);
 - e. whether an order has previously been made against the person under article 63 (injunctions) or article 64 (restitution orders);
 - f. whether the Regulatory Authority has previously asked the person to take remedial action, and the extent to which the remedial action has been taken;
 - g. the person's general compliance history, including whether the Regulatory Authority has previously given the person a private warning.

Action in similar cases

5. Action taken or to be taken by the Regulatory Authority in relation to similar cases involving others.

Action by other regulatory authorities

6. Action taken or to be taken against the person by any other regulatory authority in relation to the same facts and matters which gave rise to the apparent contravention by the person concerned.
7. In this regard, the Regulatory Authority considers the extent to which action by any other regulatory authority is sufficient to ensure the Regulatory Authority's concerns are adequately addressed, or whether it would be appropriate for the Regulatory Authority to take its own action.

Action against approved individuals

8. If the person is or was an approved individual for an authorised firm, the following factors will also be relevant:
 - a. the person's position, role and responsibilities and, in particular, how senior the person is or was in the firm and how important the person's duties in the firm are or were;
 - b. the extent of the person's involvement, having regard to the provisions of article 85;
 - c. whether the person's conduct was such that disciplinary action should be taken against the person: for example, the Regulatory Authority may decide that disciplinary action should be taken against the person because the person's conduct was deliberate or was of a standard below what could reasonably be expected;
 - d. whether disciplinary action against the firm rather than the person would be a more appropriate regulatory response;
 - e. whether disciplinary action against the person would be a proportionate response to the nature and seriousness of the contravention.

CHAPTER 6 – FINANCIAL PENALTIES AND PUBLIC CENSURES

Introduction

- 6.1 This Chapter sets out the Regulatory Authority’s policy in relation to the imposition of financial penalties under article 59 and the publication of public censures under article 58.
- 6.2 The statements of policy in this Chapter are made under article 79 and apply on and from the day this Policy Statement is issued.
- 6.3 The Regulatory Authority’s policy on the imposition of financial penalties, as required by article 79, was previously set out in The Financial Services Regulations (Financial Penalties and Public Censures) Policy Statement 2009 (QFCRA Policy Statement 2009-2) (“the previous financial penalty policy”). The previous financial penalty policy is revoked.
- 6.4 Despite the revocation of previous policy statements in relation to financial penalties, the Regulatory Authority applies the policy statement in effect at the time the relevant contravention occurred.

Purpose of financial penalties and public censure

- 6.5 The Regulatory Authority considers that the main purpose of imposing a financial penalty or publishing a public censure is to promote high standards of conduct by:
- a. penalising persons who have committed contraventions;
 - b. depriving persons of any benefit they may have gained as a result of their contraventions;
 - c. deterring persons who have committed contraventions from committing further contraventions;
 - d. deterring others from committing similar contraventions; and
 - e. demonstrating generally the benefits of compliance with regulatory requirements.
- 6.6 Financial penalties and public censures are therefore tools that, among others, the Regulatory Authority may use to help it achieve the regulatory objectives in article 12(3).
- 6.7 Without limiting paragraph 6.5 above and to remove any doubt, a financial penalty may be a punitive one that is likely to be effective as a deterrent.

Late notification and reporting contraventions

- 6.8 The Regulatory Authority regards as important the timely submission of notifications, reports or returns required under the Regulatory Authority's rules. The information in such notifications, reports or returns is essential to the Regulatory Authority's assessment of whether a person is complying with the requirements and standards of the regulatory system and to the Regulatory Authority's understanding of that person's business. It is therefore vital that notifications, reports or returns are provided on time and that they are accurate, complete and comprehensive.
- 6.9 Where a person fails to provide to the Regulatory Authority certain specified notifications, reports or returns as, or within the time which, the particular notification, report or return is required to be provided, the provisions of Chapter 10 of the General Rulebook (GENE) apply. These provisions set out the fees chargeable for late notifications, reports and returns.
- 6.10 Where, however, a person repeatedly fails to provide the Regulatory Authority with a notification, report or return required under the regulatory system, or where the failure is serious, the Regulatory Authority may decide to take disciplinary action against the person. This might be the case, for example, where a person fails to provide a notification, report or return despite repeated requests from the Regulatory Authority (and even if an administrative fee under Chapter 10 of GENE has already been charged), or where a person has failed more than once within a period of a year to provide such a notification, report or return as required.
- 6.11 Further, where a person repeatedly fails to provide the Regulatory Authority with a notification, report or return, the Regulatory Authority will also consider whether it is appropriate to withdraw the person's authorisation (under article 31(2)(C)). The grounds on which the Regulatory Authority may do so are that, in repeatedly failing to provide the notification, report or return, the person is impeding or restricting the Regulatory Authority's ability to supervise them effectively. Therefore, not only has the person contravened a relevant requirement by failing to provide the notification, report or return but is also likely to be failing to meet the fitness and propriety criteria for the purposes of their authorisation.
- 6.12 Further information on the Regulatory Authority's policy in relation to withdrawal of authorisation and action which the Regulatory Authority may take on its own initiative is set out in Chapter 9 of this Policy Statement.
- 6.13 The provision of a notification, report or return within the time specified by the applicable relevant requirement is not, of itself, sufficient to enable a person to avoid an administrative fee and the possibility of action under this Chapter of the Policy Statement. The notification, report or return must also be complete, accurate and, if appropriate, provided in the particular form or way as required. Therefore, the relevant parts of Chapter 10 of GENE and paragraphs 6.8 to 6.12

above apply if:

- a. a notification, report or return was not received (or considered to have been received) at all by the Regulatory Authority within the time specified by the relevant requirement; or
- b. the notification, report or return was received by the Regulatory Authority within that time, but:
 - i. it was incomplete or inaccurate in a material respect; or
 - ii. if it was required to be provided to the Regulatory Authority in a particular form under any regulations or rules, it was not in substantial compliance with that form; or
 - iii. it was otherwise not properly prepared, completed or signed as required under any regulations or rules; or
 - iv. if it was required to be provided in a particular way under any regulations or rules, it was not provided to the Regulatory Authority in that way.

6.14 The responsibility to provide such notifications, reports or returns on time rests on the person to whom the report or return relates.

Factors in determining whether to issue a public censure

6.15 In some cases, the Regulatory Authority may decide that, although some form of disciplinary action against a person in relation to a contravention of a relevant requirement is justified, the disciplinary action should take the form of a public censure (under article 58) rather than a financial penalty (under article 59).

6.16 In deciding whether to impose a public censure rather than a financial penalty, the Regulatory Authority considers all the relevant circumstances of the case. Although the factors set out in Annex 1 to Chapter 5 are likely to be relevant, they are not exhaustive. Not all of the factors may be relevant in a particular case and there may be other factors, not listed, that are relevant.

6.17 Some additional factors that may be relevant are:

- a. whether or not issuing a public censure would be an effective deterrent;
- b. whether the person made a profit or avoided a loss as a result of the contravention (this is likely to be a consideration in favour of imposing a financial penalty, on the basis that the person should not be permitted to benefit from the contravention);
- c. the seriousness of the contravention — if the contravention is more serious in nature or degree, this is likely to be a consideration in favour of

imposing a financial penalty, on the basis that the sanction should reflect the seriousness of the contravention; other things being equal, the more serious the contravention, the more likely it is that the Regulatory Authority will impose a financial penalty;

- d. the conduct of the person concerned: for example, bringing the contravention to the attention of the Regulatory Authority, admitting the contravention, providing full and immediate cooperation and taking prompt steps to ensure that anyone who suffered as a result of the contravention is fully compensated favour a public censure rather than a financial penalty;
- e. the disciplinary record and compliance history of the person — if they have previously been subject to disciplinary action or warned by the Regulatory Authority in relation to the same or similar behaviour this is likely to be a factor in favour of a financial penalty;
- f. the Regulatory Authority's approach in similar previous cases — the Regulatory Authority seeks to be consistent in its decisions on whether to impose a financial penalty or publish a public censure; and
- g. the effect on the person concerned: only in an exceptional case would the Regulatory Authority decide to issue a public censure rather than impose a financial penalty if a financial penalty would otherwise be the appropriate disciplinary action.

6.18 Examples of exceptional cases for the purposes of paragraph 6.17(g) are:

- a. where the person concerned has provided verifiable evidence that they would suffer serious financial hardship if the Regulatory Authority imposed a financial penalty;
- b. where the person concerned has provided verifiable evidence that they would be unable to meet regulatory requirements, particularly financial resource requirements, if the Regulatory Authority imposed a financial penalty of an appropriate amount; and
- c. where there is a likelihood of a severe adverse effect on a person's shareholders or a consequential damage to confidence in, or the stability or reputation of, the QFC if a financial penalty was imposed.

Factors in determining the appropriate level of financial penalty

6.19 Under article 79(2), in determining the amount of a financial penalty to be imposed under article 59, the Regulatory Authority must have regard to the following factors:

- a. the seriousness of the contravention in relation to the nature of the requirement contravened;

- b. the extent to which the contravention was deliberate or reckless;
- c. whether the person on whom the penalty is to be imposed is an individual;
and
- d. the effect on third parties, clients or customers and the best interests of the financial system.

6.20 In any case where the Regulatory Authority decides that a financial penalty is appropriate, additional factors may be relevant to determining the amount of that financial penalty. Therefore, in considering this, the Regulatory Authority has regard to the factors and considerations listed in the following paragraphs. Although the Regulatory Authority must have regard to the factors listed in paragraph 6.19 above, the following list is indicative only and is not exhaustive: not all listed factors and considerations will be relevant to a particular case, and there may be other factors and considerations, not listed, that are relevant.

Seriousness

6.21 The Regulatory Authority has regard to the seriousness of the contravention in relation to the nature of the requirement contravened. In considering the seriousness of the contravention, the following non-exhaustive factors may be relevant:

- a. the duration and frequency of, and the period that has elapsed since, the contravention;
- b. if the person is (or was) an authorised firm – whether the contravention happened because:
 - i. of serious or systemic weaknesses in the person’s systems, procedures or controls; or
 - ii. the resources (including staffing) allocated to them were inadequate;
- c. if the person is (or was) an authorised firm and the firm’s senior management were aware of the contravention – whether they took any steps to stop or prevent the contravention, the adequacy of any steps and when the steps were taken;
- d. the effect or potential effect of the contravention on the following:
 - i. the efficiency, transparency and integrity of the QFC;
 - ii. confidence in the QFC by users and potential users of the QFC;
 - iii. the financial stability of the QFC, including systemic risk relating to the QFC; and

- iv. the reputation of the QFC.
- e. any loss or risk of loss caused to clients, customers and other affected people;
- f. whether the contravention had an effect on particularly vulnerable people, whether intentionally or otherwise;
- g. the nature and extent of any financial crime caused or facilitated by, or otherwise attributable to, the contravention;
- h. the scope for any potential financial crime to be caused or facilitated by the contravention; and
- i. whether publicly available guidance or published materials raised concerns about the conduct constituting the contravention.

Deliberate or reckless

6.22 The Regulatory Authority has regard to the extent to which the contravention was deliberate or reckless. If the contravention was deliberate or reckless, the Regulatory Authority is likely to impose a larger financial penalty on the person than would otherwise be the case.

6.23 In this regard, the Regulatory Authority considers the following:

- a. whether the breach was intentional, in that the person concerned (including the senior management of an authorised firm) intended or foresaw that their actions would or might result in a contravention;
- b. whether the person concerned (including the senior management of an authorised firm) knew that their actions were not in accordance with internal procedures;
- c. whether any steps were taken in an attempt to conceal the misconduct;
- d. whether the contravention was committed in such a way as to avoid or reduce the risk that the contravention would be discovered;
- e. whether the decision to commit the contravention was influenced by a belief that it would be difficult to detect;
- f. whether the contravention occurred more than once, and if so, how often; and
- g. whether reasonable professional advice was obtained before or during the contravention and was not followed or responded to appropriately. Obtaining professional advice does not remove a person's responsibility for compliance with relevant requirements.

- 6.24 Factors tending to show that a contravention was reckless include:
- a. the person knowing that there was a risk that their actions or inaction could result in a contravention but failing to mitigate that risk adequately; and
 - b. the person knowing that there was a risk that their actions or inaction could result in a contravention but failing to check if they were acting in accordance with relevant internal procedures.

Whether the person is an individual

- 6.25 The Regulatory Authority has regard to whether the person on whom the financial penalty is to be imposed is an individual. In determining the amount of a financial penalty to be imposed on an individual, the Regulatory Authority takes the following into account:
- a. that individuals do not always have the resources of a firm;
 - b. that enforcement action may have a greater effect on an individual than on a firm; and
 - c. that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a firm.

- 6.26 The Regulatory Authority also considers whether the person's position or responsibilities (or both) are such as to make a contravention committed by the person more serious and whether a larger financial penalty should therefore be imposed.

Effect on third parties etc

- 6.27 The Regulatory Authority has regard to the effect of the contravention on third parties, clients or customers and the best interests of the financial system (including those matters to which the FSR apply).
- 6.28 The Regulatory Authority considers a contravention to be more serious where it results in a loss, or the risk of loss, to third parties, clients or customers or if it had an effect on particularly vulnerable people, whether intentionally or otherwise.

Deterrence

- 6.29 In determining the appropriate amount of a financial penalty, the Regulatory Authority has regard to its policy that one of the main purposes of taking disciplinary action is deterrence: that is, deterring persons who have committed contraventions from committing further contraventions, and deterring others from committing similar contraventions.

6.30 The Regulatory Authority has regard to the need to ensure that any financial penalty imposed has the appropriate deterrent effect. In this regard, the Regulatory Authority considers the extent to which it is necessary to impose a financial penalty of an appropriate amount in order to ensure that the deterrent effect of the action is not reduced or diminished.

Size, financial resources and other circumstances of the person

6.31 In determining the appropriate amount of a financial penalty, the Regulatory Authority will take into consideration the size, financial resources and other circumstances of the person.

6.32 The Regulatory Authority may take into account whether there is verifiable evidence that a person would suffer serious financial hardship if a proposed financial penalty was imposed on them. The Regulatory Authority's policy in relation to serious financial hardship is set out in paragraphs 6.48 to 6.56 below.

6.33 The Regulatory Authority regards the size and financial resources of the person concerned as matters to be taken into consideration in determining the amount of the financial penalty, but not to the extent that there is a direct correlation between those factors and the amount of the penalty.

6.34 For an authorised firm, the seriousness of a contravention may be linked to the size of the firm. For example, a systemic failure in a large authorised firm could threaten to damage a much larger number of clients or customers than a similar failure in a small authorised firm. Also, contraventions in an authorised firm with a large volume of business over a long period may be more serious than contraventions over a similar period in an authorised firm with a smaller volume of business.

6.35 The size and resources of a person may also be relevant in assessing any remedial steps taken by the person, in particular in deciding whether the steps the person took were reasonable and appropriate in the circumstances.

Financial gain or loss avoided

6.36 The Regulatory Authority will seek to deprive a person who commits a contravention of the amount of any benefit gained or loss avoided by that person as a result of their contravention.

6.37 Accordingly, if the person has made a profit or avoided a loss, the Regulatory Authority will impose a financial penalty consistent with the principle that a person who commits a contravention should not benefit from the contravention. Therefore, the amount of the penalty should not be less than the amount of the profit made or loss avoided.

6.38 Further, in taking into consideration the amount of any financial advantage gained by a person who committed a contravention, the Regulatory Authority has

regard to the need to ensure that the amount of the financial penalty acts as a deterrent to the person (and to others).

Subsequent conduct

6.39 The Regulatory Authority takes into consideration the conduct of the person after the contravention in determining the amount of the financial penalty, including, for example, the following:

- a. the conduct of the person in bringing (or failing to bring) the contravention quickly, effectively and completely to the attention of the Regulatory Authority or, if appropriate, another regulatory authority;
- b. the degree of cooperation the person showed during the investigation of the contravention;
- c. any remedial steps the person has taken in relation to the contravention, including whether they were taken on the person's own initiative or that of the Regulatory Authority or another regulatory authority. Remedial steps might include, for example:
 - i. ascertaining whether clients or customers suffered loss and compensating them if they have;
 - ii. correcting any misleading statement or impression;
 - iii. if appropriate, taking disciplinary action against, or providing additional training for, staff involved in the contravention;
 - iv. recruiting new staff to enhance or increase resources; and
 - v. introducing or improving policies, procedures or systems and controls to reduce the likelihood of the contravention arising in future.
- d. whether the person has complied with any requirements or decisions of the Regulatory Authority or another regulatory authority in relation to the contravention.

6.40 That the person has fully cooperated in the investigation of the contravention by the Regulatory Authority or another regulatory authority is a consideration tending to reduce the amount of the financial penalty. The Regulatory Authority's policy in relation to cooperation in the context of an enforcement investigation is set out in paragraphs 2.19 to 2.24 of this Policy Statement.

Disciplinary record and compliance history

6.41 The Regulatory Authority takes into consideration a person's disciplinary record and compliance history in determining the amount of the financial penalty, including, for example:

- a. whether the Regulatory Authority has previously taken any disciplinary action resulting in adverse findings against the person;
- b. whether the Regulatory Authority has previously taken action against the person under articles 31 or 46 (own initiative action);
- c. whether the person has previously given an undertaking under article 61 (enforceable undertaking);
- d. whether the Regulatory Authority has previously given the person a notice under article 62 (prohibitions and restrictions);
- e. whether an order has previously been made against the person under article 63 (injunctions) or article 64 (restitution orders);
- f. whether the Regulatory Authority has previously asked the person to take remedial action, and the extent to which the remedial action has been taken; and
- g. the person's general compliance history, including whether the Regulatory Authority has previously given the person a private warning.

6.42 The disciplinary record of a person could lead to the Regulatory Authority imposing a larger financial penalty than otherwise might be appropriate: for example, the financial penalty might be increased if the person has committed similar contraventions in the past or been warned about similar misconduct. In assessing the relevance of the person's disciplinary record and compliance history, generally the older the contravention is, the less significant it is regarded as being.

Action in similar cases

6.43 The Regulatory Authority takes into consideration action taken, or to be taken, by the Regulatory Authority in relation to similar cases involving others in determining the amount of the financial penalty.

6.44 While the Regulatory Authority seeks to act consistently in determining the amount of a financial penalty it does not operate a "tariff" system. In a particular case there may be circumstances which justify a financial penalty which is different to that imposed in another case which is otherwise substantially the same.

Action by other regulatory authorities

6.45 The Regulatory Authority takes into consideration action taken, or to be taken, by other regulatory authorities in relation to the person concerned, or in relation to similar cases involving others, in determining the amount of the financial penalty.

Settlement discount

- 6.46 The Regulatory Authority's policy in respect of settlement is set out in Chapter 8 of this Policy Statement. In the event that the Regulatory Authority and the person concerned agree on the action to be taken in a particular case, it is possible that any financial penalty imposed on the person will be reduced to take account of the settlement that has been reached. However, any settlement discount applied relates only to the punitive element of the financial penalty and not to an amount included to deprive the person concerned of any profit made, or loss avoided, as a result of their contravention or to any restitution or compensation payable under the terms of the settlement.
- 6.47 For the avoidance of doubt, the Regulatory Authority takes the same approach to determining the appropriate level of financial penalty to be imposed in a given case regardless of whether the case is concluded by way of settlement or otherwise. Where the person concerned and the Regulatory Authority reach agreement on the terms by which a matter is concluded, then the amount payable is normally less than the amount which the Regulatory Authority considers appropriate for the contravention.

Serious financial hardship

- 6.48 The purpose of a financial penalty is not to render a person insolvent or to threaten their solvency. If this is a material consideration, the Regulatory Authority considers, having regard to all other factors, whether a smaller financial penalty would be appropriate. However, where a person asserts that payment of a proposed financial penalty would cause them to suffer serious financial hardship, the Regulatory Authority will consider whether to reduce the proposed financial penalty only if:
- a. the person provides verifiable evidence that payment of the proposed financial penalty would cause them to suffer serious financial hardship; and
 - b. the person provides full, frank and timely disclosure of the verifiable evidence and cooperates fully with any enquiries the Regulatory Authority may make about their financial position.
- 6.49 It is the responsibility of the person concerned to satisfy the Regulatory Authority that payment of the proposed financial penalty would cause them to suffer serious financial hardship. It is not the Regulatory Authority's responsibility to establish that the person does have the means to pay the proposed financial penalty.
- 6.50 In any event, verifiable evidence that a person will suffer serious financial hardship is only one of the factors relevant to determining the size of a financial penalty, and the Regulatory Authority has the discretion as to whether it will take such evidence into account. It is only obliged to consider whether a smaller

penalty would be appropriate where the proposed financial penalty would render a person insolvent or threaten their solvency. Even then, the obligation is only to consider reducing the proposed financial penalty.

6.51 The following are key factors that the Regulatory Authority takes into consideration when determining whether someone will suffer serious financial hardship as a result of the imposition of a financial penalty:

- a. Whether the person has immediately realisable capital to enable them to pay the financial penalty, or if not, whether they should be required to pay it within a reasonable period of time or by way of instalments?
- b. What is the person's capital position, including their savings, investments, personal possessions, land, property and pension (depending on their age)? Relevant considerations in relation to a person's capital position might include:
 - i. The fact that an individual might have to sell their home to pay a financial penalty does not, of itself, amount to serious financial hardship and does not automatically lead to the conclusion that the financial penalty should be reduced.
 - ii. Is the fact that they have had to sell the property is disproportionate to the seriousness of the misconduct?
 - iii. Is the individual or his dependants elderly or disabled?
 - iv. Has the individual taken any steps to dispose of, transfer, or dissipate their assets since the investigation began?
 - v. Are the assets held jointly? If so, what is the individual's share?
 - vi. What liabilities does the individual have?
- c. Taking the total assets and liabilities into consideration, does the person have sufficient capital to pay the proposed financial penalty?
- d. If the person cannot pay the proposed financial penalty from immediately available capital then it is appropriate to look at their income. In this regard, the Regulatory Authority considers the income a person receives from employment in connection with which the contravention occurred and any extent to which the person has access to other means of financial support, such as regular payments provided by a third party.
- e. What level of income would be appropriate to enable the person to have a reasonable standard of living without suffering serious financial hardship? Does the person enjoy a particularly lavish or excessive lifestyle?
- f. What effect would the proposed financial penalty have on the person's

ability to meet their reasonable living expenses and financial commitments? In this regard, the following factors may be relevant:

- i. number of dependants;
 - ii. lifestyle;
 - iii. long-term financial commitments such as Court orders or debt repayments;
 - iv. reasonable mortgage or rent payments; and
 - v. medical expenses or care fees.
- g. If the person has no income, is this as a result of their misconduct? For example, were they dismissed by their employer?
- h. How likely is it that the person will lose their income as a result of action by the Regulatory Authority (for example, through withdrawal of their approval or prohibition)?

6.52 The above considerations enable the Regulatory Authority to form a view on whether the person is likely to suffer serious financial hardship if the proposed financial penalty is imposed. It is recognised that it may be appropriate to reduce the amount proposed in particular cases. Alternatively, the Regulatory Authority may agree that the financial penalty can be paid at some future date or over a specified period by way of instalments. The Regulatory Authority may agree to payment of the penalty by instalments where the person must wait for a salary payment or needs time to realise assets.

Serious misconduct

6.53 There will be cases where, even though the person has provided verifiable evidence that payment of the financial penalty would cause them to suffer serious financial hardship, the Regulatory Authority considers the contravention to be so serious that it is not appropriate to reduce the proposed financial penalty.

6.54 The Regulatory Authority will consider all the circumstances of the case in determining whether a particular contravention falls into this category. Examples of conduct that may do so include the following:

- a. providing false or misleading information to the Regulatory Authority;
- b. deliberate and repeated breaches of regulatory requirements and obligations;
- c. misconduct which fundamentally undermines the objectives of the Regulatory Authority;

- d. particularly serious misconduct which has resulted in, or gave rise to the risk of, loss by third parties;
- e. where the person has acted fraudulently or dishonestly with a view to personal gain; and
- f. where previous action by the Regulatory Authority has been unsuccessful in bringing about the desired change in behaviour either by the person concerned or the wider regulated community more generally.

6.55 Where there is serious misconduct it would diminish significantly the deterrent effect of a financial penalty if the Regulatory Authority were to reduce it on the grounds that an individual would suffer serious financial hardship. This, in turn, would be detrimental to the Regulatory Authority's objectives, particularly the objective to prevent, detect and restrain conduct which causes or may cause damage to the reputation of the QFC.

6.56 The Regulatory Authority may also conclude that it is not appropriate to reduce a proposed financial penalty if it does not accept the evidence submitted in relation to financial hardship; or where the person concerned has taken steps, such as dissipating their assets in anticipation of a financial penalty, in order to frustrate or limit the effect of the Regulatory Authority's action.

Interaction between disciplinary powers and other enforcement action

6.57 In appropriate cases, the Regulatory Authority may combine its power to impose a financial penalty or public censure with other powers available to it under Part 9 of the FSR. This might happen, for example, in a case concerning an approved individual where the Regulatory Authority considers it appropriate both to impose a financial penalty on the person and to prohibit the person from performing a particular function. Where a case relates to an authorised firm, the Regulatory Authority might decide that it is appropriate both to impose a financial penalty and to take action to prohibit the firm from entering into particular transactions.

6.58 The Regulatory Authority takes the following approach in deciding whether to combine any of its disciplinary and enforcement powers under Part 9 of the FSR:

- a. the Regulatory Authority determines what action, or combination of actions, is appropriate for the contravention;
- b. if the Regulatory Authority, having regard to the factors set out in paragraphs 6.15 to 6.18 above, considers it appropriate to impose a financial penalty, it decides the appropriate level of financial penalty having regard to paragraphs 6.19 to 6.56 set out above;
- c. If the Regulatory Authority considers it appropriate to take some other action against the person as well, it decides that action having regard to the full circumstances of the matter and other relevant parts of this Policy

Statement;

- d. If the Regulatory Authority considers it appropriate both to impose a financial penalty and to take some other action, it decides whether the combined effect on the person is likely to be disproportionate in relation to the contravention;
- e. If the Regulatory Authority considers that the combined effect on the person is likely to be disproportionate, it considers reducing the financial penalty or the extent or scope of the other action so that the combined effect is proportionate to the contravention. However, in reducing any combined action, the Regulatory Authority only does so to the extent that the deterrent effect of the combined action is not reduced or diminished;
- f. In deciding the final level of the financial penalty and the extent or scope of the other action, the Regulatory Authority also takes into account any representations by the person that the combined effect would cause them to suffer serious financial hardship. In such a case, the Regulatory Authority has regard to the full circumstances of the matter and paragraphs 6.48 to 6.56 of this Chapter.

Time and manner for payment

- 6.59 Where the Regulatory Authority decides to impose a financial penalty under article 59, it gives the person concerned a decision notice informing them of the decision. The decision notice specifies the amount of the financial penalty and the time and manner for payment.
- 6.60 A financial penalty, or part of a financial penalty (for example, where the financial penalty is payable in instalments), that is not paid within the period specified in the decision notice may be recovered by the Regulatory Authority as a debt. In such a case, the Regulatory Authority applies to the Civil and Commercial Court for an order that the financial penalty, or a part of it, is outstanding and due to the Regulatory Authority.

CHAPTER 7 – ENFORCEABLE UNDERTAKINGS

Introduction

- 7.1 This Chapter sets out the Regulatory Authority’s policy regarding enforceable undertakings under article 61.
- 7.2 Enforceable undertakings are promises, in writing, given by a person to the Regulatory Authority, to which a particular status is given by article 61. Article 84 provides that, if a person fails to comply with an undertaking given by him to the Regulatory Authority, that person contravenes a relevant requirement.
- 7.3 A person may offer an enforceable undertaking to do, or not to do, something at any time. The Regulatory Authority is under no obligation to accept a person’s offer to be bound by an enforceable undertaking and it has discretion to accept an enforceable undertaking where it considers it appropriate to do so. In deciding whether to accept an enforceable undertaking, the Regulatory Authority has regard to the particular circumstances of the matter.

Approach to enforceable undertakings

- 7.4 The Regulatory Authority considers that enforceable undertakings are an important regulatory tool to influence behaviour and encourage a culture of compliance among persons for the benefit of all participants in the QFC. As such, accepting enforceable undertakings from persons in appropriate matters supports the Regulatory Authority in meeting its regulatory objectives.
- 7.5 Accepting enforceable undertakings is in accordance with the Regulatory Authority’s approach to enforcement, particularly as it provides a flexible and versatile remedy to obtain suitable outcomes on matters that may otherwise involve litigation. As such, enforceable undertakings are time and resource effective for both the Regulatory Authority and the person providing the enforceable undertaking. In keeping with the risk-based approach to enforcement, accepting enforceable undertakings allows the Regulatory Authority to prioritise the use of its resources more effectively and achieve its regulatory objectives.

Offers of enforceable undertakings

- 7.6 The Regulatory Authority may, before or during the enforcement process in relation to a person (for example, during the scoping discussions of the investigation), suggest that it would be prepared to resolve the matter by accepting an enforceable undertaking. If so, the Regulatory Authority would generally also discuss possible terms of the enforceable undertaking that it would be prepared to consider.
- 7.7 However, while the Regulatory Authority may suggest that a matter is capable of being resolved by the giving of an enforceable undertaking, and may indicate that

it would be prepared to agree to conclude the matter in that way, it does not have the power under article 61 to require a person to give one.

- 7.8 An offer of an enforceable undertaking, by its nature, has to be made by the person who is to be bound by the undertaking and has to be provided to the Regulatory Authority for its consideration.
- 7.9 A person can make an offer to enter into an enforceable undertaking to the Regulatory Authority at any time, regardless of whether an investigation or proceedings have commenced in relation to the person. Where the Regulatory Authority decides to accept an enforceable undertaking from a person, under article 71(2) it is not required to give the person a decision notice.
- 7.10 Although the offer to be bound by an enforceable undertaking can be made at any stage in the enforcement process the Regulatory Authority is generally reluctant to accept an enforceable undertaking if it has already decided to take action against the person concerned and given them a decision notice under article 71.
- 7.11 Where an offer of an enforceable undertaking is made before the commencement of an investigation, the Regulatory Authority would not have had an opportunity to provide the person with a notice of appointment of investigators. Nor is it likely to have had an opportunity to draft a notice of proposed action. In this regard, enforceable undertakings differ from settlements.
- 7.12 Where the Regulatory Authority has already commenced an investigation, and the person has indicated that they are prepared to conclude the matter on an agreed basis with the Regulatory Authority, the Regulatory Authority generally does so by way of settlement rather than enforceable undertaking. However, this would depend on the circumstances of the case and the Regulatory Authority would consider, among other things, the stage it is at in the investigation in considering whether to conclude the matter, on an agreed basis, by way of settlement or enforceable undertaking. Whether a matter is concluded by way of enforceable undertaking or settlement also depends on the nature of the outcome to be agreed upon. For example, where a person agrees to pay a financial penalty, this will generally be by way of a settlement agreement rather than an enforceable undertaking. Further guidance on the Regulatory Authority's approach to settlement can be found in Chapter 8 of this Policy Statement.
- 7.13 Where the person subject to investigation wishes to resolve the matter by way of agreement with the Regulatory Authority, they should make their intention known to the Regulatory Authority's employee or investigator who is dealing with the matter. If the Regulatory Authority considers it appropriate to resolve the matter in that way, it would confirm that it is prepared to discuss the resolution of the matter by way of an enforceable undertaking or settlement and indicate the terms of that resolution. That said, the person concerned does not need to wait for the Regulatory Authority's confirmation, and should feel free to indicate at an early stage the undertakings to which they are prepared to commit themselves.

Accepting an enforceable undertaking

- 7.14 Under article 61, the Regulatory Authority has the discretion to accept an offer of an enforceable undertaking. As such, a person can only offer an enforceable undertaking to the Regulatory Authority but cannot compel the Regulatory Authority to accept the offer.
- 7.15 The Regulatory Authority would consider an offer of an enforceable undertaking in the light of the particular circumstances of the matter. In this regard, the Regulatory Authority would take into consideration the same criteria that it applies in deciding whether to take action, which are set out in Annex 1 to Chapter 5 of this Policy Statement. The Regulatory Authority would also:
- a. take into consideration the extent to which the conclusion of the matter by way of the enforceable undertaking would assist the Regulatory Authority in meeting its objectives, set out in article 12; and
 - b. have regard to the Principles of Good Regulation, set out in article 13.
- 7.16 Generally, the Regulatory Authority would only consider accepting an enforceable undertaking if the Regulatory Authority:
- a. has weighed the nature, significance and seriousness of conduct and the effectiveness of the regulatory outcome offered by the enforceable undertaking against outcomes offered by other available enforcement actions;
 - b. has considered the likelihood of the person offering the undertaking complying with the terms of that undertaking; and
 - c. considers that an enforceable undertaking is in the public interest and the most appropriate regulatory outcome in the circumstances of the matter.
- 7.17 The decision whether to accept the enforceable undertaking is a matter for the Regulatory Authority. The relevant decision-maker would depend on the circumstances of the case and whether it is a routine matter or minor contravention.
- 7.18 In most cases, where an enforceable undertaking is offered during the course of an enforcement investigation, the Regulatory Authority's Enforcement Committee is the decision-maker for the purposes of deciding whether to accept the enforceable undertaking.
- 7.19 In other cases where an enforceable undertaking is offered, (for example as part of the Regulatory Authority's supervision of a firm), the decision whether to accept it is made in accordance with the Regulatory Authority's internal procedures.

Terms of enforceable undertaking

- 7.20 The Regulatory Authority expects enforceable undertakings to include terms that the person:
- a. accepts that it contravened relevant requirements specified in the enforceable undertaking;
 - b. undertakes to cease the conduct that gave rise to the contraventions;
 - c. undertakes to rectify any adverse consequences, detriment or disadvantage that occurred as a result of the conduct that gave rise to the contraventions; and
 - d. will take appropriate measures and all reasonable steps to minimise the risk of such contraventions re-occurring.
- 7.21 There are many different types of enforceable undertaking that the Regulatory Authority is prepared to accept. The following non-exhaustive list provides examples of commitments that the Regulatory Authority may be prepared to accept by way of an enforceable undertaking in an appropriate case:
- a. a commitment by the giver of the undertaking to carry out specified actions to identify and remedy deficiencies in its compliance processes and have those actions reviewed by an independent expert or auditor;
 - b. a commitment to establish and implement an internal compliance action plan and report periodically to the Regulatory Authority on its progress on the steps identified in the plan;
 - c. where a person's conduct has been found to have caused loss to any of its customers, a commitment to review its business, write to its affected customers and, where appropriate, pay redress that has been calculated in accordance with a formula agreed in the undertaking;
 - d. a commitment to refrain from taking part in, or performing any role in connection with, the senior management of an authorised firm for a specified period of time; and
 - e. a commitment to refrain from writing any new business or taking on any new clients until the person has taken particular steps or addressed particular concerns to the satisfaction of the Regulatory Authority.
- 7.22 The Regulatory Authority generally refuses to accept enforceable undertakings which include terms, conditions or acknowledgements that a person giving the undertaking refuses or fails to accept that it contravened relevant requirements, or in which the giver attempts to establish defences for:
- a. contraventions of relevant requirements; or

b. breaches of or non-compliance with the terms of the undertaking.

7.23 Where a person offers an enforceable undertaking to the Regulatory Authority after the commencement of an investigation, the Regulatory Authority would generally expect the person to agree to pay the costs and expenses of the investigation incurred by the Regulatory Authority up until the time at which the enforceable undertaking was offered.

Compliance with enforceable undertakings

7.24 The Regulatory Authority may apply to the Civil and Commercial Court under article 61(3) if it is satisfied that the person who gave an enforceable undertaking has been in breach of any of its terms. The Civil and Commercial Court may make:

a. an order directing the person to comply with the relevant terms of the undertaking; or

b. any other order that the Civil and Commercial Court considers appropriate.

7.25 A failure to comply with the requirements of an enforceable undertaking is also a contravention of a relevant requirement under article 84(1). As such, the Regulatory Authority may exercise any of its enforcement powers available under Part 9 of the FSR against the person, including the imposition of a financial penalty under article 59 and the publication of that penalty.

Varying or withdrawing enforceable undertakings

7.26 Under article 61(2), a person may withdraw or vary an enforceable undertaking at any time, but only with the consent of the Regulatory Authority. If the Regulatory Authority agrees to the undertaking being varied or withdrawn, it would provide this consent to the person in writing.

7.27 A variation of an undertaking only modifies the original undertaking and does not replace it. The Regulatory Authority would only consider a request to vary an undertaking if:

a. there is a material change in the circumstances that resulted in the enforceable undertaking; or

b. the variation will not alter the meaning of the enforceable undertaking.

7.28 Where an enforceable undertaking contains an expiry date, the Regulatory Authority recognises that there may be circumstances in which the giver of the undertaking needs to extend it beyond the expiry date. For example, a person may have complied with all the major terms of an enforceable undertaking but require further time to complete a minor task (delayed by unforeseen circumstances) required under the undertaking. In such instances, the person should give compelling reasons in writing for why it has been unable to comply

with the undertaking in the specified period, because without the Regulatory Authority's consent to vary the undertaking the person would be in contravention of a relevant requirement.

- 7.29 The withdrawal of an enforceable undertaking means that the person is no longer bound by it. The Regulatory Authority considers that it would rarely consent to the withdrawal of an undertaking, and only in exceptional circumstances: for example, if the Regulatory Authority has withdrawn the authorisation or approval of the person concerned and the person would no longer be able to comply with any undertaking regarding the conduct of regulated activities.

Publicity

- 7.30 In accordance with article 18, the Regulatory Authority generally publicises the outcomes of enforcement or disciplinary actions that it takes under Part 9 of the FSR. This helps to ensure that its enforcement processes are open and transparent and also deters others from committing similar contraventions.
- 7.31 Under article 18(1) the Regulatory Authority is required to maintain a public register with details of authorised firms and approved individuals. The Regulatory Authority's general policy regarding updating the public registers to include outcomes of enforcement actions is set out in Chapter 12 of this Policy Statement.
- 7.32 The Regulatory Authority does not publicise the results of its enforcement or disciplinary actions where it believes that such publication:
- a. would not be in the public interest;
 - b. would be unfair to the person offering the enforceable undertaking or other persons; or
 - c. would not be in the interests of the financial system.
- 7.33 Where an enforceable undertaking is provided to the Regulatory Authority under article 61, the Regulatory Authority publicises the fact that the undertaking has been provided unless one or more of the factors set out in paragraph 7.32 apply.
- 7.34 As an alternative to the exercise of its powers under article 61, the Regulatory Authority may also accept an offer from a person to provide an undertaking on agreed terms as an effective and expedient means of addressing the regulatory concerns at an early stage in the enforcement process. Where the Regulatory Authority accepts an undertaking in these circumstances, it will not normally publicise information relating to the provision of the undertaking unless it considers that such publication is appropriate in the public interest or in the interests of the financial system.

CHAPTER 8 – SETTLEMENT

Introduction

- 8.1 This Chapter sets out the Regulatory Authority's policy regarding settlement of enforcement actions.
- 8.2 The Regulatory Authority and a person against whom enforcement action is being taken may hold settlement discussions at any time during the enforcement process. Settlement discussions may be initiated by either the Regulatory Authority or the person concerned.
- 8.3 Generally, the Regulatory Authority publicises details of the settlement of an enforcement or disciplinary action, in accordance with its policy on publicity of enforcement actions set out in Chapter 12 of this Policy Statement.

Approach to settlement

- 8.4 The decision to settle an enforcement action is a regulatory decision taken with the agreement of the person who is the subject of the enforcement action. Under a settlement a person against whom enforcement action is being taken agrees to the imposition of a financial penalty or other enforcement outcome and to waive any rights to contest the financial penalty or other enforcement outcome. By definition, a settlement requires the agreement of both the Regulatory Authority and the person — the Regulatory Authority cannot unilaterally impose a settlement. The Regulatory Authority intends that a settlement will bring the matters subject to the settlement to conclusion.
- 8.5 Early settlement of an enforcement action has many advantages for both the Regulatory Authority and the person who is the subject of the action. For example, settling enforcement actions avoids the need for further regulatory proceedings and litigation and is thus time and resource effective for both the Regulatory Authority and persons who are the subjects of enforcement actions. Settlement allows the Regulatory Authority to use its resources more effectively by avoiding the need to allocate resources to matters which are capable of being resolved early by way of settlement.
- 8.6 A settlement can allow restitution or redress for clients earlier than might otherwise be possible. A settlement also allows the Regulatory Authority to make a public statement about the relevant misconduct earlier than would otherwise be possible. Settlement also gives the subjects of the enforcement action an opportunity to engage with the Regulatory Authority in the drafting of any notices which will be given to them, such as a notice of proposed action or a decision notice. It also enables persons to bring matters to conclusion more swiftly. The Regulatory Authority therefore considers that, where it is appropriate and possible, enforcement actions should be settled as early as possible and that it is in the public interest to do so.

- 8.7 In considering settlement of enforcement actions, the Regulatory Authority takes into account that enforcement action is only one of the many tools available to the Regulatory Authority to secure its regulatory objectives. Before engaging in settlement discussions, the Regulatory Authority satisfies itself that taking some enforcement action is in the public interest and appropriate in the circumstances of the matter. In this regard, the Regulatory Authority takes into consideration the criteria that it applies in deciding whether to take action, which are set out in Annex 1 to Chapter 5 of this Policy Statement.
- 8.8 The terms of the settlement of an enforcement action vary depending on the circumstances of the matter. In each case, the Regulatory Authority carefully considers its regulatory objectives, the public interest, and the importance of sending clear, consistent messages through enforcement action. As such, the Regulatory Authority settles only if the agreed terms of the settlement result in an acceptable regulatory outcome.
- 8.9 Although the Regulatory Authority considers that it is in the public interest to conduct settlement discussions earlier in the enforcement process rather than later, it normally only engages in settlement discussions once it has sufficient understanding of the nature and gravity of the suspected misconduct to enable it to make a reasonable assessment of the appropriate outcome.

Timing and process

- 8.10 Settlement discussions can be held at any stage of the enforcement process. For example, settlement discussions can take place before investigators are appointed, before or after a notice of proposed action has been given under article 70, before or after a decision notice has been given under article 71 or during proceedings resulting from a referral to the Regulatory Tribunal.
- 8.11 The Regulatory Authority generally considers that settlement discussions with a person are likely to be more productive if a notice of proposed action under article 70 or some other formal notification of the Regulatory Authority's concerns and its proposed action has been given to the person. The notification enables the person to understand the Regulatory Authority's concerns and what it considers to be the appropriate regulatory action. However, it should not be assumed that the Regulatory Authority's position is not open to discussion simply because it has been set out in a notice of proposed action.
- 8.12 That said, the Regulatory Authority is unlikely to settle a matter through negotiation after a decision notice has been given to the person, or during proceedings at the Regulatory Tribunal, unless the person accepts the action being taken by the Regulatory Authority or compelling evidence comes to light which causes the Regulatory Authority to reconsider the matter.
- 8.13 Where the Regulatory Authority decides to exercise a disciplinary power, such as the imposition of a financial penalty on a person, article 71 requires the Regulatory Authority to give the person a decision notice. Accordingly, the

Regulatory Authority gives the person a decision notice where the terms of a settlement include disciplinary action. Under article 66, the person who receives a decision notice has the right to refer the matter to the Regulatory Tribunal. However, if settlement has been reached, there is unlikely to be any purpose in them doing so. Accordingly, the Regulatory Authority expects the person concerned to waive their rights under article 66.

- 8.14 Where a person has already been given a notice of proposed action under article 70 and has reached a settlement, the Regulatory Authority expects the person to waive any rights to make representations regarding the notice.
- 8.15 The Regulatory Authority considers that settlement discussions should take place in a timely and diligent manner to ensure that the Regulatory Authority does not unnecessarily divert resources to progress matters through the formal process. The Regulatory Authority will set appropriate timetables for settlement discussions to ensure that the discussions do not delay or shift focus away from the formal enforcement process. Where required, the Regulatory Authority may dispose its resources in a manner that allows the formal enforcement process to continue in parallel with the settlement discussions. To facilitate timely and effective resolution of matters, the Regulatory Authority expects persons to provide reasonable assistance in adhering to the Regulatory Authority's set timetable.

Basis for settlement discussions

- 8.16 The Regulatory Authority holds settlement discussions on the basis that neither the Regulatory Authority nor the person would seek to rely against the other on any admissions or statements made during the course of the discussions or in documents recording the discussions if the matter is considered subsequently by the Regulatory Tribunal. The Regulatory Authority sets out these terms in writing before the settlement discussions begin. This ensures that persons engage in full and frank settlement discussions that increase the likelihood of reaching a settlement.

Decisions regarding proposed settlements

- 8.17 Settlement discussions take place between the Regulatory Authority's staff and the person concerned. If the settlement discussions result in a proposed settlement, the Regulatory Authority's staff will document the proposed settlement and refer the matter to a decision-maker of the Regulatory Authority to decide whether the matter should be settled and the terms of the settlement. The appropriate decision-maker is determined in accordance with the process set out in Chapter 5 of this Policy Statement.
- 8.18 The agreement on a proposed settlement does not in itself bind the Regulatory Authority to settle on the agreed terms. Only a formal decision by an appropriate Regulatory Authority decision-maker binds the Regulatory Authority to a settlement, and the decision-maker is not bound by the terms of the proposed

settlement. As the decision-maker would not have been involved in the settlement discussions, the decision-maker may request further information to assist in their consideration of the proposed settlement. This may involve meetings with the Regulatory Authority's representatives engaged in the settlement discussions or the person subject to the enforcement action.

- 8.19 Once the decision-maker receives a recommendation from the Regulatory Authority staff or the Enforcement Committee the decision-maker decides whether to:
- a. settle the matter on the terms proposed;
 - b. recommend other terms that the decision-maker is prepared to consider and ask the Regulatory Authority staff to engage in further settlement discussions with the person concerned; or
 - c. decline to settle the matter.

Publicity

- 8.20 The Regulatory Authority generally publicises the outcome of a settlement, including the names of the persons who were subjects of the enforcement action and the key terms of the settlement. Such a public statement not only ensures transparency and accountability in the settlement of enforcement actions but promotes the Regulatory Authority as a flexible and fair regulator and encourages other persons to be more receptive to the early settlement of enforcement actions or disciplinary actions.
- 8.21 However, the Regulatory Authority is aware that persons may provide highly confidential and commercially sensitive information as part of the settlement negotiations. In such cases, the Regulatory Authority may decide not to publicise such information if it considers that any of the matters set out in article 18(3) apply. The Regulatory Authority's general policy regarding publication of enforcement actions set out in Chapter 11 of this Policy Statement applies to settlements.

Terms of settlements

- 8.22 When it agrees to the terms of a settlement the Regulatory Authority ensures that those terms are consistent with the Regulatory Authority's regulatory objectives. The Regulatory Authority also considers the following matters:
- a. the need to send clear and consistent messages through enforcement actions;
 - b. only settle where the terms of the settlement result in acceptable regulatory outcomes;

- c. the scope of any remedial steps taken in relation to customers, including payment of any redress or restitution to persons, including clients and customers, who may have been affected by the misconduct concerned;
 - d. whether any financial penalty is to be paid by way of instalments; and
 - e. the effect of the settlement on any third parties, particularly where a notice or proposed action or decision notice has been given to such a third party.
- 8.23 The Regulatory Authority only accepts settlements where the person subject to the enforcement action accepts that it contravened relevant requirements and admits relevant facts regarding those contraventions in the settlement.
- 8.24 Other terms of a settlement vary depending on the circumstances of the matter and the stage in the enforcement process at which the settlement is agreed. However, generally the Regulatory Authority asks the person:
- a. to waive, and promise not to exercise, any rights to make representations under article 70 or to gain access to material considered by the Regulatory Authority;
 - b. not to object to being given a decision notice before any period specified by the Regulatory Authority for making written representations has expired;
 - c. not to dispute the facts and matters set out in a notice of proposed action or decision notice;
 - d. to agree that the Regulatory Authority will make a public statement regarding the settlement;
 - e. to waive, and promise not to exercise, any rights under article 77 or any other provision to be allowed access to any material relied on in the decision notice;
 - f. to waive, and promise not to exercise, any right under article 66 to refer a decision notice of the Regulatory Authority to the Regulatory Tribunal;
 - g. to agree not to make any public statement that in any way conflicts with the intent, purpose or factual basis of the settlement and the action that is to be taken by the Regulatory Authority; and
 - h. to agree that, if the Regulatory Authority considers that a term of the settlement is breached, the Regulatory Authority may apply to the Civil and Commercial Court for an order directing the person to comply with the terms of the settlement and any other order that the Regulatory Authority considers appropriate.

Financial penalties and early settlement

- 8.25 The Regulatory Authority considers that where a person has been open and cooperative with the Regulatory Authority and has demonstrated a commitment to settling an enforcement matter as early as possible, the person should be given appropriate recognition.
- 8.26 The Regulatory Authority considers that where a financial penalty is imposed on a person as a result of an early settlement, the amount of the financial penalty payable by the person should generally be less than if the penalty had been imposed on the person at a later stage in the enforcement process. Accordingly, the Regulatory Authority may reduce the financial penalty payable by a person to reflect the stage of the enforcement process at which settlement was reached and the resources used by the Regulatory Authority in reaching that stage. This only applies to settlements involving the imposition of a financial penalty under article 59 and does not apply to other disciplinary and enforcement actions.
- 8.27 It may also be appropriate for the Regulatory Authority to agree that any financial penalty imposed on a person can be paid by instalments. This depends on the circumstances of the case and if agreed it is included in the terms of the settlement.
- 8.28 Where a financial penalty includes an element to deprive a person of any profits they made or losses they avoided as a result of their contravention, no reduction is allowed in respect of that part of the financial penalty. Similarly, no reduction will be applied to any restitution or compensation payable to clients or customers under the settlement agreement.
- 8.29 Where the Regulatory Authority is prepared to agree to a discounted financial penalty through settlement, the settlement agreement will contain a statement as to the appropriate penalty and any discount agreed. In any public statements regarding the settlement, the Regulatory Authority will disclose the appropriate financial penalty and the amount that is actually payable as a result of the settlement.

Third party rights

- 8.30 Where a decision notice has been given to a person following the settlement of an enforcement action with that person, the Regulatory Authority is required under article 76 to consider the effect of the decision on third party rights. As set out in Chapter 5 of this Policy Statement, in appropriate cases the Regulatory Authority gives third parties access to relevant material and the right to make written representations at the notice of proposed action stage, despite being under no obligation to do so.
- 8.31 Generally, if a decision notice identifies a third party a copy of the notice must be given to the third party unless it is impractical to do so. Third parties have the right to make representations and ultimately can refer the matter to the

Regulatory Tribunal.

- 8.32 It is therefore important that any settlement reached with the Regulatory Authority takes account of the position of any third party. The Regulatory Authority expects that, in most cases, third party rights will not create any undue difficulty for settlement either because they do not arise or because the third party agrees not to exercise such rights. In any event, this is an additional factor which may need to be considered in appropriate cases.

CHAPTER 9 – OWN INITIATIVE ACTION

Introduction

- 9.1 This Chapter sets out the Regulatory Authority’s policy on the exercise of its powers to take action on its own initiative.
- 9.2 In this Chapter, references to “own initiative action” mean action which the Regulatory Authority takes on its own initiative under article 31 (in relation to authorised firms) or article 46 (in relation to approved individuals).
- 9.3 Own initiative action enables the Regulatory Authority to:
- a. impose or vary conditions, restrictions and requirements on a person’s authorisation or approval;
 - b. require a person to take, or refrain from taking, specified actions; or
 - c. withdraw a person’s authorisation or approval or vary a person’s authorisation or approval to remove one or more regulated activities or controlled functions.

Grounds for taking own initiative action

- 9.4 The Regulatory Authority may take own initiative action at any time it considers it appropriate to do so. Circumstances may arise as part of the Regulatory Authority’s supervision of the person concerned, or issues may arise during an enforcement investigation, which prompt the Regulatory Authority to consider taking own initiative action.
- 9.5 The decision whether to take own initiative action is based on the information available to the Regulatory Authority at the time of the decision is made on a case by case basis.
- 9.6 The Regulatory Authority exercises its powers to take own initiative action when it considers it appropriate to do so in pursuit of one or more of its regulatory objectives. In the case of an authorised firm, the Regulatory Authority might do so if it is satisfied that any of the grounds in article 31(1) apply. In the case of an approved individual, the Regulatory Authority might do so if it is satisfied that any of the grounds in article 46(1) apply. These grounds include the following:
- a. in the case of an authorised firm, it appears to have failed, or to be likely to fail, to satisfy the criteria for authorisation in articles 29(2) to (5). Chapter 2 and Appendix 1 of GENE set out further guidance on the criteria that authorised firms must continue to satisfy on an ongoing basis;
 - b. in the case of an approved individual, he or she appears to have failed, or to be likely to fail, to satisfy the suitability criteria referred to in article 43(2). Chapters 4 and 5 of INDI set out further guidance on the

criteria that approved individuals are required to satisfy on an ongoing basis;

- c. the person concerned has contravened a relevant requirement or other relevant legislation, particularly where a person has contravened one or more principles under PRIN or INDI;
- d. the person has not carried on any regulated activity or controlled function for 12 months or more; and
- e. the Regulatory Authority has received a request from an overseas regulator in accordance with article 20, to take action in relation to the person.

Procedure for taking own initiative action

- 9.7 Where the Regulatory Authority decides to take own initiative action, it informs the authorised firm, and, in the case of action against an approved individual, the approved individual as well, of that action by written notice. That written notice is called a first supervisory notice. (Under article 46(2), if the Regulatory Authority takes own initiative action against an approved individual, it is required only to give notice to the authorised firm that employs the individual. However, it is the Regulatory Authority's practice to give notice to the approved individual as well).
- 9.8 Further details regarding the Regulatory Authority's procedures and decision-making process for own initiative action are set out in paragraphs 5.59 to 5.63 of this Policy Statement.
- 9.9 Where the Regulatory Authority takes own initiative action, under either article 31 or article 46, it generally gives the authorised firm an opportunity to make representations before the action is taken.
- 9.10 When taking own initiative action against an approved individual, the Regulatory Authority is required to give only the authorised firm that employs the approved individual an opportunity to make representations. However, given that the effect of own initiative action against an approved individual is likely to be significant to the individual, as a matter of policy the Regulatory Authority generally gives the individual an opportunity to make representations as well the firm. Whether that opportunity is given before or after the action comes into effect depends on the circumstances of the matter and whether the Regulatory Authority considers that the action should be taken as a matter of urgency.
- 9.11 If the authorised firm or approved individual makes representations, the representations should be in writing and provided within the period specified by the Regulatory Authority.

Urgent matters

- 9.12 As mentioned above, where the Regulatory Authority takes own initiative action it generally gives the authorised firm and any approved individual concerned an opportunity to make representations before the action is taken. However, in some circumstances the delay caused by giving a person the opportunity to make representations would be prejudicial to the interests of clients or customers or the financial system. In these circumstances, the Regulatory Authority is likely to decide that the action should be taken urgently and come into effect immediately – that is, before the person concerned has had an opportunity to make representations.
- 9.13 As the decision whether to take own initiative action is based on the particular circumstances of a matter, the Regulatory Authority is unable to set out an exhaustive list of circumstances in which the Regulatory Authority may decide to take own initiative action urgently. By way of example, the Regulatory Authority may decide that powers should be exercised or steps taken without first giving the person concerned an opportunity to make representations where:
- a. information has come to light which casts serious doubt on the adequacy of the firm’s resources, financial or otherwise;
 - b. the firm or individual might be involved in, or a firm’s business might be used or might have been used to facilitate, financial crime;
 - c. there is information to suggest that clients and customers of an authorised firm have suffered significant loss, or are at risk of significant loss if the firm or individual is allowed to continue in a particular manner;
 - d. there are serious problems regarding the authorised firm or its controllers which raise serious concerns about the firm’s ability to continue its operations or meet its regulatory obligations; or
 - e. a firm’s compliance systems are manifestly inadequate and have placed the firm at a high risk of contravening relevant requirements and failing to meet the criteria for authorisation if the firm continues its operations.
- 9.14 In deciding whether urgent own initiative action is required, the Regulatory Authority considers the full circumstances of each case. The following is a non-exhaustive list of factors that may be relevant:
- a. the extent of any loss or risk of loss to, or other adverse effect on, clients and customers of the firm;
 - b. the seriousness of any suspected contravention of relevant requirements and the steps needed to resolve that contravention;
 - c. the financial resources of the firm;

- d. the risk that the conduct of the firm or individual presents to confidence in, and the integrity and reputation of, the QFC and the financial system;
- e. the conduct of the firm or individual after the matter arose: for example, in the case of a firm, whether it identified the issue and brought it promptly to the Regulatory Authority's attention, and the steps it has taken to resolve it;
- f. whether the firm or individual has a history of such issues; and
- g. the effect that the Regulatory Authority's own initiative action is likely to have on the individual, firm or customers.

9.15 The Regulatory Authority may also take own initiative action with immediate effect where a person has provided information to the Regulatory Authority which is false or misleading in a material way. Not only is such conduct likely to be a serious contravention of a relevant requirement but it may have an adverse effect on the Regulatory Authority's ability to effectively supervise the authorised firm or approved individual concerned. Whether the provision of false or misleading information requires the Regulatory Authority to take urgent own initiative action depends on the circumstances of the matter. In this regard, the Regulatory Authority takes the following factors into account:

- a. the effect of the information on the Regulatory Authority's view of the authorised firm's ability to comply with its regulatory obligations and suitability to conduct regulated activities;
- b. whether the information appears to have been provided in an attempt to knowingly mislead the Regulatory Authority regarding important matters concerning the authorised firm's operations; or
- c. whether the provision of false or misleading information indicates there is a risk of loss to clients or customers of the authorised firm.

9.16 Where the Regulatory Authority decides to take own initiative action without first giving the authorised firm or approved individual concerned the opportunity to make representations, it provides such an opportunity promptly after the powers have been exercised or the steps have been taken.

Disciplinary or enforcement actions

9.17 As with urgent matters, the Regulatory Authority is not required to provide an opportunity to make representations about own initiative action where the powers to be exercised or steps to be taken follow a determination by the Regulatory Authority under Part 9 of the FSR or a decision by the Regulatory Tribunal or the Civil and Commercial Court.

9.18 Therefore, where the Regulatory Authority takes own initiative action either in combination with any of its disciplinary or enforcement powers, or on the basis of

a determination under Part 9 of the FSR, the Regulatory Authority is not required to give the opportunity to make representations which would otherwise be required under articles 31(3) or 46(3). Where this is the case, rather than giving the person concerned a first supervisory notice, the Regulatory Authority gives a notice of proposed action.

- 9.19 An example of this is where the Regulatory Authority decides to impose a prohibition or restriction on a person's authorisation or approval under article 62. For example, if the Regulatory Authority decided to prohibit an individual from performing the compliance oversight function and the individual were approved to perform that function, the Regulatory Authority would also withdraw that approval. Otherwise, the individual would remain approved to perform the function but would at the same time be prohibited from performing it.
- 9.20 In such a case, because prohibition action is taken under Part 9 of the FSR, the exception to the general requirement to allow an authorised firm or approved individual to make representations applies.
- 9.21 For the circumstances in which a person is given the opportunity to make representations in response to a notice of proposed action, see Chapter 5 of this Policy Statement.

Own initiative action – authorised firms

- 9.22 Where the Regulatory Authority is satisfied that it is appropriate to take own initiative action, it has a number of powers available to it under article 31(2). The options in respect of authorised firms are described in paragraphs 9.23 to 9.31 below.

Withdrawing or varying a firm's authorisation

- 9.23 One of the options available to the Regulatory Authority, where the grounds for taking own initiative action are satisfied, is to withdraw or vary the authorised firm's authorisation. However, this has severe consequences for the firm and the decision to do so is not made lightly.
- 9.24 The Regulatory Authority takes own initiative action to withdraw a firm's authorisation only where the Regulatory Authority has very serious concerns regarding the firm, or where the firm's regulated activities have come to an end and the firm has not applied for its authorisation to be cancelled.
- 9.25 The Regulatory Authority's decision to withdraw a firm's authorisation or take some other action depends entirely on the circumstances of the matter and, in particular, the seriousness of the concerns which are the grounds for the action. For example, the Regulatory Authority might consider it appropriate to withdraw a firm's authorisation where the firm:

- a. is found to have provided information to the Regulatory Authority during the authorisation process which was false or misleading in a material way;
- b. appears to be failing, or to be likely to fail, to satisfy the authorisation criteria in Chapter 2 and App 1 of GENE which a firm is required to continue to meet;
- c. repeatedly fails to provide returns or reports to the Regulatory Authority as it is required to do and therefore impedes the Regulatory Authority's ability to supervise it effectively;
- d. knowingly provides misleading or false information in returns or reports filed with the Regulatory Authority;
- e. fails to pay fees to the Regulatory Authority as required; or
- f. in any other respect, appears to the Regulatory Authority not to be a fit and proper person to carry on a regulated activity because, for example:
 - i. it has failed to conduct its business in compliance with regulatory standards and has put itself at risk of being used for financial crime;
 - ii. it does not have sufficient and appropriate systems and controls to support, monitor and manage its affairs, resources and regulatory obligations in a sound and prudent manner; or
 - iii. it does not have adequate resources, financial or otherwise, to comply with its regulatory obligations.

9.26 Depending on the circumstances of a particular case, the Regulatory Authority may consider that it is appropriate to satisfy its concerns about a firm by initially varying the firm's authorisation to remove one or more regulated activities, or imposing a condition, restriction or requirement on the firm. Where, however, that action fails to satisfy the Regulatory Authority's concerns, or where information subsequently comes to light which suggests the issues giving cause for concern are more serious than first thought, the Regulatory Authority might decide to withdraw the firm's authorisation or take some other own initiative action.

9.27 Where it appears to the Regulatory Authority that circumstances raise serious concerns and require urgent action, the Regulatory Authority might first vary an authorised firm's authorisation so that it no longer has authorisation to conduct any regulated activities, and might subsequently withdraw the firm's authorisation after further consideration.

Other types of own initiative action – authorised firms

9.28 Instead of, or as well as, withdrawing or varying a firm's authorisation, the

Regulatory Authority may decide to take own initiative action to impose or vary conditions, restrictions or requirements on a firm, or require it to take, or refrain from taking, particular action.

- 9.29 The following are examples of the types of conditions, restrictions and requirements that the Regulatory Authority might impose on an authorised firm:
- a. **Conditions:** that the authorised firm maintain specified amounts and categories of capital; that specified members of its senior management perform particular controlled functions; that it only deal with particular categories of clients in respect of specified products.
 - b. **Restrictions:** restrictions on the number, or category, of clients that the firm can deal with, the number of specified investments that it can deal in, or its regulated activities.
 - c. **Requirements:** not to take on new business; not to hold or receive client money; prohibiting the disposal of, or other dealing with, any of the firm's assets; that specified assets of the firm may only be dealt with in a manner directed by the Regulatory Authority.
- 9.30 When deciding whether to take own initiative action in relation to an authorised firm, the Regulatory Authority takes into account the effect of the powers exercised or steps taken or to be taken on the firm and seeks to ensure that any imposition or restriction imposed is proportionate to the objectives that the Regulatory Authority is seeking to achieve by taking action. The Regulatory Authority satisfies itself that taking own initiative action is appropriate in the circumstances.
- 9.31 In its supervision of firms or during the enforcement process, the Regulatory Authority might inform a firm that the firm is expected to take certain steps to satisfy the Regulatory Authority's concerns. The Regulatory Authority might consider it appropriate to agree formally or informally with the firm on those steps, for example through informal agreement between the firm and its supervisors. However, in some cases the Regulatory Authority forms the view that it is appropriate to take own initiative action to ensure that its concerns are satisfied. Such action is likely to be appropriate where the Regulatory Authority:
- a. has serious concerns about a firm or about the way its business is being conducted;
 - b. is concerned that there will be serious consequences if the firm fails to take the steps required by the Regulatory Authority;
 - c. considers that the action is appropriate to demonstrate the importance that the Regulatory Authority attaches to the need for the firm to satisfy the Regulatory Authority's concerns;

- d. considers that the action might assist the firm to take steps which would otherwise be difficult because of legal obligations owed to others.

Own initiative action – approved individuals

9.32 Article 46 enables the Regulatory Authority to take own initiative action against an approved individual. Where the Regulatory Authority is satisfied that it is appropriate to take own initiative action against an approved individual, it has a number of options available to it under article 46(2). Those options are basically the same as those available in respect of authorised firms and which are summarised in paragraph 9.3 above.

9.33 In deciding whether to withdraw or vary an individual's approval or take some other own initiative action in respect of an approved individual, the Regulatory Authority considers the full circumstances of the matter. These may include, but are not limited to, the following:

- a. the effect and seriousness of the individual's conduct;
- b. whether, and to what extent, the individual may have contravened a relevant requirement;
- c. the duration of the conduct and the length of time that has elapsed since it occurred;
- d. the particular controlled function or functions the individual is or was performing;
- e. the severity of the risk the individual poses to consumers and to the confidence in, and the integrity and reputation of, the QFC and the financial system; and
- f. the individual's disciplinary record and compliance history.

9.34 Generally, own initiative action to withdraw an individual's approval, or vary their approval to remove one or more controlled functions, is taken only if the Regulatory Authority has very serious concerns about the individual.

Fitness and propriety

9.35 Where the Regulatory Authority considers that an approved individual no longer meets the "suitability and related requirements" criteria, and his or her employer has taken no action, or inadequate action, in respect of that individual's status, the Regulatory Authority may take own initiative action against the individual under article 46.

9.36 When considering an individual's conduct in relation to the suitability and related requirements under article 43(2), the Regulatory Authority considers the guidance provided in INDI, in particular the criteria in Chapters 4 and 5 and

Appendix 1. By way of example, the Regulatory Authority may take own initiative action against an approved individual for failing to meet suitability and related requirements where:

- a. the individual has been convicted or found guilty of a criminal offence relating to fraud, dishonesty, money laundering, market manipulation, insider dealing or any other financial crime;
- b. the individual has been the subject of any adverse finding by a court, or in settlement of civil proceedings, for fraud, misconduct, wrongful trading or other misconduct;
- c. there are circumstances to suggest that the individual provided information in support of their application for approved individual status which was false or misleading in a material way;
- d. an overseas regulator has taken disciplinary action against an individual or prohibited them from being employed in the financial services industry;
- e. the Regulatory Authority has received justifiable complaints against the individual's conduct in relation to regulated activities; and
- f. the Regulatory Authority considers that the individual needs further training in a particular product, and restricts him from engaging in regulated activities in relation to that product until he has completed the required training.

Other examples of own initiative action

- 9.37 The Regulatory Authority may take own initiative action against an approved individual if any of the conditions in article 46(1) apply, not just the suitability and related requirements mentioned in article 46(1)(A). As with authorised firms, own initiative action can include the imposition of conditions, restrictions or requirements or some other variation of approval, as the Regulatory Authority considers appropriate.
- 9.38 Depending on the circumstances of a particular case, the Regulatory Authority might consider it appropriate to satisfy its concerns about an approved individual by initially imposing a condition, restriction or requirement. Information may come to light subsequently, possibly as a result of an enforcement investigation or supervisory enquiries, that leads the Regulatory Authority to conclude that the concerns regarding the individual are sufficiently serious that it is appropriate for the individual's approval to be varied or withdrawn.
- 9.39 The Regulatory Authority is unable to set out exhaustively the circumstances that would lead the Regulatory Authority to conclude that it is appropriate to take own initiative action under article 46(1), or what that action might be, but some examples include:

- a. if an approved individual may have failed to act with due skill, care and diligence, and therefore may have contravened Principle 2 in section 7.1 of INDI, the Regulatory Authority might initially vary the person's approval to limit their regulated activities pending the outcome of an internal investigation by the authorised firm concerned;
- b. if the interests of clients or customers and other authorised firms may be at risk as a result of an approved individual's actions, the Regulatory Authority might decide to impose restrictions on the individual's status; or
- c. if an approved individual has failed to comply with a condition imposed on their approval, the Regulatory Authority might withdraw the approval or impose further conditions.

Authorised firms and approved individuals

- 9.40 Authorised firms are ultimately responsible for ensuring that their approved individuals continue to satisfy the criteria that approved individuals must meet. Therefore, an authorised firm might decide that an approved individual is no longer fit and proper and apply for the approval to be withdrawn.
- 9.41 The Regulatory Authority might decide that the most effective way to satisfy concerns about an approved individual is some form of own initiative action against the relevant authorised firm rather than against the individual himself. Alternatively, the Regulatory Authority might consider that it is appropriate to take own initiative against both an approved individual and the relevant authorised firm. For example, the Regulatory Authority may take own initiative action against an authorised firm to impose a condition or requirement and also restrict a particular approved individual at the firm by removing their approval to engage in a specified regulated activity.
- 9.42 As indicated above, where the Regulatory Authority decides to take own initiative action against an approved individual, it gives that individual and the relevant authorised firm an opportunity to make representations in relation to the powers to be exercised or steps to be taken (except in the circumstances described in paragraphs 9.12 to 9.20 above).

Own initiative action and enforcement investigations

- 9.43 Where the Regulatory Authority is investigating an approved individual under articles 50 or 51 and has reasonable grounds for believing that the individual may have engaged in conduct that would be grounds for withdrawal or variation of that individual's status, under article 52(4) the Regulatory Authority may, upon written notice to both the approved individual and the relevant authorised firm, suspend or vary that individual's status for the duration of the investigation and related proceedings insofar as the investigation or proceedings relate to the individual. Where the Regulatory Authority does so, it is not required to give the individual or the firm the opportunity to make representations, nor do they have

the right to refer the decision to the Regulatory Tribunal.

- 9.44 Where an approved individual may have engaged in conduct that would satisfy the grounds for withdrawal or variation of that individual's status, but the individual is not under investigation, the Regulatory Authority considers all the circumstances of the matter in deciding whether to suspend or vary the individual's approved status, or take some other own initiative action in respect of the individual.

Request from an overseas regulator

- 9.45 Under articles 31(1)(G) and 46(1)(G), the Regulatory Authority may take own initiative action against an authorised firm or approved individual if it receives a request to do so from an overseas regulator in accordance with article 20.
- 9.46 Before taking any action in response to such a request, the Regulatory Authority satisfies itself that it is appropriate to do so. In deciding this and in accordance with article 20(4), the Regulatory Authority takes into account such factors as it considers relevant, including:
- a. whether the country or territory of the overseas regulator would confer corresponding co-operation and assistance on the Regulatory Authority;
 - b. whether the requested co-operation and assistance relates to a breach of law, or other requirement which has no close parallel in the QFC; and
 - c. the seriousness of the case and whether it is in the public interest to provide the requested co-operation or assistance.
- 9.47 Although the Regulatory Authority considers whether the circumstances that gave rise to the request might constitute a contravention of a relevant requirement, the Regulatory Authority cannot refuse a request from an overseas regulator solely because the conduct to which the request relates would not (if committed in the QFC) amount to a contravention of the QFC Law or a regulation or rule.
- 9.48 The Regulatory Authority considers such cooperation to be necessary for effective international regulation and in the interests of the financial system. Such cooperation demonstrates that the Regulatory Authority is operating in accordance with the standards adopted by other financial and business centres of a similar kind and assists in maintaining the QFC as a leading financial and business centre. Taking own initiative action in appropriate cases in response to a request from an overseas regulator therefore helps the Regulatory Authority to meet its regulatory objectives.

CHAPTER 10 – PROHIBITONS AND RESTRICTIONS

Introduction

- 10.1 This Chapter sets out the Regulatory Authority's policy in relation to the imposition of prohibitions and restrictions under article 62.
- 10.2 The powers in articles 62(1) and 62(2) cover both authorised firms and approved individuals and enable the Regulatory Authority to:
- a. prohibit an authorised firm or approved individual from:
 - i. entering into specified transactions or types of transaction;
 - ii. soliciting business from specified persons or types of person; or
 - iii. carrying on business in a specified manner or other than in a specified manner;
 - b. require an authorised firm or approved individual to carry on business or conduct itself or himself in a specified manner.
- 10.3 Article 62(3) also empowers the Regulatory Authority to prohibit a person from performing a specified function, any function falling within a specified description or any function. The power to impose a prohibition under this provision covers authorised firms and approved individuals and extends to any "Person" (as defined in the FSR).

Grounds for exercising article 62 power

- 10.4 There are no pre-conditions to the exercise of the powers under article 62. Accordingly, the Regulatory Authority has a wide discretion as to when it exercises those powers.
- 10.5 The Regulatory Authority generally exercises such a power in support of its enforcement function when it has serious concerns about an authorised firm or approved individual or another person.
- 10.6 The Regulatory Authority considers exercising its power under article 62 where it considers it appropriate to do so for the purposes of meeting the Regulatory Authority's regulatory objectives set out in article 12. In deciding this, the Regulatory Authority considers all the circumstances of the matter, including whether other enforcement or disciplinary action should be, or has been, taken against the person. The following are examples of circumstances when the Regulatory Authority is likely to consider imposing a prohibition or restriction under article 62:
- a. where it is satisfied that a person is guilty of misconduct, as defined in article 45;

- b. where it is satisfied that a person has contravened a relevant requirement, as defined in article 84, or that a person has been involved (as described in article 85) in a contravention of a relevant requirement;
- c. in relation to approved individuals, where the Regulatory Authority is satisfied that there are grounds for taking action on its own initiative under article 46; and
- d. in relation to an authorised firm, where the Regulatory Authority is satisfied that there are grounds for taking action on its own initiative under article 31.

Scope of prohibition or restriction

- 10.7 The Regulatory Authority has the power to impose a range of prohibitions and restrictions. These can relate to specified transactions or types of transaction, or soliciting or carrying on business or functions. The nature and scope of the prohibition or restriction depends on the circumstances of each case.
- 10.8 Having regard to the circumstances of the case, the Regulatory Authority may prohibit or restrict a person from performing any function in relation to specified activities or specified products, or it may limit the prohibition or restriction to specific functions in relation to specified activities. The Regulatory Authority may also prohibit or restrict a person from performing any function, or any controlled function, for a firm within the QFC.
- 10.9 The Regulatory Authority considers that the prohibition of a person, whether from performing functions, entering transactions, soliciting business or carrying on business in a specified manner, is generally more restrictive and therefore more serious than imposing a requirement on an authorised firm or approved individual to carry on business or conduct itself or himself in a specified manner. Accordingly, prohibition action will normally be taken by the Regulatory Authority only if has particularly serious concerns.
- 10.10 The Regulatory Authority is unable to produce a definitive list of circumstances in which it would impose a prohibition or restriction. However, the Regulatory Authority considers the following examples of behaviour to be sufficiently serious to warrant some form of prohibition or restriction:
- a. where the person concerned has provided information to the Regulatory Authority which is false or misleading in a material way, or has sought to conceal information which it knows to be of importance to the Regulatory Authority;
 - b. acts of dishonesty or failing to act with integrity;
 - c. serious lapses in judgement or conduct which demonstrate a serious lack of competence; or

- d. serious breaches of the Principles for authorised firms in section 2.1 of PRIN or the Principles of Conduct for approved individuals in section 7.1 of INDI.

10.11 Where the Regulatory Authority decides that prohibition or restriction is appropriate, it decides the scope of the prohibition or restriction having regard to all the circumstances of the matter. This would include, but is not limited to, the following:

- a. the functions the person performs or performed;
- b. the conduct which gave rise to the grounds for exercising the power and the extent to which it demonstrates that the person is not fit and proper;
- c. the effect of the person's conduct on third parties, including clients, customers and users or prospective users of the QFC;
- d. the severity of the risk which the person poses to third parties and the integrity, reputation, stability and users or prospective users of the QFC; and
- e. whether other enforcement or disciplinary action should be, or has been, taken against the person.

Time limited prohibitions and restrictions

10.12 In some cases, the Regulatory Authority may indicate that it would be prepared to consider revoking a prohibition or restriction in the future, for example after a certain period or in the event of a particular occurrence, such as the person concerned successfully completing a particular course of training. Where this is the case, the Regulatory Authority sets this out in the notice of proposed action or decision notice that it gives to the person informing them of the prohibition or restriction.

10.13 The Regulatory Authority is not obliged to revoke a prohibition or restriction even if it gave such an indication. Rather, the person subject to the prohibition or restriction must satisfy the Regulatory Authority, after the specified period has elapsed, that the grounds on which the Regulatory Authority imposed the prohibition or restriction no longer apply. Where the prohibition or restriction relates to the person performing a function for which they require the Regulatory Authority's approval, the person must also demonstrate that they otherwise satisfy the Regulatory Authority's criteria for the grant or variation of the approval.

10.14 When considering whether to grant or refuse an application to revoke or vary a prohibition or restriction, the Regulatory Authority considers all the relevant circumstances of a case. These may include, but are not limited to:

- a. the seriousness of the misconduct or other unfitness that resulted in the

prohibition or restriction;

- b. the amount of time since the original prohibition or restriction was imposed;
- c. any evidence which, had it been known to the Regulatory Authority at the time, would have been relevant to the decision to impose the prohibition or restriction;
- d. any relevant information regarding the person's conduct since the prohibition or restriction came into effect, including any steps taken subsequently by the person to remedy the misconduct or other unfitness; and
- e. whether, if the prohibition or restriction is lifted, the person will continue to pose the level of risk to consumers and to confidence in, and the integrity and reputation of, the QFC and the financial system which resulted in the prohibition or restriction.

10.15 The Regulatory Authority does not generally grant an application to vary or revoke a prohibition or restriction unless it is satisfied that the proposed variation or revocation will not result in a recurrence of the risk to consumers and to confidence in, and the integrity and reputation of, the QFC and the financial system that resulted in the original prohibition or restriction being imposed.

Prohibitions, restrictions and withdrawal of authorisation or approval

10.16 The imposition of a prohibition or restriction is potentially of greater effect than a withdrawal of a firm's authorisation or an individual's approval, because the prohibition or restriction may be much wider in its application. Accordingly, in most cases where the person concerned is authorised or approved the Regulatory Authority considers whether its concerns can be satisfied by withdrawing the authorisation or approval, or some other regulatory action, without the need to impose a prohibition or restriction. Obviously, where the person concerned is not authorised or approved, the Regulatory Authority does not have the option of withdrawing the authorisation or approval.

10.17 It may, however, be appropriate for the Regulatory Authority to withdraw a firm's authorisation or an individual's approved individual status as well as imposing a prohibition or restriction. For example, if a person is prohibited from performing a function which they are authorised or approved to perform, it will be necessary to take both types of action in order to give full effect to the prohibition. Accordingly, in such cases the Regulatory Authority would withdraw or vary that person's authorisation or approval to the extent that it is necessary.

10.18 The Regulatory Authority must consider the possible overlap of a prohibition and the withdrawal or variation of an authorisation or approval if a firm's authorisation or individual's approval is directly affected by the prohibition.

However, it would also be appropriate in cases where the Regulatory Authority has concluded that the person concerned is no longer fit and proper and therefore does not satisfy the criteria for authorisation or approval. In such cases, the Regulatory Authority would seldom conclude that a firm or individual is fit and proper to continue to be approved or authorised if it has also concluded that the firm or individual should be subject to prohibition or restriction on the grounds that they are not fit and proper.

10.19 Although the Regulatory Authority may withdraw an authorisation or approval by taking action on its own initiative, if it decides both to impose a prohibition or restriction and to withdraw a firm's authorisation or individual's approval, it is likely the grounds for the prohibition or restriction and the withdrawal would be fundamentally the same. Accordingly, in this case, the Regulatory Authority would set out the action in a single written notice. As action to prohibit or restrict a firm or individual is taken under article 62, the Regulatory Authority is not required to allow the firm or individual the opportunity to make representations as would normally be the case if the Regulatory Authority were taking own initiative action under articles 31 or 46. Chapter 9 of this Policy Statement contains further details on the Regulatory Authority's approach to own initiative action.

Prohibitions, restrictions and other action

10.20 In appropriate cases, the Regulatory Authority may take other action against a person in addition to imposing a restriction or prohibition. As indicated above, this normally includes withdrawing the person's authorisation or approval, as the case may be, but might also include imposing a financial penalty or public censure or applying for an injunction under article 63 (for example to prevent dissipation of assets or to restrain misconduct) or a restitution order under article 64.

10.21 If a person fails to comply with the terms of a prohibition or restriction, the person also contravenes a relevant requirement. Any person who is knowingly concerned in such a contravention also contravenes the requirement. This might be the case, for example, where a firm employs an individual who is prohibited or otherwise restricted from being so employed. The Regulatory Authority's public registers contain details of any prohibitions and restrictions imposed under article 62 and it is important for firms and individuals to be aware of anything, such as a prohibition or restriction, that is relevant to their engagement and relationship with others.

CHAPTER 11 – OTHER ENFORCEMENT POWERS

Introduction

- 11.1 This Chapter sets out the Regulatory Authority's policy on the use of its powers in relation to applications for injunctions and restitution orders and the appointment of managers.

Injunctions

- 11.2 Injunctions are orders granted by the Civil and Commercial Court on an application by the Regulatory Authority under article 63.
- 11.3 Under article 63, if the Regulatory Authority is satisfied that a person may have contravened, or is likely to contravene, a relevant requirement, the Regulatory Authority may apply to the Civil and Commercial Court for one or more of the following orders:
- a. to restrain the person from committing the contravention or, if there is a reasonable likelihood that the contravention will continue or be repeated, from continuing or repeating the contravention;
 - b. if there are steps which could be taken to remedy the contravention, to take such steps to remedy the contravention as the Civil and Commercial Court considers appropriate; or
 - c. to restrain the person from disposing of, or otherwise dealing with, any of its assets.

Factors in deciding to apply for injunctions

- 11.4 The Regulatory Authority recognises that an injunction may have serious consequences for the person who is its subject. The general test that the Regulatory Authority adopts in deciding to apply for an injunction is whether seeking an injunction would be the most effective way to deal with the Regulatory Authority's concerns.
- 11.5 The Regulatory Authority considers the particular circumstances of a matter in deciding whether to apply for an injunction. A non-exhaustive list of factors that the Regulatory Authority considers before applying for an injunction includes:
- a. the nature and seriousness of the apparent contravention. In considering the seriousness, the Regulatory Authority might consider:
 - i. the extent of any losses suffered or likely to be suffered by any affected parties;
 - ii. the number of parties (including clients or customers) who have suffered losses or are at risk of suffering losses; and

- iii. whether the assets at risk are substantial;
- b. whether the conduct that gave rise to the apparent contravention has ceased;
- c. whether the person who engaged in the apparent contravention has taken or could take steps to remedy the effects of the apparent contravention;
- d. whether the Civil and Commercial Court could make an order that will remedy the effects of the apparent contravention;
- e. whether there is a risk that the person will leave the jurisdiction of the Civil and Commercial Court and the effect of that person's leaving on the effectiveness of any orders made by the Civil and Commercial Court;
- f. where there is a danger of client money or assets of the firm concerned being lost or removed from the jurisdiction of the Civil and Commercial Court — this is particularly relevant where the removal of the assets would affect the ability of the person to pay restitution to clients and customers;
- g. the compliance history and disciplinary record of the person who engaged in the apparent contravention;
- h. whether the person has given any undertakings to the Regulatory Authority to do or not to do a thing, and the person is likely to engage in or has engaged in conduct that will breach that undertaking; and
- i. the extent to which another regulatory authority or law enforcement agency can adequately deal with the conduct giving rise to the apparent contraventions. In some cases it may be appropriate for the Regulatory Authority to apply for an injunction in addition to any enforcement action that is taken or likely to be taken by another regulatory authority or law enforcement agency.

Applications for injunctions

- 11.6 If the Regulatory Authority decides to apply for an injunction, it is not required to give the person who is the subject of the application any written notice of its decision to do so.
- 11.7 The Regulatory Authority may seek orders from the Civil and Commercial Court that the person who is the subject of the application for an injunction should pay the Regulatory Authority's costs associated with the application.
- 11.8 A failure to comply with an order of the Civil and Commercial Court would be dealt with by that Court in accordance with Articles 31 and 34 of its Regulations and Procedural Rules. A failure by a person to comply with an order by the Civil and Commercial Court made on an application by the Regulatory Authority might also constitute a contravention of a relevant requirement. As such, the

Regulatory Authority may apply for further orders from the Civil and Commercial Court and may exercise any of its enforcement powers against the person, including the imposition of a financial penalty under article 59.

Restitution orders

11.9 The Regulatory Authority may apply to the Civil and Commercial Court under article 63 for a restitution order against a person where the Regulatory Authority is satisfied that the person has been involved in a contravention of a relevant requirement and that as a result of the contravention:

- a. profits have accrued to the person; or
- b. persons affected by the contravention have suffered losses.

11.10 The article 63 power enables the Regulatory Authority to apply for a restitution order requiring the person who has committed a contravention to pay such amounts as the Regulatory Authority considers just, having regard to the profit accrued to the person involved in the contravention or the losses suffered by persons affected by the contravention.

11.11 The Regulatory Authority may make rules under article 65 to enable persons affected by contraventions to directly apply for restitution orders to the Civil and Commercial Court. For example, rule 2.7.1 of the Conduct of Business Rulebook ("COND") enables a private person who has suffered loss as a result of an authorised firm's contravention of a relevant requirement in relation to regulated activities to apply to the Civil and Commercial Court for a restitution order. Further, persons affected by contraventions may have redress available through a customer dispute resolution scheme established under Chapter 8 of COND. The Regulatory Authority expects that, given the options available to the persons affected by contraventions to seek restitution and redress on their own, circumstances requiring the Regulatory Authority to apply to the Civil and Commercial Court for a restitution order will arise rarely.

Factors in deciding to apply for restitution orders

11.12 The Regulatory Authority considers the particular circumstances of a matter in deciding whether to apply for restitution orders. A non-exhaustive list of factors that the Regulatory Authority considers before applying for restitution orders includes:

- a. whether the profits can be quantified and whether evidence is available to prove that the contraventions committed by the person subject to the application resulted in profits. It may not be possible to identify the amount of profits made by a person or to prove that the profits were owed to the affected parties and resulted from the contraventions;
- b. whether the number and names of the persons who have suffered losses

or other adverse effects can be identified. It may be difficult to prove that particular losses resulted from the contraventions;

- c. the number of persons who have suffered losses or adverse effects as a result of the contravention. Where many persons have apparently incurred losses or adverse effects as a result of a contravention the Regulatory Authority may consider it appropriate to apply for a restitution order;
- d. whether the persons who have suffered losses can bring their own action or make an application to the Civil and Commercial Court for a restitution order;
- e. the costs and resources required to obtain a restitution order and whether the restitution order is the most appropriate enforcement action in the circumstances of the matter;
- f. the availability of remedies to customers through other means such as the customer dispute resolution scheme;
- g. whether another regulatory authority or law enforcement agency can take action that provides the persons affected by a contravention with some form of redress or restitution;
- h. the financial position and the assets of the person subject to the application, and the ability of that person to pay the restitution sought; and
- i. the extent to which persons affected by the contraventions contributed to their own losses or failed to take reasonable steps to protect their own interests.

Applications for restitution orders

- 11.13 Where the Regulatory Authority decides to apply for a restitution order, it is not required to give the person who is the subject of the application any written notice of its decision to do so.
- 11.14 The Regulatory Authority may seek an order from the Civil and Commercial Court that the person who is the subject of the application for a restitution order should pay the Regulatory Authority's costs associated with the application. However, in deciding whether this is appropriate, the Regulatory Authority will consider the effect of the order, if made, on the financial position of the person subject to the application and the extent to which this will affect their ability to pay the restitution ordered.
- 11.15 The Regulatory Authority may simultaneously apply for a restitution order and take other disciplinary or enforcement action. For example, the Regulatory Authority may combine, in one application to the Civil and Commercial Court, an

application for a restitution order and an application for an injunction to restrain a person from continuing to contravene a relevant requirement. The Regulatory Authority could also decide to take disciplinary action in addition to making an application for restitution orders: for example, the Regulatory Authority may make an application for a restitution order and at the same time give a public censure under article 59 or impose some form of prohibition or restriction under article 62.

- 11.16 A failure to comply with an order of the Civil and Commercial Court would be dealt with by that Court in accordance with Articles 31 and 34 of its Regulations and Procedural Rules. A failure by a person to comply with an order by the Civil and Commercial Court made on an application by the Regulatory Authority might also constitute a contravention of a relevant requirement. As such, the Regulatory Authority could apply for further orders from the Civil and Commercial Court and could exercise any of its enforcement powers against the person, including the imposition of a financial penalty under article 59.

Determining the amount of restitution

- 11.17 The Regulatory Authority may use its formal information-gathering powers under article 48 to obtain information that would help it to determine the amount of profits made by a person subject to enforcement action or the amount of losses incurred by persons affected. This information might also be obtained during the course of an investigation by the Regulatory Authority.
- 11.18 In some cases, the Regulatory Authority may consider it appropriate to use its powers under article 49 to require the preparation of a report by a nominated person to determine the amount of profits made as a result of a contravention and the amount of any losses incurred by persons affected by the contravention.

Appointment of managers

- 11.19 Article 60 provides that the Regulatory Authority may either appoint or nominate one or more individuals to act as managers of the business of a person. Such an appointment is made by written notice to the person and on the terms that the Regulatory Authority specifies in the notice.

Grounds for appointing managers

- 11.20 There are no pre-conditions to the exercise of the power under article 60. Accordingly, the Regulatory Authority has a wide discretion as to when it will exercise the power. However, the Regulatory Authority considers that it would be appropriate to exercise this power only in exceptional circumstances.
- 11.21 The Regulatory Authority considers the particular circumstances of a matter in deciding whether to appoint managers. A non-exhaustive list of the exceptional circumstances in which the Regulatory Authority might consider appointing managers includes:

- a. where there are serious concerns about the solvency of an authorised firm or its compliance with the Regulatory Authority's prudential requirements, and the appointment of a manager is desirable to satisfy the Regulatory Authority's concerns or otherwise determine whether there are such problems;
- b. where the Regulatory Authority considers that the appointment of a manager or managers is desirable for the orderly transition of an authorised firm from one controller to another;
- c. where the Regulatory Authority considers that the existing management of an authorised firm must be replaced in order to ensure an orderly wind-down of the operations of the firm and to ensure the appropriate degree of protection for the firm's customers; or
- d. where the Regulatory Authority has grounds to suspect that serious contraventions of relevant requirements, or financial crime, have occurred, or might occur, and that the appointment of a manager is desirable and necessary to ensure the appropriate degree of protection for third parties, (including customers and users (or prospective users) of the QFC) and the integrity and reputation of the QFC and the financial system.

Procedure for appointing managers

- 11.22 Where the Regulatory Authority decides to exercise its power to appoint a manager or managers, it gives the person in respect of whom the manager is appointed a notice of proposed action. In this regard, the Regulatory Authority follows its decision-making process and policy set out in Chapter 5 of this Policy Statement when deciding to exercise its article 60 power.
- 11.23 The notice of proposed action specifies the terms on which the manager or managers are appointed and the Regulatory Authority either nominates individuals for the appointment or approves the appointment of individuals otherwise nominated: for example, by the firm itself. The notice of proposed action also specifies the time by which the appointment must be made and the reasons for the appointment.
- 11.24 In accordance with Part 10 of the FSR, the person in respect of whom the appointment of managers is proposed generally has the opportunity to make written representations in relation to the proposed appointment. No such opportunity is given if paragraph 5.36 of this Policy Statement applies.
- 11.25 If, having considered any written representations, the Regulatory Authority decides to appoint the manager or managers proposed, it gives the person concerned a decision notice in accordance with article 71.
- 11.26 Following receipt of a decision notice informing the person of the Regulatory Authority's decision, the person has the right to refer the matter to the

Regulatory Tribunal.

Relevant considerations when deciding whether to appoint managers

- 11.27 As indicated above, the Regulatory Authority recognises that the decision to appoint a manager or managers of an authorised firm is likely to have a very significant effect on the firm concerned and its existing management. Accordingly, the Regulatory Authority only exercises the article 60 power in exceptional circumstances.
- 11.28 In general, the article 60 power would only be exercised only where the Regulatory Authority is satisfied that it is necessary to do so for the protection of customers and users or prospective users of the QFC, or otherwise to maintain the confidence in or the efficiency, transparency, integrity, financial stability, or reputation of the QFC or the financial system.
- 11.29 In deciding whether to appoint a manager or managers, the Regulatory Authority considers all of the circumstances of the matter, including the following:
- a. the nature and extent of the business of the authorised firm;
 - b. the nature and seriousness of the Regulatory Authority's concerns;
 - c. whether the Regulatory Authority's concerns can be adequately satisfied through other regulatory action: for example, own initiative action under article 31 (see Chapter 9 of this Policy Statement) or a report under article 49;
 - d. whether an appropriately qualified individual is willing and available to be appointed as a manager of the firm concerned; and
 - e. the likely duration of the appointment.

Other duties, functions and powers of the Regulatory Authority

- 11.30 Schedule 2 of the FSR sets out certain additional duties, functions and powers that have been conferred on the Regulatory Authority as a result of other Regulations.
- 11.31 These other additional duties, functions and powers relate to money laundering and terrorist financing and insolvency.
- 11.32 Further details regarding the Regulatory Authority's powers in relation to money laundering and terrorist financing are set out in paragraphs 3.18 to 3.23 of this Policy Statement.
- 11.33 The Regulatory Authority's powers relating to insolvency include, amongst other things, the power to apply to the Civil and Commercial Court for an Administration order, the winding up of a company incorporated under the QFC

Companies Regulations and the power to participate in certain proceedings.

- 11.34 The circumstances in which the Regulatory Authority will exercise the powers available to it under Schedule 2 of the FSR are likely to rarely arise. Accordingly, the Regulatory Authority has no general policy on when or how it will exercise these powers. Rather, it will do so in accordance with Schedule 2 of the FSR and the action it takes will depend on the circumstances of the particular matter.

CHAPTER 12 — PUBLICITY

Introduction

- 12.1 This Chapter sets out the Regulatory Authority's general policy on publicity about:
- a. ongoing enforcement matters where the Regulatory Authority is assessing or investigating concerns and has not taken any enforcement or disciplinary action;
 - b. enforcement and disciplinary actions taken by the Regulatory Authority;
 - c. decision notices given to a person under article 71;
 - d. proceedings in the Regulatory Tribunal or the Civil and Commercial Court; and
 - e. actions taken by the Regulatory Authority on its own initiative under articles 31 or 46.
- 12.2 This Chapter also sets out the Regulatory Authority's general policy about updating the public registers of authorised firms and approved individuals to record the outcomes of enforcement actions taken by the Regulatory Authority.
- 12.3 Publicity about enforcement action improves the understanding of regulatory standards among firms and potential users of the QFC, deters other persons from engaging in similar misconduct, and demonstrates how the Regulatory Authority is using its disciplinary and enforcement powers to meet its regulatory objectives.

Publicity about ongoing matters

- 12.4 The Regulatory Authority's general policy is not to publicise the fact that it is or is not investigating, or considering enforcement action about, a matter.
- 12.5 However, in exceptional circumstances, the Regulatory Authority departs from this general policy by making a public announcement about an ongoing enforcement action. The Regulatory Authority considers that exceptional circumstances have arisen when such a public statement has become necessary in the interests of it meeting its regulatory objectives. Whether those circumstances have arisen in a particular case depends on the facts of the matter. A public announcement about an ongoing enforcement matter may be needed to:
- a. assist in maintaining the integrity of and confidence in the QFC or the Regulatory Authority;
 - b. protect clients and customers, for example by alerting customers to the risk of unauthorised conduct by a person overseas who is under investigation by the Regulatory Authority;

- c. prevent and restrain conduct which may cause damage to the reputation of the QFC, for example by alerting other firms in the QFC to the conduct of a firm under investigation to stop and deter other firms from engaging in similar conduct; or
 - d. assist the investigation itself, for example by encouraging witnesses to come forward.
- 12.6 Exceptional circumstances might also arise where the matter under assessment or investigation has become the subject of public concern, speculation or rumour. In this case, the Regulatory Authority may make a public statement about the matter to allay that concern, or to contain speculation or rumour.
- 12.7 Disclosure of an investigation is sometimes unavoidable: for example, in the course of investigators speaking to witnesses. In such circumstances, the investigation is disclosed only to the extent that it is necessary.

Publication of enforcement and disciplinary actions

- 12.8 Under article 18(1)(H), the Regulatory Authority is obliged to publicise the outcomes of enforcement or disciplinary actions that it has taken under Part 9 of the FSR. In addition to the advantages of publication about enforcement actions generally, publicity of enforcement outcomes allows the Regulatory Authority to demonstrate consistency and transparency in its enforcement actions. Such publicity has an important role to play in deterring persons who have committed contraventions from further or other contraventions, and others from committing similar contraventions. As such, publicity about enforcement and disciplinary actions taken by the Regulatory Authority helps it to meet its regulatory objectives.
- 12.9 However, the Regulatory Authority may in some circumstances consider it appropriate not to publicise enforcement or disciplinary actions taken by it, or not to do this immediately. This happens where under article 18(3), the publication would not be in the public interest, would damage confidence in the financial system or would be prejudicial to the interests of clients and customers.
- 12.10 The Regulatory Authority retains media releases about enforcement outcomes on its website regardless of how long ago they were published. Where a further public statement is required about the same matter, for example where the Regulatory Authority has taken further disciplinary action against the same person, the Regulatory Authority generally publishes a further media release about the matter.

Publicity about decision notices

- 12.11 Under article 74, the Regulatory Authority does not publish decision notices. Similarly, a person who has been given or copied a decision notice may not publish the decision notice or any details concerning it. The Regulatory Authority

regards such disclosure as a contravention of a relevant requirement and will, where appropriate, take action accordingly.

- 12.12 Generally, the Regulatory Authority makes a public statement about the enforcement or disciplinary action to which a decision notice relates when:
- a. any applicable appeal rights in respect of the matter have been waived or have expired;
 - b. the matter has not been referred to the Regulatory Tribunal; or
 - c. any appeals or proceedings about the enforcement action have concluded.

Publicity about proceedings

- 12.13 Article 19.4 of the Regulations and Procedural Rules of the Regulatory Tribunal and Article 28.3 of the Regulations and Procedural Rules of the Civil and Commercial Court provide that matters will be heard in public unless otherwise directed by the Regulatory Tribunal or the Civil and Commercial Court. As publicity about proceedings is subject to such directions, the Regulatory Authority generally does not make any public statement about the commencement of proceedings before the Regulatory Tribunal or the Civil and Commercial Court has given directions about publicity.
- 12.14 Under article 18(1)(I), the Regulatory Authority normally makes a public statement about the outcome of decisions of the Regulatory Tribunal, unless the Regulatory Tribunal directs otherwise. The Regulatory Authority also normally makes a public statement about the outcome of enforcement proceedings in the Civil and Commercial Court, unless the Civil and Commercial Court directs otherwise.
- 12.15 However, the Regulatory Authority may in some circumstances consider it appropriate not to publicise the outcome of proceedings, or not to do this immediately. This happens where under article 18(3), the publication would not be in the public interest, or would damage confidence in the financial system or would be prejudicial to the interests of clients and customers.
- 12.16 In cases where the Regulatory Authority has successfully applied for an injunction under article 63 or a restitution order under article 64, the Regulatory Authority generally publicises the matter. For example, where the Civil and Commercial Court has granted an injunction to prohibit a person from engaging in conduct in breach of relevant requirements, the Regulatory Authority considers it appropriate to publicise the fact and effect of that injunction to inform the clients of that person and protect them from further dealings about the matters which are subject to the injunction. Similarly, a restitution order may be publicised to protect and inform clients and maintain market confidence.

Publicity about enforceable undertakings and settlement

- 12.17 The Regulatory Authority's approach to publicity in respect of enforceable undertakings is set out in paragraphs 7.30 to 7.34 of this Policy Statement.
- 12.18 The Regulatory Authority's approach to publicity in respect of settlement is set out in paragraphs 8.20 to 8.21 of this Policy Statement.

Publication of own initiative action

- 12.19 The Regulatory Authority may take action on its own initiative against authorised firms and approved individuals under articles 31 or 46 ("own initiative action"). Further details about the Regulatory Authority's policy on own initiative action is set out in Chapter 9 of this Policy Statement.
- 12.20 The Regulatory Authority's own initiative actions under articles 31 or 46 are not taken under Part 9 of the FSR and, as such the obligation to publicise the outcomes under article 18(1)(H) does not apply. However, any action taken by the Regulatory Authority on its own initiative is made public by updating the public registers to record the action and, where appropriate, the Regulatory Authority may also make a media statement regarding the action. Updating the public registers to record the action ensures that the Regulatory Authority's public registers are an accurate record of the status of the approved individual or authorised firm. As such, publicity about such action assists the Regulatory Authority in meeting its objectives for similar reasons as does publicising enforcement actions taken under Part 9 of the FSR.
- 12.21 In publicising actions taken on its own initiative, the Regulatory Authority considers whether the Regulatory Authority should delay or not publicise such an action in the circumstances set out in article 18(3).
- 12.22 Where the Regulatory Authority exercises its power to take action on its own initiative, the person to which that action relates has the right to refer the matter to the Regulatory Tribunal. Where such action of the Regulatory Authority is referred to the Regulatory Tribunal, the Regulatory Authority follows its policy in relation to publication of matters subject to proceedings, as set out earlier in this Chapter.

Public registers

- 12.23 Under articles 18(1)(F) and 18(1)(G), the Regulatory Authority must maintain a public register of the details of authorised firms and approved individuals. These registers are available on the Regulatory Authority's website.
- 12.24 The Regulatory Authority generally publicises on the public registers the fact of any enforcement or disciplinary action taken under Part 9 of the FSR in respect of an approved individual or authorised firm. This is particularly relevant to actions taken by the Regulatory Authority leading to variations, suspension or

withdrawals as a result of own initiative actions under articles 31 or 46, or prohibitions and restrictions imposed on a person under article 62. The Regulatory Authority also considers what additional information about the circumstances of the enforcement action should be maintained on the public registers, taking into account any prejudice to the person concerned and the interests of consumer protection.

- 12.25 The Regulatory Authority considers that updating the public registers to include enforcement and disciplinary actions taken against a person is necessary to ensure that the public registers are an accurate record of the status of a person's approval or authorisation. Further, it is appropriate and required for the same reasons that the Regulatory Authority publicises outcomes of disciplinary and enforcement actions. In deciding whether to include the details of the enforcement action on the public registers, the Regulatory Authority considers whether the publication should be delayed or not made under article 18(3). The Regulatory Authority may decide not to record the suspension or variation on the public registers if the publication would not be in the public interest, would damage confidence in the financial system, or would be prejudicial to the interests of clients and customers.
- 12.26 If the Regulatory Authority decides to suspend or vary an approved individual's status for the duration of an investigation under article 52(4), the Regulatory Authority generally updates the registers to show the suspension or variation. Where the Regulatory Authority uses its power in article 52(4), except in exceptional circumstances, the Regulatory Authority updates the register accordingly to ensure that clients and prospective users of the QFC are always fully aware of an approved individual's status.
- 12.27 In deciding to update the registers, the Regulatory Authority considers the potential prejudice that the publicity would cause to the person who is the subject of the ongoing investigation and whether the public registers should not be updated because of the matters set out in article 18(3). Where the Regulatory Authority subsequently decides after an investigation that the suspension or variation of the approved individual's status is no longer required, the Regulatory Authority amends the register appropriately to show that.
- 12.28 The Regulatory Authority's general approach to maintaining information on the public registers regarding enforcement actions taken in relation to an authorised firm or approved individual is as follows:
- a. the Regulatory Authority notes any enforcement or disciplinary action taken regarding an approved individual or authorised person, including variations, suspensions and withdrawals of approvals and authorisations, on the public registers;
 - b. the Regulatory Authority includes on the public registers references to public statements made in relation to authorised firms or approved

individuals regarding enforcement or disciplinary action taken under Part 9 of the FSR;

- c. where a suspension or variation is no longer applicable, for example a suspension period has expired, the Regulatory Authority generally updates the public registers in a way that shows the change, without removing the historical references to any action taken; and
- d. the Regulatory Authority will consider any directions or orders made by the Regulatory Tribunal about publicity of enforcement and disciplinary actions referred to the Regulatory Tribunal.