



هيئة تنظيم  
مركز قطر للمال

QATAR FINANCIAL CENTRE  
REGULATORY AUTHORITY

## Enforcement Policy Statement 2023

The Board of the Qatar Financial Centre Regulatory Authority issues the following statement of policy prepared under the Financial Services Regulations, Articles 15(6) and 79.

Dated: 18/09/2023 2023

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## CONTENTS

<b>CHAPTER 1 – INTRODUCTION.....</b>	<b>1</b>
Introduction.....	1
<b>CHAPTER 2 – APPROACH TO THE EXERCISE OF REGULATORY POWERS .....</b>	<b>2</b>
Introduction.....	2
Risk-based and principle-based approach .....	2
Principles.....	2
Senior management obligations .....	3
Cooperation .....	4
<b>CHAPTER 3 – ASSESSMENT OF ALLEGATIONS OF CONTRAVENTIONS .....</b>	<b>5</b>
Introduction.....	5
Sources of allegations .....	5
Assessment .....	5
Information-gathering in the assessment process .....	6
Assessment criteria.....	6
Assessment Report .....	7
Outcomes of assessment.....	7
Financial crime and anti-money laundering .....	8
<b>CHAPTER 4 – CONDUCT OF INVESTIGATIONS AND REGULATORY POWERS .....</b>	<b>10</b>
Introduction.....	10
Investigations and appointment of investigators .....	10
Notice of appointment of investigators .....	10
Publicity about investigations .....	10
General information-gathering powers .....	11
Power to require a report.....	11
Investigation powers.....	11
Interviews .....	12
Language .....	13
Investigations of individuals – additional considerations .....	13
Obstruction of the Regulatory Authority.....	13
The role of the Civil and Commercial Court .....	14

Admissibility, confidentiality, and protection.....	14
Self-incrimination and protected items .....	15
Costs of enforcement investigations.....	16
Findings of an investigation .....	16
Firm-commissioned reviews and investigations.....	16
<b>CHAPTER 5 — ENFORCEMENT ACTION .....</b>	<b>18</b>
Introduction.....	18
Background .....	18
Deciding whether to take enforcement action.....	18
Procedure for deciding whether to take enforcement action .....	19
Recommendation .....	19
The Enforcement Committee.....	19
Notice of Proposed Action .....	20
Representations .....	21
Decision Notice .....	21
Discontinuance of Regulatory Authority proceedings .....	22
Access to material .....	22
Third party rights .....	23
Other actions .....	23
“Own initiative action”.....	23
Private warnings .....	23
Settlement .....	24
Annex 1 — Factors in deciding whether to take enforcement action .....	25
The nature, seriousness, and effect of the conduct .....	25
Subsequent conduct .....	26
Disciplinary record and compliance history .....	27
Action in similar cases.....	27
Action by other regulatory authorities .....	27
Action against Approved Individuals .....	27
<b>CHAPTER 6 — FINANCIAL PENALTIES AND PUBLIC CENSURES.....</b>	<b>29</b>
Introduction.....	29

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Purpose of financial penalties and public censure .....	29
Factors in determining whether to issue a public censure.....	29
Factors in determining the appropriate level of financial penalty .....	30
Seriousness .....	30
Deliberate or reckless conduct .....	31
Whether the Person is an individual .....	32
Effect on third parties or customers .....	32
Deterrence .....	33
Size, financial resources and other circumstances of the Person .....	33
Financial gain or loss avoided.....	33
Subsequent conduct .....	34
Disciplinary record and compliance history .....	35
Action in similar cases.....	35
Action by other regulatory authorities .....	35
Serious financial hardship.....	35
Serious misconduct .....	36
Interaction between disciplinary and enforcement powers .....	36
Time and manner for payment.....	36
<b>CHAPTER 7 — ENFORCEABLE UNDERTAKINGS .....</b>	<b>37</b>
Introduction.....	37
Offers of enforceable undertakings .....	37
Accepting an enforceable undertaking .....	37
Terms of enforceable undertaking.....	38
Compliance with enforceable undertakings.....	38
Varying or withdrawing enforceable undertakings .....	38
Publicity .....	39
<b>CHAPTER 8 — SETTLEMENT.....</b>	<b>40</b>
Introduction.....	40
Approach to settlement .....	40
Timing and process.....	41
Basis for settlement discussions .....	41

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Decisions regarding proposed settlements .....	42
Terms of settlements .....	42
Publicity .....	43
Financial penalties and early settlement .....	43
Third party rights .....	44
<b>CHAPTER 9 – OWN INITIATIVE ACTION .....</b>	<b>45</b>
Introduction.....	45
Authorised Firms: Own initiative action .....	45
Approved Individual: Own initiative action .....	46
Article 62 and own initiative action .....	47
Request from an overseas regulator.....	47
<b>CHAPTER 10 – PROHIBITONS AND RESTRICTIONS.....</b>	<b>48</b>
Introduction.....	48
Grounds for exercising Article 62 power .....	48
Procedure for imposing a prohibition or restriction .....	48
Scope of prohibition or restriction .....	48
Time limited prohibitions and restrictions.....	49
Indefinite prohibitions and restrictions.....	49
Prohibitions, restrictions and withdrawal of authorisation or approval.....	50
Prohibitions, restrictions and other action .....	50
<b>CHAPTER 11 – OTHER ENFORCEMENT POWERS .....</b>	<b>51</b>
Introduction.....	51
Injunctions .....	51
Factors in deciding whether to apply for injunctions .....	51
Applications for injunctions .....	52
Restitution orders.....	53
Factors in deciding to apply for restitution orders .....	53
Applications for restitution orders .....	54
Determining the amount of restitution.....	54
Appointment of managers.....	55
Grounds for appointing managers.....	55

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Procedure for appointing managers.....	55
Relevant considerations when deciding whether to require appointment of managers	56
<b>CHAPTER 12 — PUBLICITY.....</b>	<b>57</b>
Introduction.....	57
Publicity about ongoing matters .....	57
Publication of supervisory or enforcement actions.....	57
Publicity about Decision Notices .....	58
Publicity about proceedings.....	58
Publicity about enforceable undertakings and settlement .....	58
Publicity about own initiative action .....	59
Public registers.....	59

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## CHAPTER 1 – INTRODUCTION

### Introduction

- 1.1 This Policy Statement contains information on the policies, processes, and procedures (“PPPs”) of the Regulatory Authority in relation to the exercise of its own initiative action powers, its investigative and information-gathering powers, and its disciplinary and enforcement powers (the “Regulatory Powers”).
- 1.2 The powers and procedures of the Regulatory Authority in relation to its Regulatory Powers are principally set out in Parts 5, 7, 8, 9 and 10 (respectively, Articles 31, 46, 48 to 57, 58 to 69, and 70 to 79) of the Financial Services Regulations (“FSR”). A reference in this Policy Statement to an Article number is a reference to the Article by that number in the FSR, unless the contrary is stated.
- 1.3 References to *Relevant Requirements* and any contravention of them in this Policy Statement are references to those Requirements in Article 84, and any contravention as described by Articles 84 and 85. Terms used in this Policy Statement that are defined in the FSR have the defined meaning in this Policy Statement.
- 1.4 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 in nature and should not be taken to bind the Authority.
- 1.5 Nothing in this Policy Statement, whether by inclusion or omission, limits the Regulatory Authority in the exercise of its powers and functions as set out in applicable QFC legislation.
- 1.6 Nothing in this Policy Statement overrides a law of the State of Qatar, a judgment of a court or tribunal, or any legislation in force in the QFC.
- 1.7 This Policy Statement will be kept under review and amended as appropriate in light of further experience and developing law and practice.

## CHAPTER 2 — APPROACH TO THE EXERCISE OF REGULATORY POWERS

### Introduction

- 2.1 The purpose of this Chapter is to set out the Regulatory Authority's approach to the exercise of its Regulatory Powers and the fundamental considerations that apply to the exercise of those powers.
- 2.2 The Regulatory Authority exercises its Regulatory Powers to support its objectives in Article 12(3). The Authority also takes into account the 'Principles of Good Regulation' in Article 13 when using its Regulatory Powers.

### Risk-based and principle-based approach

- 2.3 The Regulatory Authority adopts a risk-based and principle-based approach to regulation.
- 2.4 The risk-based approach ensures that the Regulatory Authority's resources are focused on those areas that present the greatest risk to the achievement of its objectives.
- 2.5 The principle-based approach ensures that *Authorised Firms* and *Approved Individuals* are adhering to a standard of conduct which the Regulatory Authority would reasonably expect. The principles applicable to *Authorised Firms* are set out in the *General Rules 2005* ("GENE"), and the principles applicable to *Approved Individuals* are set out in the *Individuals (Assessment, Training and Competency Rules 2014* ("INDI"). The Authority generally takes supervisory or enforcement action on the basis of these high-level principles.
- 2.6 In this Policy Statement, supervisory action means action in the exercise of the Regulatory Authority's own initiative powers under Parts 5 and 7 of the FSR.
- 2.7 Enforcement action means action in the exercise of the Regulatory Authority's investigative and information-gathering powers under Part 8 of the FSR and its disciplinary or enforcement powers under Part 9 of the FSR.
- 2.8 If supervisory or enforcement action is necessary and appropriate, the Regulatory Authority exercises its Regulatory Powers only to the extent necessary to achieve its regulatory objectives in a way that does not interfere unnecessarily with the legitimate activities of participants in the QFC.

### Principles

- 2.9 The Regulatory Authority's risk-based approach to supervisory or enforcement action is based on the following principles:
- a. **Proportionality:** The Authority focuses on reducing the risk of non-compliance wherever possible and applying its resources in the most efficient way.

- b. **Acting decisively:** When the 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.
- c. **Procedural fairness and integrity:** The Authority takes supervisory or enforcement action in accordance with its PPPs 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 Authority's PPPs respect the rights of those with whom it deals. The Authority adheres to the rules of procedural fairness and the right of appeal as set out in the FSR and, as applicable, the regulations and procedures of the Civil and Commercial Court and the Regulatory Tribunal.
- d. **Keeping the QFC financial services community informed:** The Authority ordinarily publicises the outcomes of any supervisory or enforcement action taken. This public accountability and transparency help to maintain the integrity of the QFC by deterring contraventions of the QFC Regulations and Rules and ensures that the Authority exercises its Regulatory Powers fairly and transparently. The Authority does not generally publicise the commencement of investigations or provide information on their progress.
- e. **Cooperation and mutual assistance:** The Authority works closely with other regulators and associated bodies both in Qatar and abroad to ensure the effective exchange of information and adherence to the highest common standards. This is of particular significance to the enforcement practices in the light of the increasing importance of being able to obtain information from other jurisdictions to complete an investigation or take supervisory or enforcement action.

### Senior management obligations

- 2.10 The Regulatory Authority's rules require the senior management<sup>1</sup> of a firm to satisfy their obligations to the firm and to the Authority. Accordingly, senior managers must ensure that the firm's policies, procedures, systems, and controls identify and manage risks of the firm appropriately and adequately, particularly in relation to the firm's regulatory obligations.
- 2.11 If a firm has been involved in contraventions and its senior managers are themselves complicit in the contravention, the Regulatory Authority, if it considers it appropriate to do so, takes supervisory or enforcement action against the managers as well as the firm.
- 2.12 When considering taking supervisory or enforcement action against a senior manager, the Regulatory Authority will consider whether there is evidence that the manager has contravened a *Relevant Requirement* or has been knowingly concerned in contravening a *Relevant Requirement* and whether the individual's

<sup>1</sup> For the meaning of *senior management*, see *Governance and Controlled Functions Rules 2020* ("CTRL") rule 4.1.1.

conduct was below the standard which would be reasonable in all the circumstances at the time the conduct occurred.

- 2.13 In determining whether the conduct of a senior manager of an authorised firm fell short of the standard reasonably to be expected, the Regulatory Authority considers:
- a. whether the manager exercised reasonable care when considering the information available to them;
  - b. whether the manager reached a reasonable conclusion and acted reasonably on it;
  - c. the nature, scale and complexity of the firm's business;
  - d. the manager's role and responsibility as an approved individual performing a Controlled Function;
  - e. the manager's involvement in the firm's failure and the materiality of the involvement; and
  - f. the knowledge the manager had, or should have had, of regulatory concerns, if any, arising in the business under their control.

### **Cooperation**

- 2.14 *Authorised Firms*, under GENE, and *Approved Individuals*, under INDI, are obliged to maintain an open and cooperative relationship with the Regulatory Authority and must disclose appropriately to the Authority any information that the Authority would reasonably expect to be informed of. Therefore, the Authority gives credit to a firm or individual for cooperating with the Authority only when the cooperation offered goes above and beyond the firm's or individual's obligations to the Authority.
- 2.15 The Regulatory Authority considers the cooperation offered by a *Person* in assessing the *Person's* overall relationship with the Authority, and whether in that context it is appropriate for the Authority to exercise its Regulatory Powers. The Authority also considers cooperation offered by a *Person* in deciding what supervisory or enforcement action is appropriate in a particular matter.
- 2.16 The assessment of the level of cooperation offered by a *Person* depends on the circumstances of the matter, and cooperation is only one of many factors that the Regulatory Authority considers in deciding whether to exercise its Regulatory Powers. Accordingly, cooperation by a *Person* does not guarantee that supervisory or enforcement action will not be taken against them.

## CHAPTER 3 — ASSESSMENT OF ALLEGATIONS OF CONTRAVENTIONS

### Introduction

- 3.1 This Chapter sets out the Regulatory Authority's initial assessment process to identify matters in which some form of supervisory or enforcement action is likely to be appropriate, including those cases in which it is appropriate to appoint investigators. This Chapter does not apply to the assessment of allegations or complaints made against the Authority, which are assessed in accordance with paragraph 25 of Schedule 1 to the FSR.
- 3.2 As part of the assessment process, the Regulatory Authority considers allegations of contraventions against certain criteria to ensure consistency and transparency in deciding what action, if any, should be taken in response to the allegation.
- 3.3 After assessing an allegation, the Regulatory Authority may decide to take no action, to commence an investigation (with or without appointing investigators), to refer the matter to the Authority's Supervision Department for possible supervisory action, to refer the matter to another agency or to take some other appropriate action.

### Sources of allegations

- 3.4 There are various ways in which the Regulatory Authority may become aware of a matter that warrants supervisory or enforcement action. For example:
- a. normal regulatory operations, such as the conduct of risk assessments as part of its supervision of *Authorised Firms*;
  - a. possible contraventions may also be brought to the Authority's attention through a firm's breach-reporting obligations under GENE; and
  - b. complaints received from various external sources (such as employees or customers of *Authorised Firms*), referrals from other government agencies, by participants in the QFC, or via the Protected Reporting Regime and Consumer Disputes Resolution Scheme ("CDRS") in the QFC.

### Assessment

- 3.5 The Regulatory Authority's Enforcement Department is responsible for assessing allegations of contraventions, and the Authority's Director of Enforcement decides whether to recommend that a matter should be investigated.
- 3.6 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 Authority to determine how the Authority's discretion should be exercised and what action, if any, is required.

### **Information-gathering in the assessment process**

- 3.7 The Regulatory Authority may request a complainant to provide further information by way of correspondence or an interview to help it assess the complainant's allegation. The Authority may also approach the *Person* who is the subject of the complaint to seek further information.
- 3.8 The Regulatory Authority may consider that it is appropriate or necessary to exercise its compulsory information-gathering powers to obtain further information about an allegation. At the assessment stage the Authority may exercise the general information-gathering powers available to it under Articles 48 and 49.

### **Assessment criteria**

- 3.9 To ensure consistency and transparency in decision-making, the Regulatory Authority assesses allegations against certain criteria. These criteria are designed to deliver outcomes consistent with the Authority's objectives and the Principles of Good Regulation in Article 13. The application of the criteria depends on the circumstances of a matter and not all the criteria are relevant to the assessment of every allegation. The criteria include, but are not limited to:
- a. whether the Authority has jurisdiction in the matter;
  - b. whether the alleged contravention relates to a matter of strategic importance or significance to the Authority or the QFC;
  - c. the nature of the alleged contravention including whether it was deliberate or reckless;
  - d. the seriousness of the alleged contravention, including whether it indicates widespread or systemic problems;
  - e. the effect of the alleged contravention, including any benefit to the *Person* concerned or actual or potential loss or detriment to others;
  - f. the frequency and duration of the alleged contravention, including whether it is ongoing and the time that has elapsed since it occurred;
  - g. the likelihood of the alleged contravention being proven, having regard to the availability, reliability, and quality of the evidence;
  - h. the disciplinary record and compliance history of the *Person* concerned, including whether the *Person* has previously been warned about a similar contravention;
  - i. the *Person's* conduct after the alleged contravention occurred, including whether they brought it to the Authority's attention or sought to conceal it, and any steps taken to address its causes and effects;

- j. whether the *Person* has offered or is likely to offer any assistance to the Authority or persons affected by the alleged contravention;
- k. the remedies and supervisory or enforcement actions available to the Authority;
- l. any remedies available to the persons affected by the alleged contravention;
- m. whether another authority can act against the alleged contravention and the likelihood of such action being taken;
- n. whether any other authority (in Qatar or elsewhere) has sought the Authority's cooperation in relation to the alleged contravention;
- o. whether the alleged contravention undermines or damages the efficiency, transparency, integrity, financial stability, or reputation of, or confidence in, the QFC, the State of Qatar or the financial system; and
- p. whether, in all the circumstances, it would be appropriate for the Authority to investigate the alleged contravention to further its objectives.

### **Assessment Report**

- 3.10 All allegations and referrals to the Regulatory Authority's Enforcement Department alleging contraventions, are subject to an assessment to determine whether an investigation should be commenced or whether other action, if any, should be taken. A written report of the assessment is prepared (an "Assessment Report").
- 3.11 The Assessment Report sets out whether there is good reason to commence an investigation, in accordance with Article 50 or Article 51.

### **Outcomes of assessment**

- 3.12 Depending on the outcome of the assessment, the Regulatory Authority's Director of Enforcement will recommend whether to commence an investigation and what other action, if any, is required. The possible outcomes of an assessment include:
  - a. immediately taking enforcement action: for example, this might be appropriate if the facts and contraventions do not appear to be in dispute or the *Person* concerned is willing 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 contravention to another authority, in Qatar or elsewhere;
  - d. immediately seeking an injunction to restrain or remediate a contravention;
  - e. referring the matter to the Authority's Supervision Department for possible supervisory action or further monitoring;

- f. taking no further action. The Authority might decide this is the appropriate outcome if, for example:
  - i. there is no evidence that any contravention has 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 contravention are no longer in the jurisdiction of the QFC;
  - iii. the complaint or allegation of a contravention is too vague or general to be satisfactorily investigated;
  - iv. the Authority considers that the issues raised, or concerns identified, in the allegation relate to matters which would not be appropriate for the Authority to become involved in;
  - v. any detriment caused by the alleged or apparent contravention could be adequately addressed through other means, such as a CDRS claim or a civil lawsuit; and
  - vi. commencing an investigation would not otherwise represent a good use of the Authority's resources;
- g. other action — the Authority may consider any other action that is available or appropriate to the circumstances of the matter. This may include:
  - i. sending a private warning to the *Person* concerned; or
  - ii. accepting an enforceable undertaking.

### **Financial crime and anti-money laundering**

- 3.13 As recognised in Article 18 of the QFC Law, the criminal laws of the State of Qatar apply in the QFC. However, the Regulatory Authority has no criminal jurisdiction. Therefore, any conduct it identifies which could constitute a breach of criminal law will be referred to the relevant State authority in accordance with its obligations under the Criminal Procedure Code (Law No. 23 of 2004 as amended).
- 3.14 However, if the Regulatory Authority becomes aware of conduct which indicates that *Financial Crime* may have been, or may be, committed, it will assess the conduct to ascertain whether there is any urgent or preventative action it can take to restrain the conduct. In the case of a breach of Qatari law (for example, relating to financial fraud, market abuse, money laundering or terrorist financing), the Authority will inform the relevant State authority of any action it is proposing to take and provide any assistance that that authority reasonably requests.
- 3.15 Therefore, while the Regulatory Authority has no criminal jurisdiction, and will refer appropriate matters to the relevant State authority, it does have jurisdiction to take supervisory or enforcement action against a financial institution, designated non-

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financial business or profession<sup>2</sup>, or other *Person* falling within its regulatory jurisdiction, in respect of contraventions of *Relevant Requirements* set out in the Anti-Money Laundering and Combating the Financing of Terrorism Rules 2019 (“AML/CFTR”).

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<sup>2</sup> For the meaning of *designated non-financial business or profession* (or *DNFBP*), see AML/CFTR rule 1.3.3.

## CHAPTER 4 — CONDUCT OF INVESTIGATIONS AND REGULATORY POWERS

### Introduction

- 4.1 This Chapter sets out the Regulatory Authority's general PPPs on conducting investigations and exercising its investigation and information-gathering powers under Part 8 of the FSR.
- 4.2 In every case, the Regulatory Authority decides what action to take, which powers to exercise, and how to conduct the investigation, having regard to the specifics of the matter.

### Investigations and appointment of investigators

- 4.3 Having decided that it is appropriate to commence an investigation, the Regulatory Authority will then decide whether it is appropriate to appoint investigators under Article 50.
- 4.4 In determining whether to appoint an investigator under Article 50, the Regulatory Authority generally takes into consideration the same assessment criteria that it applies when considering allegations of contraventions (see Chapter 3), as well as any other factors relevant in the case.

### Notice of appointment of investigators

- 4.5 When the Regulatory Authority appoints investigators, the *Person* subject to the investigation is given a written notice in accordance with Article 50(2). However, Article 50(2) also provides that if the Authority believes that the giving of notice would risk frustrating the investigation in a material way, the Authority may decide not to give it.
- 4.6 If the Regulatory Authority decides to discontinue an investigation without taking any action, the Authority will inform the *Person* subject to the investigation that it has decided to discontinue, or cease actively pursuing, the investigation. If the relevant allegation of misconduct was made by way of a referral, the Authority is under no obligation to keep the referring person informed, or to take direction from the referring person in relation to the investigation, unless the circumstances of the referral make it necessary to do so.

### Publicity about investigations

- 4.7 The Regulatory Authority is aware of the potential effect of an investigation becoming publicly known. The 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 in which the Authority considers that it would be appropriate to announce whether it is investigating a particular matter.

- 4.8 There may be circumstances in which disclosure of the existence of an investigation is unavoidable (for example, if 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.<sup>3</sup>

#### **General information-gathering powers**

- 4.9 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 Authority any information of which the Authority would reasonably expect notice. However, there may be occasions when it is necessary for the Authority to require a *Person* to provide information or documents. The Authority does not need to appoint investigators to do so, as it has a general power under Article 48 to require a *Person* in the QFC to produce "... specified information or information of a specified description and/or specified documents or documents of a specified description ...". The Authority may also require this information or documents to be provided "... within such timetable and in such form and manner as the Regulatory Authority may reasonably require".

#### **Power to require a report**

- 4.10 In addition to its general information-gathering powers in Article 48, the Regulatory Authority also has the power under Article 49 to require a *Person* to produce a report by a nominated person on any matter about which the Authority has required, or could require, information or the production of documents.
- 4.11 If the Authority exercises its power under Article 49 it will give the *Person* that must produce the report written notice of the requirement. If the Authority wants the report to be provided in a particular form, it will specify that in the notice. The Authority may nominate the person to make the report but it normally allows a firm to select for itself a suitable person with the requisite experience, skills and expertise to make the report. In all instances, the person nominated to make the report must be approved by the Authority.

#### **Investigation powers**

- 4.12 If the Regulatory Authority appoints an investigator or investigators, the investigators have additional powers over and above the information-gathering powers described above.
- 4.13 Investigators' powers are in Article 52.
- 4.14 If the Regulatory Authority or an investigator requires a *Person* to take an action under Article 52(2) (i.e. to attend an interview, produce documents, or provide information or assistance), the Authority will give the *Person* a written notice of

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<sup>3</sup> Further, the restrictions on disclosure of confidential information in Article 19 always apply to the Regulatory Authority and to any *Person* coming into possession of confidential information.

what is required of them and will set out a reasonable period in which the *Person* is required to complete the action.

- 4.15 However, a *Person* subject to an investigation may provide the Regulatory Authority with information or documents voluntarily. That is, the *Person* need not wait to be required by the Authority to provide relevant information or documents. A *Person* should always be aware of their obligations under GENE (for *Authorised Firms*) and INDI (for *Approved Individuals*), as well as Article 84(2)(A) (when a *Person* knowingly or recklessly provides any information which is false, misleading or deceptive, or conceals information if such concealment is likely to mislead) in respect of their relations with the Authority.
- 4.16 If the Regulatory Authority is investigating an *Approved Individual* under Article 50 or 51 and has reasonable grounds to believe that there are grounds to vary or withdraw that individual's status, the Authority, under Article 52(4), may immediately vary or suspend the individual's status during the investigation and any related proceedings. Before doing so, the Authority will give written notice to the individual and the *Authorised Firm* concerned. In deciding whether immediate action is required, the Regulatory Authority will consider the specific circumstances of the case in accordance with Annex 1 to Chapter 5.
- 4.17 Under Article 52(5), the Authority may apply to the Civil and Commercial Court for an order that all or any of the assets, books and records of the *Person* be preserved and not moved or otherwise dealt with.

### **Interviews**

- 4.18 The Regulatory Authority, or an investigator appointed on its behalf, has a specific power under Article 52(2)(A) to require any *Person* to attend before an investigator at a specified time and place to answer questions.
- 4.19 The Regulatory Authority will always make clear whether an interview is voluntary or compulsory.
- 4.20 If a *Person* refuses to be interviewed or fails to attend an interview or answer questions after they have been served with a compulsory notice under Article 52, the Regulatory Authority will consider the *Person* to be obstructing the Authority in the exercise of its functions.
- 4.21 Article 50(3) gives a *Person* under investigation the right to legal representation during the investigation, including during an interview. However, any such legal representations will not be permitted to unreasonably obstruct or hinder the interview process.
- 4.22 In some circumstances, the Regulatory Authority may choose to have persons other than investigators present in an interview. Ultimately, the Regulatory Authority will decide who is to be present in an interview.

- 4.23 At the start of an interview, the Regulatory Authority will explain what use can be made of any information the *Person* provides. Any statement that is made or information that is given by a *Person* in an interview is admissible as evidence in any proceedings the Authority decides to take.
- 4.24 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. In most cases, the Authority subsequently provides the *Person* interviewed a copy of the recording of the interview. If a transcript of the interview is made, the Authority generally gives the *Person* interviewed a copy of that transcript. If the Authority provides a transcript, it asks the *Person* to review the transcript and confirm that it is an accurate record of the interview. If the *Person* does not respond to such a request, the Authority considers that the *Person* has confirmed that the transcript is accurate.

### **Language**

- 4.25 Interviews are, in general, conducted in English. If the interviewee's first language is not English, the Regulatory Authority will, at the interviewee's request, arrange for the questions to be translated into the interviewee's first language and for the answers to be translated back into English.
- 4.26 If the Regulatory Authority allows a *Person* to be accompanied in an interview by someone of their choice to assist with translation, the Authority reserves the right to review the accuracy of any translation. If the Authority considers that such a translation is inaccurate or incorrect, the 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**

- 4.27 The Regulatory Authority recognises that an enforcement investigation can have a significant effect on individuals. In deciding to commence such an investigation the Authority always has regard to the position, role, and responsibilities of an individual when deciding whether to investigate their conduct.

### **Obstruction of the Regulatory Authority**

- 4.28 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, but are not limited to:
- 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.
- 4.29 The Regulatory Authority also regards failing to comply with a requirement imposed by the Authority as a serious form of non-cooperation. Therefore, depending on the circumstances of the matter, the Authority may also decide that it is appropriate to take action against a *Person* for a contravention of INDI or GENE.
- 4.30 If the subject of an investigation obstructs the Regulatory Authority or fails to cooperate, the Authority takes their conduct into consideration in deciding whether to take any action and, if so, what action should be taken. Obstruction of the Authority's investigation, as set out in Article 57, may result in a separate action being taken by the Authority.
- 4.31 Furthermore, potential liability for obstructing an investigation is not limited to the subject of the investigation. For example, the Regulatory Authority considers any *Person* who seeks to mislead an investigator, including by providing false statements, documents, or other information during an enforcement interview (whether compulsory or voluntary), to be obstructing the Authority in the exercise of its functions and potentially subject to supervisory or enforcement action on that basis.

#### **The role of the Civil and Commercial Court**

- 4.32 The Regulatory Authority may apply to the Civil and Commercial Court to assist in the enforcement of the Authority's powers under Part 8 of the FSR.
- 4.33 Article 54(2) 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 Court's powers are set out in its Regulations and Procedural Rules (the "Regulations and Procedural Rules"), which can be found on its website at [Regulations of the Court | QICDRC](#).
- 4.34 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. The Regulations and Procedural Rules provide more details about the enforcement of judgments and orders of the Court.

#### **Admissibility, confidentiality, and protection**

- 4.35 Any statement that is made, information that is given, or document that is produced in compliance with a request under Part 8 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 Authority voluntarily is admissible in any proceedings that the Authority may decide to take.

- 4.36 The Regulatory Authority owes a general duty of confidentiality in respect of information that comes into its possession, whether because of a requirement to provide it or otherwise. If information falls within the definition of "Confidential Information" in Article 110, the Authority treats the information as such and does not disclose it except as permitted by Article 19(3).
- 4.37 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 *Person*.
- 4.38 A *Person* who provides the Regulatory Authority with 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 Authority honestly and in the reasonable belief that the information or document is relevant to the Authority's functions.

#### **Self-incrimination and protected items**

- 4.39 If a *Person* is subject to a requirement under Part 8 of the FSR, it is not a reasonable excuse for refusal or failure 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.
- 4.40 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.
- 4.41 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.
- 4.42 A *Person* cannot simply claim that a communication is a *Protected Item*. The *Person* must satisfy the Regulatory Authority that the communication falls within the definition of *Protected Item* in Article 110 and provide verifiable evidence to support the claim.

### **Costs of enforcement investigations**

- 4.43 Article 50(4) provides that the Regulatory Authority must pay the costs and expenses of an investigation. However, if an investigation is conducted under Article 50, and that investigation finds that a *Person* has contravened a *Relevant Requirement*, the Authority, the Regulatory Tribunal, or the Civil and Commercial Court may order the *Person* to pay to the Authority the costs and expenses, in whole or in part, of the investigation.
- 4.44 The Regulatory Authority is likely to require a *Person* to pay the costs and expenses of an investigation in most cases in which it decides to take action.

### **Findings of an investigation**

- 4.45 Investigators appointed under Article 50 must provide the Regulatory Authority with a written report of the investigation ("Investigation Report"), unless an investigation is discontinued.
- 4.46 The Investigation Report sets out the facts which are relevant to the matters under investigation and the findings of the investigation including, if appropriate, any potential contraventions of *Relevant Requirements*.
- 4.47 The Investigation Report does not usually contain any details of what action the Regulatory Authority's Enforcement Department considers to be appropriate or is considering recommending to the Authority's decision-maker.

### **Firm-commissioned reviews and investigations**

- 4.48 The Regulatory Authority recognises that there may be good reasons for *Authorised Firms* to carry out their own investigations if issues of concern for the Authority have been identified. For example, this may be for disciplinary purposes, general good management, or operational and risk control. The 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 Authority, particularly if an enforcement investigation into the same matter is contemplated. Sharing the outcome of an internal investigation can save time and resources for both parties.
- 4.49 Work done or commissioned by an *Authorised Firm* does not restrict the Regulatory Authority's ability to exercise the powers available to it under the FSR. Nor can an internal investigation by a firm be a substitute for supervisory or enforcement action if it is considered appropriate.
- 4.50 If the Regulatory Authority has indicated to an *Authorised Firm* that an issue or concern may result in a referral to the Authority's Enforcement Department, the Authority expects the firm to engage with it on the scope and purpose of any internal investigation before commissioning it. If the firm expects that it will

voluntarily disclose a report of an internal investigation that is or likely to be the subject of an enforcement investigation, the report is likely to be of greater use and benefit to the Authority if the Authority has had the opportunity to comment on its proposed scope and purpose before the internal investigation begins. Nonetheless, the extent of the Authority's involvement in commenting on the scope of an internal investigation will depend entirely on the circumstances of the matter.

- 4.51 In certain situations, an internal inquiry by the *Authorised Firm* might prejudice a Regulatory Authority investigation. Firms are therefore encouraged to be aware of this possibility and to engage with the Authority at an early stage to minimise the likelihood of any such prejudice occurring.
- 4.52 If an *Authorised Firm* does carry out or commission an internal investigation, it is useful to the Regulatory Authority for the firm to maintain detailed notes, and an accurate and comprehensive record of all inquiries it makes, including interviews conducted. This record informs the Authority's judgment about whether any further work is needed and the extent of any further work and minimises unnecessary duplication.

## CHAPTER 5 — ENFORCEMENT ACTION

### Introduction

- 5.1 This Chapter sets out the Regulatory Authority's PPPs in relation to its exercise of its disciplinary and enforcement powers.

### Background

- 5.2 In normal circumstances, after having concluded its investigation, the Regulatory Authority will issue the *Person* with a Notice of Proposed Action ("NPA"). Further details about NPAs are provided in paragraphs 5.18 to 5.23.
- 5.3 The Regulatory Authority's PPPs for deciding whether to exercise its disciplinary or enforcement powers against a *Person* are described in more detail in paragraphs 5.4 to 5.17. At the end of the process, the Authority may decide to take certain action against the *Person*. If it does so, the Authority gives the *Person* a Decision Notice (a "DN"). Further details about DNs are provided in paragraphs 5.24 to 5.27.

### Deciding whether to take enforcement action

- 5.4 Enforcement action is only one of the options available to the Regulatory Authority. It may be appropriate for the Authority to address an instance of non-compliance or regulatory concern without taking enforcement action. For example, the Authority may conclude that it is appropriate to resolve a matter by way of some form of supervisory action or with a private warning.
- 5.5 It should not be assumed that a *Person* who is subject to investigation will be subject to enforcement action. Equally, the fact that investigators have not been appointed does not imply that the Regulatory Authority will not take enforcement action against a *Person*. The Authority may act under Part 9 of the FSR without appointing investigators.
- 5.6 The disciplinary and enforcement powers available to the Regulatory Authority are set out in Part 9 of the FSR. Specifically, if the Authority considers that a *Person* has contravened a *Relevant Requirement*, it may do any one or more of the following:
- a. under Article 58, publish a public censure — that is, a statement to the effect that the *Person* has contravened a *Relevant Requirement*;
  - b. under Article 59, impose on the *Person* a financial penalty of such amount as it considers appropriate;
  - c. under Article 60, appoint one or more individuals to act as managers of a business (further details on the appointment of managers are set out in paragraphs 11.18 to 11.27);

- d. under Article 61, accept a legally enforceable undertaking from the Person (further details on enforceable undertakings are set out in Chapter 7);
  - e. under Article 62, impose a prohibition or restriction on the Person (further details on prohibitions or restrictions are set out in Chapter 10);
  - f. under Article 63, apply for an injunction against the Person (further details on injunctions are set out in paragraphs 11.2 to 11.8);
  - g. under Article 64, apply for a restitution order against the Person (further details on restitution orders are set out in paragraphs 11.9 to 11.17).
- 5.7 In deciding whether to take enforcement action in respect of conduct appearing to contravene a *Relevant Requirement*, the Regulatory Authority will consider 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 the others and there may be other factors, not listed, that are relevant.
- 5.8 In addition to exercising its disciplinary and enforcement powers under Part 9 of the FSR, the Regulatory Authority may, if appropriate, take own initiative action under Article 31 or Article 46. Further details on own initiative action are set out in Chapter 9.

### **Procedure for deciding whether to take enforcement action**

#### **Recommendation**

- 5.9 In accordance with Article 50(1), if the Regulatory Authority appoints an investigator, the investigator must report their findings of the investigation to the Authority. Based on these findings, the Enforcement Department will propose its recommendations to the Authority. A recommendation may be, but is not limited to:
- a. to discontinue the investigation;
  - b. to take enforcement action under Part 9 of the FSR; and
  - c. to deal with the non-compliance in a manner it considers necessary to meet the Authority's regulatory objectives.
- 5.10 A recommendation to take enforcement action will be made having regard to the matters outlined in the FSR and Annex 1 to this Chapter.

#### **The Enforcement Committee**

- 5.11 Within the Regulatory Authority, an Enforcement Committee ("ENFCO") reviews recommendations of the Enforcement Department in relation to the Authority's

exercise of any of its disciplinary or enforcement powers against a *Person*. The membership of ENFCO may not include any member who has a conflict of interest or other factors which may have an impact on their independence in considering a particular matter before ENFCO.

- 5.12 The Enforcement Department will provide ENFCO with the findings of the investigation, which will include a recommendation as to the proposed enforcement action.
- 5.13 When assessing the Enforcement Department's recommendation, ENFCO will determine whether any action should be taken against the *Person* concerned, and if so, what that action should be. ENFCO will have regard to the following when assessing the recommendation:
- a. the facts and matters set out in the recommendation and any comments that the *Person* concerned (and third parties, if appropriate) have provided in response as part of the investigation;
  - b. whether the material on which the recommendation or proposed action is based is adequate to support it; and
  - c. whether, in ENFCO's view, the action recommended is appropriate in all the circumstances.
- 5.14 ENFCO will recommend to the Regulatory Authority whether to follow the Enforcement Department's recommendation or take other action, and the terms of that action.
- 5.15 If the Regulatory Authority decides that it is appropriate to exercise its disciplinary or enforcement powers under Article 58, 59, 61 or 62, it gives the *Person* concerned written notice of the action it is proposing to take in accordance with Article 70. This written notice is known as an NPA.
- 5.16 If the Regulatory Authority has issued an NPA to a *Person*, the Enforcement Department will consider the *Person's* written representations, if any, and whether a DN is to be issued. If a DN is to be issued, the Enforcement Department will make a recommendation to ENFCO who in turn makes a recommendation to the Authority.
- 5.17 If ENFCO recommends that an NPA or a DN be issued, the Regulatory Authority may accept ENFCO's recommendation and issue the NPA or DN accordingly, or it may consider some other form of action, decide that no action should be taken or request further information or clarification (which may lead to further investigative work).

#### **Notice of Proposed Action**

- 5.18 Article 70 provides that, except in certain limited circumstances discussed in paragraph 5.20, if the Regulatory Authority proposes to exercise certain disciplinary

or enforcement powers under Article 58, 59, 61 or 62 it must give the *Person* concerned:

- d. an NPA; and
  - e. an opportunity to make written representations to the Authority in relation to the proposed action.
- 5.19 The NPA must specify 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.
- 5.20 Under Article 70(3)(B), the Regulatory Authority may choose not to give an NPA to a *Person*, nor give the *Person* an opportunity to make representations, if it concludes that any delay likely to arise as a result of doing so might be prejudicial to the interests of customers of the *Person* concerned, the QFC or the QFC financial system.

### **Representations**

- 5.21 If a *Person* who receives an NPA makes representations in response, it is important that they ensure that the representations address the aspects of the NPA 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 Authority's consideration of their representations if they fail to explain precisely why.
- 5.22 The Regulatory Authority will decide whether, and to what extent, a *Person* or a third party who has been given an opportunity to make representations should see, and can make representations in response to, representations made by any other party in the matter.
- 5.23 If the Regulatory Authority receives no representations in relation to an NPA either in the manner specified or within the period allowed or at all, the Authority may regard the allegations or matters in the NPA as undisputed and give a DN accordingly.

### **Decision Notice**

- 5.24 If the Regulatory Authority decides to take the action proposed in an NPA, or take an action if an NPA has not been issued under Article 70(3)(B), and that action involves the exercise of a disciplinary or enforcement power under Article 58, 59, 61 or 62, it must give the *Person* a DN in accordance with Article 71. In accordance with Article 71(3)(D), the DN would include, among other matters, a statement of the *Person's* right to refer the matter to the Regulatory Tribunal within a reasonable period specified in the DN.
- 5.25 Article 72 provides that the Regulatory Authority may take the action specified in a DN if the *Person* to which it relates does not refer the matter to the Regulatory Tribunal within the period specified for doing so. The Tribunal's Regulations and

Procedural Rules contain detailed provisions about the periods within which an appeal must be filed with the Tribunal. Therefore, the Authority will not take the action specified in such a DN until after the period for filing an appeal has passed.

- 5.26 If the *Person* concerned agrees to the action set out in a DN and not to refer the decision to the Regulatory Tribunal (for example, by way of settlement), the Regulatory Authority need not wait until after the period for filing an appeal has passed before taking the action set out in the DN.
- 5.27 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 DN. However, if a *Person* does refer a matter to the Tribunal, that referral does not automatically stay the operation of the Authority's decision. A *Person* may apply to the Tribunal under Article 73(2) to stay the operation of the decision pending the outcome of the appeal.

### **Discontinuance of Regulatory Authority proceedings**

- 5.28 Article 73(1) provides that, if the Regulatory Authority decides not to take the action to which a DN relates, it must give the *Person* concerned a notice of discontinuance, identifying the proceedings which are being discontinued.
- 5.29 If the action being discontinued involves a third party (as set out in Article 76), the Regulatory Authority will also give the third party a copy of the notice of discontinuance.
- 5.30 It may be appropriate, in exceptional circumstances, to give a *Person* a notice of discontinuance even if the Regulatory Authority is taking some other action against the *Person*. This might happen, for example, if, after consideration of a *Person's* representations, the Authority decides to take action which is substantially different to the action proposed in an NPA.

### **Access to material**

- 5.31 In accordance with Article 71(3)(C) and Article 77, if the Regulatory Authority gives a *Person* a DN, it must allow the *Person* access to the material on which it relied in taking the decision which gave rise to the obligation to give the DN.
- 5.32 In enforcement investigations, there is likely to be a large amount of that material. Not all of it will be relevant to the Regulatory Authority's decision and some parts of it will be more relevant than others. Accordingly, the Authority will identify the material on which it relied in making the decision and give the *Person* (and, if relevant, third parties) a list of that material.
- 5.33 The Regulatory Authority may provide the *Person* with copies of the material or, if appropriate, allow the *Person* to examine it. The 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.

- 5.34 Under Article 77(2), the Regulatory Authority may refuse a *Person* access to material if 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 Authority does not allow a *Person* access to material, in accordance with Article 77(3), it will give a written notice of the refusal and the reasons for it.

### **Third party rights**

- 5.35 In accordance with Article 76(1), if a DN relates to a matter which identifies a third party;<sup>4</sup> and in the opinion of the Regulatory Authority, the DN is prejudicial to that third party, the Authority must give a copy of the DN to the third party, unless, in accordance with Article 76(3), the Authority considers it impractical to do so.
- 5.36 Article 76(2) provides that a DN copied to a third party must specify a reasonable period within which the third party may make representations to the Regulatory Authority. Should the third party wish to do so, any such representations should be in writing.
- 5.37 Article 76(4) provides that a third party who is given a copy of a DN under Article 76(1) may refer to the Regulatory Tribunal the decision in question or any aspect of it, so far as it relates to the third party, or any opinion expressed by the Regulatory Authority in relation to the third party.

### **Other actions**

#### **“Own initiative action”**

- 5.38 Chapter 9 sets out the Regulatory Authority’s policy on exercising its powers under Articles 31 and 46. Those Articles relate to the Authority’s powers to act on its own initiative against an *Authorised Firm* (Article 31) or an *Approved Individual* (Article 46).

### **Private warnings**

- 5.39 The Regulatory Authority may decide that, even though it has concerns about a *Person’s* conduct or sufficient evidence of a contravention of a *Relevant Requirement*, it is not appropriate to take enforcement action against the *Person*, enabling the Authority to use its resources on the most significant matters. In such cases, the Authority may give the *Person* a private warning.
- 5.40 While a private warning is no different to any other Regulatory Authority communication which criticises, or expresses concern about, a *Person’s* conduct, it

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<sup>4</sup> A *Person* other than the *Person* to which the DN is given is called a “third party”. The determination as to whether a third party is identified in a DN and whether that identification is prejudicial to the third party is made in the Enforcement Department’s recommendation to ENFCO and the Regulatory Authority. The final decision is made by the Regulatory Authority.

has more serious implications than concerns that might be communicated during normal supervisory correspondence.

- 5.41 The decision to give a *Person* a private warning can be made at any stage of the enforcement process and for different reasons.
- 5.42 In deciding whether to give a *Person* a private warning, the Regulatory Authority considers all the circumstances known to it, including the likely effect of a private warning on the *Person*, whether the *Person* poses any risk to the Authority's regulatory objectives, and the factors set out in Annex 1 to this Chapter. If the Authority gives a private warning to an *Approved Individual*, the Authority informs the individual's employer of its decision to do so and gives it a copy of the warning.
- 5.43 A *Person* that receives a private warning is not given an opportunity to comment on the warning before it is given. However, any comments that the *Person* makes in response to the warning are recorded as part of the *Person's* disciplinary record and compliance history.
- 5.44 Because private warnings (and any comments made 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 enforcement action against a *Person*. 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 Authority also takes into consideration when the earlier warning was given, and the matters referred to in it.
- 5.45 Two or more private warnings to the same *Person* may be considered together, although they relate to separate areas of the *Person's* business, if the concerns which gave rise to them are indicative of the *Person's* attitude to compliance. Similarly, two or more private warnings given to different subsidiaries of a parent company may be considered together.

### **Settlement**

- 5.46 The Regulatory Authority's policy in relation to settlement of enforcement matters is set out in Chapter 8.

## **Annex 1 — Factors in deciding whether to take enforcement action**

1. In deciding whether to take enforcement action, the Regulatory Authority will have regard to Article 12 and the Principles of Good Regulation in Article 13. In respect of conduct appearing to the Authority to contravene a *Relevant Requirement*, the Authority will also consider the full circumstances known to it for each case before making its decision to take any enforcement action. 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, because 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; and
    - iv. the reputation of the QFC;
  - f. any loss or risk of loss caused to 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; and
- j. whether there are a number of smaller issues, which individually may not justify enforcement 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 information on the 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:

- i. ascertaining whether customers suffered loss and compensating them if they did;
  - ii. correcting any misleading statement or impression;
  - iii. taking enforcement action against, or providing additional training for, staff involved in the contravention;
  - iv. recruiting new staff to have sufficient resources; or
  - v. 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; and
- 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 to mislead.

### **Disciplinary record and compliance history**

4. The *Person's* disciplinary record and compliance history, including, for example:
  - a. whether the Regulatory Authority has previously taken any enforcement action against the *Person*;
  - b. whether the Regulatory Authority has previously acted against the *Person* under Article 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; and
  - g. whether the Regulatory Authority has previously given the *Person* a private warning and the *Person's* general compliance history.

### **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 Authority's concerns are adequately addressed, or whether it would be appropriate for the 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 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 enforcement action should be taken against the Person (for example, the Regulatory Authority may decide that enforcement 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 enforcement action against the firm rather than the Person would be a more appropriate regulatory response; and
- e. whether enforcement 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 in relation to the imposition of financial penalties are made under Article 79 and apply on and from the day this Policy Statement is issued.

### Purpose of financial penalties and public censure

- 6.3 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 because of their contraventions;
  - c. deterring Persons who have committed contraventions from committing further contraventions;
  - d. deterring others from committing similar contraventions;
  - e. demonstrating generally the benefits of compliance with regulatory requirements; and
  - f. serving to compensate the QFC and the Authority for damage to confidence in, the stability, integrity, or reputation of the QFC, or for impairment of the Authority's ability to carry out its functions.

### Factors in determining whether to issue a public censure

- 6.4 In some cases, the Regulatory Authority may decide that, although some form of enforcement action against a *Person* in relation to a contravention of a *Relevant Requirement* is justified, the enforcement action should take the form of a public censure (under Article 58) rather than a financial penalty (under Article 59).
- 6.5 In deciding whether to impose a public censure rather than a financial penalty, the Regulatory Authority considers all the relevant circumstances of the case which are known to it. Although the factors set out in Annex 1 to Chapter 5 are likely to be relevant, they are not exhaustive. Some additional factors that may be relevant include:
- a. whether a public censure would be an effective deterrent;

- b. whether the Person concerned made a profit or avoided loss as a result of the contravention;
- c. the seriousness of the contravention;
- d. the Person's conduct;
- e. the Person's disciplinary record and compliance history; and
- f. the Authority's approach in similar cases.

### **Factors in determining the appropriate level of financial penalty**

6.6 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 or customers and the best interests of the QFC financial system.

6.7 The Regulatory Authority will also have regard to the conduct of the *Person* concerned in relation to late notifications and reporting contraventions. GENE imposes fees for making certain notifications, reports, and returns late. If a *Person* has previously failed to or continues to fail to provide such notifications, reports, or returns as, or within the time which, they are required to be provided, the Authority will take these fees into account when considering an appropriate financial penalty.

### **Seriousness**

6.8 In assessing the seriousness of the contravention, the following considerations 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;
  - iv. the reputation of the QFC; and
  - v. the Authority's ability to carry out its functions;
- e. any loss or risk of loss caused to 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 the contravention to cause or facilitate Financial Crime; and
- i. whether publicly available guidance or published materials raised concerns about the conduct constituting the contravention.

**Deliberate or reckless conduct**

- 6.9 The Regulatory Authority must have regard to the extent to which the contravention was deliberate or reckless. If the contravention was deliberate or reckless, the Authority is likely to impose a larger financial penalty on the *Person* than would otherwise be the case.
- 6.10 In this regard, the Regulatory Authority may consider the following:
- a. whether the contravention was intentional, in that the Person concerned (or, if the Person is an Authorised Firm, its senior management) intended or foresaw that their actions would or might result in a contravention;
  - b. whether the Person concerned (or, if the Person is an Authorised Firm, its senior management) knew that their actions were not in accordance with the firm's internal procedures;
  - c. whether any steps were taken to conceal the contravention;

- d. whether the contravention was committed in such a way as to avoid or reduce the risk that it 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 relieve a Person from responsibility for compliance with Relevant Requirements.)
- 6.11 Factors tending to show that a contravention was reckless include, but are not limited to:
- 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**

- 6.12 The Regulatory Authority must have regard to whether the *Person* concerned is an individual. In determining the amount of a financial penalty to be imposed on an individual, the 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.
- 6.13 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 or customers**

- 6.14 The Regulatory Authority must have regard to the effect of the contravention on third parties or customers and the best interests of the QFC financial system (including those matters to which the FSR apply).

- 6.15 The Regulatory Authority considers a contravention to be more serious if it results in a loss, or the risk of loss, to third parties or customers, or if it had an effect on particularly vulnerable people, whether intentionally or not.

### **Deterrence**

- 6.16 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 enforcement action is deterrence: that is, deterring *Persons* who have committed contraventions from committing further contraventions, and deterring others from committing similar contraventions.
- 6.17 The Regulatory Authority takes into account the need to ensure that the amount of a financial penalty imposed is appropriate to act as a deterrent.

### **Size, financial resources and other circumstances of the Person**

- 6.18 In determining the appropriate amount of a financial penalty, the Regulatory Authority will take into consideration the financial resources and other circumstances of the *Person* concerned.
- 6.19 The Regulatory Authority may consider 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 6.34 to 6.37.
- 6.20 If the *Person* concerned is an *Authorised Firm*, the Regulatory Authority takes into consideration the *Person's* size and financial resources 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.
- 6.21 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.
- 6.22 The size and resources of a *Person* may also be relevant in assessing any remedial steps taken by the *Person*, in deciding whether the steps were reasonable and appropriate in the circumstances.

### **Financial gain or loss avoided**

- 6.23 The Regulatory Authority will seek to prevent a *Person* from gaining a benefit or avoiding a loss because of their contraventions.

- 6.24 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 it. Therefore, the amount of the penalty should not be less than the amount of the profit made or the loss avoided.
- 6.25 Further, in taking into consideration the amount of financial gain 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**

- 6.26 The Regulatory Authority will take into consideration the *Person's* conduct after the contravention in determining the amount of the financial penalty, including, for example, the following:
- a. the *Person's* conduct in bringing (or failing to bring) the contravention quickly, effectively, and completely to the attention of the 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 Authority or another regulatory authority. Remedial steps might include, for example:
    - i. ascertaining whether 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 Authority or another regulatory authority in relation to the contravention.
- 6.27 Whether 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.

### **Disciplinary record and compliance history**

- 6.28 The Regulatory Authority will take into consideration a *Person's* disciplinary record and compliance history in determining the amount of the financial penalty, including whether supervisory or enforcement action has been taken in relation to the *Person*.
- 6.29 The disciplinary record of a *Person* could lead to the Regulatory Authority imposing a larger financial penalty than otherwise might be considered appropriate (for example, the financial penalty might be increased if the *Person* has committed similar contraventions in the past or been warned about similar contraventions).

### **Action in similar cases**

- 6.30 The Regulatory Authority will take into consideration action taken, or to be taken, by the Authority in relation to similar cases involving other parties in determining the amount of the financial penalty.
- 6.31 While the Regulatory Authority seeks to act consistently in determining the amount of a financial penalty, it does not operate a "tariff" system. There may be circumstances which justify a financial penalty different to that imposed in another case, even if the cases are otherwise substantially the same.

### **Action by other regulatory authorities**

- 6.32 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 a financial penalty.

### **Settlement agreement**

- 6.33 The Regulatory Authority's policy in respect of settlement and its impact on a financial penalty is set out in Chapter 8.

### **Serious financial hardship**

- 6.34 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 or a payment instalment plan would be appropriate. However, if a *Person* asserts that payment of a proposed financial penalty would cause them to suffer serious financial hardship, the Authority will consider whether to reduce the proposed financial penalty or consider a payment instalment plan 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* makes full and frank disclosure of that evidence, and cooperates fully with any enquiries the Authority may make about their financial position.

- 6.35 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. In doing so, the *Person* is required to disclose all relevant and verifiable materials in support of their hardship claim. It is not the Authority's responsibility to establish that the *Person* has the means to pay the proposed financial penalty.
- 6.36 The Regulatory Authority may also conclude that it is not appropriate to reduce a proposed financial penalty if the *Person* concerned has taken steps, such as dissipating their assets in anticipation of a financial penalty, to frustrate or limit the effect of the Authority's action.

### **Serious misconduct**

- 6.37 There will be cases if, even though the *Person* concerned 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 penalty.

### **Interaction between disciplinary and enforcement powers**

- 6.38 In appropriate cases, the Regulatory Authority may take action based on a combination of its disciplinary and enforcement powers. This might happen, for example, in a case concerning an *Approved Individual* if the Authority considers it appropriate both to impose a financial penalty on the *Person* concerned and to prohibit the *Person* from performing a particular *Controlled Function*. In financial regulation, the imposition of a financial penalty is a means of penalising an *Approved Individual* for the conduct concerned and deterring similar contraventions. A prohibition order is primarily intended to protect the public (and the QFC and QFC financial system itself) if an *Approved Individual's* behaviour demonstrates a lack of fitness for a particular role or roles in an *Authorised Firm*. Similarly, in a case that relates to an *Authorised Firm*, the Authority might decide that it is appropriate both to impose a financial penalty and to prohibit the firm from entering transactions.

### **Time and manner for payment**

- 6.39 If the Regulatory Authority decides to impose a financial penalty under Article 59, it will give the *Person* concerned a DN informing them of the decision. The DN will specify the amount of the financial penalty and the time and manner for payment.
- 6.40 A financial penalty, or part of a financial penalty (for example, if the financial penalty is payable in instalments), that is not paid within the period specified in the DN may be recovered by the Regulatory Authority as a debt in accordance with Article 59(4).

## CHAPTER 7 — ENFORCEABLE UNDERTAKINGS

### Introduction

- 7.1 This Chapter sets out the Regulatory Authority's PPPs 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 such an undertaking, 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 may accept an enforceable undertaking if it considers it appropriate to do so. In deciding whether to accept an enforceable undertaking, the Authority has regard to the specific circumstances of the matter.
- 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.

### Offers of enforceable undertakings

- 7.5 The Regulatory Authority may, before or during the enforcement process in relation to a *Person*, suggest that it would be prepared to resolve the matter by accepting an enforceable undertaking. If so, the Authority would generally also suggest possible terms of an undertaking that it would be prepared to consider.
- 7.6 A *Person* can make an offer to enter an enforceable undertaking to the Regulatory Authority at any time, regardless of whether an investigation or proceedings have commenced in relation to the *Person*. If the Authority decides to accept an enforceable undertaking from a *Person*, under Article 71(2) it is not required to give the *Person* a DN. If an investigation has been commenced, a notice of discontinuance will be issued, and the enforceable undertaking will conclude the matter.

### Accepting an enforceable undertaking

- 7.7 Under Article 61, the Regulatory Authority has the discretion to accept an offer of an enforceable undertaking.
- 7.8 The Regulatory Authority would consider an offer of an enforceable undertaking in the light of the 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 enforcement action, which are set out in Annex 1 to Chapter 5.

7.9 Generally, the Regulatory Authority would only consider accepting an enforceable undertaking if the Authority:

- a. has weighed the nature, significance and seriousness of the relevant conduct and the effectiveness of the regulatory outcome offered by the undertaking against outcomes offered by other available enforcement proceedings;
- b. has considered the likelihood that the Person offering the undertaking would comply with it; and
- c. considers that an enforceable undertaking is in the public interest and the most appropriate regulatory outcome in the circumstances of the matter.

#### **Terms of enforceable undertaking**

7.10 The Regulatory Authority would expect an enforceable undertaking to include terms stating that the *Person*:

- a. accepts that it contravened one or more Relevant Requirements specified in the 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 because of the conduct; and
- d. will take appropriate measures to minimise the risk of such contraventions re-occurring.

7.11 If a *Person* offers an enforceable undertaking to the Regulatory Authority after the commencement of an investigation, the Authority will generally expect the *Person* to agree to pay the costs and expenses of the investigation incurred by the Authority up until the time at which the undertaking was offered.

#### **Compliance with enforceable undertakings**

7.12 A failure to comply with the requirements of an enforceable undertaking is a contravention of a *Relevant Requirement* under Article 84(1). Therefore, the Regulatory Authority may exercise any of its disciplinary or enforcement powers available under Part 9 of the FSR against the *Person* concerned, including the imposition of a financial penalty under Article 59 and the publication of that penalty. The Authority may also apply to the Civil and Commercial Court under Article 61(3) for an order directing the *Person* to comply with the relevant terms of the undertaking.

#### **Varying or withdrawing enforceable undertakings**

7.13 Under Article 61(2), a *Person* may vary or withdraw an enforceable undertaking at any time, but only with the consent of the Regulatory Authority. If the Authority

agrees to the undertaking being varied or withdrawn, it will provide this consent to the *Person* in writing. After the undertaking has been withdrawn, the *Person* is no longer bound by it.

- 7.14 A variation of an enforceable undertaking only modifies the original undertaking and does not replace it. The Regulatory Authority would only consider a request to vary an undertaking if, for example:
- a. there is a material change in the circumstances that resulted in the undertaking;  
or
  - b. the variation will not alter the meaning of the undertaking.
- 7.15 If an enforceable undertaking specifies an expiry date, but the *Person* that gave the undertaking has not fully complied with it by that date, the Regulatory Authority recognises that there may be circumstances in which the *Person* needs to extend it beyond that date. In such a case, the *Person* should give compelling reasons in writing for why it has been unable to comply with the undertaking by that date, because without the Authority's consent to vary the undertaking the *Person* would be in contravention of a *Relevant Requirement* after that date.

### **Publicity**

- 7.16 In accordance with Article 18, the Regulatory Authority generally publicises the outcomes of supervisory or enforcement actions that it takes under Parts 5, 7 and 9 of the FSR. This helps to ensure that its enforcement processes are open and transparent and deters others from committing similar contraventions.
- 7.17 The Regulatory Authority does not publicise the fact that an enforceable undertaking has been accepted if 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 QFC financial system.

## CHAPTER 8 – SETTLEMENT

### Introduction

- 8.1 This Chapter sets out the Regulatory Authority's PPPs regarding settlement of enforcement actions.
- 8.2 The Regulatory Authority and a *Person* against whom enforcement action is being taken may enter into settlement discussions at any time during the enforcement process. Settlement discussions should be followed with a written proposal by the *Person* concerned for further consideration by the Authority.

### Approach to settlement

- 8.3 Under a settlement a *Person* against whom enforcement action is being taken agrees to the imposition of a financial penalty or other action and to waive any rights to contest the action. By definition, a settlement requires the agreement of both the Regulatory Authority and the *Person*.
- 8.4 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 proceedings avoids the need for further regulatory proceedings and litigation and is thus time and resource effective for both the Authority and *Persons* who are the subjects of enforcement actions.
- 8.5 A settlement can allow restitution or redress for customers earlier than might otherwise be possible. A settlement also allows the Regulatory Authority to make a public statement about the relevant contravention earlier than would otherwise be possible. Settlement also gives the subjects of the enforcement action an opportunity to engage with the Authority in the drafting of any notices which will be given to them, such as a DN. It also enables *Persons* to bring matters to conclusion more swiftly. The Authority therefore considers that enforcement proceedings should be settled as early as possible and that it is in the public interest to do so.
- 8.6 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 Authority settles only if the agreed terms of the settlement result in an acceptable regulatory outcome.
- 8.7 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 contraventions to enable it to make a reasonable assessment of the appropriate outcome.

### **Timing and process**

- 8.8 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 an NPA has been given under Article 70, before or after a DN has been given under Article 71, or during proceedings resulting from a referral to the Regulatory Tribunal.
- 8.9 The Regulatory Authority generally considers that settlement discussions with a *Person* are likely to be more productive if an NPA under Article 70 or some other formal notification of the Authority's concerns and its proposed action has been given to the *Person*. The notification enables the *Person* to understand the Authority's concerns and what it considers to be the appropriate enforcement action. However, it should not be assumed that the Authority's position is fixed simply because it has been set out in an NPA.
- 8.10 The Regulatory Authority is unlikely to settle a matter after a DN has been given to the *Person*, or during proceedings at the Regulatory Tribunal, unless the *Person* accepts the action being taken by the Authority or compelling evidence comes to light which causes the Authority to reconsider the matter.
- 8.11 If the Regulatory Authority has issued an NPA to the *Person*, and a settlement has been reached, the Authority expects the *Person* to waive any rights to make representations under Article 70(1)(B) regarding the notice.
- 8.12 If the Regulatory Authority decides to exercise a disciplinary power under Article 58, 59, 60 or 62, Article 71 requires the Authority to give the *Person* a DN. Accordingly, the Authority will give the *Person* a DN if the terms of a settlement include disciplinary action. However, the Authority expects the *Person* to waive their rights under Article 66 to refer the DN to the Regulatory Tribunal if a settlement has been agreed.
- 8.13 The Regulatory Authority considers that settlement discussions should take place in a timely and diligent manner to ensure that the Authority does not unnecessarily divert resources to progress matters through the formal process. The Authority will set an appropriate timetable for settlement discussions to ensure that the discussions do not delay, or shift focus away from, the formal enforcement process and the Authority expects *Persons* to provide reasonable assistance in adhering to the Authority's timetable.

### **Basis for settlement discussions**

- 8.14 The Regulatory Authority holds settlement discussions on a without prejudice basis—that is, if the matter is, or will be, considered by the Regulatory Tribunal, no party to the discussions will seek to rely on admissions or statements made during the discussions or in documents recording the discussions. The Authority sets out that basis in writing before the 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**

- 8.15 If settlement discussions result in a proposed settlement, the investigator or the Enforcement Department will document the proposed settlement and refer the matter to the Regulatory Authority to decide whether the matter should be settled and the terms of the settlement.
- 8.16 Provisional agreement to a proposed settlement by the Director of Enforcement or other representative of the Regulatory Authority does not bind the Authority to settle on the agreed terms. The proposed settlement will be recommended to ENFCO, who in return will decide whether or not to recommend the terms of the proposed settlement to the Authority. Upon receiving the recommendation from ENFCO, the Authority will decide whether to settle the matter on the terms proposed, recommend other terms and request further settlement discussions with the *Person* concerned, or decline to settle the matter.

### **Terms of settlements**

- 8.17 The Regulatory Authority only accepts settlements if the *Person* subject to the enforcement action accepts that it contravened *Relevant Requirements* and admits relevant facts regarding those contraventions in the settlement.
- 8.18 When it agrees to the terms of a settlement, the Regulatory Authority ensures that those terms are consistent with the Authority's regulatory objectives in Article 12, as well as the Principles of Good Regulation in Article 13.
- 8.19 In general, as it relates to terms of the settlement agreement, the Regulatory Authority asks the *Person*:
- a. if an NPA has been issued, to waive, and promise not to exercise, any rights to make representations under Article 70;
  - a. if an NPA has been issued, not to object to being given a DN before any period specified by the Authority for making written representations has expired;
  - b. if an NPA or DN has been issued, not to dispute the facts and matters set out in the NPA or DN;
  - c. to agree that the Authority will make a public statement regarding the settlement;
  - d. if a DN has been issued, to waive, and promise not to exercise, any rights under Article 77 to be allowed access to any material relied on in a DN;
  - e. if a DN has been issued, to waive, and promise not to exercise, any right under Article 66 to refer the DN to the Tribunal;

- f. 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 Authority; and
- g. to agree that, if the Authority considers that a term of the settlement is breached, the 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 Authority considers appropriate.

### **Publicity**

- 8.20 The Regulatory Authority generally publicises the outcome of a settlement, including the names of the *Persons* who were the subjects of the enforcement action and the key terms of the settlement. However, the Authority is aware that *Persons* may provide highly confidential and commercially sensitive information as part of the settlement negotiations. In such cases, the Authority may decide not to publicise such information if it considers that any of the matters in Article 18(3) apply.

### **Financial penalties and early settlement**

- 8.21 The Regulatory Authority considers that if a *Person* has been open and cooperative with the Authority and has demonstrated a commitment to settling an enforcement matter as early as possible, the *Person* should be given appropriate recognition.
- 8.22 The Regulatory Authority considers that if a financial penalty is imposed on a *Person* as a result of an early settlement, the penalty should generally be less than if it had been imposed later in the enforcement process. Accordingly, the 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 Authority in reaching that stage.
- 8.23 The Regulatory Authority may agree that a financial penalty 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.
- 8.24 If a financial penalty includes an element to prevent a *Person* from gaining a benefit or avoiding a loss because of their contravention, no reduction is allowed in that part of the financial penalty. Similarly, no reduction will be allowed in any restitution or compensation payable to customers under the settlement.
- 8.25 If the Regulatory Authority agrees to a reduced financial penalty through settlement, the settlement agreement will contain a statement as to the appropriate penalty and the reduction agreed. In any public statements regarding the settlement, the Authority will specify the appropriate financial penalty and the amount that is payable because of the reduction.

### **Third party rights**

- 8.26 If it is intended that a DN is to be given to a *Person* as part of the settlement of an enforcement action with that *Person*, the Regulatory Authority will consider the effect of the settlement on third parties before issuing the DN, unless the Authority considers it impractical to do so.
- 8.27 Generally, if a DN 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.

## CHAPTER 9 – OWN INITIATIVE ACTION

### Introduction

- 9.1 This Chapter sets out the Regulatory Authority's PPPs on the exercise of its powers to act 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 Article 31 (in relation to *Authorised Firms*) and Article 46 (in relation to *Approved Individuals*) allow 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*.
- 9.4 If 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 Authority takes own initiative action against an *Approved Individual*, it is required only to give notice to the *Authorised Firm* that employs the individual.

### Authorised Firms: Own initiative action

- 9.5 The Regulatory Authority may take its own initiative action against an *Authorised Firm* at any time it considers appropriate if it is satisfied that any of the grounds in Article 31(1) apply.
- 9.6 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 type of *Specified Products* that it can deal in, or the type of *Regulated Activities* it may conduct.
  - 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 Authority.

- 9.7 The Regulatory Authority will take own initiative action to vary or withdraw a firm's authorisation if the Authority has serious concerns about the firm or if the firm's *Regulated activities* have ceased. When considering whether an *Authorised Firm's* authorisation should be varied or withdrawn, the Authority considers the criteria in Articles 29(2)-(5).
- 9.8 In accordance with Article 31(3), when the Regulatory Authority takes own initiative action, the *Authorised Firm* concerned will be provided with an opportunity to make written representations.
- 9.9 If the *Authorised Firm* makes representations about own initiative action, the representations must be in writing and provided within the period specified by the Regulatory Authority.
- 9.10 In accordance with Article 31(4)(B), the Regulatory Authority is not required to provide an *Authorised Firm* with an opportunity to make written representations if the Authority takes own initiative action following a determination the Authority made under Part 9 of the FSR, or a decision by the Regulatory Tribunal or the Civil and Commercial Court relating to or affecting the *Authorised Firm* in question.

#### **Approved Individual: Own initiative action**

- 9.11 The Regulatory Authority is provided with powers under Article 46 to take own initiative action against an *Approved Individual*, similar to the powers provided under Article 31 in relation to an *Authorised Firm*, at any time it considers appropriate if it is satisfied that any of the grounds in Article 46(1) apply.
- 9.12 The Regulatory Authority will take own initiative action to vary the approval of *Approved Individuals* to remove one or more *Controlled Functions*, or withdraw an individual's approval, if the Authority has very serious concerns about the individual. When considering whether an *Approved Individual* no longer meets the suitability criteria and related requirements criteria under Article 43(2), the Authority considers the guidance provided in INDI, in particular the criteria in Chapters 4 and 5 and Annex 1 to Chapter 5.
- 9.13 In accordance with Article 46(3), if the Regulatory Authority decides to take own initiative action against an *Approved Individual*, it will inform the relevant *Authorised Firm* by written notice. Subject to Article 46(4), the firm will be provided an opportunity to make representations to the Authority.
- 9.14 When the Regulatory Authority takes own initiative action against an *Approved Individual* under Article 46 following a determination by the Authority under Part 9 of the FSR, or a decision by the Regulatory Tribunal or the Civil and Commercial Court, the Authority will inform the *Authorised Firm* that it is taking the action. In these circumstances and in accordance with Article 46(4)(B), the Authority will not

provide either the firm or the individual with an opportunity to make representations.

### **Article 62 and own initiative action**

- 9.15 If there are grounds for the withdrawal of an *Authorised Firm's* authorisation or an *Approved Individual's* approval, the Regulatory Authority may exercise its power to take an own initiative action together with its power to impose a prohibition or restriction on the firm or individual under Article 62.
- 9.16 If the Regulatory Authority imposes a prohibition or restriction on an *Approved Individual* under Article 62, and wishes to also exercise its power under Article 46, the Authority will give written notice to both the individual and the *Authorised Firm* that employs them as well as the opportunity to make written representations. If the action under Article 46 follows a determination by the Authority under Part 9 of the FSR or a decision by the Civil and Commercial Court or the Regulatory Tribunal, the Authority need not give an opportunity to either the firm or the individual to make representations (Article 46(4)(B)).
- 9.17 Similarly, if the Regulatory Authority imposes a prohibition or restriction on an *Authorised Firm*, and wishes to also exercise its power under Article 31, the Authority will give written notice to the firm as well as the opportunity to make written representations. If the action under Article 31 follows a determination by the Authority under Part 9 of the FSR or a decision by the Civil and Commercial Court or the Regulatory Tribunal, the Authority need not give an opportunity to the firm to make representations. (Article 31(4)(B)).
- 9.18 If a prohibition or restriction allows an *Approved Individual* to undertake one or more *Controlled Functions*, or an *Authorised Firm* to undertake one or more *Regulated Activities*, the Regulatory Authority will not seek withdrawal of the firm's authorisation or the individual's approval, but in the case of an *Approved Individual*, the Authority may vary, the individual's approval to remove one or more *Controlled Functions* to reflect the prohibition, and in the case of an *Authorised Firm*, the Authority may vary, the firm's authorisation to remove one or more *Regulated Activities*. Upon the revocation of the prohibition or restriction, the firm or individual must undergo the same approval process to satisfy the Authority that the criteria for approval are met and that they are now fit and proper to undertake the *Controlled Function* or the *Regulated Activity*.

### **Request from an overseas regulator**

- 9.19 Under Article 31(1)(G) or 46(1)(F), 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. Before taking any action in response to such a request, the Authority will satisfy itself that it is appropriate to do so in accordance with Article 20(4).

## CHAPTER 10 — PROHIBITONS AND RESTRICTIONS

### Introduction

- 10.1 This Chapter sets out the Regulatory Authority's PPPs in relation to the imposition of prohibitions and restrictions under Article 62 ("the Article 62 power").
- 10.2 The powers in Articles 62(1) and 62(2) cover *Authorised Firms* and *Approved Individuals* respectively, and Article 62(3) extends to *Persons* that are not *Authorised Firms* or *Approved Individuals*.

### Grounds for exercising Article 62 power

- 10.3 The Regulatory Authority will consider exercising the Article 62 power if it considers it appropriate to do so for the purposes of meeting the Authority's regulatory objectives in Article 12. In deciding this, the Authority will consider all the circumstances of the matter known to it, including whether other supervisory or enforcement action should be, or has been, taken against the *Person* concerned.

### Procedure for imposing a prohibition or restriction

- 10.4 If the Regulatory Authority decides to exercise the Article 62 power to impose a prohibition or restriction, it will follow the approach set out in Chapter 5.
- 10.5 Articles 70 and 71 apply to the exercise of the Article 62 power. Therefore, except in certain limited circumstances, if the Regulatory Authority proposes to exercise the Article 62 power, it must give the *Person* concerned an NPA specifying the action that the Authority proposes to take and an opportunity to make written representations to the Authority in relation to the action. If the Authority then exercises the power, it must give the person concerned a DN specifying the action that it is taking. After the *Person* receives the DN, they have the right to refer the matter to the Regulatory Tribunal.

### Scope of prohibition or restriction

- 10.6 The nature and scope of a prohibition or restriction will depend on the circumstances of each 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 Authority may also prohibit or restrict a *Person* from performing any function, or any *Controlled Function*, within the QFC. The circumstances that the Authority would consider include, but are not limited to:
- a. the functions that 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 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 supervisory or enforcement action should be, or has been, taken against the Person.

### **Time limited prohibitions and restrictions**

- 10.7 In some cases, the Regulatory Authority may be prepared to consider revoking a prohibition or restriction at some time in the future, (for example, after a certain period or on a particular occurrence, such as the *Person* concerned successfully completing a particular course of training or otherwise showing that they have fully corrected the relevant deficiencies). If so, the Authority will set this out in the relevant NPA or DN restriction.
- 10.8 The *Person* concerned will be given the opportunity, after the specified period has elapsed, to satisfy the Regulatory Authority that the grounds on which the Authority imposed the prohibition or restriction no longer apply and that the prohibition or restriction should be revoked or varied. If the prohibition or restriction relates to the *Person* performing a function for which they require the Authority's approval and the Authority has withdrawn the *Person's* approval as own initiative action under Article 46, the *Person* must also demonstrate that they satisfy the criteria for the grant of the approval.
- 10.9 When considering an application to revoke or vary a prohibition or restriction, the Regulatory Authority will consider all the relevant circumstances known to it.
- 10.10 The Regulatory Authority generally will not 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 QFC financial system) that resulted in the prohibition or restriction being imposed.

### **Indefinite prohibitions and restrictions**

- 10.11 The Regulatory Authority may impose a prohibition or restriction for an indefinite period in appropriate cases. An indefinite prohibition will generally be imposed if, having regard to the criteria for authorisation set out in GENE and the criteria for approval of an individual set out in INDI, the Authority considers that:
  - a. based on the information available to it, there is little or no likelihood that the *Person* concerned will ever satisfy the criteria; or
  - b. there is insufficient information available to support a determination that the criteria could possibly be met within any reasonable fixed period.

- 10.12 If a prohibition or restriction allows an *Approved Individual* to continue to undertake one or more *Controlled Functions*, the Regulatory Authority may by written notice require the individual to carry out the functions in a specified manner, or prohibit the individual from carrying out a specified function.

#### **Prohibitions, restrictions and withdrawal of authorisation or approval**

- 10.13 If there are grounds for withdrawal of an *Authorised Firm's* authorisation or an *Approved Individual's* approval, the Regulatory Authority may exercise its power under Article 31 or 46 to take own initiative action together with its power to prohibit the firm or individual under Article 62. In such a case, the Authority is not required to provide the firm or the individual with an opportunity to make representations (Article 31(4)(B) and 46(4)(B)). Further details on own initiative action are set out in Chapter 9.

#### **Prohibitions, restrictions and other action**

- 10.14 In appropriate cases, the Regulatory Authority may exercise its other disciplinary and enforcement powers under Part 9 of the FSR against a *Person* in addition to imposing a restriction or prohibition.
- 10.15 If a *Person* fails to comply with the terms of a prohibition or restriction, the failure is a contravention of a *Relevant Requirement*. Any *Person* who is knowingly concerned in such a contravention also contravenes the requirement (for example, if a firm employs an individual who is prohibited or otherwise restricted from being so employed). The Regulatory Authority's public registers contain details of 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 PPPs on the exercise of its powers in relation to applications for injunctions and restitution orders and the appointment of managers.

### Injunctions

11.2 Injunctions are orders made 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 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. to take any available steps to remedy the contravention that the Court considers appropriate; or
- c. to restrain the Person from disposing of, or otherwise dealing with, any of its assets.

### Factors in deciding whether 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 Authority adopts in deciding to apply for an injunction is whether seeking an injunction would be the most effective way to deal with the Authority's concerns.

11.5 The Regulatory Authority will consider the circumstances of a matter in deciding whether to apply for an injunction. The following is a non-exhaustive list of factors that the Authority may consider before applying for an injunction:

- a. the nature and seriousness of the apparent contravention. In considering the seriousness, the 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 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 its effects;
- d. whether the Civil and Commercial Court could make an order that will remedy those effects;
- e. whether there is a risk that the Person will leave the jurisdiction of the Court and the effect of that Person's leaving on the effectiveness of any orders made by the Court;
- f. in the case of a contravention by an Authorised Firm, whether there is a danger of client money or assets being lost or removed from the jurisdiction of the Court (particularly if the removal of the assets would affect the firm's ability to pay restitution to customers);
- g. the Person's disciplinary record and compliance history;
- h. whether the Person has given any undertakings to the Authority to do or not to do a thing, and whether 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 Authority to apply for an injunction in addition to any supervisory or 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 an order from the Civil and Commercial Court that the *Person* who is the subject of an application for an injunction should pay the 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 under the Court's Regulations and Procedural Rules. A failure by a *Person* to comply with an order by the Court made on an application by the Regulatory Authority would also be a contravention of a *Relevant Requirement* and may result in supervisory or enforcement action. Therefore, the Authority may apply for further orders from the 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 64 for a restitution order against a *Person* if the 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 or been otherwise adversely affected as a result of the contravention.
- 11.10 The Article 64 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 Authority considers just, having regard to the profit accrued to the *Person* or the losses suffered by persons affected by the contravention.

## **Factors in deciding to apply for restitution orders**

- 11.11 The Regulatory Authority will consider the circumstances of a matter in deciding whether to apply for a restitution order. The following is a non-exhaustive list of factors that the Authority may consider before applying for such an order:
- a. whether evidence is available to prove that the contraventions committed by the *Person* subject to the application resulted in profits or losses and whether the profits or losses can be quantified. It may not be possible to quantify the 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 losses resulted from the contraventions;
  - c. the number of persons who have suffered losses or adverse effects because of the contravention. If many persons have apparently suffered losses or adverse effects because of a contravention the Authority may consider it appropriate to apply for a restitution order;
  - d. whether the persons who have suffered losses can bring their own actions or apply to the Court for redress;
  - e. the costs and resources required to obtain a restitution order;
  - f. whether the restitution order is the most appropriate enforcement action in the circumstances;
  - g. the availability of remedies to customers through other means such as the CDRS;

- h. 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;
- i. 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
- j. 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**

- 11.12 If 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.
- 11.13 The Regulatory Authority may seek an order from the Civil and Commercial Court that the *Person* against which a restitution order is sought should pay the Authority's costs associated with the application. However, in deciding whether this is appropriate, the Authority will consider the effect of the order, if made, on the *Person's* financial position and the extent to which this will affect their ability to pay any restitution ordered.
- 11.14 The Regulatory Authority may simultaneously apply for a restitution order and take other enforcement action. For example, the 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 Authority could also decide to 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.
- 11.15 A failure to comply with an order of the Civil and Commercial Court would be dealt with by that Court in accordance with its Regulations and Procedural Rules. A failure by a *Person* to comply with an order by the Court made on an application by the Regulatory Authority would also be a contravention of a *Relevant Requirement* and may result in supervisory or enforcement action. Therefore, the Authority could apply for further orders from the Court and could also exercise any of its disciplinary or enforcement powers against the *Person*, including the imposition of a financial penalty under Article 59.

### **Determining the amount of restitution**

- 11.16 The Regulatory Authority may exercise its 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 an investigation by the Authority under Article 52.

11.17 In some cases, the Regulatory Authority may consider it appropriate to exercise its powers under Article 49 to require the preparation of a report by a nominated person to determine the amount of profits made because of a contravention and the amount of any losses incurred by persons affected by the contravention.

### **Appointment of managers**

11.18 Article 60 provides that the Regulatory Authority may require any *Person* to appoint one or more individuals to act as manager(s) of their business. Such an appointment is made by written notice to the *Person* and on the terms that the Authority specifies in the notice. The individual or individuals appointed to act as managers of the business of the *Person* must be nominated or approved by the Authority.

### **Grounds for appointing managers**

11.19 The Regulatory Authority considers the particular circumstances of a matter in deciding whether to require a *Person* to appoint managers. The following is a non-exhaustive list of the circumstances in which the Authority might consider appointing managers:

- a. if there are serious concerns about the solvency of an Authorised Firm or its compliance with the Authority's prudential requirements, and the appointment of a manager is desirable to satisfy the Authority's concerns or otherwise determine whether there are such problems;
- b. if the 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. if the Authority considers that the existing management of an Authorised Firm must be replaced to ensure an orderly wind-down of the firm's operations and to ensure that its customers are appropriately protected; or
- d. if the 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 appropriate protection for third parties (including customers and users (or prospective users) of the QFC) and the integrity and reputation of the QFC and the QFC financial system.

### **Procedure for appointing managers**

11.20 If the Regulatory Authority decides to exercise its power under Article 60 to require a *Person* to appoint managers to their business, it will follow the approach set out in Chapter 5.

- 11.21 An NPA issued in accordance with Article 60 specifies the terms on which the managers are to be appointed. In the NPA the Regulatory Authority either nominates individuals proposed for appointment or requires the person to whom the notice is given to nominate individuals for that purpose. If The NPA requires individuals to be appointed, it will also specify the time by which the appointment must be made and the reasons for the appointment.
- 11.22 In accordance with Part 10 of the FSR, the *Person* in respect of whom the appointment of managers is proposed generally can make written representations in relation to the proposed appointment. No such opportunity is given if paragraph 5.20 applies.
- 11.23 If, having considered any written representations, the Regulatory Authority requires a *Person* to appoint managers to their business, it gives the *Person* concerned a DN in accordance with Article 71.
- 11.24 After the person receives the DN, the *Person* has the right to refer the matter to the Regulatory Tribunal.

**Relevant considerations when deciding whether to require appointment of managers**

- 11.25 The Regulatory Authority recognises that the appointment of a manager of an *Authorised Firm* is likely to have a very significant effect on the firm concerned and its existing management. Therefore, the Authority would only exercise the Article 60 power in exceptional circumstances.
- 11.26 In general, the Article 60 power would only be exercised if 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 confidence in, or the efficiency, transparency, integrity, financial stability, or reputation of, the QFC or the QFC financial system.
- 11.27 The Regulatory Authority will consider all the circumstances of the matter known to it in the appointment of a manager or managers, including the following:
- a. the nature and extent of the business of the Authorised Firm;
  - b. the nature and seriousness of the Authority's concerns;
  - c. whether the Authority's concerns can be adequately satisfied through other supervisory or enforcement action (for example, own initiative action under Article 31 (see Chapter 9) 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.

## CHAPTER 12 – PUBLICITY

### Introduction

- 12.1 This Chapter sets out the Regulatory Authority's general PPPs on publicity in accordance with Article 18 and for updating the public registers of *Authorised Firms* and *Approved Individuals* to record the outcomes of enforcement actions taken by the Authority.
- 12.2 Publicity about supervisory or enforcement actions 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

- 12.3 The Regulatory Authority generally does not publicise the fact that it is, or is not, investigating or considering supervisory or enforcement action about a matter.
- 12.4 However, in exceptional circumstances, the Regulatory Authority may make a public announcement about an ongoing matter. The Regulatory Authority would consider that exceptional circumstances have arisen when such a public statement has become necessary to meet its regulatory objectives. Whether those circumstances have arisen in a particular case depends on the facts of the matter.
- 12.5 The Regulatory Authority might also consider that exceptional circumstances have arisen if a matter under 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 rumours.
- 12.6 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 supervisory or enforcement actions

- 12.7 Under Article 18(1)(H), the Regulatory Authority is obliged to publicise the outcomes of supervisory or enforcement actions that it has taken under Parts 5, 7, and 9 of the FSR.
- 12.8 However, as provided under Article 18(3), the Regulatory Authority may in some circumstances consider it appropriate not to publicise supervisory or enforcement actions taken by it, or not to do so immediately.
- 12.9 The Regulatory Authority retains media releases about supervisory and enforcement actions on its website.

### **Publicity about Decision Notices**

- 12.10 Subject to Article 18 and any other rights and obligations in the QFC Law and the FSR relating to the publication of information, the Regulatory Authority normally does not publish DNs. Subject to Article 19(3), a *Person* who has been given a DN or a copy of a DN may not publish it or any details about it. Such a disclosure is a contravention of a *Relevant Requirement*, and the Authority will, if appropriate, act accordingly.
- 12.11 Generally, the Regulatory Authority makes a public statement about the enforcement action to which a DN relates when:
- a. any applicable appeal rights have been waived or have expired;
  - b. the matter has not been referred to the Regulatory Tribunal;
  - c. any appeals or proceedings about the enforcement action have concluded; or
  - d. it is in the public interest or in the interest of the QFC financial system.

### **Publicity about proceedings**

- 12.12 Proceedings heard in the Regulatory Tribunal or the Civil and Commercial Court will be heard in public unless the Tribunal or the Court directs otherwise.
- 12.13 Under Article 18(1)(I), the Regulatory Authority normally makes a public statement about a decision of the Regulatory Tribunal, unless the 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 Court directs otherwise. However, as provided under Article 18(3), the Authority may in some circumstances consider it appropriate not to make a public statement, or not to do so immediately.
- 12.14 If the Regulatory Authority has successfully applied for an injunction under Article 63 or a restitution order under Article 64, the Authority generally publicises the matter. For example, if the Civil and Commercial Court has granted an injunction to prohibit a *Person* from engaging in conduct in breach of *Relevant Requirements*, the Authority would consider it appropriate to publicise the fact and effect of that injunction to inform that *Person's* customers and protect them from further dealings about the matters relevant to the injunction. Similarly, the Authority may publicise a restitution order to protect and inform customers and maintain market confidence.

### **Publicity about enforceable undertakings and settlement**

- 12.15 The Regulatory Authority's approach to publicity in respect of enforceable undertakings and settlement is set out in Chapter 7 and 8, respectively.

## Publicity about own initiative action

- 12.16 The Regulatory Authority's own initiative actions under Article 31 or 46 are not taken under Part 9 of the FSR and the obligation to publicise the outcomes under Article 18(1)(H) does not apply. However, any action taken by the Authority on its own initiative is made public by updating the public registers to record the action and, if appropriate, the Authority may also make a media statement about the action. Updating the public registers to record the action ensures that the registers are an accurate record of the status of every *Approved Individual* and *Authorised Firm*.
- 12.17 However, if such action by the Regulatory Authority is referred to the Regulatory Tribunal, the Authority follows its approach in relation to publication of matters subject to proceedings, as set out earlier in this Chapter.

## Public registers

- 12.18 Under Articles 18(1)(F) and 18(1)(G), the Regulatory Authority must maintain public registers of the details of *Authorised Firms* and *Approved Individuals*. The registers are available on the Authority's website.
- 12.19 The Regulatory Authority considers it necessary that the public registers are an accurate record of the status of every *Person's* approval or authorisation. The Authority generally publicises on the public registers the fact of any enforcement action taken under Part 9 of the FSR in respect of an *Approved Individual* or *Authorised Firm*. Additionally, the Authority publicises on the public registers any actions taken by it leading to variations, suspension, or withdrawals because of an action taken under Article 52(4), own initiative actions taken under Article 31 or 46, or prohibitions and restrictions imposed on a *Person* under Article 62.
- 12.20 Where a suspension, variation or restriction is no longer applicable, for example a suspension has expired, the Regulatory Authority generally updates the public registers in a way that reflects the change, without removing the historical reference to any action taken.
- 12.21 In deciding to update the registers, the Regulatory Authority considers whether the publication should be delayed or not made, considering any unfairness to the *Person* concerned or if it would not be in the public interest or in the interest of the Financial System (Article 18(3)).
- 12.22 If enforcement action is taken by the Regulatory Authority against *Persons* holding registered functions<sup>5</sup> or form part of the senior management in a designated non-financial business or profession, the Authority will normally publish the action in accordance with Article 18 and will notify the Qatar Financial Centre Authority to take such action as they consider necessary in their public register. The same

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<sup>5</sup> In accordance with Article 11.2 of the Qatar Financial Centre Authority's Rules, a Registered Function includes a senior executive function, and if applicable, a money laundering and reporting officer or a designated representative function.

publication process applies when enforcement action is taken by the Regulatory Authority against a *Person* which is a Licensed Firm<sup>6</sup>, its employees or those who hold a registered function on its behalf. For the avoidance of doubt, a reference to a Licensed Firm in this paragraph does not include a Licensed Firm which is also an *Authorised Firm* or a designated non-financial business or profession.

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<sup>6</sup> As defined in the QFC Authority Regulations, a Licensed Firm is a body corporate, partnership or unincorporated association which has been granted and continues to hold a License granted by the QFC Authority.