

GENERAL RULEBOOK (GEN)

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

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3.3.41A (1) This Rule applies to:

- (a) Banks;
 - (b) Insurers other than Captive Insurers or Authorised ISPVs;
 - (c) Authorised Persons that hold a Financial Services Permission to carry on the Regulated Activity of Managing a Profit Sharing Investment Account which is a PSIAu; and
 - (d) other Authorised Persons or Recognised Bodies who by written notice are deemed subject to this Rule by the Regulator.
- (2) A majority of the Governing Body must be Non-Executive Directors, and at least one of those Non-Executive Directors must be an Independent Non-Executive Director.
- (3) The chair of the Governing Body must be a Non-Executive Director or an Independent Non-Executive Director.
- (4) The Regulator may require that the Governing Body increase the proportion or number of Non-Executive Directors and Independent Non-Executive Directors.
- (5) The Regulator may require the Governing Body to establish one or more of:
- (a) an audit committee;
 - (b) a risk committee;
 - (c) a nomination committee;
 - (d) a remuneration committee,
- or a committee that oversees the mandate of one or more of such committees.
- (6) The Regulator may require that any committee of the Governing Body have:
- (a) a certain number or proportion of Non-Executive Directors and Independent Non-Executive Directors;
 - (b) a chair that is a Non-Executive Director or an Independent Non-Executive Director; and
 - (c) a chair that is not the chair of the Governing Body or any other committee of the Governing Body.
- (7) The Regulator may require an Authorised Person that is subject to this Rule and operating as a Branch to establish a committee to implement corporate governance responsibilities in relation to the Branch's operations in the ADGM.

Guidance

Scope of corporate governance

1. Corporate governance is framework of systems, policies, procedures and controls through which an entity:
 - a. promotes the sound and prudent management of its business;
 - b. protects the interests of its Customers and stakeholders; and
 - c. places clear responsibility for achieving compliance with Rule 3.3.41(2)(a) and (3) on the Governing Body and its members and the senior management of the Authorised Person.

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Proportionate application to Authorised Persons depending on the nature of their business

5. One of the key considerations that underpins how the corporate governance requirements set out in Rule 3.3.41 and Rule 3.3.41A apply to an Authorised Person is the nature, scale and complexity of the Authorised Person's business, and its organisational structure. When deciding whether to exercise its powers under Rule 3.3.41A, the Regulator may have regard to an Authorised Person's systemic importance, size, risk profile, complexity, stage of operations and whether the Authorised Person is a Domestic Firm or a Branch.

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7. For example, an Authorised Person which is a small scale operation with a tightly held ownership structure may not have be able to constitute a Governing Body which comprises members who are fully independent of the Authorised Person's business and from each other, nor be sufficiently large to be able to form numerous committees of the Governing Body to undertake various functions such as nomination and Remuneration. Similarly, it may not be necessary for a Bank or Insurer to have an Independent Non-Executive Director appointed to its Governing Body where it is a Subsidiary or at an early stage of its operations. If that is the case, the Authorised Person should apply for a waiver or modification of the relevant requirements in Rule 3.3.41A, providing appropriate justification.

8. In such cases, whilst strict adherence to such aspects of best practice would not be required, overall measures as appropriate to achieve the sound and prudent management of the business would be needed. For example, an Authorised Person with no regulatory track record would be expected to have additional corporate governance controls in place to ensure the sound and prudent management of its business, such as the appointment of an independent Director (who has relevant regulatory experience) to its Governing Body.

Application to Branches and Groups

89. As part of the flexible and proportionate application of corporate governance standards to Authorised Persons, whether an Authorised Person is a Branch or a Subsidiary within a Group is also taken into account. An Authorised Person which is a member of a Group may, instead of developing its own corporate governance policies, adopt Group-wide

corporate governance standards. However, the Governing Body of the Authorised Person should consider whether those standards are appropriate for the Authorised Person, and to the extent possible, make any changes as necessary.

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

Best practice relating to corporate governance

4011. In addition to the considerations noted above, best practice that an Authorised Person may adopt to achieve compliance with the applicable corporate governance standards is set out in Guidance at Appendix 1.1. An Authorised Person may, where the best practice set out in Appendix 1.1 is not suited to its particular business or structure, deviate from such best practice or any aspects thereof. The Regulator will expect the Authorised Person to demonstrate to the Regulator, upon request, what the deviations are and why such deviations are considered by the Authorised Person to be appropriate. An Authorised Person should periodically undertake a review of its corporate governance, and its effectiveness against best practice. The Regulator may request a copy of the output of such periodic reviews.

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Senior Manager

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

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

Guidance

1. In respect of a Fund, the Regulator ~~would expect~~ expects the Fund Manager to appoint at least one individual other than the Senior Executive Officer to carry out Senior Manager functions in relation to the Fund such as managing operational risk and other internal controls.
2. In respect of a Bank or an Insurer other than Captive Insurers or Authorised ISPVs, the Regulator expects the appointment of at least one individual other than the Senior Executive Officer as a Senior Manager to advise its Governing Body and senior management of relevant risks in accordance with Rule 3.3.6(1).

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8.10.6 Each Authorised Person and Recognised Body must advise the Regulator immediately if it becomes aware, or has reasonable grounds to believe, that any of the following matters may have occurred or may be about to occur:

- (1) the Authorised Person or Recognised Body's failure to satisfy the fit and proper requirements;
- ...
- (6) prior to any proposed restructuring, merger, acquisition, reorganisation, divestiture or business expansion which could have a significant impact on the Authorised Person or Recognised Body's risk profile or resources;
- ...
- (9) non-compliance with Rules due to an emergency outside the Authorised Person or Recognised Body's control and the steps being taken by the Authorised Person or Recognised Body.

8.10.6A Major acquisition or establishment of subsidiary

- (1) An Authorised Person in Category 1, 2 or 5 must notify the Regulator in writing prior to:
 - (a) establishing or acquiring a subsidiary, regardless of its type of activity, other than an entity which is to be used purely as a special purpose vehicle to provide finance to the Authorised Person;
 - (b) committing to any proposal to acquire or invest, whether directly or indirectly, in an entity, where the value of that acquisition is greater than or equal to 10% of the Authorised Person's Capital Resources; or
 - (c) committing to any proposal to acquire, whether directly or indirectly, 20% or more of the equity interest in an entity.
- (2) An Authorised Person which is a Domestic Firm, in Category 1, 2 or 5 must:
 - (a) notify the Regulator in writing of the proposed acquisition or investment, in accordance with 8.10.6A(1), at least 45 days prior to the proposed date for effecting the transaction; and
 - (b) give to the Regulator all the relevant information relating to that acquisition or investment to enable the Regulator to assess the impact of the proposed transaction on the Authorised Person.
- (3) An Authorised Person which is a Branch in Category 1, 2 or 5, must:
 - (a) notify the Regulator in writing in advance of any proposed acquisition or investment in accordance with 8.10.6A(1); and
 - (b) provide to the Regulator a copy of any information that their head office provided to their Non-ADGM Financial Services Regulator or any further information that the Regulator may request.

- (4) If the Regulator is not satisfied with any aspects related to a proposed transaction following a notification in accordance with Rule 8.10.6A(1), the Regulator may:
- (a) require an Authorised Person not to proceed with the transaction; or
 - (b) impose conditions on the proposed transaction or additional prudential requirements on the Authorised Person.
- (5) The procedures in Part 21 of the FSMR apply to a decision of the Regulator under 8.10.6A(4).
- (6) If the Regulator decides to exercise its power under 8.10.6A(4), the Authorised Person may refer the matter to the Appeals Panel for review.

Guidance

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

f. any other factors the Regulator considers to be relevant.

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

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APP1 BEST PRACTICE RELATING TO CORPORATE GOVERNANCE AND REMUNERATION

A1.1 Best practice relating to corporate governance

Guidance

Roles of the Governing Body and the senior management

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

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Internal governance of the Governing Body

5. The Governing Body should also ensure that the senior management is responsible for carrying out regular stress testing on credit, operational, market, and liquidity risks. The Governing Body should annually review the stress scenarios and take action to address any perceived issues arising from those reviews. The Governing Body may delegate certain responsibilities to designated senior management committees where appropriate, for example an Asset and Liability Committee (ALCO), as contemplated in PRU.

6. The Governing Body should have appropriate practices and procedures for its own internal governance, and ensure that these are followed, and periodically reviewed to ensure their effectiveness and adequacy. These policies and procedures should cover a formal and transparent process for nomination, selection, and removal of the members of the Governing Body (see the GPM), and a specified term of office as appropriate to the roles and responsibilities of the member, particularly to ensure the objectivity of ~~his~~ their decision making and judgment (see paragraph 11 of this Appendix). Appropriate succession planning should also form part of the Governing Body's internal governance practices.

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8. The Governing Body should also ensure that when assessing the performance of the members of the Governing Body and its Senior Managers and Persons Undertaking Key Control Functions, the independence and objectivity of that process is achieved through appropriate mechanisms, such as the assignment of the performance assessment to an independent member (see paragraph 11 of this Appendix, and the GPM) of the Governing Body or a committee of the Governing Body ~~comprising a majority of independent members. See the GPM for the independence criteria for Authorised Persons and the GPM for the independence criteria for Recognised Bodies~~ (see paragraph 9A(c)).

Committees of the Governing Body

9. To support the effective discharge of its responsibilities, the Governing Body should establish its committees as appropriate. The committees that a Governing Body may commonly establish, depending on the nature, scale and complexity of its business and operations, include the audit, ~~Remuneration, risk, nomination, remuneration and ethics/compliance, nominations and risk management~~ committees. In some cases, an ALCO, as referenced in paragraph 5, will be a committee of the Governing Body rather than a management committee. Where committees are appointed, they should have clearly defined mandates, authority to carry out their respective functions, and the degree of independence and objectivity as appropriate to the role of the committee. Committees should be made up of members with the knowledge, skills, experience and independence appropriate to the nature of the committee.

- 9A. If the functions of any committees are combined, the Governing Body should ensure such a combination does not compromise the integrity or effectiveness of the functions so combined. In all cases, the Governing Body remains ultimately responsible for the matters delegated to any such committees.

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

- i. monitoring the integrity of the financial statements and reviewing significant financial reporting judgements contained in them;
- ii. reviewing internal financial controls and, unless expressly addressed by a separate risk committee or by the Governing Body itself, internal controls and risk management systems;
- iii. monitoring and reviewing the effectiveness of the internal audit function;
- iv. making recommendations to the Governing Body in relation to the appointment, re-appointment, removal and terms of engagement, including remuneration, of the external auditor;
- v. reviewing and monitoring the external auditor's independence and objectivity and the effectiveness of the audit process;
- vi. developing and implementing policy on the engagement of the external auditor to supply non-audit services; and

vii. reviewing the adequacy of arrangements by which staff may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action.

b. **Risk committee** – a risk committee is responsible for, among other things:

i. advising the Governing Body on the overall risk appetite, overseeing senior management’s implementation of the risk management strategy, reporting on the risk culture, and interacting with and overseeing the risk management function;

ii. overseeing the strategy of the Authorised Person or Recognised Body for:

- the management of capital and liquidity; and
- dealing with all the relevant risks;

iii. ensuring that the strategy is consistent with the established risk appetite; and

iv. receiving and reviewing regular reports about:

- the Authorised Person’s or Recognised Body’s risk profile;
- the risk profile in the light of the approved risk appetite and risk limits; and
- any limit breaches and actions taken as a result of such breaches.

c. **Nomination committee** - a nomination committee is responsible for making recommendations to the Governing Body for the appointment of new Directors, having assessed such individuals to ensure they are fit and proper with relevant knowledge, skills and expertise. The committee may also assess individuals to be appointed to senior management, including Approved Persons and Key Individuals. It should aim to ensure that the Governing Body is appropriately balanced with a view to the best interests of the entity. The committee may also assess the performance of the Governing Body and senior management.

d. **Remuneration committee** - a remuneration committee is responsible for developing, adopting and overseeing a written Remuneration policy; see Appendix 1.2.

e. **Ethics/compliance committee** - an ethics/compliance committee is responsible for overseeing the arrangements that are in place to support appropriate conduct of business by an Authorised Person or Recognised Body in line with the corporate values, professional standards and code of ethics referred to in paragraph 2 of this Appendix. This can include promoting proper decision-making, compliance with laws, regulations and internal rules relating to the conduct of business and due consideration of reputational risks associated with these that may arise.

Independence and objectivity

10. The Governing Body should establish clear and objective independence criteria which should be met by a sufficient number of members of the Governing Body and any committees it establishes to promote objectivity and independence in decision making by the Governing Body. ~~See the GPM for particularly the independence criteria of the relevant chair.~~
11. A Non-Executive Director will not be considered to be an Independent Non-Executive Director where one or more of the following criteria are met:
 - a. they have already served as a member of the Governing Body for a significant period;
 - b. they have been an Employee of the Authorised Person or Recognised Body or its Group within the last five years;
 - c. they have or have had, within the last three years, a material business relationship with the Authorised Person or Recognised Body, either directly or as a Partner, Shareholder, Director or senior Employee of another body that has such a relationship with that entity;
 - d. they receive or have received, in the last three years, additional remuneration or payments from the Authorised Person or Recognised Body apart from a Director's fee, or participate in the Authorised Person's or Recognised Body's share option or performance-related pay scheme, or are a member of the Authorised Person's or Recognised Body's pension scheme;
 - e. they are or have been a Director, Partner or Employee of a firm which is the Authorised Person's or Recognised Body's external auditor;
 - f. they have close family ties with any of the Authorised Person's or Recognised Body's advisers, Directors or senior Employees;
 - g. they hold cross Directorships or have significant links with other Directors through involvement in other Companies or bodies;
 - h. they represent a significant Shareholder.