



## **General Rulebook (GEN)**

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

## 4. GENERAL PROVISIONS

### 4.1 Application

- 4.1.1 (1) Rules 4.2 and 4.8 apply to every Person to whom any provision in the Rulebook applies.
- (2) Rules 4.3 and 4.4 apply to every Authorised Person and Recognised Body.
- (3) Rules 4.5 and 4.6 apply to every Authorised Person, Recognised Body and Person who has submitted an application for authorisation to carry on one or more Regulated Activities.
- (4) Rule 4.7 applies to the Regulator.
- (5) This Chapter does not apply to a Representative Office.

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### Adequate and appropriate resources

- 5.2.8 (1) In assessing whether an applicant has adequate and appropriate financial resources, the Regulator will consider:
- (a) how the applicant will comply with the applicable provisions of PRU, COBS or PIN;
- (b) the provision the applicant makes, or, if the applicant is a member of a Group, which other members of the Group make, in respect of any liabilities, including contingent and future liabilities;

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### Financial years

- 6.3.5 (1) The first financial year of an Authorised Person which is a Domestic Firm starts on the day on which it is ~~authorised-incorporated~~ and lasts for such period not exceeding 18 months as may be determined by its Directors or Partners.

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

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## Regulatory Returns Auditor's Report

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

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

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## 8.2 Waivers or Modification

8.2.1 This Rule applies to every Authorised Person ~~and~~, Recognised Body, Remote Body, Remote Member, Foreign Fund Manager, Person making a ~~Public~~ an Offer of Securities or Reporting Entity.

8.2.2 Throughout the Rulebook reference to the written notice under the FSMR will be referred to as a "Waiver or Modification".

- 8.2.3 If an Authorised Person, Recognised Body, Remote Body, Remote Member, Foreign Fund Manager, Person making a ~~Public~~ an Offer of Securities or Reporting Entity wishes to apply for a Waiver or Modification, it must apply in writing and the application must be delivered to the Regulator as outlined in Rule 8.2.4.

### Guidance

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

- 8.2.4 The application must contain:
- (1) the name and Financial Services Permission/Recognition Order/FSRA identification number of the Authorised Person, Recognised Body, Remote Body, Remote Member, Foreign Fund Manager, Person making a ~~Public~~ an Offer of Securities or Reporting Entity;
  - (2) the Rule to which the application relates;
  - (3) a clear explanation of the Waiver or Modification that is being applied for and the reason why the Authorised Person, Recognised Body, Remote Body, Remote Member, Foreign Fund Manager, Person making a Public Offer or Reporting Entity is requesting the Waiver or Modification;
  - (4) details of any other requirements; for example, if there is a specific period for which the Waiver or Modification is required;
  - (5) the reason, if any, why the Waiver or Modification should not be published or why it should be published without disclosing the identity of the Authorised Person, Recognised Body, Remote Body, Remote Member, Foreign Fund Manager, Person making a Public Offer or Reporting Entity; and
  - (6) all relevant facts to support the application.
- 8.2.5 An Authorised Person ~~and~~, Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity must immediately notify the Regulator if it becomes aware of any material change in circumstances which may affect the application for or the continuing relevance of a Waiver or Modification.

### Revocation and variation of Waivers or Modification

- 8.2.6 The Regulator may revoke or vary a Waiver or Modification at any time. In deciding whether to revoke or vary a Waiver or Modification, the Regulator will consider whether the conditions in Rules 8.2.1 to 8.2.3 are no longer satisfied, and whether the Waiver or Modification is otherwise no longer appropriate.
- 8.2.7 If the Regulator proposes to revoke or vary a Waiver or Modification, or revokes or varies a Waiver or Modification with immediate effect, it will:
- (1) give the Authorised Person ~~or~~, Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity written notice either of its proposal, or of its action, and may give reasons for such proposal or action; and
  - (2) state in the notice a reasonable period within which the Authorised Person ~~or~~, Recognised Body, Remote Body, Remote Member, Person making a Public

Offer or Reporting Entity can make representations about the proposal or action.

- 8.2.8 If the Authorised Person ~~or~~ Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity wishes to make oral representations in accordance with its rights under Rule 8.2.7(2), it should:
- (1) inform the Regulator as soon as possible;
  - (2) specify who will make the representations; and
  - (3) specify which matters will be covered.
- 8.2.9 Upon receipt of information from the Authorised Person ~~or~~ Recognised Body, Remote Body or Remote Member, Person making a Public Offer or Reporting Entity under Rule 8.2.8, the Regulator will inform the Authorised Person ~~or~~ Recognised Body, Remote Body or Remote Member, Person making a Public Offer or Reporting Entity of the time and place for hearing the representations and may request a written summary of such representations.
- 8.2.10 After considering any representations made by an Authorised Person ~~or~~ Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity under Rule 8.2.8:
- (1) in the case of a proposed revocation or variation, the Regulator will give the Authorised Person ~~or~~ Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity written confirmation of its decision to revoke or vary the Waiver or Modification or not, as the case may be; or
  - (2) in the case of a revocation or variation that has already taken effect, either confirm the revocation or variation or seek the Authorised Person ~~or~~ Person's, Recognised Body's, Remote Body's, Remote Member's, Person making a Public Offer's or Reporting Entity's consent to a new Waiver or Modification.
- 8.2.11 Alternatively, the Regulator may vary a Waiver or Modification with the Authorised Person ~~or~~ Person's, Recognised Body's, Remote Body's, Remote Member's, Person making a Public Offer's or Reporting Entity's consent, or upon the application of ~~an~~ the Authorised Person ~~or~~ Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity.
- 8.2.12 If an Authorised Person ~~or~~ Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity wishes the Regulator to vary a Waiver or Modification, or the Regulator wishes to vary a Waiver or Modification with the consent of the relevant Authorised Person ~~or~~ Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity each of the Authorised Person ~~or~~ Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity (as applicable), and the Regulator should follow the procedures in this Rule.
- 8.2.13 If the Waiver or Modification that has been revoked or varied, as the case may be, has previously been published, the Regulator may publish the variation unless it is satisfied that it is inappropriate or unnecessary to do so, having regard to any representations made by the Authorised Person ~~or~~ Recognised Body, Remote Body, Remote Member, Person making a Public Offer or Reporting Entity.

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