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Insight: Corporate

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Qatar Financial Centre Regulatory Authority adopts new rules for the acquisition of significant ownership positions in QFC authorised firms

Key highlights:

- QFCRA must approve a change of control, whether in direct shareholding or at a parent level, with key thresholds set at 10%, 24%, 49% and 74% of voting rights or shares.
- When exceeding the 49% and 74% thresholds, letters of comfort must be provided to the QFCRA confirming the shareholders' capability and willingness to support the firm.
- New reporting and monitoring requirements for QFC firms in respect of their controlling shareholders.

The Qatar Financial Centre Regulatory Authority (the "**QFCRA"**), has recently adopted changes to the rules governing the acquisition of significant ownership positions in Qatar Financial Centre ("**QFC**") authorised firms. The General (Controller and Miscellaneous) Amendments Rules 2014[1] ("**New Rules**") amend the General Rules 2005 ("**GENE**") and came into effect on 1 February 2014.

The New Rules primarily amend the provisions in chapter 8 of GENE relating to controllers and impose certain reporting, monitoring and other requirements in connection with an increase, decrease or change of control in the shareholding (whether direct shareholding or at the parent level) of a QFC authorised firm.

Discussed below is a summary of the key amendments set out in the New Rules and their impact on QFC authorised firms.

What constitutes a "controller"?

A "controller" is a significant owner in a QFC authorised firm. A controller is one who (whether alone or together with one or more associates) has acquired control through any of the following:

1. holding 10% or more of the shares in the firm or being entitled to exercise, or control the exercise of, 10% or more of the voting power in the firm;
2. holding 10% or more of the shares in a parent entity of the firm or being entitled to exercise, or control the exercise of, 10% or more of the voting power in a parent entity of the firm;
3. being able to exercise significant influence over the management of the firm or a parent entity of the firm because of the person's shareholding or voting power, or by contractual or other arrangements;

1 The General (Controller and Miscellaneous) Amendments Rules 2014 are available online, in English at: http://www.complinet.com/net_file_store/new_rulebooks/q/f/QFCRA_RM2014-1.pdf.

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4. being able to exercise, or control the exercise of, 10% or more of the voting power in the firm because of the person's shareholding or voting power in a third party that holds 10% or more of the shares of the firm; or
5. being able to exercise significant influence over the management of the firm because of the person's shareholding or voting power in a third party that holds 10% or more of the shares of the firm.

QFC entities

The following rules apply in relation to entities established in the QFC, which does not include branches except as otherwise indicated below.

New controllers and changing the level of control

The New Rules specify that a person must not first become a controller, or increase or decrease control over an authorised entity, without the QFCRA's approval. While the threshold for becoming a controller remains 10% of shares or voting rights (as set out above), the New Rules introduced threshold levels for increases and decreases of control at 24%, 49% and 74%. It is important to note that these threshold levels do not only apply to direct shareholding in a QFC authorised entity, but also to shareholding at the parent or ultimate parent levels. This will have an impact on mergers and acquisitions involving a QFC authorised entity (even if the transaction occurs at the level of a parent entity), given that any change of control at the level of the parent or ultimate parent will trigger the requirement for QFCRA approval.

In order to approve or change the level of control, a QFC authorised entity must notify the QFCRA by providing a "controller notice". If the entity does not know of the matter or does not have sufficient information to give the controller notice, the entity must notify the person proposing to acquire or change control that they have an obligation to give the "controller notice" to the QFCRA.

The rules are silent as to what constitutes sufficient information or lack of knowledge of the matter. In any case, the controller notice must be given at least 30 days before the person acquires or changes control or, if such notice is not practicable, then immediately after the entity or person required to give notice becomes aware of the matter.

Exceeding the 49% and 74% thresholds

If a person proposes to increase control from, or below, 49% to above that level, or from, or below, 74% to above that level, a letter of comfort addressed to the QFCRA must accompany the controller notice.

At its discretion, the QFCRA may request a letter of comfort from a person that seeks to increase control from, or below, 24% to a level up to 48.99%.

The letter of comfort underlies such person's willingness and commitment to help the entity maintain adequate capital and liquidity levels and to meet its obligations and regulatory requirements. The letter of comfort must state that the person has an adequate level of financial resources as well as provide clear statements as to the relationship between the entity and the controller (or proposed controller). The letter of comfort will cease to have effect if the level of control subsequently decreases to 49% or less, provided that an application is made to the QFCRA and approval of the QFRCA is obtained.

Criteria for approval of a controller

Approval of controller shareholding is based on fitness and propriety as well as the financial capability of the shareholder. Generally, the QFCRA has a wide ambit of discretion over how it may treat the application for approval, and may approve with or without conditions, object or refuse outright. In the case of an objection, the QFCRA must give reasons and an opportunity (within 14 days at least) to make representations to the QFCRA to consider.

Material adverse change relating to a controller

The onus is on a QFC authorised entity (which does not include a branch, unless its authorisation so requires) to give notice to the QFCRA if the controller is subject to a material adverse change in their position including not only a deterioration of its financial position but also circumstances that may diminish the fitness of the entity or its ability to conduct business, legal proceedings or investigations that may call the controller's integrity into question, or substantial changes in its governing body. An example of a substantial change to a governing body includes removal of a majority of board members (or equivalent governing body) in a single event or series of connected events.

Monitoring and reporting

The QFCRA also requires the authorised entity (which does not include a branch, unless its authorisation so requires) to compile an annual report on the controllers of the entity and also maintain a system which enables it to be notified of, and to monitor, any proposed changes in its controller shareholder positions and significant changes to their conduct or circumstances.

QFC branches

In relation to a QFC authorised firm that is a branch registered in the QFC, it must give a controller notice if any of the following occur:

- a person is proposing to become a controller of the firm;
- a controller is proposing to increase its control over the firm;
- a controller is proposing to decrease its control from above 50% to 50% or less; or
- a controller is proposing to cease control,

immediately after the firm becomes aware of the matter. The responsibility is on the branch to make appropriate inquiries if it has reasonable grounds to suspect that any of the above matters exist.

Conclusion

The New Rules aim to increase transparency, stability and investor confidence, and they are intended to further increase the regulatory standards in the QFC in line with leading international financial regulatory regimes. It is not yet clear how these New Rules will be implemented in practice.

The New Rules also create additional responsibilities for QFC authorised entities as they must put in place appropriate systems to carefully monitor changes relating to its significant shareholders, both at the direct shareholding and parent shareholding levels.

Prior results do not guarantee a similar outcome.

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