



AIFC REGULATIONS ON OBLIGATIONS

AIFC REGULATIONS No. 16 of 2017

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SCHEDULE 1: INTERPRETATION



PART 1: GENERAL

1. Name

These Regulations are the *AIFC Regulations on Obligations 2017*.

2. Date of enactment

These Regulations are enacted on the day they are approved by the Governor.

3. Commencement

These Regulations commence on 1 January 2018.

4. Legislative authority

These Regulations are adopted by the Governor under article 4 of the Constitutional Statute and subparagraph 3) of paragraph 9 of the Management Council Resolution on AIFC Bodies.

5. Application of these Regulations

These Regulations apply in the jurisdiction of the Astana International Financial Centre.

6. Interpretation

Schedule 1 contains definitions used in these Regulations.

7. Non-assignment of right of action for Personal Injury

- (1) A right of action under these Regulations based on Personal Injury cannot be assigned.
- (2) Subsection (1) does not prohibit the assignment of proceeds arising from a right of action.

8. Rights cumulative

- (1) The existence of a right of action under these Regulations does not affect any other right of action under these Regulations or any other AIFC Regulations or any AIFC Rules.
- (2) A Claimant may sue a Defendant in relation to any right of Action under these Regulations.

9. Limitation period

- (1) Despite anything to the contrary provided by the AIFC Court Regulations, if a cause of action arises as a result of fraud by the Defendant, there is no time limit within which the Action must be commenced.
- (2) For an Action under a relevant Chapter of Part 3 (Obligations of general application), a cause of action arises on the earliest day the Claimant knows, or ought reasonably to know, about the Loss that gives rise to the cause of action. However, any Action must be commenced within 15 years after the day that the cause of action in fact arose.



- (3) If a Person seeks to recover a contribution from another Person under section 14 (Apportionment of Joint and Several liability), the Person must commence an Action to recover it within 3 years after the day that judgement was given against the Person by the Court or the Person agreed to make a payment in settlement of the relevant claim, as the case may be.
- (4) In this section:
relevant Chapter means any of the following Chapters:
 - (a) Chapter 2 (Negligence);
 - (b) Chapter 3 (Occupier's liability);
 - (c) Chapter 4 Misrepresentation).

10. Causation

- (1) To establish liability under these Regulations, a Claimant must show that the Defendant's conduct caused Loss to the Claimant by showing that, apart from the Defendant's conduct, the Claimant would not have suffered the Loss, and that the Defendant's conduct was a substantial cause of the Claimant's Loss.
- (2) Once a Claimant has shown that the Defendant's conduct caused the Claimant's Loss, within the meaning given by subsection (1), and assuming that all other requirements for the Defendant to be liable are made out, the Defendant is liable for the Claimant's entire Loss, subject to Chapter 1 (Apportionment of liability) of Part 3 (Obligations of general application) and the AIFC Regulations on Damages and Remedies.

11. Intervening act

If the Defendant's conduct caused Loss to the Claimant within the meaning given by section 10 (Causation), the Defendant is not responsible for Loss to the Claimant to the extent that a supervening event has the result that the Defendant's conduct is no longer an operative cause of the Claimant's Loss.



PART 2: CAPACITY

12. Capacity

- (1) Unless otherwise provided by these Regulations, all Persons are entitled to sue, and are liable to be sued, in Actions under these Regulations.
- (2) However, a Person is not liable to be sued in an Action under these Regulations if the Person is under 18 years old at the time of the Person's act or omission that, apart from this subsection, would give rise to a liability.



PART 3: OBLIGATIONS OF GENERAL APPLICATION

CHAPTER 1: APPORTIONMENT OF LIABILITY

13. Joint and Several Liability

- (1) Subject to the AIFC Court Regulations and the AIFC Court Rules, a Claimant has the right to sue any number of Persons the Claimant considers to be Jointly Liable or Severally Liable in relation to any liability to the Claimant under these Regulations.
- (2) Persons who are Jointly Liable or Severally Liable in relation to the same Loss are liable for the whole Loss.
- (3) Persons who are Severally Liable in relation to different Loss are each liable only for the Loss that each has caused.

14. Apportionment of Joint and Several Liability

- (1) A Person who is liable under these Regulations for any Loss may recover contribution from any other Person who is liable in relation to the same Loss.
- (2) A Person who makes a payment in settlement of a claim under these Regulations may recover from any other Person who would have been liable in relation to the same Loss if the factual basis of the claim against the other Person could be established.
- (3) A contribution recovered from a Person under this section is the contribution that the arbitrator or the Court considers just, having regard to the Person's responsibility for the Loss in question.

15. Vicarious liability

- (1) An employer is Jointly Liable with the employer's employee in relation to liability of the employee under these Regulations arising in the course of the employee's service.
- (2) If a relationship of service exists under which a Person (**A**) provides services for another Person (**B**), B is jointly liable with A in relation to liability of A under these Regulations arising during the course of A's service.
- (3) Whether a relationship of service exists between A and B depends on the substance of the relationship between them in all its aspects, rather than its form. It is not essential that there should be a contract of service between them.
- (4) A principal is Jointly Liable with the principal's agent in relation to liability of the agent under these Regulations arising in the course of the agency if the act or omission of the agent that gives rise to the liability is within the agent's authority.
- (5) If a Person knowingly and actively instigates another Person to act or omit to act in a way that gives rise to liability under these Regulations, or otherwise acts in concert with another Person in relation to an act or omission that gives rise to liability under these Regulations, the Person is Jointly Liable with the other Person.

16. Responsibility for children

A parent or other Person responsible for a child is Jointly Liable with the child in relation to liability of the child under these Regulations if, at the time the child commits the act or omission that gives rise to the liability, the parent or other Person:



- (a) has control of, or is negligent in permitting the child to use, a dangerous thing that causes the Loss suffered by the Claimant; or
- (b) is negligent in not exercising proper control and supervision of the child; or
- (c) has previously authorised or subsequently ratifies the child's act; or
- (d) if the Loss suffered by a third Person arises from a perilous situation created by the act of the child—ought reasonably to have anticipated the situation in the circumstances.

CHAPTER 2: NEGLIGENCE

17. Liability for negligence

- (1) A Defendant is liable in negligence to a Claimant if, and to the extent that:
 - (a) the Defendant owes a duty of care to the Claimant; and
 - (b) the Defendant breaches the duty of care to the Claimant; and
 - (c) the Defendant's acts or omissions in breach of the duty of care to the Claimant cause Loss to the Claimant.
- (2) The Defendant's liability under subsection (1) is reduced by the extent to which the Claimant's negligent acts or omissions contributed to the Claimant's Loss.

18. Duty of care

- (1) A Defendant owes a duty of care to a Claimant if:
 - (a) it is reasonably foreseeable that the Defendant's acts or omissions could cause Loss to the Claimant; and
 - (b) the relationship between the Defendant and the Claimant is sufficiently proximate for a duty of care to exist; and
 - (c) it is fair, just and reasonable in the circumstances that the Defendant should owe the Claimant a duty of care.
- (2) However, if a Defendant negligently creates a situation endangering life or property, the Defendant owes a duty of care to a Claimant who suffers Loss as a direct result of attempting rescue if it is reasonably foreseeable that rescue could be attempted.
- (3) Also, a Person only owes a duty positively to act if the Person has assumed responsibility for the Claimant, for certain property, or for a third party, causing Loss to the Claimant.

19. Public authorities

- (1) A public authority may owe a duty of care in carrying out a statutory or other legal duty.
- (2) If a public authority takes a decision or action in the exercise of a statutory or other legal discretion, the public authority may owe a duty of care in relation to the decision or action, but only if the decision or action is outside the ambit of the discretion.



- (3) To fall outside the ambit of the public authority's statutory or other legal discretion, the decision or action must be so unreasonable that there has been no real exercise of the discretion given to the public authority.
- (4) A public authority cannot owe a duty of care in relation to a Failure to exercise a statutory or other legal discretion.
- (5) A public authority does not owe a duty of care under subsections (1) and (2) so far as it is subject to an immunity or exemption from liability in relation to the duty.
- (6) In this section:

public authority means a government department, agency, authority, company or institution.

20. Economic loss

- (1) If a Claimant has suffered only pure economic loss as a result of the Defendant's conduct, the Defendant only owes a duty of care to the Claimant if:
 - (a) the requirements of section 17 (Liability for negligence) are met; and
 - (b) the Defendant assumes a responsibility to the Claimant; and
 - (c) the Claimant relies on the Defendant; and
 - (d) it is reasonable for the Claimant to rely on the Defendant.
- (2) For this section, if a Person makes a statement, the Person assumes a responsibility to each Person to whom the statement is made, or becomes available, (a **recipient**) if:
 - (a) the Person knows, or ought to know, that the statement will be communicated to the recipient, either specifically or as a member of an ascertainable class and that it is likely to be acted on by the recipient for the purpose for which the statement was made; and
 - (b) the Person intends, or the recipient reasonably believes that the Person intended, for the recipient to act on the statement for that purpose.

21. Standard of care

- (1) To establish a breach of a duty of care, a Claimant must show that a Defendant Failed to exercise Reasonable Care to avoid causing Loss to the Claimant, having regard to the probability, and the likely seriousness, of the Loss.
- (2) For these Regulations, **Reasonable Care** is the care that a Person of ordinary care and skill, engaged in the type of activity in which the Defendant was engaged, would have exercised.
- (3) A professional Person exercises Reasonable Care if the Person shows the standard of care of an ordinary skilled Person exercising and professing to have the special skill in question.
- (4) If there are different views within a profession about what is Reasonable Care, a



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professional Person in the profession shows Reasonable Care if the Person takes an approach endorsed or followed by a responsible body of professional opinion in that profession.



CHAPTER 3: OCCUPIER'S LIABILITY

22. Occupier's liability

An Occupier is liable to another Person if:

- (a) the Occupier owes the other Person a duty of care; and
- (b) the Occupier breaches the duty of care to the Person; and
- (c) the Occupier's acts or omissions in breach of the duty of care to the Person cause Loss to the Person.

23. Occupier's duty of care to Visitors

An Occupier of Premises owes a duty of care to a Visitor.

24. Standard of care owed by Occupier to Visitors

- (1) An Occupier of Premises must, in performing the Occupier's duty under section 23 (Occupier's duty of care to Visitors) to a Visitor, take the care, that is reasonable in all the circumstances of the case, to see that the Visitor will be reasonably safe in using the Premises for the purposes for which the Visitor is invited or permitted by the Occupier to be there.
- (2) In working out whether the Occupier has performed the duty of care to a reasonable standard:
 - (a) the Occupier must expect that children will be less careful than adults; and
 - (b) the Occupier may expect that a Person, in the exercise of the Person's employment, profession or calling, will guard against any special risks ordinarily incident to it, if the Occupier allows the Person to do so.
- (3) The Occupier is not liable for a danger caused by the faulty work of an independent contractor employed by the Occupier if the Occupier took reasonable steps in the circumstances to see that the contractor was competent and that the contractor's work was properly done.

25. Warnings and notices for Visitors

A warning or notice is effective to exclude or restrict an Occupier's liability under section 22 (Occupier's liability) to a Visitor if in all the circumstances the warning or notice was sufficient to enable the Visitor to be reasonably safe.

26. Occupiers duty of care to Non-Visitors

- (1) An Occupier of Premises owes a duty to take Reasonable Care of a Non-Visitor if:
 - (a) the Occupier knows, or has reasonable grounds to know, that there is a danger on or in the Premises; and
 - (b) the Occupier knows, or has reasonable grounds to know, that the Non-Visitor is, or may come, within the vicinity of the danger; and
 - (c) the risk is a risk against which the Occupier ought reasonably to offer



protection.

- (2) In working out whether the Occupier has performed the Occupier's duty of care to a reasonable standard, the Occupier must expect that children will be less careful than adults.

27. Standard of care owed by Occupier to Non-Visitors

- (1) If an Occupier of Premises owes a duty to a Non-Visitor under section 26 (Occupier's duty of care to Non-visitors), the duty is to take the care, that is reasonable in all the circumstances of the case, to see that the Non-Visitor does not suffer Personal Injury on or in the Premises because of the danger on or in the Premises.
- (2) The Non-Visitor must prove that the Occupier has breached the Occupier's duty of care.
- (3) A Non-Visitor may only recover for Personal Injury under this Chapter and cannot recover for any other Loss.

28. Warnings for Non-Visitors

An Occupier of Premises may absolve the Occupier of liability to a Non-Visitor by taking steps, which are reasonable in all the circumstances, to give a warning of the danger.

CHAPTER 4: MISREPRESENTATION

29. Misrepresentation defined etc.

- (1) For this Chapter, a Person (the **Representor**) makes a **Misrepresentation** to another Person (the **Representee**) if:
 - (a) the Representor, or the Representor's agent, (the **maker**) makes a representation, or has notice that the representation is made; and
 - (b) the representation is an incorrect representation of fact, past or present, or a representation of opinion falling within subsection (3); and
 - (c) the Representee is any of the following:
 - (i) the Person to whom the representation is made or, if the Person is an agent of another Person, the other Person;
 - (ii) a Person to whom the maker knew the representation would, or intended that the representation should, be made known;
 - (iii) a Person who is a member of a class to whom the representation is made;
 - (iv) if the representation is intended by the maker to be made generally—any Person to whom the representation is made.
- (2) A representation of opinion or law unaccompanied by an incorrect representation of fact, past or present, cannot be a Misrepresentation.
- (3) A representation of opinion can only be a Misrepresentation if it is accompanied by a further incorrect representation of fact, whether past or present and express or implied,



and the Representee (or the Representee's agent, acting in the agent's capacity as agent) has reasonable grounds for believing that the opinion is true.

- (4) A representation may be made in writing (electronically or otherwise), orally, by implication, by conduct, by means of a mark, trade name, get-up, image, slogan or advertising, or in any other way.
- (5) Non-disclosure cannot amount to a representation, unless the non-disclosure is a breach of a specific duty to disclose.
- (6) If a representation becomes untrue before a contract is concluded, it becomes a Misrepresentation, unless the Representor (or the Representor's agent) informs the Representee before a contract is concluded that the representation is no longer true.
- (7) A representation is not a Misrepresentation if the Representor (or the Representor's agent) is doing no more than making a truthful statement of fact that the Representor has a legitimate interest in making.

30. Liability for Misrepresentation

The Representor is liable to a Representee for a Misrepresentation if:

- (a) the Misrepresentation was made to induce a Person to enter into a contract or Persons to enter into contracts; and
- (b) the Representee entered into a contract after the Misrepresentation was made; and
- (c) the Misrepresentation influenced the Representee to enter into the contract or affected the terms on which the Representee agreed to enter into it; and
- (d) the Representee suffers Loss as a result of entering into the contract.



CHAPTER 5: DECEIT

31. Deceit

- (1) A Defendant is liable in deceit if:
 - (a) the Defendant makes a statement that is fraudulent; and
 - (b) the Defendant intends that a Person should rely on the fraudulent statement; and
 - (c) the Claimant relies on the statement; and
 - (d) the Claimant suffers Loss as a result of relying on the statement.
- (2) A statement is *fraudulent* if its maker:
 - (a) knows that it is false; or
 - (b) has no belief in its truth; or
 - (c) is reckless about whether it is true or false.
- (3) It is not a defence to an Action under this section that the Claimant could have discovered the deceit if the Claimant had exercised Reasonable Care.



CHAPTER 6: ECONOMIC TORTS

32. Inducing or procuring breach of legal obligation

A Defendant is liable to a Claimant if:

- (a) the Defendant knows that a third party owes a legal obligation to the Claimant; and
- (b) the Defendant intentionally induces the third party to breach the obligation; and
- (c) the Claimant suffers Loss as a result of the breach thereof.

33. Intimidation

(1) Subject to section 35 (Exception to sections 33 and 34), a Defendant is liable if:

- (a) the Defendant intentionally makes, directly or indirectly, a threat to a second Person that the Defendant will commit an act that it is unlawful for the Defendant to commit; and
- (b) as a result of the threat, the second Person refrains from acting as the second Person is entitled to act; and
- (c) as a result of refraining to act, the second Person or a third Person suffers Loss; and
- (d) the Defendant would be liable to the second Person or third Person had the Defendant committed the unlawful act.

(2) If the requirements of subsection (1) are met, the second Person or third Person, or both, may commence an Action against the Defendant.

34. Unlawful interference with contract

(1) Subject to section 35 (Exception to sections 33 and 34), a Defendant is liable to another Person if the Defendant uses unlawful means with the intention and effect of causing Loss to the other Person under or in connection with a contract to which the Person is party.

(2) For the Defendant to be liable, it is not necessary that the unlawful means be directed at the other Person.

(3) The means are only unlawful if any Person would have a right of action as a result of the Defendant using them.

35. Exception to sections 33 and 34

A Person may not commence an Action under section 33 (Intimidation) or 34 (Unlawful interference with contract) if the Person can commence an Action against the Defendant under the AIFC Contract Regulations.

36. Unlawful conspiracy

(1) If 2 or more Persons conspire to do an unlawful act with the intention to cause Loss to the Claimant, and Loss is caused to the Claimant by the performance by at least one of them of the unlawful act, they are Jointly Liable to the Claimant.



- (2) The act is only unlawful if the Claimant would have a right of action as a result of any one Person performing it.

37. Breach of confidence

- (1) Subject to subsection (5), a Person (the **relevant Person**) has a duty not to misuse specific information that the Person has received from another Person (the **confidant**), directly or through an intermediary, if the information can reasonably be regarded as confidential and the Person knows or ought to know that the information is confidential.
- (2) If the relevant Person breaches the Person's duty under subsection (1), the Person is liable to the confidant.
- (3) Unless confidentiality is otherwise expanded by agreement, the information is not confidential if:
 - (a) it is in the public domain; or
 - (b) it is trivial or useless; or
 - (c) it is in the public interest that the information should not be confidential.
- (4) Misuse of the information includes, but is not limited to, its disclosure.
- (5) However, the relevant Person may disclose information if:
 - (a) the confidant has consented, expressly or by implication, to its disclosure; or
 - (b) its disclosure is required by law; or
 - (c) its disclosure is required in the interests of the confidant; or
 - (d) it is no longer confidential; or
 - (e) it is disclosed to a Person who has a legitimate interest in receiving it.
- (6) It is not a defence that the relevant Person did not know that the Person was misusing the confidential information.

38. Passing off

- (1) A Defendant is liable to a Claimant if:
 - (a) the Claimant's business, goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature; and
 - (b) the Defendant makes a Misrepresentation that confuses or deceives Persons in relation to the business, goods or services of the Claimant, or is likely to do so; and
 - (c) the Defendant makes the Misrepresentation without regard for its truthfulness; and
 - (d) the Claimant suffers, or is likely to suffer, damage as a result of that confusion



or deception.

- (2) For this section, it is not necessary that the Persons confused or deceived should be aware of the Claimant's identity, if they are accustomed to the Claimant's business, goods or services.
- (3) It is not a defence to an Action under this section that the Defendant did not intend to cause the confusion or deception mentioned in subsection (1)(b).
- (4) In this section (and sections 30 (Liability for Misrepresentation) and 40 (Passing off: interpretation):

Misrepresentation has the meaning given by section 29 (Misrepresentation defined etc.).

39. Assisting passing off by others

A Defendant is liable if the Defendant knowingly assists or facilitates passing off under section 38 (Passing off) by another Person.

40. Passing off: interpretation

For section 38(1)(b) (Passing off), a Misrepresentation confuses or deceives Persons if, for example, it results in the reasonable belief that:

- (a) the Defendant's business, goods or services are the business, goods or services of the Claimant, or vice versa; or
- (b) the Claimant's goods or services of one class, quality, condition or state are of another class, quality, condition or state; or
- (c) the Defendant's goods or services belong to a class of goods or services with a discrete reputation, and they do not; or
- (d) goods are covered by the Claimant's guarantee, and they are not covered.



CHAPTER 7: WRONGFUL INTERFERENCE WITH PROPERTY

41. Wrongful interference with Property

- (1) A Defendant is liable to another Person if, the Defendant wrongfully interferes with Property in which the other Person has an Interest and the other Person suffers Loss as a result of the interference.
- (2) The Defendant *interferes* with the Property if the Defendant:
 - (a) takes, retains or parts with the Property; or
 - (b) deals with the Property or, for Property for which the Defendant owes a duty of care, neglects the Property so that it is destroyed or damaged; or
 - (c) deals with the Property in a way that constitutes a denial of title or possession of, or enjoyment by, the other Person.
- (3) However, the Defendant does not interfere with the Property if the Defendant merely denies the other Person's Interest in it.
- (4) The Defendant's interference is *wrongful* if it happens without the other Person's permission, express or implied.
- (5) It is not a defence that the Defendant did not know that the other Person had an Interest in the Property.

42. Property defined for Chapter 7

In this Chapter:

Property has the meaning given to it in the AIFC Personal Property Regulations, but does not include money, things in action and intellectual property.

43. Interest in Property defined for Chapter 7

For this Chapter, a Person has an *Interest* in Property if the Person has any interest in it, present or future, direct or derivative, possessory or proprietary.

44. More than one Interest in Property

- (1) A co-owner, or any other Person with a limited Interest in the Property, may recover under this Chapter proportionately according to the Person's Interest.
- (2) A co-owner may commence an Action under this Chapter against a fellow co-owner of the same Property.

45. Chapter 7 subject to Part 7

This Chapter is subject to the provisions of Part 7 (Obligations relating to banking).

46. Rights of third parties

- (1) It is a defence to an Action under this Chapter to show that a third party has a better claim to title of the relevant Property than the Claimant.



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- (2) If a Defendant has been found liable to a Claimant under this Chapter, and subsequently another Claimant is found to have a superior claim to or Interest in or to the relevant Property, the first Claimant is liable to account to the other Claimant.



CHAPTER 8: DEFENCES

47. Voluntary assumption of risk

A Defendant is not liable to a Claimant under Chapter 2 (Negligence) or Chapter 3 (Occupier's liability) if:

- (a) the Claimant has knowingly subjected the Claimant to the risk on which the claim is based; and
- (b) the Claimant wishes to be subject to the risk or agrees to be subject to the risk.

48. Illegal conduct of Claimant

A Claimant may not claim under this Part for Loss or other injury in the course of, or as a consequence of, the Claimant's unlawful conduct, or if it would be unlawful for the Claimant to obtain a remedy.

49. Prevention of crime and harm

It is a defence to any liability under this Part that the Defendant was taking the action that was in the Defendant's view both reasonable and necessary to prevent the commission of a crime or harm to Persons or property.

50. Lawful authority

It is a defence to any liability under this Part that the Defendant's conduct was authorised by law.

51. Exclusion of liability

Unless otherwise provided by these Regulations, a Person can exclude or limit the Person's liability under this Part, subject to the AIFC Implied Terms in Contracts and Unfair Terms Regulations.



PART 4: OBLIGATIONS RELATING TO INSURANCE

52. Application of Part 4 and Contract of Insurance etc. defined

- (1) This Part applies to Persons in relation to Contracts of Insurance.
- (2) For these Regulations, a **Contract of Insurance** is a contract under which a Person (the **Insurer**) undertakes to indemnify, or to provide a corresponding benefit to or for the benefit of, another Person (the **Insured**) with an insurable interest on the happening of a specified event.

53. Duty of Insured to disclose facts

- (1) An Insured under a Contract of Insurance is under a duty to the Insurer to disclose to the Insurer every fact within the Insured's knowledge that would influence the judgement of a prudent insurer in deciding the terms and conditions of the contract or in deciding whether to enter into the contract.
- (2) The duty in subsection (1) continues for the life of the Contract of Insurance.
- (3) For subsection (1):
 - (a) an Insured is taken to have knowledge of matters of which the Insured's agent has knowledge if:
 - (i) the Insured relies, or has relied, on the agent in relation to information about the subject matter of the insurance; or
 - (ii) the agent is in a predominant position in relation to the principal in all the circumstances relating to the Contract of Insurance; and
 - (b) if an agent enters into the Contract of Insurance on behalf of the Insured—the Insured is also under a duty to ensure disclosure of every fact within the knowledge of the agent that would be disclosable under that subsection if known by the Insured.

54. Duty of utmost good faith etc. of Insurer and Insured

- (1) All parties to a Contract of Insurance are under a duty to act honestly and with the utmost good faith in relation to the contract.
- (2) The duty in subsection (1) continues for the life of the Contract of Insurance.
- (3) For subsection (1), the duty to act with the utmost good faith is satisfied by a party to a Contract of Insurance if the party:
 - (a) discloses every fact relevant to the contract; and
 - (b) makes no misrepresentation relating to the contract; and
 - (c) intends to carry out, and carries out, the party's obligations with the utmost good faith.

55. Consequence of breach of duty in relation to Contracts of Insurance

- (1) If a party to a Contract of Insurance breaches a duty under this Part in relation to the



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contract, the contract may be avoided by the other party.

- (2) However, subsection (1) applies in relation to a claim under the Contract of Insurance only if the breach of duty is material to the claim.
- (3) This section does not limit the power of the Court to grant any remedy in relation to a dispute relating to a Contract of Insurance.



PART 5: OBLIGATIONS RELATING TO BAILMENT

CHAPTER 1: APPLICATION AND DEFINITIONS

56. Application of Part 5

- (1) This Part applies to any Bailment of property possessed or owned by a Person within the AIFC.
- (2) However, this Part does not apply in relation to securities or negotiable instruments.

57. Bailment defined etc.

- (1) A **Bailment** arises whenever a Person (the **Bailor**) lawfully in possession, or entitled to possession, of property transfers possession of the property to another Person (the **Bailee**).
- (2) For this part, possession of property (the **relevant property**) may be transferred by:
 - (a) physical transfer of the relevant property; or
 - (b) Delivery of any property (including a document of title) entitling or enabling the recipient to possess the relevant property.
- (3) However, possession by an agent, acting within the agent's authority, of property owned by the agent's principal is not a **Bailment**. The transfer by an agent of possession of property belonging to the principal, if done within the agent's authority, is a **Bailment**.
- (4) A Bailment may be:
 - (a) contractual; or
 - (b) non-contractual.
- (5) A non-contractual Bailment may be voluntary or involuntary. A **Voluntary Bailment** happens if, in the absence of a contract of Bailment, the Bailor and the Bailee intend that possession should be transferred to the Bailee. Any other non-contractual Bailment is an **Involuntary Bailment**.
- (6) A non-contractual Bailment may be:
 - (a) for the benefit of the Bailor; or
 - (b) for the benefit of the Bailee.
- (7) An Involuntary Bailment must be presumed to be for the benefit of the Bailor unless otherwise proved.

58. Sub-Bailment defined etc.

A **Sub-Bailment** is the transfer of possession of property from a Person (other than the owner) entitled to possession of the property (the **Sub-Bailor**) to a Person other than the owner of the property (the **Sub-Bailee**). Bailment by an agent on behalf of the agent's principal under section 57(3) (Bailment defined etc.) is not a **Sub-Bailment**.



CHAPTER 2: DUTIES OF BAILOR AND BAILEE

59. Application of Chapter 2

This Chapter, other than sections 64 (Bailee's duty not to act in way inconsistent with owner's title etc.) and 73 (Duty of Bailee to return property under non-contractual Bailment), does not apply to contracts of hire.

60. Duty of Bailor to disclose information

- (1) A Bailor under a Voluntary Bailment is under a duty to disclose to the Bailee information about the property bailed if the Bailee would reasonably expect notice of the information and the absence of the information could reasonably cause Loss to the Bailee.
- (2) A Bailor under an Involuntary Bailment is under a duty to disclose to the Bailee, as soon as reasonably practicable after becoming aware of the Bailment and the identity of the Bailee, information about the property bailed if the Bailee would reasonably expect notice of the information and the absence of the information could reasonably cause Loss to the Bailee.
- (3) A Failure to comply with an obligation under subsections (1) and (2) is a breach of a duty of care owed by the Bailor to the Bailee under Chapter 2 (Negligence) of Part 3 (Obligations of general application).

61. Expenses in relation to Bailments

- (1) For a Voluntary Bailment:
 - (a) unless there is evidence of a contrary intention by the Bailee, the Bailor is under a duty to pay the reasonable expenses of the Bailee incurred in undertaking the Bailment of the property if the purpose of the Bailment is for custody or otherwise for the benefit of the Bailor; and
 - (b) in all other cases, the Bailor and Bailee must bear their own costs.
- (2) For an Involuntary Bailment, the Bailor is under a duty to pay the reasonable expenses of the Bailee incurred in undertaking the Bailment of the property.

62. Duty of Bailee to take care of property bailed

- (1) A Bailee must take the care of the property bailed that is reasonable in all the circumstances.
- (2) A Bailee under a contractual Bailment may vary the standard of care applying under subsection (1) in the contract of Bailment, subject to the AIFC Implied Terms in Contracts and Unfair Terms Regulations.
- (3) A Bailee under a Voluntary Bailment may vary the standard of care applying under subsection (1) by notice to the Bailor, subject to the AIFC Implied Terms in Contracts and Unfair Terms Regulations. However, the notice may only take effect from the time the Bailor becomes aware, or ought reasonably to have become aware, of its contents.
- (4) If a Bailee complies with the Bailee's obligations under this section, the Bailee is not responsible for the loss, destruction or deterioration of the property bailed, subject to any contrary agreement.



- (5) A Failure by a Bailee to comply with the obligation under subsection (1) is a breach of a duty of care owed by the Bailee to the Bailor under Chapter 2 (Negligence) of Part 3 (Obligations of general application).
- (6) In deciding whether a Bailee has complied with the Bailee's obligations under this section, all of the circumstances of the Bailment must be taken into account. In particular, regard must be had of the following matters:
 - (a) whether the Bailment is contractual or non-contractual and, if it is non-contractual, whether the Bailment is a Voluntary Bailment or Involuntary Bailment;
 - (b) whether the Bailor and Bailee (if either) benefits from the Bailment;
 - (c) whether the Bailor has complied with the Bailor's obligation under section 60 (Duty of Bailor to disclose information);
 - (d) any custom of trade, or previous course of dealing, between the Bailor and the Bailee relevant to the Bailment.
- (7) In relation to subsection (6)(a), the following provisions apply:
 - (a) if the Bailment is a contractual Bailment and the Bailee is a custodian for hire or reward (including, for example, an auctioneer or warehouse keeper)—the Bailee is presumed to exercise the standard of care of a professional custodian for hire or reward in relation to property of the type bailed;
 - (b) if the Bailment is an Involuntary Bailment and the Bailee intends to take possession of the property bailed—the Bailee is subject to the same standard of care as the Bailee would have been subject if the Bailment were a Voluntary Bailment;
 - (c) if the Bailment is an Involuntary Bailment and the Bailee does not intend to take possession of the property bailed—the Bailee has no obligation under section 60 (Duty of Bailor to disclose information) until the Bailee becomes aware of the Bailment.
- (8) In relation to subsection (6)(b), the following provisions apply:
 - (a) if the Bailment is a contractual Bailment—it is presumed that the Bailment does not benefit either party to the Bailment over the other;
 - (b) if the Bailment is an Voluntary Bailment—it is presumed that, if the Bailee receives a corresponding service from the Bailor, the Bailment benefits the Bailee as much as it does the Bailor;
 - (c) if the Bailment is an Involuntary Bailment—it is presumed that the Bailment is for the benefit of the Bailor.

63. Duty of Bailee not to use property bailed

- (1) A Bailee must not use the property bailed except:
 - (a) as permitted by the Bailor; or
 - (b) to the extent reasonably necessary for the purpose of the Bailment.



- (2) If the Bailment is an Involuntary Bailment, the Bailee may use the property bailed to the extent reasonably necessary to prevent the Bailee suffering Loss as a result of or in connection with the Bailment.
- (3) Use by the Bailee of the property bailed otherwise than in accordance with subsections (1) and (2) is wrongful interference with property under Chapter 7 (Wrongful interference with property) of Part 3 (Obligations of general application).

64. Bailee's duty not to act in way inconsistent with owner's title etc.

- (1) Except as permitted by the Bailor, a Bailee is under a duty not to act:
 - (a) in a way that is inconsistent with the title of the owner of the property; or
 - (b) in a way that is inconsistent with the rights of the Bailor as notified to the Bailee (if the Bailor is not the owner of the property).
- (2) For subsection (1), the Bailee may assume that the Bailor is the owner of the property if not notified otherwise by the Bailor, and accordingly the Bailee has no duty under subsection (1)(b) unless so notified.
- (3) A breach by the Bailee of the duty under subsection (1) is wrongful interference with property under Chapter 7 (Wrongful interference with property) of Part 3 (Obligations of general application).
- (4) If the Bailee breaches the duty under subsection (1), the Bailor may terminate the Bailment at any time.

65. Duty of Bailee to return property under non-contractual Bailment

- (1) If a Bailment is a non-contractual Bailment, the Bailor is entitled to return of the property bailed on reasonable notice to the Bailee at any time.
- (2) A Failure by the Bailee to return the property bailed in accordance with subsection (1) is wrongful interference with property under Chapter 7 (Wrongful interference with property) of Part 3 (Obligations of general application).

66. Joint Bailments

- (1) If property belonging to co-owners is Bailed to a Bailee, the Bailee is obliged to return the property only on the instructions of all of the co-owners, unless the co-owners otherwise notify the Bailee.
- (2) If property is bailed to more than 1 Person acting as Bailee, each Bailee is Jointly Liable in relation to any breach of duty under this Part relating to the Bailment.

67. Sub-Bailments

- (1) If a Bailment is a Sub-Bailment, the duties of the Sub-Bailee under a relevant section are owned concurrently to the Sub-Bailor and to the owner of the property.
- (2) A Sub-Bailment does not alter the rights and obligations of the Bailor and Bailee under the original Bailment.
- (3) In this section:



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relevant section means any of the following sections:

- (a) section 62 (Duty of Bailee to take care of property bailed);
- (b) section 63 (Duty of Bailee not to use property bailed);
- (c) section 64 (Bailee's duty not to act in way inconsistent with owner's title etc.).



PART 6: FIDUCIARY DUTIES

68. Application of Part 8

- (1) This Part applies to any Person who is a Fiduciary of another Person.
- (2) This Part does not apply to the relationship arising under agency.

69. Fiduciary defined etc.

- (1) For these Regulations, a Person is the ***Fiduciary*** of another Person (the ***Principal***) if the Person has undertaken (whether or not under contract) to act for or on behalf of the other Person in a matter in circumstances that give rise to a relationship of trust and confidence.
- (2) It is presumed, unless demonstrated to the contrary, that Persons acting in the following capacities are Fiduciaries:
 - (a) an attorney, in relation to the attorney's clients;
 - (b) an employee, in relation to the employee's employer;
 - (c) a director of a Company, in relation to the Company;
 - (d) a partner of a partnership (including a limited partnership), in relation to the other partners;
 - (e) a member of a limited liability partnership, in relation to the limited liability partnership;
 - (f) a receiver or liquidator (however described) of a Company, in relation to the Company;
 - (g) a trustee, in relation to the beneficiaries of the trust.
- (3) In all other situations it is a question of fact whether in all the circumstances of the case a Person is a Fiduciary.

70. Fiduciary's obligation of loyalty

- (1) A Fiduciary acting in the capacity of Fiduciary is under an obligation of loyalty to the Principal.
- (2) The Fiduciary may exclude or restrict the Fiduciary's obligation of loyalty under this section by contract with the Principal, subject to the AIFC Implied Terms in Contracts and Unfair Terms Regulations.

71. Content of Fiduciary's obligation of loyalty

- (1) The Fiduciary's obligation of loyalty consists of such of the duties set out in the following subsections as are appropriate in all the circumstances of the relationship between the Fiduciary and the Principal.
- (2) The Fiduciary must act in Good Faith in what the Fiduciary considers to be in the interests of the Principal without regard to the Fiduciary's own interests.



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- (3) The Fiduciary must not place the Fiduciary in a position where the Fiduciary's own interests conflict with the Principal's interests.
- (4) If, in any transaction, there is a conflict between an interest or duty of the Fiduciary and an interest of the Principal, the Fiduciary must account to the Principal for any benefit the Fiduciary receives from the transaction.
- (5) However, the Fiduciary does not have to account for the benefit if the benefit has been disclosed to and approved by the Principal.
- (6) The Fiduciary must not use the Principal's property, information or opportunities for the Fiduciary's own or anyone else's benefit unless the Principal has consented or the use has been fully disclosed to the Principal and the Principal has not objected to it.
- (7) The Fiduciary must only use information obtained in confidence from the Principal for the benefit of the Principal, and must not use it for the Fiduciary's own advantage or for the benefit of any other Person.
- (8) The Fiduciary owes the Principal a duty to exercise the care, skill and diligence that would be exercised in the same circumstance by a reasonable person having both:
 - (a) the knowledge and experience that may reasonably be expected of a person in the same position as the Fiduciary; and
 - (b) the knowledge and experience that the Fiduciary has.

72. Consequences of breach of Fiduciary's obligation of loyalty

- (1) If a Fiduciary breaches the Fiduciary's obligation of loyalty to the Principal:
 - (a) the Fiduciary is liable to pay damages to the Principal in relation to any loss suffered by the Principal in accordance with the AIFC Regulations on Damages and Remedies; and
 - (b) the Fiduciary is liable to account to the Principal for any benefit the Fiduciary has acquired as a result of the breach.
- (2) If a Fiduciary, in breach of the Fiduciary's obligation of loyalty to the Principal:
 - (a) enters into an agreement with the Principal; or
 - (b) deals or agrees to deal with any of the Principal's property;the Principal may apply to the Court to set aside the agreement or dealing.



SCHEDULE 1: INTERPRETATION

1. **Definitions for these Regulations**

In these Regulations:

Action includes counterclaim and set-off.

AFSA means the Astana Financial Services Authority.

AIFC means the Astana International Financial Centre.

AIFCA means the Astana International Financial Centre Authority.

AIFC Regulations means regulations adopted by the Management Council or the Governor, and includes, for example, these Regulations.

AIFC Rules means rules adopted by the Board of Directors of the AFSA, the Board of Directors of the AIFCA or the Governor.

Bailee, Bailment and **Bailor** have the meanings respectively given by section 57 (Bailment defined etc.).

Claimant means a Person who brings or makes a claim under these Regulations.

Company means a company, whether incorporated in the AIFC or in any jurisdiction other than the AIFC.

Constitutional Statute means the Constitutional Statute of the Republic of Kazakhstan dated 7th December 2015 *On Astana International Financial Centre*.

Contract of Insurance has the meaning given by section 52 (Application of Part 4 and Contract of Insurance etc. defined).

Contravene includes Fail to comply with.

Court means the Astana International Financial Centre Court.

Defendant means a Person against whom a claim is brought or made under these Regulations.

Delivery means transfer of possession from a Person to another Person.

Fail includes refuse.

Fiduciary has the meaning given by section 69 (Fiduciary defined etc.).

Good Faith: an act or omission is in Good Faith if it is done or omitted to be done honestly, whether or not it is done or omitted to be done negligently.

Governor means the Governor of the Astana International Financial Centre.

Insured and **Insurer** have the meanings respectively given by section 52 (Application of Part 4 and Contract of Insurance etc. defined).



Interest in Property, for Chapter 7 (Wrongful interference with property) of Part 3 (Obligations of general application), has the meaning given by section 43 (Interest in Property defined for Chapter 7).

Involuntary Bailment has the meaning given by section 57(5) (Bailment defined etc.).

Jointly Liable: 2 or more Persons are **Jointly Liable** if the same facts cause each of them to be liable to the same Person in relation to the same Loss.

Loss means Personal Injury, Physical Damage or economic loss.

Management Council means the Management Council of the Astana International Financial Centre.

Management Council Resolution on AIFC Bodies means *The Structure of the Bodies of the Astana International Financial Centre*, adopted by resolution of the Management Council on 26 May 2016, as amended by resolution of the Management Council, *The Amendments and supplementations to the Structure of the Bodies of the Astana International Financial Centre*, adopted on 9 October 2017.

Misrepresentation, for Chapter 4 (Misrepresentation) of Part 3 (Obligations of general application), has the meaning given by section 29 (Misrepresentation defined etc.).

Non-Visitor, in relation to an Occupier's Premises, means a Person who enters onto or into the Premises without the Occupier's consent, express or implied.

Occupier, in relation to Premises, means the Person who occupies, or any one of a number of Persons who occupy, the Premises.

Person includes any natural person or incorporated or unincorporated body, including a Company, partnership, unincorporated association, government or state.

Personal Injury means any injury to a person's body or death, but does not include psychiatric injury.

Physical Damage means any damage to property (including real property).

Premises means any land, building or other structure or any vehicle.

Principal, in relation to a Fiduciary, has the meaning given by section 69 (Fiduciary defined etc.).

Property, for Chapter 7 (Wrongful interference with property) of Part 3 (Obligations of General application), has the meaning given by section 42 (Property defined for Chapter 7).

Reasonable Care has the meaning given by section 21(2) (Standard of care).

Representee and **Representor**, for Chapter 4 (Misrepresentation) of Part 3 (Obligations of general application), have the meanings respectively given by section 29 (Misrepresentation defined etc.).

Several Liability: 2 or more Persons are **Severally Liable** if they cause the same Loss for which they are not Jointly Liable for all or any parts of the Loss.

Sub-Bailee, **Sub-Bailment** and **Sub-Bailor** have the meanings respectively given by section 58 (Sub-Bailment defined etc.).



Visitor, in relation to an Occupier's Premises, means a Person who enters onto or into the Premises with the Occupier's consent, express or implied.

Voluntary Bailment has the meaning given by section 57(5) (Bailment defined etc.).