

Astana Financial Services Authority

Consultation Paper

AFSA-O-CE-2019-0001

Addressing Certain Limitations Related to Founding Members of Non-Profit Incorporated Organisations

19 November 2019

Introduction

1. The Astana Financial Services Authority (AFSA) has issued this Consultation Paper to invite public comments on the proposed amendments to the AIFC Non-profit Incorporated Organisations Regulations and AIFC Non-profit Incorporated Organisations Rules related to addressing certain limitations related to Founding Members of Non-Profit Incorporated Organisations.
2. The proposals in this Consultation Paper will be of interest to current and potential AIFC Participants who are interested in doing business in the AIFC.
3. All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use “Consultation Paper AFSA-O-CE-2019-0001” in the subject line. You may, if relevant, identify the organisation you represent when providing your comments. The AFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise. Comments supported by reasoning and evidence will be given more weight by the AFSA.
4. The deadline for providing comments on the proposals is **19 December 2019**. Once we receive your comments, we shall consider if any refinements are required to the proposals.
5. Comments to be addressed by:

post: Policy and Strategy Division
Astana Financial Services Authority (AFSA)
55/17 Mangilik El avenue, block C3.2, Nur-Sultan, Kazakhstan
or emailed to: consultation@afsa.kz
Tel: +7 7172 647375
6. The remainder of this Consultation Paper contains the following:
 - (a) background to the proposals;
 - (b) the key element of the proposed amendments;
 - (c) Annex 1: Draft of proposed amendments.

Background

The Astana Financial Services Authority ("AFSA") proposes to make amendments to the AIFC Non-Profit Incorporated Organisations Regulations and Rules to remove limitations in the current framework to permit legal entities to serve as Founding Members of the AIFC Non-profit Incorporated Organisations. The proposed amendments also aim to remove the requirement on the number of Founding Members that may apply for the incorporation of a Non-profit Incorporated Organisation.

KEY ELEMENT OF THE PROPOSED AMENDMENTS

Currently, Section 12(1) of the AIFC Non-profit Incorporated Organisations Regulations states that “Three or more individuals may apply for the incorporation of an Incorporated Organisation by signing, and filing with the Registrar of Companies, an application for incorporation in the accordance with the Rules”. The definition of Founding Member similarly uses the word “individuals”.

The proposed amendments remove limitations in the current framework to permit legal entities to serve as Founding Members of the AIFC Non-profit Incorporated Organisation, as well as remove the requirement on the number of Founding Members that may apply for the incorporation of a Non-profit Incorporated Organisation.

Additionally, the proposed amendments are related to simplification of the Standard Charter for Non-profit Incorporated Organisations.

Question

Do you have any concerns related to the proposed amendments to AIFC Non-profit Incorporated Organisations Regulations and AIFC Non-profit Incorporated Organisations Regulations Rules? If so, what are they, and how should they be addressed?

In this Annex, a blue font and underlining indicates new text and strikethrough indicates deleted text.

AIFC NON-PROFIT INCORPORATED ORGANISATIONS REGULATIONS

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PART 3: FORMATION AND REGISTRATION

12. Method of formation

- (1) ~~Three~~ One or more ~~individuals~~ Founding Members may apply for the incorporation of an Incorporated Organisation by signing, and filing with the Registrar of Companies, an application for incorporation in the accordance with the Rules.
- (2) The application must state the following:
 - (a) the proposed name of the Incorporated Organisation;
 - (b) the proposed address of the Incorporated Organisation's registered office;
 - (c) the Authorised Activities proposed to be conducted by the Incorporated Organisation;
 - (d) the full name, nationality, residency and address of each of the applicants, if the applicant is a natural person;
 - (e) the other particulars (if any) required by the Registrar of Companies or the Rules;
 - (f) the full name, date and place of incorporation or registration of each of the applicants, if the applicant is a Body Corporate.
- (3) The application must include, or be accompanied by, the following:
 - (a) a declaration signed by each of the applicants that the Incorporated Organisation will only conduct Authorised Activities;
 - (b) the proposed Charter of Organisation of the Incorporated Organisation.

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PART 4: FINANCIAL RESOURCES, ACCOUNTS AND AUDIT

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22. Accounts

- (1) The Founding Members of an Incorporated Organisation must ensure that accounts are prepared in relation to each financial year of the Incorporated Organisation within 6 months after the end of the financial year and that the accounts comply with the requirements of this section.
- (2) The accounts must:
 - (a) be prepared in accordance with accounting principles or standards prescribed by the Rules or otherwise approved by the Registrar of Companies; and
 - (b) show a true and fair view of the financial position of the Incorporated Organisation; and
 - (c) comply with any other requirements of these Regulations and the Rules.
- (3) The Founding Members must approve the Incorporated Organisation's accounts and must ensure that they are signed on their behalf by at least ~~2~~ 1 of them.
- (4) The accounts must be examined and reported on by an Auditor.
- (5) An Incorporated Organisation must file its audited accounts for a financial year with the Registrar of Companies within 7 days after the day the accounts are approved by the Founding Members and reported on by an Auditor.
- (6) Contravention of this section is punishable by a fine.

PART 5: FOUNDING MEMBERS AND ORDINARY MEMBERS

23. Founding Members and Ordinary Members

- (1) An Incorporated Organisation must have Founding Members and may have Ordinary Members.
- (2) The Charter of Organisation of an Incorporated Organisation must define who may become a Founding Member or an Ordinary Member of the Incorporated Organisation.
- (3) The initial Founding Members are the Persons who applied for the incorporation of the Incorporated Organisation.
- (4) After the incorporation of the Incorporated Organisation, Founding Members are appointed by Special Resolution of the Founding Members
- (5) The Founding Members of an Incorporated Organisation must, in Exercising their Functions, act honestly, in good faith and in the best interest of the Incorporated Organisation and must exercise the care, diligence and skill that a reasonably prudent pPerson would exercise in comparable circumstances.
- (6) A pPerson may not be a Founding Member and an Ordinary Member at the same time in the same Incorporated Organisation.

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26. Meetings of Founding Members

- (1) The Founding Members are to meet at the times and places that they decide.
- (2) However, a Founding Member may at any time call a meeting of the Founding Members by giving the other Founding Members at least ~~21~~ 7 days Written notice of the meeting.

27. Board of Incorporated Organisation

- (1) An Incorporated Organisation must be managed by a Board.
- ~~(2) An Incorporated Organisation must ensure that its Board consists solely of Founding Members and that Ordinary Members are not involved in the management of the Incorporated Organisation.~~
[intentionally omitted]
- (3) An Incorporated Organisation must ensure that its Charter of Organisation makes provision about the membership of its Board and the Board's Functions and operations.
- (4) The Board may appoint a resident of the Republic of Kazakhstan to be the Incorporated Organisation's agent.
- (5) Subject to the Charter of Organisation, the Board may delegate any of its Functions to any Person it considers appropriate.
- (6) Contravention of this section is punishable by a fine.

PART 6: REPORTING

28. Notice of certain changes

(1) If any of the following changes happen in relation to an Incorporated Organisation, the Incorporated Organisation must file notice of the change with the Registrar of Companies, in accordance with the Rules, within 30 days after the day the change happens:

- (a) any change relating to its registered office or contact details (including, for example, a change in the address of its registered office, a change in a telephone or fax number or a change of email address);
- (b) any change to its Founding Members;
- (c) any change to its name;
- (d) any change in its Authorised Activities.

(2) [Changes in the Registered Details notice must be accompanied by the prescribed fee set out in the Rules from time to time.](#)

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SCHEDULE 1: INTERPRETATION

Note: See section 6.

1. Definitions for these Regulations

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[Board means the governing body of the Incorporated Organisation.](#)

Founding Member, of an Incorporated Organisation, means ~~an individual~~ [Person](#):

- (a) who was:
 - (i) an applicant for the Incorporated Organisation's incorporation; or
 - (ii) appointed after its incorporation as a Founding Member by Special Resolution of the Founding Members; and
- (b) has not ceased to be a Founding Member under the Charter of Organisation.

AIFC NON-PROFIT INCORPORATED ORGANISATIONS RULES

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PART 2: INCORPORATED ORGANISATIONS

2.1 Charter of Organisation

2.1.1 For section 13(4) of the AIFC Non-profit Incorporated Organisations Regulations, the provisions of Schedule 1 (Standard Charter) are the model provisions to be known as the Standard Charter.

~~2.1.2 If the proposed Charter of Organisation accompanying an application for the incorporation of an Incorporated Organisation does not adopt the whole of the Standard Charter, the application must set out details of the parts of the Standard Charter that have not been adopted. Unless the Standard Charter is adopted by the Incorporated Organisation in its entirety, the Charter, signed by or on behalf of each member, must be filed with the application.~~

2.1.3 The proposed Charter of Organisation accompanying an application for the incorporation of an Incorporated Organisation must include provision for the following matters:

- (a) the Authorised Activities to be conducted by the Incorporated Organisation;
- (b) the calling of meetings of the Founding Members by Founding Members;
- (c) the proceedings of meetings of the Founding Members, including voting;
- (d) information to be provided to Founding Members before a meeting of the Founding Members;
- (e) the maximum number of Founding Members;
- (f) the appointment and removal of Founding Members;
- (g) the Functions of Founding Members;
- (h) appointment of the secretary, if applicable;
- (i) the keeping of minutes.

2.1.4 An application for the incorporation of an Incorporated Organisation must state that the proposed Charter of the Incorporated Organisation accompanying the application has been adopted by the applicants.

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2.4 Incorporated Organisation's names

2.4.1 A Person may apply to the Registrar of Companies for the reservation of a name for an Incorporated Organisation (or proposed Incorporated Organisation).

2.4.2 If the name is acceptable to the Registrar of Companies, the Registrar must reserve the name for 30 days.

2.4.3 The following provisions apply to the name of an Incorporated Organisation or the reservation of a name for an Incorporated Organisation (or a proposed Incorporated Organisation):

- (a) the name must use letters of the English alphabet, numerals or other characters acceptable to the Registrar of Companies;
- (b) the name must not, in the opinion of the Registrar, be, or be reasonably likely to become, misleading, deceptive, conflicting with another name (including an existing name of a company or another Incorporated Organisation);
- (c) the name must not contain words that may suggest a relationship with the AIFCA, AFSA or any other governmental authority in the AIFC, Astana or the Republic of Kazakhstan, unless the relevant authority has consented in Writing to the use of the name;
- (d) the name must not contain any of the following words unless the AFSA has consented in Writing to their use:
 - (i) the word 'bank', 'insurance' or 'trust';

- (ii) words that suggest that the incorporated organisation is a bank, insurance company or trust company;
- (iii) words that suggest in some other way that it is authorised to conduct Financial Services in the AIFC;
- (e) the name must not contain words that may suggest a connection with, or the patronage of, any Person or organisation, unless the Person or organisation has consented in Writing;
- (f) the name must not be, in the opinion of the Registrar, otherwise undesirable.

2.4.4 In this rule:

Financial Services has the meaning given under the AIFC Financial Services Framework Regulations.

2.4.5 [An application for the reservation of a name for an Incorporated Organisation \(or proposed Incorporated Organisation\) must be accompanied by the prescribed fee set out in the Rules from time to time.](#)

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2.8 Register of Founding Members and Ordinary Members

The register of Founding Members and Ordinary Members of an Incorporated Organisation maintained under section 25 (Register of members) of the AIFC Non-profit Incorporated Organisations Regulations must include the following particulars for each person who is or has been Founding Member or Ordinary Member, and be kept in alphabetical order of their names:

- (a) the member's full name;
- (b) whether the member is a Founding Member or Ordinary Member;
- (c) if the member has a former given or family name—the former name or, if the member has 2 or more former names, each former name;
- (d) the member's date and place of birth [or incorporation \(registration\), as the case may be;](#)
- (e) the member's address;
- (f) if the member has had a former address within the last 5 years—the address;
- (g) the date the member become a Founding Member or Ordinary Member;
- (h) if relevant, the date the member ceased to be a Founding or Ordinary Member.

SCHEDULE 1: STANDARD CHARTER

Note: See rule 2.1.1.

1. INTERPRETATION

In this Charter:

- a) unless the contrary intention appears:

[Board](#) means the governing body of the Incorporated Organisation.

[Chair](#) means the chair of the Board.

[Chief Executive Officer](#) means the chief executive officer of the Incorporated Organisation who is a natural person and a resident of the Republic of Kazakhstan, appointed by the Board from time to time.

Founding Member, of the Incorporated Organisation, means a ~~individual~~ [Person](#):

- (a) who was:
 - (i) an applicant for the Incorporated Organisation's incorporation; or

- (ii) appointed after its incorporation as a Founding Member by Special Resolution of the Founding Members; and
- (b) has not ceased to be a Founding Member under this Charter.

General Meeting means a meeting of the Founding Members.

Office, of the Incorporated Organisation, means the registered office of the Incorporated Organisation.

Ordinary Member, of the Incorporated Organisation, means a Person that has been accepted as an Ordinary member of the Incorporated Organisation.

Ordinary Resolution, of the ~~Founding Members Board of the Incorporated Organisation~~, means a resolution of a duly constituted meeting of the Incorporated Organisation's ~~passed at a meeting of the Founding Members passed by the votes of the Founding Members entitled to vote and representing~~ by a simple majority of the votes of the ~~members of the~~ Founding Members ~~present at the meeting in person or, if proxy allowed, by proxy, at a meeting of the Board~~ for which notice specifying the intention to propose the resolution was duly given. ~~and includes any resolution in Writing under clause 17.8 that is expressed to be an ordinary resolution~~

Secretary means the Person who is the Secretary of the Incorporated Organisation, and includes any other Person who is appointed to Exercise the Functions of the Secretary of the Incorporated Organisation, including a joint, assistant or deputy Secretary.

Special Resolution, of the Founding Members, means a resolution passed at a meeting of the Founding Members by the votes of at least 75% of the Founding Members present at the meeting in person or, if proxies are allowed, by proxy, provided that notice specifying the intention to propose the resolution as Special Resolution was duly given.

Members Register of Members means the register of Founding Members and Ordinary Members maintained by the Incorporated Organisation under section 25 of the Regulations.

the Regulations means the AIFC Non-profit Incorporated Organisations Regulations and includes the AIFC Non-profit Incorporated Organisations Rules, as amended from time to time.

this Charter means this Charter of the Incorporated Organisation.

- b) terms used in this Charter have the same meanings as they have, from time to time, in the Regulations, or the relevant provisions of the Regulations, unless the contrary intention appears; ~~and~~
- c) words in the singular include the plural and words in the plural include the singular, unless the contrary intention appears; ~~and~~
- d) words indicating gender include every other gender, unless the contrary intention appears; ~~and~~
- e) the word may, or a similar term, used in relation to a Function indicates that the Function may be Exercised or not Exercised, at discretion; ~~and~~
- f) the word must, or a similar term, used in relation to a Function indicates that the Function is required to be Exercised; ~~and~~
- g) a reference to Regulations or Rules is a reference to Regulations or Rules of the Astana International Financial Centre and, unless the contrary intention appears, a reference to particular Regulations or Rules includes a reference to those Regulations or Rules as amended from time to time; ~~and~~
- h) where an Ordinary Resolution is expressed to be required for any purpose, a Special Resolution is also effective for that purpose.

2. INCORPORATED ORGANISATION NAME

The Incorporated Organisation's name is [as specified in the application]. ~~[insert name and, unless the words 'Non-profit Organisation' are part of the name, insert those words immediately after the name].~~

~~3. INCORPORATED ORGANISATION REGISTERED OFFICE~~

~~The Office of the Incorporated Organisation must be in the Astana International Financial Centre.~~

3. INCORPORATED ORGANISATION PURPOSES AND RESTRICTIONS

3.1. The Authorised Activities of the Incorporated Organisation are: [as specified in the application].

~~(a) [insert activities]; and~~

~~(b) [insert activities].~~

- 3.2. The Incorporated Organisation must not distribute profits or revenues from its activities to its Founding Members or Ordinary Members or former Founding Members or Ordinary Members.

4. INCORPORATED ORGANISATION'S MEMBERSHIP

- 4.1. Subject to the Regulations and without affecting any rights, entitlements or restrictions attached to any existing membership, any membership may be issued with the rights, entitlements or restrictions that the ~~Founding Members Board of the Incorporated Organisation~~ determine by Ordinary Resolution.
- 4.2. The Incorporated Organisation must not have more than [as specified in the application] ~~[insert the maximum number]~~ of Founding Members at any time.
- 4.3. A Person must not be recognised by the Incorporated Organisation as a Founding Member or Ordinary Member unless the Person's name is entered in the ~~Members~~ Register of Members as a Founding Member or Ordinary Member, as the case may be.

5. ADMISSION OF NEW MEMBERS

- 5.1. After the incorporation of the Incorporated Organisation, Founding Members are appointed by Special Resolution of the Founding Members, and Ordinary Members are appointed by the Founding Members by any means the Founding Members consider appropriate.
- 5.2. The Incorporated Organisation may charge a Person a reasonable fee for the entry of the Person's name in the ~~Members~~ Register of Members.
- 5.3. A Person must not be appointed as a Founding Member, at a General Meeting, unless the Person has been recommended by a Founding Member or Ordinary Member; and details of the Person have been included in the notice of the meeting at which the appointment is to be considered. The details must include at least the information that would be included in the Register of Members, if the Person were to be appointed as a Founding Member.

~~6.3. The Board may, by Ordinary Resolution, decide whether membership certificates are to be issued and, if so, the form of the certificates.~~

6. PROCEEDINGS OF FOUNDING MEMBERS

- 6.1. Subject to this Charter, the Founding Members may conduct their proceedings (including their meetings) as they consider appropriate.
- 6.2. Subject to any decision of a General Meeting, a resolution in Writing signed by all the Founding Members is as valid and effective as if it had been passed at a General Meeting. The resolution may consist of several Documents in ~~the~~ like form each signed by 1 or more Founding Members. However, this subclause does not apply to any decision (however described) required to be made by Special Resolution.

7. CEASING TO BE A MEMBER

- 7.1. A Person who is a Founding Member ceases to be a Founding Member if the Person:
- (a) becomes bankrupt; or
 - (b) is, in the opinion of the Founding Members, formed by Special Resolution, incapable (otherwise than on a temporary basis) of performing the duties of a Founding Member; or
 - (c) is absent, except on leave granted by the Founding Members, from 3 consecutive General Meetings; or
 - (d) resigns by notice to the Incorporated Organisation; or
 - (e) is removed by Special Resolution of the Founding Members.
- 7.2. A Person who is an Ordinary Member ceased to be an Ordinary Member, if the Person is removed by a resolution of the Founding Members.

8. CALLING GENERAL MEETINGS

- 8.1. Any Founding Member may call a General Meeting, including an annual General Meeting of Founding Members.

- 8.2. A General Meeting may be called by a Founding Member by giving the other Founding Members at least ~~7~~ 21 days Written notice of the meeting.
- 8.3. The notice must specify the time and place of the meeting and the general nature of the matters to be considered. If the Founding Member calling the meeting intends to propose a resolution at the meeting, the notice must specify the intention to propose the resolution and whether it is to be proposed as a Special Resolution or Ordinary Resolution.
- 8.4. Notice of an annual General Meeting of the Founding Members must state that the meeting is an annual General Meeting.

9. PROCEEDINGS AT GENERAL MEETINGS

- 9.1. Subject to the Regulations and this Charter, a question arising at a General Meeting is to be decided by a majority of the Founding Members present, in person or by proxy, and voting. However, subject to these Regulations and this Charter, the Founding Member chairing the meeting also has a casting vote if the votes on any question are equal.
- 9.2. Business may be conducted at a General Meeting only if a quorum is present. A quorum is 50% of the number of Founding Members for the time being or, if that number is not a whole number, the next whole number. If a Founding Member is required not to vote on a resolution because of a conflict of interest, the Founding Member must not be counted in working out whether there is a quorum in relation to the resolution.
- 9.3. If a quorum is not present within half an hour after the time specified in the notice calling the meeting (the meeting start time), the meeting must be adjourned to a place and time decided by the Founding Members. If during the meeting a quorum ceases to be present, the meeting must be adjourned to a place and time decided by the Founding Members.
- 9.4. The ~~Chair of the Board of the Incorporated Organisation chairs the meeting. If the Chair of the Board is not present or willing to act within 15 minutes after the meeting start time, another~~ Founding Member elected by the Founding Members present chairs the meeting.
- 9.5. The Founding Member chairing the meeting (the meeting chair) may adjourn the meeting with the consent of the majority of the votes of the Founding Members present at the meeting. A matter must not be considered at the adjourned meeting if the matter could not have been considered at the meeting had the adjournment not taken place. It is not necessary for notice to be given of the adjourned meeting unless the meeting was adjourned for 14 days or longer. If the meeting was adjourned for 14 days or longer, at least 7 days notice of the adjourned meeting must be given to the Founding Members. The notice must specify the time and place of the adjourned meeting, the general nature of the matters to be considered at the adjourned meeting, and any resolutions of which notice has been given.
- 9.6. Unless a poll is demanded, a resolution put to the vote must be decided on a show of hands. A poll may be demanded, before or on the declaration of the result of a vote by show of hands:
 - (a) by the meeting chair; or
 - (b) by at least ~~1~~ 2 Founding Members having the right to vote at the meeting.
- 9.7. Unless a poll is demanded, the meeting chair may declare that a resolution has been carried or lost by a particular majority. The entry in the minutes of the meeting of that declaration is conclusive evidence of the result of the resolution.
- 9.8. Any poll must be taken in the way the meeting chair directs and the result is the resolution of the meeting at which the poll was demanded.
- 9.9. A poll demanded on the election of a Founding Member to chair the meeting or on an adjournment must be taken immediately. A poll demanded on any other question must be taken as the meeting chair directs, but not more than 30 days after the day the poll is demanded. The demand for a poll does not prevent the continuation of the meeting for the transaction of any business other than the question on which the poll is demanded.
- 9.10. If a poll demanded at a meeting is not taken at the meeting, the Founding Members must be given at least 7 days Written notice of the time and place at which a poll is to be taken, unless the time and place is announced at the meeting.

10. VOTES OF FOUNDING MEMBERS

- 10.1. A Founding Member must not vote at a General Meeting or otherwise on any resolution concerning a matter in which the Founding Member has a direct or indirect conflict of interest, unless a General Meeting permits the Founding Member to vote on the resolution. For this subclause, an interest of a Founding Member includes an interest of any Person who is connected to the Founding Member.
- 10.2. An objection may only be raised at a General Meeting to the right of any Person to vote at the meeting or on a poll arising from the meeting. The Founding Member chairing the meeting (the meeting chair) must rule on the objection unless the objection relates to the meeting chair. The decision of the meeting chair is final.
- 10.3. A Founding Member may vote on a poll by proxy.
- 10.4. An instrument appointing a proxy to vote at a General Meeting, or on a poll arising from a General Meeting, must be in Writing in a form approved by the Founding Members and distributed with the notice of the meeting or poll. The form must include a section allowing the Founding Member to direct the proxy on how the proxy must act.
- 10.5. An instrument appointing a proxy must be deposited at the Office of the Incorporated Organisation at least 48 hours before the General Meeting at which the proxy is to be exercised is to be held. For a poll that is not being taken immediately but some time after it is demanded, an instrument appointing a proxy may be deposited at the poll with the Chair of the Board, the Secretary or any other Founding Member present or at any time before the poll at the Office of the Incorporated Organisation.
- 10.6. A vote given or poll demanded by proxy is valid despite the revocation of the proxy by the Founding Member who appointed the proxy unless the Incorporated Organisation receives Written notice of the revocation from the Founding Member before the vote is taken or the poll is demanded.

11. THE BOARD

- 11.1. The Incorporated Organisation has a Board.
- 11.2. The Board consists of the Chair and ~~[insert number]~~ other members.
- ~~11.3. The Board must consist solely of Founding Members.~~
- 11.3. The Chair and other members of the Board are appointed by the Founding Members for the terms (if any) decided by the Founding Members [by Ordinary Resolution](#).
- 11.4. A person who is the Chair or another member of the Board ceases to be the Chair or member of the Board if:
 - ~~(a) the person ceases to be a Founding Member; or~~
 - (a) the person's term as the Chair or another member ends without the person being reappointed; or
 - (b) the person is, in the opinion of the Founding Members formed by [Ordinary Special](#) Resolution, incapable (otherwise than on a temporary basis) of performing the person's duties as the Chair or another member of the Board; or
 - (c) the person is absent, except on leave granted by the Board, from 3 consecutive meetings of the Board; or
 - (d) the person resigns as the Chair or another member of the Board by notice to the Incorporated Organisation; or
 - (e) the person is removed as the Chair or another member of the Board by [Ordinary Special](#) Resolution. ~~of the Founding Members~~

~~11.6. The Founding Members may appoint a Founding Member to act as the Chair of the Board during any period, or all periods, when:~~

- ~~(a) there is a vacancy in the office of Chair of the Board; or~~
- ~~(b) the Chair is on leave of absence given by the Founding Members; or~~
- ~~(c) the Chair is unable, for any reason, to perform the duties of the office.~~

~~11.7. While a Founding Member is acting as the Chair of the Board:~~

~~(a) the Founding Member has, subject to any limitations in the acting appointment, all the Functions of the Chair; and~~

~~(b) this Charter applies in relation to the Founding Member as if the Founding Member were the Chair.~~

12. ALTERNATE MEMBERS OF BOARD

- 12.1. ~~A Founding Member who is T~~the Chair or another member of the Board (the appointor) may appoint ~~any other Founding Member or~~ any other person approved by the Founding Members (the appointee) to act as his alternate and may revoke the appointment at any time. The appointee may Exercise all the Functions of the appointor as a member of the Board (other than any Function of the Chair) but is not entitled to remuneration.
- 12.2. The appointor and appointee must both be given notice of all Board meetings.
- 12.3. The appointee is entitled to attend and vote at Board meetings, and counts towards the Board's quorum, if the appointor is absent.
- 12.4. The appointee holds office as the appointor's alternate for as long as the appointor holds office as a member of the Board unless the appointee's appointment is revoked by the appointor.
- 12.5. The appointor must give notice of the appointment of the appointee, and any revocation of the appointment, to the Incorporated Organisation.

13. FUNCTION AND POWERS OF BOARD AND CHIEF EXECUTIVE OFFICER

- 13.1. The Incorporated Organisation must be managed by the Board ~~of the Incorporated Organisation.~~
- 13.2. The Board may appoint a resident of the Republic of Kazakhstan to be the Incorporated Organisation's ~~agent.~~ Chief Executive Officer.
- 13.3. The Board may delegate any of its Functions to a committee of Founding Members or to a duly appointed ~~agent.~~ Chief Executive Officer.
- 13.4. The Board has power to do all things necessary or convenient to be done for, or in connection with, the conduct of the Incorporated Organisation's Authorised Activities, accountable to Founding Members. These powers include, but are not limited to, the following:
 - (a) identifying strategic directions and/or objectives of the Incorporated Organisation and making strategic decisions affecting the future operation of the Incorporated Organisation;
 - (b) monitoring the Chief Executive Officer's performance against the Incorporated Organisation's strategy, objectives and ensuring any necessary corrective action is taken;
 - (c) overall management of the Incorporated Organisation's activities without interfering in day-to-day operations of the Incorporated Organisation;
 - (d) appointing and dismissing the Chief Executive Officer of the Incorporated Organisation;
 - (e) exercising, within the Incorporated Organisation's competence, other powers established by decisions of the Founding Members.
- 13.5. The Board may determine key responsibilities of the Chief Executive Officer in addition to the following:
 - (a) to negotiate, sign and execute contracts, transactions, arrangements, and deals, of any kind or nature, with third parties in the name of the Incorporated Organisation, with the right to terminate and amend them as required from time to time;
 - (b) to open, close and manage bank accounts for the Incorporated Organisation, to carry out banking transactions on behalf of the Incorporated Organisation (including, for example, the right to issue, sign and endorse cheques, draw voucher letters of credit, make transfers, obtain loans with or without security, and obtain bank facilities, bank guarantees and bank performance bonds) and to complete and sign all applications and Documents necessary for the conduct of the Incorporated Organisation's Authorised Activities;
 - (c) to employ Persons required for the conduct of the Incorporated Organisation's Authorised Activities, and to decide their remuneration, benefits and the rules and provisions related to their employment, as well as the right to terminate their employment;
 - (d) to sign memoranda of association with the terms and conditions that it considers appropriate;

- (e) to claim on behalf of the Incorporated Organisation, to attach the property of debtors, to refer cases to arbitration, and to appoint lawyers and take legal proceedings to protect the Incorporated Organisation's interests whether as plaintiff or defendant, as party to arbitration or otherwise.

~~16. REMUNERATION AND EXPENSES OF FOUNDING MEMBERS~~

~~A Founding Member is entitled to be paid the remuneration, and reimbursed the expenses, decided by the Founding Members by Ordinary Special Resolution.~~

14. PROCEEDINGS OF THE BOARD

- 14.1. Subject to this Charter, the Board ~~of the Incorporated Organisation~~ may conduct its proceedings (including its meetings) as it considers appropriate.
- 14.2. The Board is to meet at the times and places that it decides.
- 14.3. However, the Chair of the Board may, at any time, call a meeting of the Board and must call a meeting if asked by at least the number of members of the Board required to constitute a quorum.
- 14.4. The Chair is to chair all meetings of the Board at which the Chair is present. If the Chair is not present a meeting, the member of the Board (other than an alternate member) elected by the members present (including any alternate members) chairs the meeting.
- 14.5. Subject to this Charter, a question arising at a meeting of the Board is to be decided by a majority of the members of the Board present, in person or by alternate, and voting. However, subject to this Charter, the member chairing the meeting (the meeting chair) also has a casting vote if the votes on any question are equal.
- 14.6. Business may be conducted at a meeting of the Board only if a quorum is present. A quorum is 2 or, if the Founding Members have fixed another number, that number. If a member of the Board is required not to vote on a resolution because of a conflict of interest, the member must not be counted in working out whether there is a quorum in relation to the resolution.
- 14.7. An appointment of a member of the Board, or of an alternate of a member of the Board, is not invalid only because of a defect or irregularity in or in relation to the appointment.
- 14.8. Subject to any decision of a General Meeting or of the Board, a resolution in Writing signed by all the members of the Board (or their alternates) is as valid and effective as if it had been passed at a meeting of the Board. The resolution may consist of several Documents in the like form each signed by 1 or more members (or their alternates).
- 14.9. A member of the Board must not vote at a meeting of the Board or otherwise on any resolution concerning a matter in which the member has a direct or indirect conflict of interest, unless a General Meeting or meeting of the Board permits the member to vote on the resolution. For this subclause, an interest of a member of the Board includes an interest of any Person who is connected to the member.
- 14.10. An objection may only be raised at a meeting of the Board to the right of any ~~P~~erson to vote at the meeting. The meeting chair must rule on the objection unless the objection relates to the meeting chair. The decision of the meeting chair is final.

15. SECRETARY

The Board may appoint and remove a secretary and is to decide the terms and conditions of any appointment (including in relation to remuneration).

16. MINUTES

The Founding Members and Board must ensure that minutes are kept recording the following:

- (a) all appointments of officers ~~(including agents appointed under clause 13.3)~~ made by the [Board and the Founding Members](#);
- (b) all proceedings at or arising out of General Meetings, and meetings of the Board and committees of Founding Members, including the names of the Founding Members present at each meeting.

17. NOTICES

- 17.1. Any notice under this Charter must be given in Writing.

- 17.2. Notice may be given to a Founding Member personally, by sending it by post in a prepaid envelope addressed to the Founding Member at the Founding Member's registered address, or by leaving it at that address.
- 17.3. A ~~P~~person present, either in person or by proxy, at any meeting is taken to have received notice of the meeting.
- 17.4. Proof that an envelope containing a notice was properly addressed, prepaid and posted is conclusive evidence that the notice was given 48 hours after it was posted. A notice is taken to be given at the end of 48 hours after the envelope containing it was posted.

18. REMUNERATION AND EXPENSES OF FOUNDING MEMBERS

A Founding Member is entitled to be paid the remuneration, and reimbursed the expenses, decided by the Founding Members by Ordinary ~~Special~~ Resolution.

~~21. INDEMNITY~~

~~The Incorporated Organisation must indemnify a Founding Member, officer or Auditor of the Incorporated Organisation in relation to any liability incurred in defending any proceeding in relation to the Incorporated Organisation.~~

19. AMENDMENT OF THIS CHARTER

This Charter may ~~only~~ be amended by a Special Resolution ~~of the Founding Members.~~