

In this section, the underlining indicates a new text and the striking through indicates deleted text in the proposed amendments

PROPOSED AMENDMENTS to AIFC COMPANIES REGULATIONS



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PART 1: GENERAL

CHAPTER 1–PRELIMINARY

1. **Name**

These Regulations are the *AIFC Companies Regulations 2017*.

2. **Date of enactment**

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

3. **Commencement**

These Regulations commence on 1 January 2018.

4. **Legislative authority**

These Regulations are adopted by the Governor under paragraph 1 of article 3 and article 4 of the Constitutional Statute and subparagraph 3-1) of paragraph 9 of the Management Council Resolution on AIFC Bodies.

5. **Application of these Regulations**

- (1) These Regulations apply within the jurisdiction of the AIFC.
- (2) Without limiting subsection (1), these Regulations apply to any Person who conducts business in or from the AIFC as an AIFC Participant.
- (3) Any other Legislation Administered by the Registrar is additional to, and its operation is not affected by, these Regulations.
- (4) The *Rules on Registration and Recognition of the Astana International Financial Centre Participants 2017* as in force immediately before the commencement of these Regulations are repealed.
- (5) Except where otherwise provided in these Regulations, anything done or omitted to be done under or for the *Rules on Registration and Recognition 2017* are taken to have been done or omitted under or done under or for these Regulations.

6. **Interpretation**

Schedule 1 contains definitions and other interpretative provisions used in these Regulations.

CHAPTER 2–COMMERCIAL LICENCES

7. **Prohibition against conduct of business without holding Commercial Licence etc.**

- (1) A Person must not conduct business in or from the AIFC unless the Person holds a Commercial Licence and is incorporated or registered as an AIFC Participant.
- (2) Subsection (1) does not apply to a Person if the Person:



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- (a) is an exempt Person under the Rules; or
 - (b) is exempted from the requirement to hold a Commercial Licence by the Registrar.
- (3) Contravention of this section is punishable by a fine.

(4) Where a Person enters into a contract with a third party and is knowingly (or ought reasonably to know that it would be) in contravention of subsection 1, that contract may be terminated at the sole option of that third party.

8. Commercial Licences

- (1) The Registrar may issue a Commercial Licence subject to any conditions or restrictions.
- (2) The holder of a Commercial Licence must not Contravene a condition or restriction to which the licence is subject.
- (3) The Registrar may revoke, suspend, or vary the terms of, a Commercial Licence on the Registrar's own initiative or on the application of the licence holder.
- (4) The Registrar may exercise a power under subsection (3) in relation to a Commercial Licence on the Registrar's own initiative only if the Registrar:
 - (a) complies with the Decision-making Procedures; and
 - (b) either:
 - (i) is satisfied that the licence holder, or an officer, employee or agent of the licence holder, has Contravened, is Contravening or is likely to Contravene these Regulations; or
 - (ii) considers that the exercise of the power is necessary or desirable in the interests of the AIFC.
- (5) A Commercial Licence has effect for 1 year from the date of its issue or the shorter period decided by the Registrar.
- (6) The holder of a Commercial Licence must, at least 15 days before the day the term of the licence ends, apply to the Registrar for the renewal of the licence, unless the licence holder has:
 - (a) ceased to conduct business in the AIFC; and
 - (b) given the Registrar the notification required by the Rules.
- (7) Contravention of subsection (2) or (6) is punishable by a fine.



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PART 2: THE APPOINTMENT AND ROLE OF REGISTRAR

9. Appointment of Registrar

- (1) The office of the Registrar of Companies is established within the framework of the AFSA.
- (2) The Chief Executive Officer of the AFSA must appoint an individual as Registrar of Companies and may dismiss the person from office for proper cause.
- (3) In Exercising the Registrar's Functions, the Registrar must act in an independent way, even though the Registrar is an agent of the AFSA.

10. Registrar's Objectives and Functions

- (1) In Exercising the Registrar's Functions, the Registrar must pursue the following objectives (the Registrar's *Objectives*):
 - (a) to promote good practices and observance of the requirements of these Regulations, the Rules and any other Legislation Administered by the Registrar;
 - (b) to administer these Regulations, the Rules and any other Legislation Administered by the Registrar in an effective and transparent way;
 - (c) to prevent, detect and restrain conduct that is, or may be, in a Contravention of these Regulations, the Rules and any other Legislation Administered by the Registrar;
 - (d) to maintain a reliable and up-to-date Register of Companies, and provide public access to the register, in accordance with these Regulations, the Rules and any other Legislation Administered by the Registrar.
- (2) The Registrar has the Functions given to the Registrar by or under these Regulations, the Rules or any other AIFC Regulations or AIFC Rules.
- (3) The Registrar must Exercise the Registrar's Functions only in pursuit of the Registrar's Objectives.
- (4) Without limiting subsection (2), the Registrar's Functions include the following:
 - (a) preparing draft rules, standards and codes of practice and submitting them to the Board of Directors of the AFSA for its consideration;
 - (b) preparing and adopting non-binding guidance for AIFC Participants, and advising the Board of Directors of the AFSA of any guidance adopted by the Registrar;
 - (c) issuing or prescribing forms to be used for these Regulations, the Rules or any other Legislation Administered by the Registrar;
 - (d) issuing or prescribing procedures and requirements relating to these Regulations, the Rules or any other Legislation Administered by the Registrar;
 - (e) specifying the method of filing, delivery or deposit (however described) of Documents under or for these Regulations, the Rules or any other Legislation Administered by the Registrar, whether by electronic or any other means;



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- (f) Exercising any Function delegated to the Registrar under these Regulations or any other Legislation Administered by the Registrar.
- (5) The Registrar may permit or require the use of an electronic or computer-based system for the filing, delivery or deposit of Documents or information required under or for these Regulations, the Rules or any other Legislation Administered by the Registrar and may specify the circumstances in which Persons are taken to have signed or certified Documents on an electronic or computer-based system for any purpose under these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (6) The Registrar must, through the Exercise of the Registrar's Functions, assist Kazakhstan to comply with its obligations under any international treaty or other agreement to which it is a party.
- (7) The Registrar may do anything the Registrar considers necessary or desirable to be done for or in connection with, or reasonably incidental to, the Exercise of the Registrar's Functions subject to any applicable Decision-making Procedures.
- (8) The Registrar may delegate all or any of the Registrar's Functions to another Person in accordance with the Rules.
- (9) The Registrar, and any delegate or agent of the Registrar, is not liable for anything done or omitted to be done in the Exercise or purported Exercise of the Registrar's Functions (including any Function delegated to the Registrar).
- (10) Subsection (9) does not apply to an act or omission if the act or omission is shown to have been in bad faith.

10A. Liability

- (1) The Registrar may be sued in the Registrar's corporate capacity.
- (2) However, the Registrar, the AFSA, or an officer, employee, delegate or agent of the Registrar or AFSA, cannot be held liable for anything done or omitted to be done in the Exercise or purported Exercise of the Functions of the Registrar or the Board of Directors of the AFSA under these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (3) Subsection (2) does not apply in relation to an act or omission if the act or omission is shown to have been in bad faith.

PART 3: INCORPORATION AND REGISTRATION OF COMPANIES

11. Types of companies

- (1) The types of companies that may be incorporated under these Regulations are:
 - (a) Private Companies, if they meet the requirements in section 36(1) (Requirements for Public and Private Companies); and
 - (b) Public Companies, if they meet the requirements in section 36(~~5~~2).
- (2) A Foreign Company may be registered under these Regulations as a Recognised Company if it



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meets the requirements in Part 12 (Recognised Companies).

12. Legal personality

A Company incorporated under these Regulations has a separate legal personality from that of its Shareholders. The Liabilities of a Company, whether arising in contract, tort or otherwise, are the Company's Liabilities and not the personal Liabilities of any Shareholder or Officer of the Company, except where otherwise provided under these Regulations.



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PART 4: COMPANY FORMATION AND INCORPORATION

13. Formation of companies

- (1) A company may be incorporated under these Regulations on the application of any 1 or more Persons in accordance with this Part.
- (2) A company must not be incorporated for an unlawful purpose.
- (3) An application for the incorporation of a company must be filed with the Registrar by the Incorporators or their duly authorised representative.
- (4) The application must state the following:
 - (a) the proposed name of the Company;
 - (b) whether the proposed Company is to be a Private Company or a Public Company;
 - (c) the nature of the business to be conducted by the proposed Company;
 - (d) the amount of the initial share capital and shareholdings of the Incorporators;
 - (e) the nominal value of each Share;
 - (f) the address of the proposed Company's registered office;
 - (g) the following information for each Incorporator:
 - (i) the full name, nationality and address of the Incorporator;
 - (ii) if the Incorporator is an individual and is to hold Shares in trust for another Person—the full name, nationality and address of the beneficial owner of the Shares;
 - (iii) if the Incorporator is a Body Corporate—the beneficial ownership information of the Body Corporate required by the Rules;
 - (h) the full name (including any previous names), nationality, address, business occupation (if any) and date of birth of the individuals who are to serve as the Directors and, if applicable, the Secretary;
 - (i) the other particulars (if any) required by the Registrar or the Rules;
 - (j) or the particulars required by Part 16 of these Regulations.
- (5) The proposed Articles of Association, signed by or on behalf of each Incorporator, must be filed with the application.

14. Articles of Association

- (1) A Company's Articles of Association must be in the English language and must be divided into paragraphs numbered consecutively.



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- (2) A Company's Articles of Association must contain:
 - (a) a statement as to whether the Company is a Private Company or a Public Company; and
 - (b) the information mentioned in section 13(4)(a) to (h) (Formation of companies); and
 - (c) the other matters (if any) required by these Regulations or the Rules to be included in the Articles of Association of a Company.
- (3) The Articles of Association may contain any other matters that the Shareholders wish to include in the Articles of Association. However, the Articles of Association must not contain a provision that is inconsistent with these Regulations or the Rules.
- (4) A Company may adopt, as its Articles of Association, the whole or any part of the Standard Articles that is relevant to the Company.
- (5) If Standard Articles are not adopted by a Company in their entirety, the Company must submit to the Registrar, before the Articles of Association are adopted by the Company, a statement by the Incorporators that the Articles of Association proposed to be adopted by the Company comply with the requirements of these Regulations, the Rules and all other applicable AIFC Regulations and AIFC Rules.
- (6) If any change to these Regulations, the Rules or any other applicable AIFC Regulations or AIFC Rules results in an inconsistency between the provisions of a Company's Articles of Association and the provisions of these Regulations, the Rules or any other applicable AIFC Regulations or AIFC Rules:
 - (a) the provisions of these Regulations and any other applicable AIFC Regulations and AIFC Rules prevail; and
 - (b) the Company is not required to amend its Articles of Association, unless these Regulations, the Rules or any other applicable AIFC Regulations expressly require it to do so.

15. **Decision on incorporation application etc.**

- (1) The Registrar may refuse to incorporate a Company for any reason the Registrar considers to be a proper reason for refusing to incorporate the Company.
- (2) If the Registrar incorporates a Company, the Registrar must register the Articles of Association filed with the application for incorporation.

16. **Effects of incorporation etc.**

- (1) On the incorporation of a Company and registration of its Articles of Association, the Registrar must:
 - (a) issue a certificate of incorporation confirming that the Company is incorporated as either a Private Company or a Public Company; and
 - (b) assign a number to the Company, which is to be the Company's identification number;



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and

- (c) enter the name of the Company in the Register.
- (2) On the date of incorporation mentioned in the certificate of incorporation:
 - (a) the Incorporators of the Company become the Shareholders of the Company; and
 - (b) the Company, having the name contained in the certificate of incorporation, becomes a body corporate, capable of Exercising all the Functions of an incorporated Company.
- (3) A certificate of incorporation issued by the Registrar is conclusive evidence of the following matters:
 - (a) that the Company has been duly incorporated;
 - (b) whether the Company is a Public Company or a Private Company;
 - (c) that the requirements of these Regulations and the Rules have been complied with in respect of the incorporation of the Company.
- (4) Without limiting subsection (1)(a), the Registrar may make alternative arrangements relating to the issue of certificates of incorporation to Companies in circumstances prescribed by the Rules.

17. **Notification of change in Registered Details of Company**

- (1) If any of the Registered Details of a Company change, the Company must notify the Registrar in Writing of the change within 14 days after the day the change happens and must comply with all other requirements applying to the Company under the Rules in relation to the change.
- (2) Contravention of this section is punishable by a fine.

18. **Effect of Articles of Association**

- (1) Subject to these Regulations and the Rules, on registration the Articles of Association bind the Company and its Shareholders to the same extent as if they had been signed by the Company and by each Shareholder, and contained covenants by the Company and each Shareholder to comply with all their provisions.
- (2) An amount payable by a Shareholder to the Company under the Articles of Association is a debt due from the Shareholder to the Company.

19. **Amendment of Articles of Association**

- (1) Subject to these Regulations and the Rules, a Company may amend its Articles of Association by Special Resolution.
- (2) Unless an amendment of the Articles of Association of a Company relates solely to a change of its name, correcting manifest errors or increasing the amount of its authorised or issued share capital, the Company must, before the amendment is made, submit to the Registrar:
 - (a) the proposed amendment; and



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- (b) a certificate given by at least 1 of the Directors of the Company stating that the proposed amendment complies with the requirements of these Regulations and the Rules and all other applicable AIFC Regulations and AIFC Rules.
- (3) If the Articles of Association of a Company are amended, the rights and obligations of the Shareholders and the Company that arose under the Articles of Association before the amendment is made are not be affected unless the amendment expressly provides for it to have such an effect.
- (4) Despite anything in the Articles of Association of a Company, a Shareholder of the Company is not bound by an amendment made to the articles after the day the Shareholder became a Shareholder so far as the amendment:
 - (c) requires the Shareholder to take or subscribe for more Shares than those held by the Shareholder at the end of the day immediately before the amendment is made; or
 - (d) in any way increases the Shareholder's Liability at the end of that day to contribute to the Company's share capital or otherwise to pay an amount to the Company.
- (5) Subsection (4) does not apply in relation to the Shareholder if the Shareholder, either before or after the amendment is made, agreed to be bound by it.

20. **Copies of Articles of Association for Shareholders**

- (1) A Company must, at a Shareholder's request, give the Shareholder a copy of the Company's Articles of Association if the Shareholder pays the reasonable fee (if any) that the Company requires.
- (2) Contravention of this section is punishable by a fine.

21. **Prohibition against use of misleading, deceptive or conflicting Company names**

- (1) A Company must not use a name that, because of any fact, matter or circumstance, is, or is reasonably likely to become, misleading, deceptive or conflicting with another name (including an existing name of another Company or Recognised Company).
- (2) If, because of the happening or likely happening of any fact, matter or circumstance, a Company's name is, has become, or is reasonably likely to become, misleading, deceptive or conflicting with another name (including an existing name of another Company or Recognised Company), the Company must change its name within 30 days or, if the Registrar agrees to a longer period, that longer period.
- (3) Contravention of this section is punishable by a fine.

22. **Change of Company name**

- (1) A Company must not change its name otherwise than by Special Resolution and must not change its name to a name that is not acceptable to the Registrar.
- (2) If a Company changes its name by Special Resolution in accordance with subsection (1), the Company must file the Special Resolution with the Registrar within 14 days after the day the Special Resolution is passed.



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- (3) Contravention of subsection (1) or (2) is punishable by a fine.
- (4) If a Company changes its name and complies with subsection (2) in relation to the change, the Registrar must, as soon as practicable:
 - (a) enter the new name in the Register in place of the former name; and
 - (b) issue a certificate of name change showing the previous name and the new name of the Company.
- (5) The change of name takes effect on the day the Registrar issues the certificate of name change.
- (6) The change of name does not:
 - (a) affect any rights or obligations of the Company; or
 - (b) render defective any legal proceedings by or against it.
- (7) Any legal proceedings that could have been commenced or continued against the Company under its former name may be commenced or continued against it under its new name.
- (8) A Company may obtain the prior approval of the Registrar to the new name before the name is changed by Special Resolution.

23. **Power to require change of name**

- (1) Without limiting section 21 (Prohibition against misleading, deceptive or conflicting names), if, in the opinion of the Registrar, the name by which a Company is registered is, has become, or is reasonably likely to become, misleading, deceptive, conflicting with another name (including an existing name of another Company), or otherwise undesirable, the Registrar may direct the Company to change it.
- (2) The Registrar must comply with the Decision-making Procedures in deciding whether to give a direction under subsection (1).
- (3) A Company must comply with a direction given by the Registrar under subsection (1) within 30 days after the date specified in the direction unless the Registrar allows a longer period to comply with the direction.
- (4) Contravention of subsection (3) is punishable by a fine.

24. **Registered office and conduct of business**

- (1) A Company must, at all times, have a registered office in the AIFC to which all communications and notices to the Company may be addressed.
- (2) A Document may be served on a Company by leaving it at, or sending it by post to, the registered office of the Company in the AIFC.
- (3) A Company must conduct its principal business activity in the AIFC, unless the Registrar otherwise permits.



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- (4) Contravention of subsection (1) or (3) is punishable by a fine.

25. Particulars in Company communications

- (1) A Company must ensure that its name, and the address of its registered office, appears in legible characters in all its letterheads, receipts, order forms and other correspondence (*relevant communications* of the Company).
- (2) A Company must not include any Registered Details of the Company in its relevant communications if the information provided is false or misleading. Any reference to the amount of the Company's share capital included in relevant communications of the Company must be to the Company's fully Paid-up share capital.
- (3) Contravention of this section is punishable by a fine.

26. Annual returns

- (1) A Company must, at the same time as it applies for renewal of its Commercial Licence (and, in any event, before the end of the term of its Commercial Licence), file with the Registrar an annual return containing:
- (a) its financial statements for the last financial year for which the Company's accounts have been prepared; and
- (b) a statement, for each class of Shares in the Company, setting out either:
- (i) the name and address of each Shareholder who, on the filing date, held not less than 5% of the Allotted Shares of that class and the number of Shares of that class held by the Shareholder, together with the number of Shareholders each of whom, on that date, held less than 5% of the Allotted Shares of that class and the total number of Shares held by them; or
- (ii) the name and address of every Shareholder who, on the filing date, held any Shares of that class and the number of Shares of that class held by the Shareholder; and
- (c) the particulars mentioned in section ~~12(3)~~13(4)(j) (Formation of companies) for each Director and, if applicable, the Secretary; and
- (d) if Shares are held by the Company as treasury Shares—the entry required by section 62(8)(a) (Treasury Shares); and
- (e) the other information, and declarations, (if any) required by the Rules.
- (2) The annual return must be accompanied by the filing fee prescribed by the Rules from time to time.
- (3) A Shareholder (or in the case of a Public Company only, any Person) may request a Public Company to provide a copy of an annual return of the Company to the Shareholder (or Person, if applicable). If the Shareholder (or Person, if applicable) pays the reasonable fee (if any) that the Public Company requires, the Company must, within 10 days after the day the request is received or the day any required payment is made (whichever is later), either give the Shareholder (or, in



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the case of a Public Company only, any Person) a written copy of the annual return or make a written copy of the annual return available for the Person Shareholder (or, in the case of a Public Company only, any Person) at the Company's registered office.

- (4) Contravention of subsection (1) or (3) is punishable by a fine.

27. **Company Records**

- (1) This section applies to Records that a Company is required to keep under these Regulations and the Rules.
- (2) The Company may keep the Records in the form of a bound or loose-leaf book, or photographic film, or may enter or record the Records by a system of mechanical or electronic data processing or any other medium that is capable of reproducing any required information in intelligible written form within a reasonable time.
- (3) The Company must take reasonable precautions:
- (a) to prevent the loss or destruction of Records; and
 - (b) to prevent the falsification of entries in them; and
 - (c) to facilitate the detection and correction of inaccuracies in them.
- (3) If any Records are kept otherwise than in intelligible written form, any duty imposed on the Company under these Regulations and the Rules to allow inspection and copying of, or to require the giving or production of, information or Documents is to be treated as a duty to allow inspection and copying of, or to require the giving or production of, information or Documents in intelligible written form.

28. **Filing of Special Resolutions and certain other Resolutions and agreements**

- (1) This section applies to the following Resolutions and agreements in relation to a Company:
- (a) any Special Resolution;
 - (b) any Ordinary Resolution or agreement agreed to by all the Shareholders of the Company that, if not agreed to by all the Shareholders, would not have been effective for its purpose, unless passed as a Special Resolution;
 - (c) any Ordinary Resolution or agreement agreed to by all the Shareholders of a class of Shares that, if not agreed to by all those Shareholders, would not have been effective for its purpose, unless passed by some particular majority or otherwise in some particular way;
 - (d) any Ordinary Resolution or agreement that effectively binds all the Shareholders of a class of Shares, although not agreed to by all those Shareholders.
- (2) A reference in subsection (1) to the Shareholders of a Company, or to the Shareholders of class of Shares in a Company, does not include a reference to the Company itself if the Company is a Shareholder, or a Shareholder of that class of Shares, only because it holds Shares as treasury Shares.



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- (3) A Company must file a written copy of every Resolution or agreement to which this section applies or, if a Resolution or agreement is not in Writing, a written memorandum setting out its terms with the Registrar within 15 days after the day it is passed or made.
- (4) Contravention of subsection (3) is punishable by a fine.



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PART 5: CORPORATE CAPACITY AND TRANSACTIONS

29. Capacity of Company

- (1) A Company has the capacity, rights and privileges of a natural person.
- (2) The validity of an act done by a Company must not be called into question on the ground of lack of capacity because of anything in its Articles of Association.
- (3) Without limiting subsection (2), a Person acting in good faith in dealing with the Company is not affected by any limitations in its Articles of Association relating to its Directors' powers to bind the Company or authorise another Person to bind the Company.

30. Form of contracts

A Person acting under the express or implied authority of a Company may make, vary, revoke or discharge a contract, or sign an instrument, on behalf of the Company in the same way as if the contract were made, varied, revoked or discharged, or the instrument signed, by a natural person.

31. Pre-incorporation contracts

- (1) A contract that purports to be made by or on behalf of a Company before its incorporation has effect as a contract made with the Person purporting to act for or on behalf of the Company, and that Person is personally liable on the contract and entitled to the benefits of the contract unless subsection (2) applies.
- (2) The Company may, within the period specified in the contract or, if no period is specified, within a reasonable time after the Company is incorporated, adopt the contract by act or conduct signifying its intention to be bound by the contract. If the Company adopts the contract:
 - (a) the Company is bound by the terms of the contract and is entitled to its benefits; and
 - (b) the Person who purported to act for or on behalf of the Company before its incorporation ceases to be bound by the contract or to be entitled to its benefits.

32. Participation in Holding Company

- (1) A Body Corporate cannot be a Shareholder of a Company that is its Holding Company, unless subsection (2) applies. An Allotment or transfer of Shares in a Company to its Subsidiary is void, except to the extent otherwise provided in this section.
- (2) If a Subsidiary is, when it becomes a Subsidiary, a Shareholder of its Holding Company, the Subsidiary may continue to be a Shareholder of its Holding Company for 1 year after the day it becomes a Subsidiary, if either:
 - (a) both of the following subparagraphs are satisfied:
 - (i) it has no right to vote at meetings of the Holding Company or a class of its Shareholders;
 - (ii) it does not acquire further Shares in the Holding Company except on an Allotment of Shares to all Shareholders, in proportion to the number of Shares held by the



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Shareholders immediately before the Allotment, by way of bonus issue; or

- (b) it is a Shareholder in its Holding Company only as a Personal Representative or trustee.
- (3) Subsection (1) also applies to a nominee acting on behalf of the Subsidiary as if the nominee were the Subsidiary itself.



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PART 6: CLASS RIGHTS

33. Variation or abrogation of class rights

- (1) This section applies to a variation or abrogation of the rights attached to a class of Shares in a Company.
- (2) If the Articles of Association of the Company, or the terms of issue of the relevant Shares, make provision for the variation or abrogation, the rights may only be varied or abrogated in accordance with the provision made for the variation or abrogation.
- (3) If the Articles of Association of the Company, and the terms of issue of the relevant Shares, do not make provision for the variation or abrogation, the rights may only be varied or abrogated:
 - (a) with the Written consent of the holders in the aggregate of at least 75% of the nominal value of the Shares of that class; or
 - (b) by a Special Resolution passed at a separate meeting of the holders of Shares of that class approving the variation or abrogation.
- (4) For this section, any amendment of a provision of the Articles of Association of the Company for the variation or abrogation of the rights attached to the class of Shares, or the insertion of any such provision into the Articles of Association, is taken to be a variation or abrogation of the rights.

34. Shareholders' right to object to variation or abrogation

- (1) This section applies if the rights attached to any class of Shares in a Company are varied or abrogated under section 33.
- (2) The holders in the aggregate of at least 15% of the nominal value of the Shares of that class who did not consent to, or vote in favour of the Special Resolution for, the variation or abrogation may apply to the Court to have the variation or abrogation cancelled on the ground that the variation or abrogation would unfairly prejudice the interests of holders of Shares of that class.
- (3) The application must be made to the Court within 28 days after:
 - (a) if the rights were varied or abrogated under section 33(2)—the day the rights were varied or abrogated; or
 - (b) if the rights were varied or abrogated under section 33(3)(a)—the day the consent required by that paragraph was given; or
 - (c) if the rights were varied or abrogated under section 33(3)(b)—the day the Special Resolution was passed under that paragraph.
- (4) The application may be made on behalf of the holders of Shares entitled to make it by 1 or more of them appointed in Writing.
- (5) Within 7 days after the day the application is made to the Court, the applicants must give Written notice of the application to the Registrar.
- (6) If an application is made to the Court in accordance with this section, the variation or abrogation



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has no effect (and, if the variation or variation has taken effect before the application is made, is taken never to have taken effect) unless and until it is confirmed by the Court.

- (7) If, after hearing the applicant and any other Persons who appear to the Court to be interested in the application, the Court is satisfied that this section has been complied with in relation to the application and that the variation or abrogation would unfairly prejudice the interests of the holders of Shares of the class, the Court may disallow the variation or abrogation. If the Court is not so satisfied, the Court must confirm the variation or abrogation.



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PART 7: PRIVATE COMPANIES AND PUBLIC COMPANIES

CHAPTER 1–FEATURES OF A COMPANY

35. **Limited Liability**

- (1) The Liability of a Shareholder of a Company is limited to the amount (if any) that remains unpaid on the Shares held by the Shareholder.
- (2) A reference to a Private Company or a Public Company includes a reference to a Company Limited by Shares incorporated in accordance with the AIFC Rules on Registration and Recognition of the Astana International Financial Centre Participants 2017.

36. **Requirements for Public and Private Companies**

- (1) A Private Company must:
 - (a) have at least 1 Shareholder; and
 - (b) not be a Public Company.
- (2) A Public Company:
 - (a) is not prohibited under section 50 (Prohibition of public offers by Private Companies) from making an offer of its Securities to the Public; and
 - (b) must have the share capital required by section 43 (Minimum share capital); and
 - (c) must have at least 1 Shareholder, but may otherwise have any number of Shareholders.

37. **Name of Private Company**

- (1) A Private Company must use only the name of the Company entered in the Register, and must ensure that, whenever it uses that name, the name is immediately followed by the word 'Limited' or the abbreviation 'Ltd.'.
- (2) Contravention of this section is punishable by a fine.

38. **Name of Public Company**

- (1) A Public Company must use only the name of the Company entered in the Register and must ensure that, whenever it uses that name, the name is immediately followed by the words 'Public Limited Company' or the abbreviation 'PLC' or 'plc'.
- (2) Contravention of this section is punishable by a fine.

CHAPTER 2–ALTERATION OF COMPANY TYPE

39. **Re-registration of Public Company as Private Company**

- (1) A Public Company may be re-registered as a Private Company if:



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- (a) a Special Resolution that it should be so re-registered is passed; and
 - (b) either:
 - (i) no application has been made under subsection (2); or
 - (ii) an application has been made subsection (2) and an order has been made by the Court confirming the Special Resolution; and
 - (c) an application for re-registration is delivered to the Registrar that includes, or is accompanied by:
 - (i) a statement of the Company's proposed name on re-registration; and
 - (ii) a copy of the Special Resolution that the Company be re-registered as a Private Company; and
 - (iii) a copy of the Articles of Association as proposed to be amended; and
 - (iv) a written legal opinion from the Company's external legal adviser stating that the proposed amendments of the Articles of Association comply with the requirements of these Regulations and any other applicable AIFC Regulations and AIFC Rules.
- (2) The holders of not less in the aggregate than 5% of the nominal value of the Shares, or not fewer than 10 Shareholders, of the Company who did not vote in favour of the Special Resolution may apply to the Court, within 28 days after the day the Resolution is passed, to have the Resolution set aside on the ground that their interests would be unfairly prejudiced if the Resolution were not set aside.
- (3) If an application is made to the Court under subsection (2), the Court may:
- (a) dismiss it, if no grounds are found that the rights of Persons making the application are adversely affected; or
 - (b) confirm the Special Resolution; or
 - (c) impose conditions that need to be met before the Company can be registered as a Private Company; or
 - (d) set the Special Resolution aside.
- (4) If an application is made to the Court under subsection (2), the Registrar must not re-Register the Public Company as a Private Company, until the application has been finally dealt with by the Court.
- (5) If the Registrar is satisfied that the Company meets the requirements under this section to be re-registered as a Private Company, the Registrar must re-register the Company accordingly. If the Registrar re-registers the Company, the Registrar must issue an appropriate certificate of conversion that states the date that the certificate was issued.
- (6) On issue of the certificate of conversion, the Company becomes a Private Company and the



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proposed changes in the Company's name and Articles of Association, as included in or accompanying its application for re-registration, take effect.

40. **Re-registration of Private Company as Public Company**

- (1) A Private Company may be re-registered as a Public Company if:
 - (a) a Special Resolution that it should be so re-registered is passed; and
 - (b) it has a share capital that meets the share capital requirements under section 43 (Minimum share capital) for a Public Company; and
 - (c) the requirements under subsection (2) and, if applicable, the requirements under subsection (3) are met; and
 - (d) an application for re-registration is delivered to the Registrar that includes or is accompanied by:
 - (i) a statement of the Company's proposed name on re-registration; and
 - (ii) a copy of the Special Resolution that the Company be re-registered as a Public Company; and
 - (iii) a copy of the Articles of Association as proposed to be amended; and
 - (iv) if subsection (3) applies, a copy of the relevant valuation report required under section 46 (Non-cash consideration for Shares in Public Company); and
 - (v) a written legal opinion from the Company's external legal adviser stating that the proposed amendments to the Articles of Association comply with the requirements of these Regulations, the Rules and all other applicable AIFC Regulations and AIFC Rules.
- (2) Before applying to re-register as a Public Company, the Company must obtain:
 - (a) a balance sheet prepared as at a date (the balance sheet date) not more than 7 months before the day the application is delivered to the Registrar; and
 - (b) an unqualified report by the Company's auditors that the balance sheet has been prepared in accordance with the accounting principles or standards prescribed by the Rules or otherwise approved by the Registrar; and
 - (c) a Written statement by the Company's auditors that, in their opinion, the amount of the Company's net assets at the balance sheet date was not less than the aggregate of the Company's share capital and its reserves.
- (3) If Shares are Allotted by the Company in the period between the balance sheet date and the passing of the Special Resolution that the Company be re-registered as a Public Company, and the Shares are Paid-up otherwise than in cash, the Company must (unless the Allotment is in connection with a Share exchange) comply with the requirements of section 46 in respect of the Allotment.
- (4) For this section, Shares are Allotted by a Company in connection with a Share exchange if:



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- (a) the consideration for the Allotment is the transfer of Shares in another Body Corporate or the cancellation of Shares in another Body Corporate, and the Allotment is open to all holders (or all of a particular class of holders) of Shares in the other Body Corporate; or
 - (b) there is a proposed merger with another Body Corporate under which the Company proposes to acquire all the assets and Liabilities of the other Body Corporate in exchange for the issue of its Shares or other Securities to the shareholders or members of the other Body Corporate.
- (5) If the Registrar is satisfied that a Private Company that has applied under this section to be re-registered as a Public Company meets the requirements to be re-registered as a Public Company, the Registrar must re-register the Company accordingly. If the Registrar re-registers the Company, the Registrar must issue an appropriate certificate of conversion that states the date that the certificate was issued.
- (6) On issue of the certificate of conversion, the Company becomes a Public Company and the proposed changes in the Company's name and Articles of Association, as included in or accompanying its application for re-registration, take effect.
- (7) In this section:

auditor means a Person who is registered by the Registrar as an auditor under these Regulations.

CHAPTER 3—SHAREHOLDERS AND SHARES GENERALLY

41. Shareholders

- (1) The Incorporators of a Company are taken to have agreed to become Shareholders of the Company and, on the registration of the Company, must be entered as Shareholders in the Company's Register of Shareholders.
- (2) A Person other than an Incorporator may become a Shareholder in the Company by:
 - (a) agreeing to become a Shareholder in the Company; and
 - (b) acquiring a Share in the Company; and
 - (c) having the Person's name entered in the Company's Register of Shareholders.

42. Nature of Shares

- (1) Subject to the Articles of Association and the terms of their issue, each Share must:
 - (a) give the right to vote at a meeting of the Company; and
 - (b) represent a proportionate interest in the Company; and
 - (c) rank, if fully Paid-up, in all respects equally with each other Share of the same class of Shares in the Company.
- (2) Subject to section 54 (Transfer and registration of Shares and Debt Securities), the Shares or other



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interests of a Shareholder of a Company are transferable in the way provided in its Articles of Association.

- (3) A Company may create different classes of Shares to the extent permitted by its Articles of Association.

43. **Minimum share capital**

- (1) Each Share in a Company must have a fixed nominal value. A Share may not be Allotted by a Company at less than its nominal value. An Allotment of a Share that does not have a fixed nominal value, or is Allotted at less than its nominal value, is void.
- (2) A Private Company must have no minimum share capital.
- (3) A Public Company:
 - (a) must have an issued and allotted share capital (excluding treasury Shares) of no less than U.S. \$100,000 at any time; and
 - (b) must not Allot a Share except as Paid-up at least as to $\frac{1}{4}$ of its nominal value.
- (4) Subsection (3)(b) does not apply to Shares Allotted under an Employee Share Scheme.

44. **Alteration of share capital**

- (1) A Company may, by Resolution, alter its share capital, unless the alteration is prohibited by its Articles of Association or results in the Company not having the share capital required by section 43 (Minimum share capital).
- (2) A Company may:
 - (a) increase its share capital by creating new Shares of an existing class with the same nominal value, or a new class of Shares of the nominal value it considers appropriate; or
 - (b) consolidate and divide its share capital (whether Allotted or not) into Shares representing a larger nominal value than their existing nominal value; or
 - (c) subdivide its Shares, or any of them, into Shares representing a smaller nominal value than their existing nominal value, if the proportion between the amount paid and the amount unpaid (if any) on each subdivided Share is the same as it was for the Share from which the sub-divided Share was derived.
- (3) A Company must not alter its share capital:
 - (a) otherwise than by Resolution; or
 - (b) if the alteration, or any alteration of its share capital, is prohibited by its Articles of Association; or
 - (c) if the alteration would result in the Company not having the share capital required by section 43.



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- (4) Contravention of subsection (3) is punishable by a fine
- (5) Subject to section 48 (Shareholders' pre-emption rights), the board of Directors of a Company may, if authorised by the Articles of Association or Ordinary Resolution, exercise a power of the Company:
 - (a) to Allot Shares; or
 - (b) to grant rights to subscribe for or convert any Securities into Shares.

45. **Non-cash consideration for Shares in Private Company**

- (1) A Private Company must not, except as provided under subsection (2), Allot Shares as Paid-up (in part or in full) other than for cash consideration.
- (2) If a Private Company Allots Shares for consideration other than cash, the board of Directors of the Company must:
 - (a) determine the reasonable cash value of the consideration for the Shares; and
 - (b) resolve that, in its opinion, the consideration for the Shares is fair and reasonable to the Company and to all existing Shareholders; and
 - (c) resolve that, in its opinion, the present cash value of the consideration to be provided for the Shares is not less than the nominal value to be credited for the issue of the Shares; and
 - (d) submit a copy of the relevant resolutions to the Registrar along with the notice of the Allotment.
- (3) The resolutions required under subsection (2) must describe the consideration in sufficient detail and the present cash value of the consideration, as determined by the board of Directors, and the basis of the board's valuation.
- (4) This section does not apply to:
 - (a) the Allotment of Shares in a Company on the conversion of any convertible Securities; or
 - (b) the exercise of an option to acquire Shares in a Company; or
 - (c) the Allotment of Shares that are fully Paid-up from the reserves of a Company to all Shareholders in proportion to the number of Shares held by each Shareholder; or
 - (d) the consolidation and division, or subdivision, of Shares, or any class of Shares, in a Company in accordance with section 44(2)(b) (Alternation of share capital).

46. **Non-cash consideration for Shares in Public Company**

- (1) A Public Company must not Allot Shares as Paid-up (in part or in full) cash unless:
 - (a) the Company has obtained an independent valuation of the consideration in accordance with this section not earlier than 6 months before it Allocates the Shares; and



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- (b) a copy of the valuation report has been given to the proposed allottee; and
 - (c) copies of the valuation report and the relevant resolutions of the board of Directors have been given to the Registrar along with the notice of the Allotment
- (2) A Public Company must not accept, in part or full payment for its Shares or any premium on them, an undertaking given by a Person that the Person or another Person is to undertake work or provide services for the Company or any other Person, unless the work is to be undertaken or the services provided within 5 years after the date of Allotment of the Shares.
- (3) Subsections (1) and (2) do not apply to:
 - (a) the Allotment of Shares in a Company in connection with a Share exchange; or
 - (b) the Allotment of Shares in a Company in connection with a proposed merger with another Body Corporate; or
 - (c) the Allotment of Shares in a Company on the conversion of any convertible Securities; or
 - (d) the exercise of an option to acquire Shares in a Company; or
 - (e) the Allotment of Shares that are fully Paid-up from the reserves of a Company to all Shareholders in proportion to the number of Shares held by each Shareholder; or
 - (f) the consolidation and division, or subdivision, of Shares, or any class of Shares, in a Company in proportion to the Shares or the Shares in that class.
- (4) A valuation report required under subsection (1) must be made by a Person registered as an auditor under these Regulations who is not:
 - (a) an Employee of the Company; or
 - (b) a partner, officer or employee of an Employee of the Company or of a partnership in which an Employee of the Company is a partner; or
 - (c) an officer or employee of an associated undertaking of the Company; or
 - (d) a partner, officer or employee of an associated undertaking of the Company or of a partnership in which an associated undertaking of the Company is a partner; or
 - (e) connected with the Company in a way prescribed under the Rules.
- (5) The Person conducting the valuation (the *valuer*) may request an Employee of the Company to provide the information and explanation that the valuer considers necessary for the valuation. The Employee must comply with the request or take reasonable steps to ensure that the request is complied with.
- (6) A Person must not:
 - (a) make a statement, or give information, to the valuer (whether orally, in a Document or in any other way) that is false or misleading in a material particular; or



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- (b) give a Document to the valuer that is false or misleading in a material particular; or
 - (c) conceal information if the concealment is likely to mislead or deceive the valuer.
- (7) Contravention of subsection (5) or (6) is punishable by a fine.
- (8) For this section:
- (a) an Allotment is in connection with a Share exchange if the consideration for the Allotment is the transfer of Shares in another Body Corporate or the cancellation of Shares in another Body Corporate, and the Allotment is open to all holders (or all of a particular class of holders) of Shares in the other Body Corporate; and
 - (b) an Allotment is in connection with a proposed merger of a Company with another Body Corporate, if the Company proposes to acquire all the assets and Liabilities of the other Body Corporate in exchange for the issue of its Shares or other Securities to the shareholders or members of the other Body Corporate.

47. **Bearer Shares**

It is unlawful for a Company to issue bearer Shares. Any Shares issued by a Company that purport to be bearer Shares are void.

48. **Shareholders' pre-emption rights**

- (1) Subject to section 49 (Exceptions of pre-emption right), a Company must not allot Equity Securities to a Person on any terms unless:
- (a) it has made an offer to each Person who holds Equity Securities to allot to the Person, on the same or more favourable terms, a proportion of the Equity Securities that is as nearly as practicable equal to the proportion of the Equity Securities held by the Person in the Company's share capital; and
 - (b) the period during which any offer may be accepted has expired or the Company has received notice of the acceptance or refusal of every offer made.
- (2) For purposes of subsection (1), the Company allots Equity Securities if it:
- (a) grants a right to subscribe for, or to convert Securities into, Ordinary Shares; and
 - (b) sells Equity Securities in the Company that were held by the Company immediately before the sale as treasury Shares.
- (3) Shares held by the Company as treasury Shares are disregarded for this section, so that the Company is not treated as a Person who holds Equity Securities and treasury Shares are not treated as forming part of the Company's share capital.
- (4) A Company's Articles of Association may prohibit the Company from Allotting Shares of a particular class in respect of an offer referred to in subsection (1)(a), unless the Company has complied with the equivalent pre-emption rights included in its Articles of Association. Subsection (1) does not apply in such circumstances and the Company may Allot the Shares in accordance with those equivalent pre-emption rights, if an offer is made in accordance with subsection (5).



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- (5) An offer made under subsection (1)(a) or (4):
- (a) may be made in hard copy or electronic form; and
 - (b) may, if a holder of Equity Securities has not given an address to the Company, be made by arranging for the offer, or a notice specifying where a copy of it can be obtained or inspected, to be published in the Appointed Publications; and
 - (c) must be open for acceptance for a period of not less than 14 days after the date:
 - (i) the offer is taken to have been received in accordance with the Articles of Association (or, if the Articles of Association do not contain such a provision, when the offer is reasonably expected to have been received by the offeree); or
 - (ii) the offer is published in the Appointed Publications.
- (6) A Company does not contravene this section if:
- (a) an offer has been made to holders of Equity Securities in accordance with this section; and
 - (b) the Company allots Equity Securities to:
 - (i) an existing holder of Equity Securities; or
 - (ii) a Person in whose favour an existing holder of Equity Securities has renounced right to the allotment.
- (7) Contravention of this section is punishable by a fine.

49. **Exceptions to pre-emption right**

Section 48 (Shareholders' pre-emption rights) does not apply in respect of an allotment of Equity Securities:

- (a) that are bonus Shares; or
- (b) that would be held under, or allotted or transferred under, an Employee Share Scheme; or
- (c) that are wholly or partly Paid-up otherwise than in cash in accordance with section 45 (Non-cash consideration for Shares in Private Company) or 46 (Non-cash consideration for Shares in Public Company); or
- (d) in a Private Company, to the extent that the Pre-emption right has been excluded or varied by its Articles of Association; or
- (e) by any Company, to the extent that the restrictions prescribed by section 48 (Shareholders' pre-emption rights) have been excluded or varied by Special Resolution (unless a higher threshold is required by the Articles of Association), if the Special Resolution has been recommended by the Directors of the Company in a Written statement circulated to all Shareholders that sets out:
 - (i) the Directors' reasons for making the recommendation; and



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- (ii) the amount to be paid to the Company in respect of allotment; and
- (iii) the Directors' justification of that amount.

CHAPTER 4—PROHIBITION OF PUBLIC OFFERS BY PRIVATE COMPANIES

50. Prohibition of public offers by Private Companies

- (1) A Private Company must not:
 - (a) make an offer of its Securities to the public; or
 - (b) allot or agree to allot its Securities to any Person with a view to the Securities being offered to the public.
- (2) Unless the contrary is proved, an allotment or agreement to allot Securities is presumed to be made with a view to such Securities being offered to the public if an offer of the Securities (or any of them) is made to the public:
 - (a) within 6 months after the allotment or agreement to allot; or
 - (b) before the receipt by the Company of the whole of the consideration to be received by the Company in respect of the Securities.
- (3) A Private Company does not Contravene subsection (1) if it:
 - (a) acts in good faith under arrangements under which it is to re-register as a Public Company before the Securities are allotted; or
 - (b) undertakes, as part of the terms of the offer, to re-register as a Public Company within 6 months after the day the offer is first made, and the undertaking is complied with.
- (4) For this section:
 - (a) an *offer to the public* includes an offer to any section of the public, however selected; and
 - (b) an offer is not regarded as an *offer to the public* if:
 - (i) it can be properly regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the Securities becoming available to Persons other than those receiving the offer; or
 - (ii) it can be properly regarded, in all the circumstances, as being made to an existing Shareholder or Employee of the Company (or a member of the Person's immediate family), an existing holder of a Debt Security of the Company, or a trustee for any of them, and, if it is made on terms renounceable, it can only be renounced in favour of another Person who is entitled to receive that offer; or
 - (iii) it can be properly regarded, in all the circumstances, as being an offer for Securities to be held under an Employee Share Scheme and, if it is made on terms renounceable, it can only be renounced in favour of another Person who is



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entitled to receive that offer.

- (5) Contravention of subsection (1) is punishable by a fine.

51. Enforcement of section 50(1) prohibition

- (1) This section applies if:
- (a) an application is made to the Court by a Shareholder or Creditor of a Company for an order under this section; or
 - (b) an application is made to the Court by a Shareholder of a Company for an order under section 175 (Orders for unfair prejudice to Shareholders); or
 - (c) an application is made to the Court by the Registrar for an order under this section in relation to a Company.
- (2) If it appears to the Court that the Company is Contravening or is proposing to Contravene section 50(1) (Prohibition of public offers by Private Companies), the Court may order restraining the Company from Contravening or continuing to Contravene the subsection.
- (3) If it appears to the Court that the Company has Contravened section 50(1), the Court may make 1 or more order ~~sunder~~ subsection (4).
- (4) If subsection (3) applies, the Court may:
- (a) order the Company to re-register as a Public Company; or
 - (b) if it appears to the Court that the Company does not meet the requirements for re-registration as a Public Company or it is impractical or undesirable to require the Company to re-register as a Public Company, make any of the following orders against either the Company or any Person Knowingly Concerned in the Contravention (whether or not the Person is an Officer of the Company):
 - (i) a remedial order to put an affected party back in the position that the party would have been in apart from the Contravention;
 - (ii) without limiting subparagraph (i), an order that any Person Knowingly Concerned in the Contravention must offer to purchase Securities at the price and on the other terms the Court considers appropriate;
 - (iii) if a remedial order is made against the Company—an order that the Company's share capital be reduced accordingly;
 - (iv) an order that the Company be subject to a compulsory winding up;
 - (v) any other order the Court considers appropriate.
- (5) In this section:

affected party means a Shareholder or Creditor of the Company.



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CHAPTER 5—REGISTERS OF SHAREHOLDERS AND DEBT SECURITY HOLDERS AND SHARE CERTIFICATES

52. Register of Shareholders

- (1) A Company must establish and maintain a Register of Shareholders.
- (2) The Company must promptly enter the following in the Register of Shareholders:
 - (a) the names and addresses of its Shareholders, together with a statement of the Shares held by each Shareholder, distinguishing each Share by its number (if the Share has a number) and, if the Company has 2 or more classes of issued Shares, by its class;
 - (b) the date each Shareholder was registered as a Shareholder;
 - (c) the date any Person ceased to be a Shareholder;
 - (d) the date the number of Shares held by any Shareholder increased or decreased;
 - (e) for Shares that are not fully paid—the amount remaining unpaid on each Share;
 - (f) for joint holders of Shares in a Company—unless otherwise provided in its Articles of Association, the following:
 - (i) the names of each joint holder;
 - (ii) the nominee Shareholder for the purposes of voting;
 - (iii) a nominated single address to which all communications required to be sent to a Shareholder can be sent.
- (3) Contravention of this section is punishable by a fine.

53. Register of Debt Security Holders

- (1) If a Company has issued Debt Securities, it must establish and maintain a Register of Debt Security Holders.
- (2) The Company must promptly enter in the Register of Debt Security Holders the name and address of, and the amount of the Debt Securities held by, each Debt Security holder.
- (3) Contravention subsection (2) in relation to a Debt Security does not affect the validity of the Debt Security.
- (4) Contravention of this section is punishable by a fine.

54. Transfer and registration of Shares and Debt Securities

- (1) Despite anything in the Articles of Association of a Company, the Company must not register a transfer of a Share in, or Debt Security of, the Company unless it has been given a written instrument of transfer by the transferee or the transfer is in accordance with a provision of the Rules that enables title to Securities to be evidenced and transferred without a written instrument



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of transfer.

- (2) Subject to subsection (6), the Company must promptly register a transfer of a Share in, or Debt Security of, the Company if it is permitted to register the transfer under subsection (1).
- (3) Subsection (1) does not affect any power of the Company to register as a Shareholder or Debt Security holder any Person to whom the right to any Share in, or Debt Security of, the Company has been transmitted by operation of these Regulations, including under any order made by a court of competent jurisdiction.
- (4) An application for the transfer of a Share or Debt Security made by the Personal Representative of a deceased Shareholder or Debt Security holder is as effective as it would be if it had been made personally by the deceased Shareholder or Debt Security holder.
- (5) On the application of the transferor of a Share in or Debt Security of a Company, the Company must promptly enter in its Register of Shareholders or Register of Debt Security Holders (as the case may be) the name of the transferee in the same way and subject to the same conditions as if the application for the entry had been made by the transferee.
- (6) If a Company has reasonable grounds to refuse to register a transfer of Shares in, or Debt Securities of, the Company, the Company must, as soon as reasonably practicable but within 14 days after the day the transfer was lodged with it, give the transferor and transferee Written notice of its reasons for the refusal.
- (7) Contravention of this section is punishable by a fine.

55. **Place where registers must be kept**

- (1) A Company's Register of Shareholders and, if it has issued Debt Securities, its Register of Debt Security Holders, must be kept at its registered office.
- (2) However, a register may be maintained by an agent of the Company at the premises of the agent and kept at that office, if the Company has immediate access to the register. If the register is maintained by an agent of the Company at the premises of the agent and not in the AIFC, the Company may keep a copy of the register at its registered office and, if it does so, the Company must update the copy of the register to reflect any changes to the information contained in the register within 10 days after the day the register is changed by the agent.
- (3) Contravention of this section is punishable by a fine.

56. **Inspection of registers**

- (1) A Company must ensure that its Register of Shareholders and its Register of Debt Security Holders (if any) are open for inspection by, respectively, any Shareholder or Debt Security holder of the Company during business hours without charge, and, if the Company is a Public Company, by any other Person on application under subsection (3) and on payment of the reasonable amount (if any) required by the Company, at the registered office of the Company or, if the register is maintained at the office of an agent and the office is in the AIFC, at the office of the agent.
- (2) However, if a register mentioned in subsection (1) is maintained at an office of an agent of the Company and the office is outside the AIFC, the Company must keep a copy of the register at its registered office and that subsection applies to the Company as if a reference to the register were



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a reference to the copy kept at its registered office.

- (3) An application by a Person under this subsection must be made in Writing to the Company and must include the following information:
- (a) if the applicant is an individual—the applicant’s name and address;
 - (b) if the applicant is an organisation—the name and address of an individual responsible for making the application on behalf of the organisation;
 - (c) the purpose for which the information obtained is to be used;
 - (d) whether the information will be disclosed to any other Person and, if so:
 - (i) if the other Person is an individual—the individual’s name and address; and
 - (ii) if the other Person is an organisation—the name and address of an individual responsible for receiving the information on its behalf; and
 - (iii) the purpose for which the information is to be used by the other Person.
- (4) If a Company refuses to allow a Person to inspect a register under subsection (1), the Registrar may, on the Person’s application, direct the Company to immediately allow the Person to inspect the register. An application made under this subsection by a Person other than a Shareholder or Debt Security holder must include the information set out in subsection (3).
- (5) A Company must comply with a direction given to it under subsection (4).
- (6) Contravention of subsection (1) or (5) is punishable by a fine.

57. Rectification of registers

- (1) If:
- (a) without reasonable excuse, the name of a Person, or the number of Shares held or the class of Shares held by a Person, is not entered correctly in, or is omitted from, a Company’s Register of Shareholders; or
 - (b) there is a Failure or unnecessary delay in entering in the Register of Shareholders of a Company the fact that a Person has ceased to be a Shareholder;
- the Person (an *aggrieved Person*), or any Shareholder of the Company, may apply to the Registrar for rectification of the register.
- (2) If:
- (a) without sufficient reason, the name of a Person, or the number of Debt Securities held or the type of Debt Securities held by a Person, is, not entered correctly in, or is omitted from, a Company’s Register of Debt Security Holders; or
 - (b) there is a Failure or unnecessary delay in entering in the Register of Debt Security Holders of a Company the fact that a Person has ceased to be a Debt Security holder;



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the Person (an *aggrieved Person*), or any Debt Security holder of the Company, may apply to the Registrar for rectification of the Register of Debt Security Holders.

- (3) If the Registrar receives an application under subsection (1) or (2) in relation to a register of a Company, the Registrar may:
 - (a) order the Company to rectify the register; or
 - (b) refuse, for reasonable cause (including, for example, the existence of a dispute relating to the application or the relevant holding), to order the Company to rectify the register.
- (4) A Company must not Contravene an order of the Registrar made under subsection (3)(a).
- (5) Without limiting the Registrar's powers under subsection (3), the Court may make 1 or more of the following orders:
 - (a) on the application of the Registrar, an order enforcing an order made by the Registrar under subsection (3)(a);
 - (b) on the application of an aggrieved Person in relation to a Company, or any Shareholder or Debt Security holder of a Company, an order directing the Company to rectify, or not to rectify, the Company's Register of Shareholders or Register of Debt Security Holders or to do, or not do, anything else;
 - (c) on the application of an aggrieved Person in relation to a Company, an order requiring the Company to pay damages.
- (6) Contravention of subsection (4) is punishable by a fine.

58. **Share certificates**

- (1) If a Company Allocates any of its Shares or receives a properly completed transfer for any of its Shares, the Company must, within 14 days after the day it Allocates the Shares or receives the transfer, complete and have ready for delivery a certificate for all the Shares Allocated or transferred, unless title to the Shares is evidenced without a written instrument in accordance the Rules.
- (2) If title to the Shares or the transfer of the Shares is evidenced without a written instrument, the Company must complete the registration of the Allotment or transfer of the Shares within 14 days after the day the Company Allocates the Shares or receives a properly completed transfer for the Shares.
- (3) Subsections (1) and (2) does not apply to a transfer of Shares if the Company is, for any reason, entitled to refuse to register the transfer and does not register the transfer.
- (4) Contravention of this section is punishable by a fine.

59. **Right of Public Company to request information about interests in its Shares**

- (1) A Public Company may give a Written notice to any Person whom it knows or has reasonable grounds to believe:



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- (a) is interested in the Company's Shares; or
 - (b) has been interested in the Company's Shares at any time within 3 years before the date of the notice.
- (2) The notice may require the Person to confirm any interest that Person has, or has had, in the Shares and to provide the details relating to the interest that are specified in the notice.
- (3) For this section, a Person has an interest in Shares of a Company if the Person:
- (a) has entered into a contract to acquire the Shares; or
 - (b) is not the registered holder of the Shares, but is entitled to:
 - (i) exercise any right given by holding the Shares; or
 - (ii) control the exercise of any such right.
- (4) If a Person Fails to comply with a notice given to the Person by a Company under subsection (1), the Company may apply to the Court for an order directing that the Shares in which the Person has an interest be subject to any 1 or more of the following restrictions:
- (a) that any transfer of, or agreement to transfer, the Shares is void;
 - (b) that voting rights are not exercisable in respect of the Shares;
 - (c) that no further Shares be issued instead of the Shares or under an offer made to their holder;
 - (d) that, except in a liquidation, no payment be made of amounts owed by the Company on the Shares, whether in respect of capital or otherwise.
- (5) On the application, the Court may make the order that the Court considers appropriate, having regard, in particular, to the rights of third parties in respect of the Shares in relation to which the application is made.
- (6) Any Person whose rights are, or are likely to be, unfairly affected by an order of the Court made under subsection (5) may apply to the Court on that ground. If the Court is satisfied that the order unfairly affects the rights of the applicant or any other third party, the Court may, for the purpose of protecting the rights of the applicant or any third party, and subject to the terms that it considers appropriate, order that, to the extent stated in the order:
- (a) restrictions imposed by the order under subsection (5) do not apply in relation a stated Person or Persons (or a stated category of Persons); or
 - (b) relevant Shares are to cease to be subject to restrictions imposed by the order under subsection (5).
- (7) If there is a restriction applying in relation to Shares under an order under subsection (5) (as affected by any order made under subsection (6)), each the following are void to the extent that they Contravene the restriction:



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- (a) any transfer of, or agreement to transfer, the Shares;
- (b) any vote cast, or any other action taken relying on a vote cast, in respect of the Shares;
- (c) any issue of Shares instead of the Shares or under an offer made to their holder;

except in a liquidation, any payment made of amount owed by the Company on the Shares, whether in respect of capital or otherwise.

- (8) An application may be made to the Court, by the Company concerned or any Person aggrieved, for an order directing that Shares subject to restrictions under an order under subsection (5) are to cease to be subject to the restrictions. The Court may not make the order unless:
 - (a) it is satisfied that the relevant facts about the Shares have been disclosed to the Company and no Person has received an unfair advantage because of the earlier Failure to make the disclosure; or
 - (b) the Shares are to be transferred for valuable consideration and the Court approves the transfer.

CHAPTER 6—REDEMPTION AND PURCHASE OF SHARES

60. Power to issue redeemable Shares

- (1) Subject to section 61 (Power of Company to purchase its own Shares), a Company may, if authorised to do so by its Articles of Association, issue and Allot, or convert existing non-redeemable shares (whether Allotted or not) into, Shares that are to be redeemed, or are liable to be redeemed, either in accordance with their terms or at the option of the Company or the Shareholder.
- (2) However, the Company must not convert existing non-redeemable Shares into redeemable Shares if, as a result, there are no issued Shares that are not redeemable.
- (3) A Company may redeem Shares in the Company only if they are fully paid and from the following sources:
 - (a) for the nominal value of the Shares—from the Paid-up share capital, share premium and other reserves of the Company; and
 - (b) for any premium—from realised or unrealised profits, share premium or other reserves of the Company.
- (4) A Company must not redeem any of its Shares unless all of the Directors sign a certificate stating that they have formed the opinion:
 - (a) that, immediately following the day payment for the redemption is proposed to be made, the Company will be able to discharge its Liabilities as they fall due; and
 - (b) that, having regard to:
 - (i) the prospects of the Company and to the intentions of the Directors with regard



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to the management of the Company's business; and

- (ii) the amount and character of the financial resources that will be available to the Company;

the Company will be able to continue to conduct its business, and discharge its Liabilities of they fall due, for 12 months immediately after the day payment for the redemption is proposed to be made.

- (5) A Director must not sign a certificate under subsection (4) unless the Director has reasonable grounds for the matters stated in the certificate.
- (6) Contravention of subsection (5) is punishable by a fine.
- (7) If Shares are redeemed under this section, the Shares must be treated as cancelled and the amount of the Company's share capital must be reduced by the nominal value of the Shares redeemed, unless they are held by the Company as treasury Shares.
- (8) If a Company is about to redeem Shares under this section, it may issue Shares up to the value of the Shares to be redeemed, as if those Shares had never been issued.
- (9) A Company must not redeem its Shares under this section if because of the redemption:
 - (a) there would no longer be a Shareholder of the Company holding Shares other than redeemable Shares; or
 - (b) the Company would cease to have the share capital required by section 43 (Minimum share capital) or any other applicable AIFC Regulations and AIFC Rules.
- (10) If a Company redeems any of its Shares, the Company must, within 14 days after the day the redemption is completed, notify the Registrar of the redemption and tell the Registrar what the Company's share capital is after completion of the redemption.

61. **Power of Company to purchase its own Shares**

- (1) Subject to any restrictions in its Articles of Association, a Company may purchase its own Shares to the extent permitted by this section.
- (2) A Company must not purchase its own shares unless the purchase is approved by:
 - (a) a Special Resolution, if it is an off-market purchase and the Company is not a Wholly-Owned Subsidiary; or
 - (b) an Ordinary Resolution, if it is a market purchase or the Company is a Wholly-Owned Subsidiary.
- (3) The holders of the Shares to be purchased do not have a right to vote on the Resolution required under subsection (2). The Company must ensure that the holders of those Shares do not vote on the Resolution.
- (4) A Company must not purchase its Shares under this section if:



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- (a) because of the purchase, there would no longer be a Shareholder of the Company holding Shares other than redeemable Shares or Shares held as treasury Shares; or
 - (b) the Shares are not fully paid; or
 - (c) the Company would cease to have the share capital required by section 43 (Minimum share capital).
- (5) The provisions of section 60(4) to (5) (Power to issue redeemable Shares) apply, with any necessary changes, to the purchase by a Company under this section of its own Shares as they apply to the redemption by the Company of its redeemable Shares.
- (6) If a Company purchases its own Shares, the Company must ensure that the Shares are paid for:
- (a) if it is an off-market purchase—on purchase; or
 - (b) if it is a market purchase—in accordance with the rules of the relevant Regulated Market.
- (7) If a Company proposes to purchase its own Shares, the Company must:
- (a) send a copy of the contract setting out the terms for the purchase of the Shares to each Shareholder at or before the proposed Resolution approving the purchase is sent to the Shareholder; and
 - (b) ensure that a copy of the contract is available for inspection by Shareholders at the Company's registered office for at least 15 days before the day of the meeting to consider the Resolution and at the meeting itself.
- (8) If a Public Company purchases its own Shares, the Company must ensure that a copy of the contract setting out the terms of the purchase is kept available for inspection, at the request of any Shareholder, at the Company's registered office for 10 years after the day the Shares are purchased.
- (9) For this section:
- (a) a purchase of Shares is a *market purchase* if it is made by a Public Company on a Regulated Market; and
 - (b) a purchase of Share is an *off-market purchase* if it is not made by a Public Company on a Regulated Market.
- (10) If a Company purchases its own Shares under this section, the Company must, within 14 days after the day the purchase is completed, notify the Registrar of the purchase and tell the Registrar what the Company's share capital is after completion of the purchase.
- (11) Contravention of this section is punishable by a fine.
- (12) Contravention of section 60(5) as applied by subsection (5) is punishable by a fine.

62. Treasury Shares

- (1) A Company may hold any Shares that have been purchased by it under section 61 (Power of Company to purchase its own Shares) as treasury Shares if:



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- (a) there is no restriction in its Articles of Association that prohibits it from holding the Shares as treasury Shares; and
 - (b) it is approved by an Ordinary Resolution; and
 - (c) it complies with the other requirements of this section.
- (2) A Company that holds Shares as treasury Shares may:
- (a) cancel the Shares; or
 - (b) sell the Shares; or
 - (c) transfer the Shares for the purposes of, or under, an Employee Share Scheme; or
 - (d) transfer the Shares to existing Shareholders as fully paid bonus Shares; or
 - (e) continue to hold the Shares.
- (3) If a Company cancels Shares held as treasury Shares, the amount of the Company's share capital must be reduced by the nominal value of the cancelled Shares.
- (4) While Shares are held by a Company as treasury Shares:
- (a) the Company must not, for sections 95 (Meeting requests) and 98 (General provisions about meeting and votes), be treated as being a Shareholder or as holding Shares in the Company; and
 - (b) no voting rights (direct or through proxy) attach to the Shares held as treasury Shares; and
 - (c) if, for a Resolution to be passed or any act or decision to be taken (or not taken) by any Person, a provision of these Regulations and the Rules requires:
 - (i) a proportion of votes attaching to Shares held in the Company to be obtained; or
 - (ii) a proportion of the holders of Shares of the Company (which may include Persons representing by proxy other holders of Shares of the Company) to consent or not to consent;
- the Shares held as treasury Shares must not, for that provision, be taken into account in working out the total number of Shares held by the Company or whether the required proportion has been attained; and
- (d) the Company must not make or receive any dividend, or any other Distribution (whether in cash or otherwise) of the Company's assets (including any Distribution of assets to Shareholders on a winding up), in respect of the Shares held as treasury Shares; and
 - (e) the rights in respect of the treasury Shares must not be exercised by or against the Company; and
 - (f) the obligations in respect of the treasury Shares must not be enforceable by or against the



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Company; and

- (g) any purported exercise or enforcement of a right, obligation, requirement or anything else mentioned in paragraphs (b) to (f) is void.
- (5) However, subsection (4) does not prevent:
 - (a) an Allotment of Shares as fully paid bonus Shares in respect of treasury Shares; or
 - (b) the payment of any amount payable on the redemption of redeemable Shares that are held as treasury Shares.
- (6) If a Company is about to cancel Shares under subsection (2)(a), it may issue Shares up to the Paid-up amount of the Shares to be cancelled as if those Shares had never been issued.
- (7) Any Shares Allotted by a Company as fully paid bonus Shares in respect of Shares held as treasury Shares must be treated as if they were purchased by the Company at the time they were Allotted.
- (8) If Shares are held by a Company as treasury Shares:
 - (a) the Register of Shareholders must include an entry relating to the number of Shares held as treasury Shares; and
 - (b) the Register must, to the extent it contains details of the Shareholders of the Company, include an entry relating to the number of Shares held as treasury Shares; and
 - (c) the annual return filed under section 26 (Annual return) must include an entry relating to the number of Shares held as treasury Shares on 1 January in the year of the return.

63. **Prohibition on financial assistance to acquire Shares**

- (1) A Company must not:
 - (a) if it is a Public Company—provide financial assistance for a Person to acquire Shares, or any units of Shares, in itself or its Holding Company; and
 - (b) if it is a Private Company—provide financial assistance for a Person to acquire Shares, or units of Shares, in a Holding Company that is a Public Company, unless the provision of the financial assistance is authorised under any 1 or more of subsections (2) to (6).
- (2) The provision of the financial assistance is authorised if the provision of the financial assistance:
 - (a) does not materially prejudice the interests of the Company or its Shareholders or the Company's ability to discharge its Liabilities as they fall due; and
 - (b) is approved by a Resolution of Shareholders holding not less than 90% in nominal value of the Shares giving a right to attend and vote at any Shareholders' meeting.
- (3) The provision of the financial assistance is authorised if the Company's ordinary business includes providing finance and the financial assistance is provided in the ordinary course of that business and on ordinary commercial terms.



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- (4) The provision of the financial assistance is authorised if the financial assistance is provided in connection with, or for the purposes of, an Employee Share Scheme of the Company.
- (5) The provision of the financial assistance is authorised if the provision of the financial assistance is only an incidental part of some larger purpose of the Company and the financial assistance is given in good faith in the interests of the Company.
- (6) The provision of the financial assistance is authorised if the financial assistance is of a kind prescribed by the Rules for this subsection.
- (7) Each Officer of a Company must ensure that the Company does not Contravene this section.
- (8) Contravention of this section is punishable by a fine.
- (9) In this section:

financial assistance means financial assistance of any kind, and includes any of the following:

- (a) making a loan;
- (b) making a gift;
- (c) issuing a Debt Security;
- (d) giving security over the Company's assets;
- (e) giving a guarantee or an indemnity in respect of another Person's Liability;

but does not include any of the following:

- (f) a Distribution of the Company's assets by way of dividend lawfully made or in the course of the Company's winding up;
- (g) an Allotment of fully paid bonus Shares;
- (h) a redemption or purchase by a Company of its own Shares under this Chapter;
- (i) a reduction of share capital under Chapter 7.

CHAPTER 7—REDUCTION OF CAPITAL

64. Reduction of Share Capital

- (1) A Private Company may reduce its Share Capital by a Special Resolution supported by a solvency statement under section 65 (Reduction of Share Capital by Private Company supported by solvency statement).
- (2) A Public Company or Private Company may reduce its Share Capital by a Special Resolution confirmed by the Court, following the procedures in sections 66 (Reduction of Share Capital by Special Resolution confirmed by Court order) and 67 (Court order confirming reduction of Share Capital).



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- (3) A Company must not reduce its Share Capital under subsection (1) or (2) if:
- (a) its Articles of Association contain any prohibition or restriction relating to capital reduction; or
 - (b) because of the reduction, there would no longer be any Shareholder of the Company other than holders of redeemable Shares; or
 - (c) if the Company is a Public Company—the reduction in the Share Capital would result in the Company not having the share capital required by section 43 (Minimum share capital) or any other applicable AIFC Regulations and AIFC Rules, except in the circumstances to which section 69 (Public Company reducing its Share Capital below its authorised minimum) applies.
- (4) Subject to subsection (3), a Company may reduce its Share Capital in any way, and on the terms, decided by it, including, for example:
- (a) by extinguishing or reducing the Liability on any of its Shares in respect of Share Capital not Paid-up, or
 - (b) either with or without extinguishing or reducing Liability on any of its Shares, by
 - (i) cancelling any Paid-up Share Capital that is lost or unrepresented by available assets, or
 - (ii) by repaying any Paid-up Share Capital in excess of the Company's requirements; or
 - (c) by causing any of its Shares that have been issued otherwise than as fully Paid-up to be forfeited for Failure to pay any amount payable on them or by accepting their surrender instead of causing them to be forfeited.
- (5) For this Chapter, a redemption or purchase by a Company of its Shares in accordance with Chapter 6 is not a reduction of the Share Capital of the Company.
- (6) A Company must not reduce its Share Capital otherwise than in accordance with this Chapter. Contravention of this subsection is punishable by a fine.

65. **Reduction of Share Capital by Private Company supported by solvency statement**

- (1) A Resolution for reducing Share Capital of a Private Company is supported by a solvency statement for section 64(1) (Reduction of share capital) if:
- (a) on a day not more than 30 days and not less than 15 days before the date the reduction of the Share Capital is to have effect, the Company has published a notice in the Appointed Publications stating the following:
 - (i) the amount of the Share Capital as most recently determined by the Company;
 - (ii) the nominal value of each Share;
 - (iii) the amount by which the Share Capital is to be reduced;



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- (iv) the date the reduction is to have effect; and
 - (b) the notice contains a solvency statement that complies with subsection (2).
- (2) A solvency statement is a statement by each Director of the Company that the Director:
 - (a) has formed the opinion, as regards the Company's situation at the date of the statement, that there is no ground on which the Company could be found to be unable to discharge its debts as they fall due; and
 - (b) has also formed the opinion that:
 - (i) if the Company intended to commence its winding up within 12 months after the date of the statement, the Company would be able discharge its debts in full within 12 months of the commencement of the winding up; or
 - (ii) in any other case, the Company would be able to discharge its debts as they fall due during the year immediately after the date of the statement.
- (3) A Director of the Company must not make a solvency statement mentioned in subsection (1)(b) unless the Director has reasonable grounds for the opinion expressed in the statement. In forming the opinion, the Director must take into account all of the Company's Liabilities (including any contingent or prospective Liabilities).
- (4) Contravention of subsection (3) is punishable by a fine.
- (5) If a Company reduces the amount of its Share Capital, the Company must, within 30 days after the day the reduction takes effect, file with the Registrar a copy of the notice under subsection (1)

66. **Reduction of Share Capital by Special Resolution confirmed by Court order**

- (1) If a Company is permitted to do so under its Articles of Association and has passed a Special Resolution for reducing its Share Capital, it may apply to the Court for an order confirming the reduction.
- (2) If the proposed reduction of Share Capital involves the payment to a Shareholder of any Paid-up Share Capital or a diminution of Liability in respect of any unpaid Share Capital, the subsections (3), (4) and (5) apply, except so far as the Court directs otherwise under subsection (6).
- (3) Any Creditor of the Company is entitled to object to the reduction of capital if the Creditor, at the date fixed by the Court, is entitled to a debt or claim that would be admissible in proof against the Company, if that date were the commencement of the winding up of the Company.
- (4) The Court must settle a list of Creditors entitled to object under subsection (3). For that purpose, the Court:
 - (a) must ascertain, as far as possible, without requiring an application from any Creditor, the names of the Creditors and the nature and amount of their debts or claims; and
 - (b) may publish notices fixing a day or days by which Creditors not entered on the list are to claim to be entered in the list or are to be excluded from the right of objecting to the



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reduction of capital.

- (5) If, for a Creditor entered on the list, the Creditor's debt or claim is not discharged or has not determined and the Creditor has not consented to the reduction, the Court may dispense with the consent of that Creditor, on the Company securing payment of the Creditor's debt or claim by appropriating, as the Court may direct, the following amount:
 - (a) if the Company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it—the full amount of the debt or claim;
 - (b) if the Company does not admit, and is not willing to provide for, the full amount of the debt or claim or the amount is contingent or not ascertained—an amount fixed by the Court.
- (6) The Court may, having regard to any special circumstances of the case, direct that subsections (3), (4) and (5) do not apply, or apply with stated modifications, in relation to any class or any classes of Creditors.
- (7) An Officer of the Company must not:
 - (a) intentionally or recklessly:
 - (i) conceal the name of a Creditor entitled to object to the reduction of Share Capital, or
 - (ii) misrepresents the nature or amount of the debt or claim of a Creditor, or
 - (b) be Knowingly Concerned in any such concealment or misrepresentation.
- (8) Contravention of subsection (7) is punishable by a fine.

67. **Court order confirming reduction of Share Capital**

- (1) The Court may, on the terms it considers appropriate, make an order confirming the reduction of a Company's Share Capital, if satisfied, in relation to every Creditor of the Company who under section 66(3) (Reduction of Share Capital by Special Resolution confirmed by Court order) is entitled to object to the reduction of the Share Capital, that either:
 - (a) the Creditor has consented to the reduction; or
 - (b) the Creditor's debt or claim has been discharged or has determined or has been secured.
- (2) If the Court makes an order under subsection (1), it may also make either or both of the following orders:
 - (a) an order requiring the Company to publish the reasons for the reduction of Share Capital, or the other information about it that the Court considers appropriate, with a view to giving proper information to the public about the causes that led to the reduction;
 - (b) if there is any reserve arising out of the reduction of Share Capital—an order directing whether or not it is distributable.



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68. **Registration of order and statement of capital**

- (1) If the Court confirms the reduction of a Company's Share Capital, the Company must give the Registrar:
 - (a) a copy of the order of the Court confirming the reduction; and
 - (b) a statement of capital, approved by the Court, showing in respect of the Company's Share Capital:
 - (i) the total number of issued Shares; and
 - (ii) the aggregate nominal value of those Shares; and
 - (iii) the amount Paid-up and unpaid (if any) on each Share (whether on account of the nominal value or by way of premium).
- (2) The Registrar must register the order and statement of capital. On that registration the Special Resolution for reducing the Share Capital as confirmed by the order takes effect.
- (3) The Registrar must certify the registration of the order and statement of capital. The certificate:
 - (a) must be signed by the Registrar; and
 - (b) is conclusive evidence that all the requirements of these Regulations and the Rules in relation to the reduction of Share Capital have been complied with and that the Company's Share Capital is as stated in the statement of capital.
- (4) On its registration, the statement of capital is taken to be substituted for the corresponding part of the Articles of Association.

69. **Public Company reducing its Share Capital below its authorised minimum**

- (1) If registration of an order of the Court under section 67 (Court order confirming reduction of Share Capital) in relation to a Public Company would result in the Company not having the Share Capital required by section 43 (Minimum share capital), the Registrar must not register the order unless the Company is first re-registered as a Private Company under section 39 (Re-registration of Public Company as Private Company) or the Court has made an order under subsection (2).
- (2) The Court may, by order, authorise the Company to be re-registered as a Private Company without it having passed the Special Resolution required under section 39 (Re-registration of Public Company as Private Company). The order must specify the changes to the Articles of Association and name in connection with the re-registration.
- (3) The Registrar must, on receipt of an order under subsection (2), issue a certificate of incorporation altered to meet the circumstances of the case. On the issue of the certificate, the Company becomes a Private Company and the changes to the Articles of Association and its name take effect.

70. **Liability to Creditors in respect of reduction of Share Capital by Court order**

- (1) This section applies if:



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- (a) a Creditor entitled to object to the reduction of the Share Capital of a Company is not entered on the list of Creditors under section 66 (Reduction of Share Capital by Special Resolution confirmed by Court order) because of the Creditor's ignorance of the proceedings for the reduction or of the nature and effect of the proceedings on the Creditor's claim; and
 - (b) after the reduction of capital, the Company is unable to pay the amount of the Creditor's debt or claim.
- (2) Every Person who was a Shareholder of the Company on the day the Special Resolution for reducing the Share Capital took effect under section 68(2) (Registration of order and statement of capital) is liable to contribute, towards payment of the Creditor's debt or claim, an amount not exceeding the amount that the Person would have been liable to contribute if the Company had commenced to be wound up on the previous day.
- (3) If the Company is wound up under these Regulations, the Court, on the application of the Creditor and proof that the Creditor is a Creditor mentioned in subsection (1)(a), may settle a list of Persons liable to contribute under subsection (2), and may make and enforce calls and orders on the Persons included on the list as if they were ordinary contributories in a winding up.
- (4) This section does not affect the rights of the listed Persons among themselves.

71. **Treatment of reserves arising from reduction of capital**

Any reserve arising from the reduction of a Company's Share Capital is only distributable as provided in the Articles of Association or authorised by a Special Resolution, unless otherwise provided by an order of the Court under section 67(2)(b) (Court order confirming reduction of Share Capital).

CHAPTER 8—DISTRIBUTIONS

72. **Restrictions on Distributions**

- (1) A Company must not make a Distribution unless the Distribution is made out of profits available for Distribution. The profits available for Distribution are the Company's accumulated, realised profits (so far as not previously utilised by Distribution or capitalisation) less its accumulated, realised losses (so far as not previously written off in a reduction or reorganisation of capital duly made).
- (2) A Public Company must not make a Distribution:
- (a) unless the amount of its net assets is not less than the aggregate of its share capital and undistributable reserves; and
 - (b) unless, and only to the extent that, the Distribution does not reduce the amount of those net assets to less than that aggregate.
- (3) Whether a Distribution may be made by a Company without Contravening this section is determined by reference to the following items as stated in the relevant accounts:
- (a) profits, losses, assets and Liabilities;
 - (b) provisions of any kind;



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- (c) share capital and reserves (including undistributable reserves).
- (4) The **relevant accounts** are the Company's last annual accounts, except that:
 - (a) if the Distribution would be found to Contravene this section by reference to the Company's last annual accounts—it may be justified by reference to interim accounts; and
 - (b) if the Distribution is proposed to be declared during the Company's first accounting reference period or before any accounts have been prepared in respect of that period—may be justified by reference to initial accounts.
- (5) If the relevant accounts are:
 - (a) the Company's last annual accounts—the accounts must be the accounts that were sent to Shareholders under section 131(4) (Accounts); and
 - (b) interim accounts—the accounts must be properly prepared so as to enable a reasonable judgement to be made about the amounts of the items mentioned in subsection (3); and
 - (c) initial accounts—the accounts must be properly prepared so as to enable a reasonable judgement to be made about the amounts of the items mentioned in subsection (3) and, if the Company is a Public Company, accompanied by a report from the Company's auditor stating whether, in the auditor's opinion, the accounts have been properly prepared.
- (6) If any applicable requirement in subsection (5) is not complied with in relation to any accounts, the accounts may not be relied on for this section and the Distribution is accordingly treated as a Contravention of this section.
- (7) In this section:

auditor means a Person who is registered by the Registrar as an auditor under these Regulations.

Distribution, in relation to a Company, means every description of distribution of the Company's assets to its Shareholders, whether in cash or otherwise, except a distribution by way of:

- (a) an issue of bonus Shares; or
- (b) the redemption or purchase of any of the Company's own Shares out of share capital (including the proceeds of any fresh issue of Shares), or out of unrealised profits, in accordance with these Regulations and the Rules; or
- (c) the reduction of share capital either by:
 - (i) extinguishing or reducing the Liability of any of the Shareholders in respect of share capital not Paid-up or by repaying any Paid-up share capital; and
 - (ii) a distribution of assets to Shareholders on the winding up of the Company.

undistributable reserves, of a Company, means any of the following:



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- (a) its share premium account;
 - (b) any capital redemption reserve;
 - (c) the amount by which its accumulated, unrealised profits (so far as not previously utilised by Distribution or capitalisation) exceeds its accumulated, unrealised losses (so far as not previously written off in a reduction or reorganisation of capital duly made);
 - (d) any other reserve that the Company is prohibited from distributing by its Articles of Association or under any applicable AIFC Regulations or AIFC Rules.
- (8) Contravention of this section is punishable by a fine.

73. **Consequences of unlawful Distribution**

If a Distribution, or part of a Distribution, made by a Company to any of its Shareholders is made in Contravention of section 72 (Restrictions on Distributions) and, at the time of the Distribution, the Shareholder knows or has reasonable grounds for believing that it is made in Contravention of that section, the Shareholder is liable to repay the Distribution, or that part of it, to the Company or, for a Distribution made otherwise than in cash, to pay to the Company an amount equal to the value of the Distribution, or that part, at that time.

CHAPTER 9–DIRECTORS AND SECRETARIES

74. **Directors**

- (1) A Private Company must have at least 1 director and a Public Company must have at least 2 directors.
- (2) A Person must not be a Director if the Person:
 - (a) is not a natural person; or
 - (b) is under 18 years old; or
 - (c) is disqualified from being a Director because of:
 - (i) having been convicted of a criminal offence, involving dishonesty or moral turpitude, in any jurisdiction in the past 10 years; or
 - (ii) having been found guilty of insider trading or the equivalent in any jurisdiction at any time; or
 - (iii) having been judged disqualified by any court; or
 - (iv) having been disqualified by the AFSA; or
 - (v) a disqualification specified in the Articles of Association; or
 - (d) is an undischarged bankrupt.

75. **Election, term and removal of directors**



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- (1) The first directors of a Company must be elected by the Incorporators. Subsequent directors must be elected by the Shareholders by Ordinary Resolution, or as otherwise provided by the Articles of Association, for the term that the Shareholders decide.
- (2) Each director holds office until the director's successor takes office or until the director's earlier death, resignation or removal by Ordinary Resolution or as otherwise provided by the Articles of Association.
- (3) A vacancy created by the death, resignation or removal of a director may be filled by Ordinary Resolution or, if the vacancy is not filled by an Ordinary Resolution, by the remaining directors. However:
 - (a) any director appointed by the remaining directors is subject to reappointment by Ordinary Resolution at the next General Meeting; and
 - (b) if an Ordinary Resolution of reappointment of the director is not passed at the next General Meeting—the director ceases to be a director at the conclusion of the General Meeting.
- (4) The number of directors must be fixed by the Articles of Association subject to the requirements of section 74(1) (Directors).
- (5) If, at a General Meeting, it is proposed that 2 or more persons be appointed as directors, the appointments must be made by a separate Resolution in respect of each person, unless unanimously agreed otherwise by the Shareholders at the meeting.

76. **Duties of Directors**

- (1) The duties of Directors under sections 77 to 83 and section 85 are owed by each Director of a Company to the Company.
- (2) If a person ceases to be a Director, the person continues to be subject to:
 - (a) the duty under section 81 (Duty to avoid conflicts of interest), in relation to the exploitation of any property, information or opportunity of which the person became aware when the person was a Director; and
 - (b) the duty under section 82 (Duty not to accept benefits from third parties), in relation to things done or omitted to be done by the person before the person ceased to be a Director.
- (3) Except as otherwise provided in these Regulations, more than 1 of the duties of Directors may apply in any given case.
- (4) The Constitutional Documents of a Company must not include any provision the effect of which would be to weaken the duties of Directors under this Chapter.

77. **Duty to act within powers**

A Director of a Company must:

- (a) act in accordance with the Constitutional Documents; and



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- (b) only exercise the powers of a Director for the purposes for which the powers have been given.

78. **Duty to promote success of Company**

- (1) A Director of a Company must act in the way the Director honestly considers, in good faith, would be most likely to promote the success of the Company for the benefit of its Shareholders as a whole and, in doing so, must have regard, among other matters, to:
 - (a) the likely consequences of any decision in the long term; and
 - (b) the interests of the Company's Employees; and
 - (c) the need to foster the Company's business relationships with suppliers, customers and others; and
 - (d) the impact of the Company's operations on the community and the environment; and
 - (e) the desirability of the Company maintaining a reputation for high standards of business conduct; and
 - (f) the need to act fairly as between Shareholders of the Company.
- (2) To the extent that the purposes of the Company consist of or include purposes other than the benefit of its Shareholders, the reference in subsection (1) to *the benefit of its Shareholders* has effect as if it included those other purposes.
- (3) The duty imposed under this section has effect subject to any law applicable to the Company requiring Directors, in certain circumstances, to consider or act in the interests of the Company's Creditors or customers.

79. **Duty to exercise independent judgement**

- (1) A Director of a Company must exercise independent judgement.
- (2) A Director of a Company does not infringe the duty under subsection (1) if the Director acts:
 - (a) in accordance with an agreement duly entered into by the Company that restricts the future exercise of discretion by its Directors; or
 - (b) in a way authorised by the Constitutional Documents.

80. **Duty to exercise reasonable care, skill and diligence**

A Director of a Company must exercise the care, skill and diligence that would be exercised by a reasonably diligent person with:

- (a) the general knowledge, skill and experience that may reasonably be expected of a person Exercising the Functions Exercised by the Director in relation to the Company; and
- (b) the general knowledge, skill and experience that the Director has.



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81. **Duty to avoid conflicts of interest**

- (1) A Director of a Company must avoid a situation in which the Director has, or can have, a direct or indirect interest that conflicts, or may possibly conflict, with the interests of the Company.
- (2) The duty under subsection (1) applies in particular to the exploitation of any property, information or opportunity.
- (3) The duty under subsection (1) does not apply to a conflict of interest arising in relation to a transaction or arrangement if the requirements of section 83 (Duty to declare interest in proposed transaction or arrangement) or 85 (Duty to declare interest in existing transaction or arrangement) are met.
- (4) A Director of a Company does not Contravene the duty under subsection (1) if:
 - (a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - (b) the Directors of the Company have authorised the situation in accordance with the Articles of Association and any applicable provisions of these Regulations and the Rules.
- (5) A Company's Articles of Association may include alternative procedures for avoiding conflicts of interests. A Director does not Contravene the provisions of this section by acting in accordance with the alternative procedures.
- (6) In this section:

conflict of interest includes a conflict of an interest and a duty and a conflict of duties.

82. **Duty not to accept benefits from third parties**

- (1) A Director of a Company must not accept a benefit from a third party if the benefit is given to the Director:
 - (a) because of the Director's position as a Director of the Company; or
 - (b) for doing (or not doing) anything as a Director of the Company;unless the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- (2) In this section:

conflict of interest includes a conflict of an interest and a duty and a conflict of duties.

83. **Duty to declare interest in proposed transaction or arrangement**

- (1) This section applies if a Director of a Company becomes aware, or ought reasonably to have become aware, that the Director is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the Company.
- (2) The Director must declare the nature and extent of the interest to the other Directors of the



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Company in accordance with section 85 (Duty to declare interest in existing transaction or arrangement).

- (3) But the declaration must be made before the proposed transaction or arrangement is entered into. For a declaration under this section, section 85 (Duty to declare interest in existing transaction or arrangement) applies to the Director with any other necessary changes.

84. Breaches of Directors' duties

If a Director of a Company ~~of~~ Breaches any 1 or more of the duties under sections 77 to 83, the Director is taken to have Contravened these Regulations.

85. Duty of Directors to declare interest in existing transaction or arrangement

- (1) If a Director of a Company has, directly or indirectly, an interest in a transaction or arrangement entered into by the Company or a Subsidiary of the Company and the Director is aware that the interest conflicts or may conflict, to a material extent, with the interests of the Company or Subsidiary, the Director must unless the Director has previously declared such interest under section 83 (Duty to declare interest in proposed transaction or arrangement), declare to the other Directors of the Company the nature and extent of the Director's interest in accordance with this section.
- (2) The declaration must be made as soon as practicable after the Director becomes aware of the circumstances that gave rise to the duty to make the declaration.
- (3) The declaration must be made:
 - (a) at a meeting of the Directors; or
 - (b) by a general Written notice given to the other Directors.
- (4) A declaration made at a meeting of the Directors under subsection (3)(a) must be tabled at, and recorded in the minutes of, the meeting.
- (5) A declaration made by way of a general Written notice given to the other Directors under subsection (3)(b) must be tabled at, and recorded in the minutes of, the first meeting of the Directors after the declaration is made or, if it is not reasonably practicable to do so at that meeting, at the next earliest meeting of the Directors.
- (6) A notice given to the Company by a Director that the Director is to be regarded as interested in a transaction or arrangement with a specified Person is sufficient declaration of the Director's interest in any transaction or arrangement entered into with the Person after the notice is given.
- (7) If a declaration of interest for section 83 or this section proves to be, or becomes, inaccurate or incomplete, a further declaration must be made, in the same way as the initial declaration.
- (8) If a Director of a Company Fails to declare an interest of under this section or section 83, the Company, a Shareholder of the Company or the Registrar may apply to the Court for an order under this subsection. On the application, the Court may make any order that it considers appropriate, including, for example, either or both of the following:
 - (a) an order setting aside the relevant transaction or arrangement;



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- (b) an order directing the Director to account to the Company for any benefit, gain or profit obtained because of the relevant transaction or arrangement.
- (9) However, a transaction or arrangement is not voidable, and a Director is not accountable, under subsection (8) in relation to it if, despite a Failure to comply with this section:
 - (a) the transaction or arrangement is ratified by the Company under section 86 (Ratification on interest in existing transaction or arrangement) at a General Meeting; and
 - (b) the nature and extent of the Director's interest in the transaction or arrangement were declared in reasonable detail in the notice calling the General Meeting.
- (10) Also, without limiting the Court's power to order a Director to account for any profit, gain or benefit realised, the Court must not set aside a transaction or arrangement unless it is satisfied that:
 - (a) the interests of third parties who have acted in good faith would be unfairly prejudiced if the transaction or arrangement were not set aside; or
 - (b) the transaction or arrangement was not reasonable and fair in the interests of the Company at the time it was made.

86. **Ratification of interest in existing transaction or arrangement**

- (1) This section applies to the ratification by a Company of a transaction or arrangement mentioned in section 85(1) (Duty to declare interest in existing transaction or arrangement).
- (2) The Company may, by an Ordinary Resolution, ratify the transaction or arrangement, unless its Constitutional Documents prohibit from doing so.
- (3) If the Company is a Public Company, any votes cast by the Director or Directors who have the conflict of interest in the transaction or arrangement, and any other Connected Person to such a Director, must be disregarded for the purposes of any Ordinary Resolution mentioned in subsection (2).
- (4) In this section:

Connected Person, in relation to a Director, means:

- (a) the spouse, or a child, stepchild or a grand-child, of the Director; or
- (b) a Body Corporate if the Director, alone or together with an individual or individuals mentioned in paragraph (a):
 - (i) has at least 20% of any share capital of the Body Corporate; or
 - (ii) is entitled to exercise or control the exercise of more than 20% of the voting power at any general meeting of the Body Corporate; or
- (c) if the Director, or an individual mentioned in paragraph (a), is a partner in a partnership—each partner in the partnership; or



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- (d) any other Person declared by the Rules to be a Connected Person for this definition.

87. **Prohibition of financial assistance to Directors etc.**

- (1) Subject to subsection (4), a Company must not provide financial assistance of any of the following kinds to a Director:
 - (a) making a loan, issuing a Debt Security or granting a credit facility or other similar form of financial assistance;
 - (b) giving a guarantee or security or indemnity in connection with a loan, Debt Security, credit facility or other similar form of financial assistance, whether the financial assistance is provided by the Company or another Person;
 - (c) any other form of financial assistance prescribed by the Rules,unless:
 - (d) consent is given by Shareholders attending (in person or by proxy) a General Meeting who together hold not less than 90% of the Shares that are voted at the meeting; and
 - (e) all of the Directors of the Company certify that providing the financial assistance would not materially prejudice either of the following:
 - (i) the interests of the Company and its Shareholders; or
 - (ii) the Company's ability to discharge its Liabilities as they fall due.
- (2) Any financial assistance provided under subsection (1) must be:
 - (a) documented in Writing; and
 - (b) before it is provided, recorded in the minutes of a meeting of the Directors of the Company, under signature of all of the Directors, as being provided in accordance with the requirements of that subsection.
- (3) Financial assistance may not be provided to a Connected Person for a Director of a Company except in accordance with this section.
- (4) Subsection (1) does not apply to the provision of financial assistance by a Company if:
 - (a) the financial assistance consists of remuneration paid in the ordinary course to a Director for services as a Director; or
 - (b) the financial assistance is for liability indemnity insurance related to the discharge of a Director's duties to the Company; or
 - (c) the Company's ordinary business includes providing finance and the financial assistance is provided in the ordinary course of that business and on ordinary commercial terms; or
 - (d) the financial is of a kind prescribed by the Rules as exempt from this section.



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- (5) Sections 81 (Duty to avoid conflicts of interest) and 82 (Duty not to accept benefits from third parties) do not apply to any financial assistance provided in accordance with this section.

88. **Validity of acts of Director**

The acts of a Director are valid despite any defect that may afterwards be found in the Director's appointment or qualification.

89. **Secretary**

- (1) A Public Company must have at least 1 Secretary.
- (2) The Directors of a Public Company must take all reasonable steps to ensure that the Secretary (or each joint Secretary) of the Company is a Person who appears to them to have the necessary knowledge and experience to discharge the Functions of Secretary of the Company and who:
- (a) has held the office of Secretary of a public Body Corporate for at least 3 of the immediately preceding 5 years; or
- (b) is a Person who, because of holding or having held any other position or by being a Shareholder of any other body, appears to the Directors to be capable of discharging the Functions of Secretary of the Company.
- (3) A Private Company may have a Secretary.
- (4) If a Private Company does not have a Secretary:
- (a) anything authorised or required to be given or sent to, or served on, the Company by being given or sent to, or served on, its Secretary may be given or sent to, or served on, the Company itself and anything addressed to the Secretary is taken to be addressed to the Company; and
- (b) anything else required or authorised to be done by the Secretary may be done by a Director or a Person authorised generally or specifically in that behalf by the Directors.

90. **Register of Directors and Secretaries**

- (1) Every Company must keep, at its registered office, a Register of its Directors and, if applicable, a Register of its Secretaries. The Company must ensure that a register contains the particulars required by the Rules.
- (2) If a Company is required to keep a register under subsection (1), the Company must ensure that the register is open to inspection, during business hours and without charge, by the Registrar or any Shareholder or Director of the Company.
- (3) The Company may, by its Articles of Association or a decision in General Meeting, impose reasonable restrictions on the availability of a register for inspection under subsection (2), but must nevertheless ensure that the register is open for inspection for at least 2 hours on each day that its registered office is open.
- (4) If a Company Fails to make a register available for inspection under subsection (2) by the Registrar or a Shareholder or Director of the Company, the Registrar may, by Written notice given to the



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Company, direct the Company to immediately make the register available for inspection by that Person. The Company must comply with the direction.

- (5) Contravention of this section is punishable by a fine.

91. Assumptions in relation to Directors and Secretary

- (1) A Person dealing with a Company is entitled to assume that anyone who appears, from the information that is available to the public in the Register, or a register kept by the Company under these Regulations, to be a Director or Secretary of the Company:
- (a) has been duly appointed; and
 - (b) has authority to Exercise the Functions customarily Exercised by a Director or Secretary of a similar Company.
- (2) A Company is not entitled to assert in proceedings in relation to dealings of the Company that any assumption under subsection (1) is incorrect.
- (3) However, a Person is not entitled to make an assumption under subsection (1) if at the time of the dealing with the Company the Person knew or could have reasonably suspected that the assumption was incorrect.

92. Disqualification orders

- (1) Without limiting any other powers available to the Registrar, if the Registrar considers that it is in the public interest that an individual should not, without the leave of the Court, be a Director of, or in any way (whether directly or indirectly) be concerned or take part in the management of, a Company, the Registrar may apply to the Court for an order to that effect against the ~~person~~Person.
- (2) The Court may make the order applied for if satisfied that the ~~person's~~Person's conduct (including, for example, any Breach by the person of any 1 or more of the duties under sections 77 to 83 and section 85) makes the person unfit to be concerned or take part in the management of a Company.
- (3) An order under subsection (2) may be made ~~for the period, not longer than 15 years, the Court considers appropriate.;~~
- a) in the case of a first offence, for the period, not longer than 15 years; or
 - b) in the case of a repeated offence, for an unlimited period, as the Court considers appropriate.
- (4) A ~~person~~Person must not Contravene an order under subsection (2).
- (5) Contravention of subsection (4) is punishable by a fine.

CHAPTER 10—MEETINGS

93. Participation in meetings

- (1) Subject to the Articles of Association, a Shareholder may participate in a meeting by phone or by other similar means of communication if each Shareholder present at the meeting can hear what is



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said by any other Shareholder present at the meeting, and each Shareholder so participating at the meeting is taken to be present at the meeting.

- (2) Subject to the Articles of Association, a Director may participate in a meeting by phone or other similar means of communication if each Director present at the meeting can hear what is said by any other Director present at the meeting, and each Director so participating at the meeting is taken to be present at the meeting.

94. Annual General Meeting

- (1) A Private Company is not required to hold an Annual General Meeting unless expressly required to do so under its Articles of Association.
- (2) Every Public Company must hold a General Meeting as its Annual General Meeting within 6 months of the end of each financial year (in addition to any other meetings held during that period). The Company must ensure that not more than 18 months elapses between the date of an Annual General Meeting and the date of the next.
- (3) Contravention of subsection (2) is punishable by a fine.
- (4) A notice calling an Annual General Meeting of a Public Company must state that the meeting is an Annual General Meeting.

95. Meeting requests

- (1) On a Shareholders' request, the Directors or, if appointed, the Secretary, of a Company must, despite anything in the Articles of Association, promptly call a General Meeting or a meeting of holders of any class of Shares. The meeting must be held as soon as practicable, but not later than 2 months after the day the request is made (the *request day*).
- (2) For this section, a *Shareholders' request* is a request of Shareholders of the Company holding, on the request day, not less than 5% of the share capital of the Shares that on that day have the right to vote at the meeting requested.
- (3) The Shareholders' request must state the purpose of the meeting, be made by or on behalf of each Shareholder making the request and be deposited at the registered office of the Company. The request may consist of several Documents in similar form each signed by or on behalf of 1 or more of the Shareholders making the request.
- (4) If, within 21 days after the request day, the Directors or Secretary of the Company do not call the requested meeting to be held within 2 months after the request day, made the Shareholders making the request, or any of them representing more than $\frac{1}{2}$ of the total voting rights of all of them, may themselves call a meeting. The meeting so called must be held within 3 months after the request day.
- (5) A meeting called under this section must be called in the same way, as nearly as possible, as the in which meetings are to be called by Directors or Secretary.

96. Registrar's power to call meeting in default

- (1) If a meeting of a Company is not held as required by section 94 (Annual General Meetings) or 95 (Meeting requests), the Registrar may, on the application of any Director or Shareholder of the



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Company, call, or direct the Company to call, the meeting.

- (2) If a Company is given a direction under subsection (1), the Company must not, without reasonable excuse, fail to comply with the direction. Contravention of this subsection is punishable by a fine.

97. Notice of meetings

- (1) Any General Meeting (other than an Annual General Meeting of a Public Company or an adjourned such meeting) must be called by at least 14 days Written notice. An Annual General Meeting of a Public Company must be called by at least 21 days Written notice.
- (2) If a General Meeting is called by shorter notice than that specified in subsection (1), it is taken to have been duly called if the required majority of the Shareholders agree that the meeting should be taken to have been duly called.
- (3) For subsection (2), the **required majority** is:
- (a) for a Private Company—a majority together holding not less than 90% of the share capital represented by the Shares giving a right to attend and vote at the General Meeting; and
 - (b) for a General Meeting other than an Annual General Meeting of a Public Company—a majority together holding not less than 95% of the share capital represented by the Shares giving a right to attend and vote at the General Meeting; and
 - (c) for an Annual General Meeting of a Public Company—all Shareholders of the Company.
- (4) A notice of a General Meeting of a Company must:
- (a) set out the time, date and place for the General Meeting; and
 - (b) state the general nature of the General Meeting's business; and
 - (c) set out the intention to propose any Ordinary Resolution or Special Resolution and, if so, set out the terms of the Resolution; and
 - (d) for a Public Company—include a copy of any accounts and auditor's report that are to be laid before the General Meeting.

98. General provisions about meetings and votes

The following provisions apply to any General Meeting of a Company or of the holders of any class of Shares in a Company unless the Articles of Association provide otherwise:

- (a) a notice of every meeting must be given to every Shareholder entitled to receive it:
- (i) by delivering or posting it to the Shareholder's registered address; or
 - (ii) in the electronic form (if any) agreed to by the Shareholder; or
 - (iii) by making it available on the website (if any) agreed to by the Shareholder; or
 - (iv) in the other way or form (if any) agreed to by the Shareholder;



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- (b) except for a Company with a single Shareholder, at any General Meeting of the Company, 2 Shareholders personally present or represented by proxy are a quorum;
- (c) at any meeting dealing with a variation of any class rights other than an adjourned meeting, the quorum is the number of Shareholders holding or representing by proxy at least 1/3 in nominal value of the issued and Allotted Shares of the class, and at an adjourned meeting, 1 Shareholder holding Shares of the class or the Shareholder's proxy is a quorum;
- (d) any Shareholder elected by the Shareholders present at the meeting may chair the meeting;
- (e) on a show of hands, every Shareholder present in person at the meeting has 1 vote and, on a poll, every Shareholder has 1 vote for every Share held by the Shareholder.

99. Representation of Body Corporate at meetings

- (1) A Body Corporate may, by resolution of its Directors or other governing body, authorise any Person to act as its representative at any meeting of a Company, the holders of any class of Shares of a Company or the Creditors of a Company.
- (2) A Person authorised under subsection (1) to attend a meeting for a Body Corporate is entitled to exercise the same powers for the Body Corporate as the Body Corporate could exercise if it were an individual Shareholder or Creditor of the Company.

100. Resolutions in writing of Private Companies

- (1) Subject to any restrictions in a Private Company's Articles of Association, anything that may be done by a Resolution of the Company passed at a Shareholders' meeting (other than a Resolution to remove a Director or a Person who is registered as an auditor under these Regulations) may be done either by a resolution in writing in accordance with this section.
- (2) A resolution in writing is passed as an Ordinary Resolution if it is passed by Shareholders representing a simple majority of the total voting rights of Shareholders who, at the relevant time, would be entitled to vote.
- (3) A resolution in writing is passed as a Special Resolution only if:
 - (a) it stated that it was proposed as a Special Resolution; and
 - (b) it is passed by Shareholders representing not less than 75% of the total voting rights of Shareholders who, at the relevant time, would be entitled to vote.
- (4) An Ordinary Resolution or Special Resolution in writing may consist of several instruments in the same form each signed by or on behalf of 1 or more Shareholders.
- (5) An Ordinary Resolution or Special Resolution under this section is taken to be passed on the day the instrument, or the last of several instruments, is last signed or, if the resolution specifies a later date, on that date.
- (6) Any Document attached to an Ordinary Resolution or Special Resolution in writing under this section is taken to have been laid before a meeting of the Shareholders signing the Ordinary



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Resolution or Special Resolution.

- (7) Section 104 (Minutes and examination of minute books) applies to an Ordinary Resolution or Special Resolution in writing under this section as if it had been passed at a meeting.
- (8) This section does not affect or limit any provisions in the Articles of Association relating to the effectiveness of the consent of Shareholders, or any class of Shareholders, of a Private Company given to any Document, or anything else, otherwise than at a meeting of them.

101. **Recording of decisions by sole Shareholder**

- (1) If:
 - (a) a Company has only 1 Shareholder; and
 - (b) the Shareholder takes a decision that may be taken by the Company in a General Meeting and has effect as if agreed by the Company in a General Meeting; and
 - (c) the decision is not taken by way of Ordinary Resolution in writing;the Shareholder must provide the Company with a Written record of the decision.
- (2) Failure to comply with subsection (1) does not affect the validity of the decision.

102. **Proxies**

- (1) A Shareholder of a Company entitled to attend and vote at a General Meeting or at a meeting of the holders of any class of Shares is entitled to appoint, by Written notice to the Company, another Person (whether a Shareholder or not) as the Shareholder's proxy to attend and vote instead of the Shareholder.
- (2) A proxy appointed to attend and vote for a Shareholder has the same rights as the Shareholder, including, for example:
 - (a) to speak at the meeting; and
 - (b) to vote (but only to the extent allowed by the appointment or the Articles of Association); and
 - (c) to join in a demand for a poll.
- (3) A notice calling a meeting of a Company must contain a reasonably prominent statement that a Shareholder entitled to attend and vote is entitled to appoint a proxy (or, if permitted, 1 or more proxies) to attend and vote instead of the Shareholder, and that a proxy need not also be a Shareholder.

103. **Demand for poll**

- (1) A provision in the Articles of Association is void in so far as it would have the effect either of:
 - (a) excluding the right to demand a poll at a General Meeting, or at a meeting of the holders of any class of Shares, on a question, other than the election of the chair of the meeting or



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- the adjournment of the meeting; or
- (b) making ineffective a demand for a poll on any such question that is made either:
 - (i) by not less than 5 Shareholders having the right to vote on the question; or
 - (ii) by a Shareholder or Shareholders representing not less than 10% of the total number of Shares having the right to a vote on the question.
 - (2) The instrument appointing a proxy to vote at such a meeting is taken also to provide authority to demand or join in demanding a poll and, for subsection (1), a demand by a Person as proxy for a Shareholder is the same as a demand by the Shareholder.
 - (3) On a poll taken at such a meeting, a Shareholder entitled to more than 1 vote need not, if that Shareholder votes (in person or by proxy), use all the Shareholder's votes in the same way.

104. **Minutes and examination of minute books**

- (1) Every Company must ensure that minutes of all proceedings at General Meetings, meetings of the holders of any class of Shares, and meetings of its Directors and of committees of Directors, are entered in books kept for that purpose. The Company must ensure that the names of the Directors present at each of those meetings are recorded in the minutes.
- (2) If the minutes purport to be signed by the chair of the meeting at which the proceedings took place or by the chair of the next meeting, the minutes are evidence of the proceedings.
- (3) If minutes of a meeting have been made in accordance with this section, then, unless the contrary is proved, the meeting is taken to have been duly called and held, and all proceedings that took place at the meeting are taken to have duly taken place.
- (4) A Company must ensure that the books containing the minutes of the General Meetings of the Company, or of meetings of the holders of a class of Shares of the Company, are kept at the Company's registered office, and are open to inspection during business hours by a Shareholder without charge.
- (5) A Shareholder of a Company may, by giving the Company a Written request and paying the reasonable amount (if any) required by the Company, ask the Company for a copy of any minutes mentioned in subsection (4) (other than minutes of a meeting of the holders of a class of Shares if the Shareholder is not a holder of that class of Shares). The Company must, within 7 days after the day it receives the request and payment of any required amount, give the copy of the minutes to the Shareholder.
- (6) If a Company Contravenes subsection (4) or (5) in relation to a Shareholder of the Company, the Registrar may, by Written notice given to the Company, direct the Company to immediately comply with the subsection in relation to the Shareholder. If a Company is given a direction under this subsection, the Company must comply with the direction.

CHAPTER 11—PROTECTION OF MINORITIES IN TAKEOVERS

105. **Takeover Offers**

- (1) In this Chapter:



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Takeover Offer, in relation to a Company, means an offer to acquire all the Shares, or all the Shares of any class or classes, in the Company (other than Shares that at the date of the offer are already held by The Offeror), if the offer is on terms that are the same in relation to all the Shares to which the offer relates or, if those Shares include Shares of different classes, in relation to all the Shares of each relevant class.

(2) In subsection (1):

Shares means Shares that:

- (a) have been Allotted on the date of the offer; or
 - (b) are subsequently Allotted before a date specified in or determined in accordance with the terms of the offer; or
 - (c) any rights convertible into Shares before a date specified or determined in accordance with the term of the offer.
- (3) The terms offered in relation to any Shares are, for this section, to be treated as being the same in relation to all the Shares, or all the Shares of a class to which the offer relates, despite any variation permitted by subsection (4).
- (4) A variation is permitted if:
- (a) the law of a country or territory outside the AIFC precludes the acceptance of an offer in that jurisdiction in the form or the forms specified, or precludes it except after compliance by The Offeror with conditions with which it is unable to comply or that it regards as unduly onerous; and
 - (b) the variation is such that the Persons by whom the acceptance of an offer in that form is precluded are able to accept an offer in a different form but of substantially equivalent value.
- (5) The reference in subsection (1) to Shares already held by The Offeror includes a reference to Shares that The Offeror has an unconditional right to acquire under an unconditional option to acquire.
- (6) If the terms of an offer make provision for their revision and for an acceptance on the previous terms to be treated as an acceptance on the revised terms, the revision must not be regarded for this Chapter as the making of a fresh offer and a reference in this Chapter to the date of the offer is made is accordingly to be taken to be a reference to the date the original offer was made.
- (7) In this Chapter:

The Company means the Company whose Shares are the subject of the Takeover Offer.

The Offeror means, subject to section 111 (Joint offers), the Person making the Takeover Offer.

106. **Right of The Offeror to buy out minority Shareholders**

- (1) If, for a Takeover Offer that does not relate to Shares of different classes, The Offeror has, because of acceptances of the offer, acquired or contracted to acquire not less than $\frac{9}{10}$ in value of the Shares



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to which the offer relates, The Offeror may, within 120 days after the day the Takeover Offer closes, give notice to the holder of any Shares to which the offer relates that The Offeror has not acquired, or contracted to acquire, that The Offeror desires to acquire those Shares.

- (2) If, for a Takeover Offer relates to Shares of different classes, The Offeror has, because of acceptances of the offer, acquired or contracted to acquire not less than $\frac{9}{10}$ in value of the Shares of any class to which the offer relates, The Offeror may, within 120 days after the day the Takeover Offer closes, give notice to the holder of any Shares of that class that The Offeror has not acquired, or contracted to acquire, that The Offeror desires to acquire those Shares.
- (3) The Offeror must not give a notice under subsection (1) or (2) unless The Offeror has acquired, or contracted to acquire, the Shares necessary to satisfy the minimum specified in the subsection within 4 months after the date of the offer, and must not give the notice more than 2 months after the day The Offeror acquires, or contracts to acquire, the shares necessary to satisfy that minimum.
- (4) When The Offeror gives the first notice in relation to an offer, The Offeror must send a copy of it to The Company together with a signed declaration by The Offeror stating that the conditions for giving the notice are satisfied. The Offeror must not make the declaration unless The Offeror has reasonable grounds for believing it to be true.
- (5) If The Offeror is a Body Corporate, the declaration must be signed by a Director of the Body Corporate for The Offeror. The Director must not make the declaration unless the Director has reasonable grounds for believing it to be true.
- (6) Contravention subsection (4) or (5) is punishable by a fine.
- (7) In a proceeding against a Person for a Failure to send a copy of a notice as required by subsection (4), it is a defence for the Person to prove that the Person took reasonable steps to ensure that the subsection was complied with.
- (8) Subsection (9) applies if, during the period within which a Takeover Offer can be accepted, The Offeror acquires, or contracts to acquire, any of the Shares to which the offer relates otherwise than because of acceptances of the offer.
- (9) If this subsection applies and either:
 - (a) the value (the *acquisition value*) for which the Shares are acquired, or contracted to be acquired, does not, at that time, exceed the value that is receivable by an acceptor under the terms of the offer; or
 - (b) those terms are subsequently revised so that, when the revision is announced, the acquisition value, at the time mentioned in paragraph (a), no longer exceeds the value that is receivable by an acceptor under those terms;

The Offeror must be treated for this section as having acquired or contracted to acquire those Shares because of acceptances of the offer; but in any other case those Shares must be treated as excluded from those to which the offer relates.

107. Effect of notice under section 106

- (1) Subject to section 110 (Applications to Court), the following provisions have effect if a notice is given in respect of any Shares under section 106 (Right of The Offeror to buy out minority



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Shareholders).

- (2) The Offeror is entitled and bound to acquire the Shares on the terms of the offer.
- (3) If the terms of the offer give the holder of any Shares a choice of payment for the Shares, the notice must give particulars of the choice and state:
 - (a) that the holder of the Shares may, within 6 weeks after the date of the notice, indicate the holder's choice by a Written communication sent to The Offeror at an address specified in the notice; and
 - (b) which payment specified in the offer is to be taken as applying if holder indicate the holder's choice;

and the terms of the offer mentioned in subsection (2) have effect accordingly.

- (4) Subsection (3) applies whether or not any time limit or other conditions applying to the choice under the terms of the offer can still be met. If the payment chosen by the holder of the Shares:
 - (a) is not cash and The Offeror is no longer able to make that payment; or
 - (b) was to have been made by a third party who is no longer bound or able to make the payment;

the payment must be taken to consist of an amount of cash payable by The Offeror that, at the date of the notice, is equivalent to the chosen payment.

- (5) At the end of 6 weeks after the date of the notice, The Offeror must immediately:
 - (a) send a copy of the notice to The Company; and
 - (b) make payment to The Company on behalf of the holders of the Shares to which the notice relates.
- (6) The copy of the notice sent to The Company under subsection (5)(a) must be accompanied by an instrument of transfer executed on behalf of the Shareholder by a Person appointed by The Offeror. On receipt of that instrument, The Company must register The Offeror as the holder of those Shares.
- (7) If the payment referred to in subsection (5)(b) is to be made in Securities to be issued by The Offeror, the reference in that section to making payment is a reference to the issue of the Securities to The Company on behalf of the holders of the Shares to which the notice relates.
- (8) Any amount or other payment received by The Company under subsection (5)(b) is not the property of The Company but must be held by The Company on behalf of the Person entitled to the Shares in respect of which the amount or other payment was received.
- (9) Any amount received, including any dividend or other amount accruing from any other payment, by The Company under subsection (5)(b) must be paid into a separate bank account, the balance of which bears interest at an appropriate rate and can be withdrawn by the notice (if any) that is appropriate.



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108. Right of minority Shareholder to be bought out by The Offeror

(1) If, for a Takeover Offer does not relate to Shares of different classes, at any time before the end of the period within which the offer can be accepted:

- (a) The Offeror has, because of acceptances of the offer, acquired or contracted to acquire some (but not all) of the Shares to which the offer relates; and
- (b) those Shares, with or without any other Shares in the Company that The Offeror has acquired, or contracted to acquire, amount to not less than $\frac{9}{10}$ in value of all the Shares in the Company;

the holder of any Shares to which the offer relates who has not accepted the offer may, by a Written communication addressed to The Offeror, require The Offeror to acquire the Shares.

(2) If, subsection (1) does not apply to a Takeover Offer and, at any time before the end of the period within which the offer can be accepted:

- (a) The Offeror has, because of acceptances of the offer, acquired or contracted to acquire some (but not all) of the Shares of any class to which the offer relates; and
- (b) those Shares, with or without any other Shares of that class that The Offeror has acquired, or contracted to acquire, amount to not less than $\frac{9}{10}$ in value of all the Shares of that class;

the holder of any Shares of that class who has not accepted the offer may, by a Written communication addressed to The Offeror, require The Offeror to acquire the Shares.

(3) No later than 1 month after the end of the period within which the offer can be accepted The Offeror must give any Shareholder or holder of Shares of that class who has not accepted the offer a notice setting out:

- (a) the rights that are exercisable by the Shareholder or holder of Shares of that class under subsection (1) or (2); and
- (b) the period within which the rights are exercisable;

and, if the notice is given before the end of the period within which the offer can be accepted, the notice must state that the offer is still open for acceptance.

(4) The notice under subsection (3) may specify a period (not less than 3 months after the end of the period within which the offer can be accepted) for the exercise of the rights given by this section. If the notices specifies such a period, the rights may not be exercised after the end of that period.

(5) Subsection (3) does not apply to any Shares if The Offeror has given the Shareholder notice in respect of the Shares under section 106 (Right of The Offeror to buy out minority Shareholders).

(6) Contravention of subsection (3) is punishable by a fine.

(7) If The Offeror is not a Company, then, in a proceeding against The Offeror for an alleged Failure to comply this section, it is a defence for The Offeror to prove that The Offeror took all reasonable steps to ensure that this section was complied with.



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109. Effect of requirement under section 108

- (1) Subject to section 110 (Applications to Court), the following provisions have effect if a Shareholder exercises the Shareholder's rights in respect of any Shares under section 108 (Right of minority Shareholder to be bought out by The Offeror).
- (2) The Offeror is entitled and bound to acquire the Shares on the terms of the offer or, if other terms are agreed, on the other terms.
- (3) If the terms of the offer give the holder of the Shares a choice of payment for the Shares, the holder of the Shares may, in accordance with section 107(3) (Effect of notice under section 106), indicate the holder's choice when requiring The Offeror to acquire them.
- (4) Subsection (3) applies whether or not any time limit or other conditions apply to the choice under the terms of the offer can still be met. If the payment chosen by the holder of the Shares:
 - (a) is not cash and The Offeror is no longer able to make that payment; or
 - (b) was to have been made by a third party who is no longer bound or able to make that payment;

the payment must be taken to consist of an amount of cash payable by The Offeror that, on the day the holder of the Shares required The Offeror to acquire them, is equivalent to the chosen payment.

110. Applications to Court

- (1) If a notice is given under subsection 106 (Right of The Offeror to buy out minority Shareholders) to the holder of any Shares, the Court may, on an application made by the holder within 6 weeks after the day the notice was given:
 - (a) order that The Offeror is not be entitled and bound to acquire the Shares; or
 - (b) specify terms of acquisition different from those of the offer.
- (2) If an application to the Court under subsection (1) is pending at the end of the period mentioned in section 107(5) (Effect of notice under section 106), then, unless otherwise ordered by the Court, that section does not have effect until the application has been disposed of.
- (3) If the holder of any Shares exercises the holder's rights under section 108 (Right of minority Shareholder to be brought out by The Offeror), the Court may, on an application made by the holder or The Offeror, order that the terms on which The Offeror is entitled and bound to acquire the Shares are the terms that the Court considers appropriate.
- (4) On an application made under subsection (1) or (3) the Court may not require consideration that is:
 - (a) a higher value than the value (the *offer value*) specified in the notice containing the terms of the offer to be paid for the Shares to which the application relates, unless the holder of the Shares shows that the offer value would be unfair; or
 - (b) a lower value than the offer value.



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- (5) No order for costs may be made against a Shareholder making an application under subsection (1) or (3), unless the Court considers:
 - (a) that the application was unnecessary, improper or vexatious; or
 - (b) that there has been unreasonable conduct by the Shareholder during the proceedings on the application.
- (6) If a Takeover Offer has not been accepted to the extent necessary to entitle The Offeror to give notices under section 106(1) or (2), the Court may, on the application of The Offeror, make an order authorising The Offeror to give notices under section 106 (1)or (2) if satisfied:
 - (a) that The Offeror has, after reasonable enquiry, been unable to trace 1 or more of the Persons holding Shares to which the offer relates; and
 - (b) that the Shares that The Offeror has acquired, or contracted to acquire, because of acceptances of the offer, together with the Shares held by the Person or Persons mentioned in paragraph (a), total not less than the minimum applying under section 106(1)or (2) and
 - (c) that the terms offered are fair and reasonable.
- (7) However, the Court may not make an order under subsection (6) unless it considers that it is just and equitable to make the order having regard, in particular, to the number of Shareholders who have been traced but have not accepted the offer.

111. **Joint offers**

- (1) A Takeover Offer may be made by 2 or more Persons jointly, and in that event, this Chapter has effect with the following modifications.
- (2) The conditions for the exercise of the rights given by sections 106 (Right of The Offeror to buy out minority Shareholders) and 108 (Right of minority Shareholder to be brought out by The Offeror) are satisfied by the joint offerors acquiring, or contracting to acquire, the necessary Shares jointly (as respects acquisitions because of acceptances of the offer) and either jointly or separately (in other cases) and, subject to the following provisions, the rights and obligations of The Offeror under those sections and sections 107 (Effect of notice under section 106) and 109 (Effect of requirement under section 108) are respectively joint rights and joint and several obligations of the joint offerors.
- (3) It is sufficient compliance with any provision of those sections requiring or authorising a notice or other Document to be given or sent by or to the joint offerors that it is given or sent by or to any of them, except that the declaration required by section 106(4) must be made by all of them and, for a joint offeror that is a Body Corporate, signed by a Director of the Body Corporate.
- (4) In sections 105, 107(7) and 112, a reference to *The Offeror* is a reference to the joint offerors or any of them.
- (5) In section 107(4)(a), the reference to *The Offeror being no longer able to make the payment* is a as reference to none of the joint offerors being able to do so.
- (6) In section 107(6), a reference to *The Offeror* is a reference to the joint offerors or such of them as they may determine.



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- (7) In section 110, a reference to The Offeror is a reference to the joint offerors, except that any application under section 110(3) or (6) may be made by any of them. However, the reference in section 110(6)(a) to The Offeror having been unable to trace 1 or more of the Persons holding Shares is a reference to none of the joint offerors having been able to do so.

112. Associates

- (1) The requirement in section 105(1) (Takeover Offers) that a Takeover Offer must extend to all the Shares, or all the Shares of any class or classes, in a Company may be satisfied even though the offer does not extend to Shares that associates of The Offeror hold or have contracted to acquire. Shares that an associate holds or has contracted to acquire, whether at the time when the offer is made or subsequently, must be disregarded for the purposes of any reference in this Chapter to the Shares to which a Takeover Offer relates.
- (2) If, during the period within which a Takeover Offer can be accepted, any associate of The Offeror acquires, or contracts to acquire, any of the Shares to which the offer relates, then, if the condition specified in section 106(9)(a) or (b) (Right of The Offeror to buy out minority Shareholders) is satisfied in respect of those Shares, the Shares must be treated for section 106 as Shares to which the offer relates.
- (3) In section 108(1)(b) and (2)(b) (Right of minority Shareholder to be bought out by The Offeror), the reference to Shares that The Offeror has acquired or contracted to acquire includes a reference to Shares that any associate of The Offeror has acquired or contracted to acquire.
- (4) In this section:
- associate**, in relation to The Offeror, means any of the following:
- (a) a nominee of The Offeror;
 - (b) a Holding Company, Subsidiary or fellow Subsidiary of The Offeror or a nominee of such a Holding Company, Subsidiary or fellow Subsidiary;
 - (c) a Body Corporate in which The Offeror has a substantial interest.
- (5) For subsection (4), a Company is a **fellow Subsidiary** of another Body Corporate if both are Subsidiaries of the same Body Corporate but neither is a Subsidiary of the other.
- (6) For subsection (4), The Offeror has a **substantial interest** in a Body Corporate if:
- (a) the Body Corporate or its Directors are accustomed to act in accordance with The Offeror's directions or instructions; or
 - (b) The Offeror is entitled to exercise or control the exercise of 1/2 or more of the voting power at General Meetings of the Body Corporate; or
 - (c) The Offeror owns or controls directly or indirectly more than 20% of the share capital of the Body Corporate.
- (7) If The Offeror is an individual, The Offeror's associates also include The Offeror's spouse and any child, stepchild or grandchild of The Offeror.



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PART 8: MERGERS

CHAPTER 1—MERGERS: GENERAL

113. Application and interpretation of Part 8

- (1) This Part applies only to the extent that a Merging Company is a Public Company.
- (2) In this Part:
 - (a) a reference to a **Merging Body** is a reference to a body proposing to merge with any 1 or more of the following:
 - (i) a Company or Recognised Company;
 - (ii) a Body Corporate (other than a Recognised Company) incorporated outside the AIFC;(and **Merging Company** has a corresponding meaning); and
 - (b) a reference to a **Merged Body** is a reference to the body resulting from a merger under this Part, which may be:
 - (i) a new Company or a new Body Corporate incorporated outside the AIFC (a **New Body**); or
 - (ii) an existing Company or an existing Body Corporate incorporated outside the AIFC (a **Survivor Body**);(and **Merged Company**, **New Company** and **Survivor Company** have corresponding meanings).
- (3) This Part does not apply to any Foreign Company that is declared to be an excluded body under the Rules.
- (4) Chapter 11 (Protection of Minorities in Takeovers) of Part 7 (Private Companies and Public Companies) does not prevent the acquisition or takeover of a Merging Body by another Merging Body by way of a merger under this Part.
- (5) This Part does not apply to a Company if the Company is being wound up under the AIFC Insolvency Regulations.
- (6) In this Part:

Group Merger means a merger in which the Merging Bodies are:

 - (a) a Holding Company and 1 or more Wholly-Owned Subsidiaries of the Holding Company; or
 - (b) a Wholly-Owned Subsidiary of a Body Corporate and 1 or more of the following:
 - (i) the Body Corporate;



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- (ii) 1 or more other Wholly-Owned Subsidiaries of the Body Corporate.
- (7) For this Part, the Rules may prescribe the following:
- (a) pre-registration steps—if all Merging Bodies are Companies;
 - (b) pre-registration steps—if a Merged Body is not a Company;
 - (c) pre-registration steps—applicable in all other cases; and
 - (d) any other procedures or matter that is required to assist or facilitate a merger to which this Part applies.

CHAPTER 2—MERGERS REQUIREMENTS

114. Merger agreement

- (1) For the purposes of a merger, each Merging Body must enter into an agreement with each other Merging Body. The agreement (the *merger agreement*) must state the terms of the merger, including the following:
- (a) details of the proposed Merged Body, including the following:
 - (i) whether it is to be a Survivor Body or a New Body;
 - (ii) whether it is to be a Company, Recognised Company or another Body Corporate incorporated outside the AIFC;
 - (iii) the names and addresses of the Persons who are proposed to:
 - (A) be its Directors; or
 - (B) manage it, if it is to be a Body Corporate that does not have Directors;
 - (b) details of any arrangements necessary to complete the merger and to provide for the management of the Merged Body;
 - (c) details of any payment, other than the information specified in subsection (2), proposed to be made to a Shareholder, member or Director of a Merging Company;
 - (d) in relation to the transfer of any Securities of a Merging Company, the information specified in subsection (2).
- (2) For subsection (1)(c) and (d), the specified information in relation to the transfer of any Securities of a Merging Company is:
- (a) if any Securities are to be converted into Securities of the Merged Body—how the conversion is to be made; or
 - (b) otherwise, what the holders are to receive instead, and how and when they are to receive it.



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- (3) If the Merged Body is to be a New Company, the merger agreement must also set out:
 - (a) the proposed Articles of Association of the New Company; and
 - (b) a draft of any other Document or information that would be required to be delivered to the Registrar (however described) if that New Company were to be incorporated under these Regulations otherwise than by merger.
- (4) If the Merged Body is to be a Survivor Company, the merger agreement must also:
 - (a) if any amendments to the Articles of Association of the Survivor Company are proposed—include details of the amendments; and
 - (b) if any person is to become, or cease to be, a Director of the Survivor Company on the merger—state the name and address of each such person.
- (5) If Shares of a Merging Body are held by or on behalf of another Merging Body and the Merged Body is to be a New Company:
 - (a) the merger agreement must provide for the cancellation of the Shares, without any repayment of capital, when the merger is completed; and
 - (b) provision may not be made in the merger agreement for the conversion of the Shares into Securities of the New Company.
- (6) A merger agreement may provide that, at any time before the completion of the merger, the agreement may be terminated by any 1 or more of the Merging Companies, even though the merger has been approved by the Shareholders or members of all or any of those Merging Companies.
- (7) If an agreement is terminated under the terms of a merger agreement referred to in subsection (6), this Part does not require or authorise any further steps to be taken to complete the merger.
- (8) The requirements of this section for a merger agreement do not apply in respect of a Group Merger.

115. Resolutions and certificates for merger

- (1) Before notice is given of a meeting of a Merging Company to approve a merger agreement under section 116 (Approval of merger), the Directors of the Company must pass a Directors' resolution that, in the opinion of the Directors voting for the resolution, the merger is in the best interests of the Company. The resolution must contain either a solvency statement referred to in subsection (2) or a statement referred to in subsection (4).
- (2) If the Directors voting for the resolution under subsection (1) are satisfied on reasonable grounds that they can properly make a solvency statement in respect of the Company, the resolution must include a statement that they are so satisfied.
- (3) For this section, a *solvency statement* is a statement that, having made full inquiry into the affairs of the Company, the person making the statement reasonably believes that the Company is, and will remain until the merger is completed, able to discharge its Liabilities as they fall due.
- (4) If subsection (2) does not apply, the resolution must contain a statement that the Directors voting



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for it are satisfied on reasonable grounds that there is a reasonable prospect of obtaining the permission of the Court under section 119 (Company to apply to Court if solvency statement not made).

- (5) After the resolution under subsection (1) is passed, but before notice is given as mentioned in that subsection, each Director who voted in favour of it must sign a certificate setting out the grounds for the solvency statement under subsection (2) or the statement under subsection (4), as the case may be.
- (6) Before the notice is given as mentioned in subsection (1) each relevant person under subsection (7) must sign a certificate stating:
 - (a) that, in the person's opinion, the Merged Body will be able to continue to conduct business and discharge its Liabilities as they fall due for 12 months after the day the certificate is signed or the merger is completed, whichever is the later; and
 - (b) the grounds for that opinion, having particular regard to:
 - (i) the prospects of the Merged Body; and
 - (ii) the proposals in any merger agreement in relation to the management of the Merged Body's business, or any proposals in the Special Resolutions proposed to be approved under section 116 in relation to that matter; and
 - (iii) the amount and character of the financial resources that will, in the person's opinion, be available to the Merged Body.
- (7) For subsection (6), a *relevant person* is any of the following:
 - (a) the persons proposed in any merger agreement, or in a Special Resolution for a Group Merger:
 - (i) to be Directors of the Merged Body; or
 - (ii) to manage the Merged Body, if it is to be a Body Corporate that does not have Directors;
 - (b) if none of the Directors of the Merging Bodies is a person mentioned in paragraph (a)—the persons who signed the certificate or statement mentioned in subsection (5).

116. Approval of merger

- (1) Each Merging Body that is a Company must submit the merger for approval by a Special Resolution of the Company and, if there is more than 1 class of Shareholders, for approval by a Special Resolution of a separate meeting of each class.
- (2) Notice of each meeting:
 - (a) must be accompanied by:
 - (i) a copy or summary of any merger agreement; and



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- (ii) copies of the proposed Articles of Association or other Constitutional Documents for the Merged Body or a summary of the principal provisions of those Documents; and
 - (iii) if the notice is accompanied by a summary mentioned in subparagraph (i) or (ii)—information about how a copy of the summarised Document may be inspected by the Shareholders of the Company; and
 - (iv) a copy of each certificate or statement signed under section 115(5) and (6) (Resolutions and certificates for merger) in relation to the merger; and
 - (v) a statement of the material interests in the merger of the Directors of each Merging Body and the persons managing any Merging Body that does not have Directors; and
 - (vi) any further information that a Shareholder would reasonably require to make an informed decision about the merger; and
- (b) must contain sufficient information to alert Shareholders to their right to apply to the Court under section 117 (Objection to merger by Shareholders).
- (3) A Special Resolution to approve a Group Merger must:
- (a) provide that the capital accounts of each Merging Body are to be added to the capital accounts of the Merged Body; and
 - (b) specify any changes to the Articles of Association of the Merged Body that are to take effect on the merger; and
 - (c) state the names and addresses of the persons who are proposed to be the Directors of the Merged Body after the merger; and
 - (d) provide that the Shares of each Merging Body are to be cancelled without any repayment of capital.
- (4) A merger is approved under this section when all the Special Resolutions mentioned in subsection (1) have been passed in respect of all the Merging Bodies that are Companies.
- (5) A merger may not be completed unless it is approved under this section.

117. **Objection to merger by Shareholders**

- (1) A Shareholder of a Merging Company may apply to the Court for an order under section 175 (Orders for unfair prejudice to Shareholders) on the ground that the merger would unfairly prejudice the interests of the Shareholder.
- (2) An application must not be made:
 - (a) more than 28 days after the day the merger is approved under section 116 (Approval of merger); or
 - (b) by a Shareholder who voted in favour of the merger.



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CHAPTER 3—CREDITORS

118. Notice to Creditors of merger

- (1) No later than 28 days after the day a merger is approved under section 116 (Approval of merger), each Merging Body that is a Company must send Written notice to each of its Creditors who, after its Directors have made reasonable enquiries, is known to the Directors to have a claim against the Company exceeding U.S. \$5,000.
- (2) The notice must state:
 - (a) that the Company intends to merge, in accordance with this Part, with 1 or more Bodies Corporate specified in the notice; and
 - (b) that a copy of the merger agreement and each Special Resolution of the Company is available to Creditors from the Company, free of charge, on request.
- (3) If section 119 (Company may apply to Court if solvency statement not made) applies to the merger, the notice must also:
 - (a) state that a Merging Company has applied or will apply for the permission of the Court under that section; and
 - (b) state that any Creditor of any of the Merging Bodies may request the Company making the application to send a copy of the application to the Creditor; and
 - (c) set out information about:
 - (i) how a Creditor may contact the Company making the application or a Person representing it in that application; and
 - (ii) the effect of section 119(4), including the date of the application to the Court, if known at the time of the notice.
- (4) If section 119 does not apply to the merger, the notice must also state that any Creditor of the Company may:
 - (a) give notice to the Company of the Creditor's objection to the merger within 28 days after the day the notice is published under subsection (5); or
 - (b) require the Company to notify the Creditor if any other Creditor of the Company applies to the Court for an order restraining the merger or modifying the merger agreement.
- (5) The Company must publish the contents of the notice in the Appointed Publications or in another way approved by the Registrar.
- (6) The notice must be published:
 - (a) no later than 28 days after the day the merger is approved under section 116; or
 - (b) as soon as practicable after the Company sends the last of the notices under subsection



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(1), whichever occurs earlier.

119. **Company to apply to Court if solvency statement not made**

- (1) This section applies to a merger if a certificate signed by the Directors of any of the Merging Companies under section 115(5) (Resolutions and certificates for merger) does not contain the solvency statement mentioned in section 115(3).
- (2) The merger may not be completed unless the Court permits the merger on the ground that the merger would not be unfairly prejudicial to the interests of any Creditor of any of the Merging Bodies.
- (3) A Merging Company to which a certificate mentioned in subsection (1) relates, or all such Companies jointly if there are more than 1, must as soon as is practicable after the proposed merger is approved under section 116 (Approval of merger):
 - (a) apply to the Court for permission for the merger; and
 - (b) send a copy of the application to:
 - (i) any Creditor known to the Directors, after having made reasonable enquiries, to have a claim against any of the Merging Bodies exceeding U.S. \$5,000; and
 - (ii) any other Creditor of any of the Merging Bodies who request a copy from that Company; and
 - (iii) the Registrar.
- (4) The Court must not hear the application for at least 28 days after the day it is made to the Court.

120. **Objection by Creditor if solvency statements made**

- (1) This section applies to a merger if each certificate signed by the Directors of the Merging Companies under section 115(5) (Resolutions and certificates for merger) contains the solvency statement mentioned in section 115(3).
- (2) A Creditor of a Merging Company who objects to the merger:
 - (a) may, within 28 days of after the day the notice under section 118(5) (Notice to Creditors of merger) is published, give notice of the Creditor's objection to the Company; and
 - (b) if the Creditor's claim against the Merging Company is not discharged—the Creditor may, within 28 days after the day the Creditor gives notice of the Creditor's objection to the Company, apply to the Court for an order restraining the merger or modifying the merger agreement.
- (3) If a Creditor makes an application under subsection (2)(b), the Company must, within a reasonable time after receiving a copy of the application, send a copy of it to each other Creditor:
 - (a) to whom a notice was sent under section 118(1); or
 - (b) who has made a request under section 118(3)(b); or



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- (c) who has given notice of objection under subsection (2)(a); or
 - (d) to whom the Court orders that a copy should be sent.
- (4) If, on an application under subsection (2)(b), the Court is satisfied that the merger would unfairly prejudice the interests of the applicant or of any other Creditor of the Merging Company, the Court may make the order that it considers appropriate in relation to the merger, including, for example, an order:
- (a) restraining the merger; or
 - (b) modifying the merger agreement (if any) or Special Resolution in the way specified in the order.
- (5) Subsection (6) applies if the Court is considering making an order under subsection (4)(b) to modify a merger agreement or Special Resolution that does not contain a provision in accordance with section 114(6) (Merger agreement) allowing each of the Merging Companies to terminate the merger following the modification.
- (6) The Court must not make the order unless:
- (a) the order also inserts the provision mentioned in subsection (5) in the merger agreement or Special Resolution; and
 - (b) the Court is satisfied that each Merging Company will have an adequate opportunity to reconsider whether to proceed with the merger following the modification.

121. **Consent of Registrar required for mergers involving bodies other than Companies**

- (1) If 1 or more of the Merging Bodies are not Companies:
- (a) the Merging Bodies must apply jointly to the Registrar for consent to the merger; and
 - (b) the merger may not be completed unless the Registrar consents and any conditions of the consent are complied with.
- (2) The application for consent must not be made until after the day of the last publication of a notice under section 118(5).
- (3) The application must be accompanied by:
- (a) a copy of any merger agreement and the Special Resolutions passed under section 116 (Approval of merger); and
 - (b) if any Merging Body is a Company—a copy, in respect of each Company, of:
 - (i) a copy of the resolution passed under section 115(1) (Resolutions and certificates for merger), together with, if the information is not contained in the resolution, a list identifying the Directors who voted in favour of the resolution; and
 - (ii) the certificates signed under sections 115(5) and (6); and



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- (c) a copy of the notice to Creditors published under section 118(5), with the date of its publication; and
 - (d) information, as at the time of the application under this section, about:
 - (i) any application made by a Shareholder to the Court under section 117 (Objection to merger by Shareholders); or
 - (ii) if no application has been made to the Court under that section—the date by which an application may be made to the Court under that section.
- (4) If section 119 (Company may apply to Court if solvency statement not made) applies to the merger:
- (a) the application under this section must also be accompanied by information, as at the time of that application, about the application made, or to be made, to the Court under that section; and
 - (b) the applicants must:
 - (i) keep the Registrar informed of the progress of the application under that section; and
 - (ii) provide, when available, a copy of the Court order permitting the merger.
- (5) If section 120 (Objection by Creditor if solvency statement made) applies to the merger, the application under this section must also be accompanied by:
- (a) information, as at the time of the application under this section, about:
 - (i) any notice of objection given by a Creditor under section 120(2)(a); or
 - (ii) if no notice of objection has been given—the date by which a notice of objection may be given; and
 - (b) evidence satisfactory to the Registrar that the merger would not be unfairly prejudicial to the interests of any Creditor of any Merging Body that is a Company.
- (6) If the Merged Body is to be a Company, the application must also be accompanied by:
- (a) the consent of the proposed Directors to act as Directors; and
 - (b) a copy of its proposed Articles of Association, unless it is to be a Survivor Company and there are no amendments proposed to its Articles of Association.
- (7) If 1 more of the Merging Companies is a Foreign Company, the application must also be accompanied by evidence satisfactory to the Registrar, in respect of each Foreign Company, that:
- (a) the laws of the jurisdiction in which the Foreign Company is incorporated do not prohibit either or both of:
 - (i) the proposed merger; or



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- (ii) if the Merged Body is to be a new Body Corporate incorporated in that jurisdiction—the incorporation of that Body Corporate because of the merger; and
 - (b) if those laws or the constitution of the Foreign Company require that an authorisation be given for the application under this section or for the merger—the authorisation has been given; and
 - (c) if the Foreign Company is not to be a Survivor Company—the Foreign Company will, in due course after the completion of the merger, cease to be a Body Corporate incorporated under the law of the jurisdiction in which it is presently incorporated.
- (8) If the Merged Body is to be a Foreign Company, the application must also be accompanied by evidence satisfactory to the Registrar that the laws of the jurisdiction in which the Merged Body is to be incorporated provide that on the merger:
 - (a) the property and rights to which the transferor bodies were entitled immediately before the merger will become the property and rights of the Merged Body; and
 - (b) the Merged Body will become subject to any criminal and civil liabilities, and any contracts, debts and other obligations, to which the transferor bodies were subject immediately before merger; and
 - (c) any legal proceedings that, immediately before the merger, were pending by or against any of the transferor bodies may be continued by or against the Merged Body.
- (9) Subsections (10) and (11) apply unless, at the time of the application under this section:
 - (a) there has been no objection by a Shareholder or by a Creditor to the merger; and
 - (b) the time for making any objection has elapsed.
- (10) The applicants must:
 - (a) notify the Registrar of any objection of which they become aware after the application; and
 - (b) notify the Registrar of the result once any objection, whenever made, has been disposed of; and
 - (c) provide to the Registrar any further information or Document reasonably required by the Registrar in connection with any objection.
- (11) Until the applicants have complied with subsection (10), the Registrar:
 - (a) must not make any decision on the application other than to refuse consent on grounds unconnected to an objection; and
 - (b) may, in respect of the application, take any other action short of making a decision, or take no further action.



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(12) In subsections (9), (10) and (11):

objection means:

- (a) the making by a Shareholder of any Merging Company of an application to the Court under section 117; or
- (b) the giving of notice of objection under section 120(2)(a) (Objection by Creditor if solvency statement made) by a Creditor of any Merging Company.

CHAPTER 4—COMPLETION OF MERGER AND GROUNDS FOR OPINIONS

122. Effect of completion of merger

- (1) On the completion date of a merger:
 - (a) the Merging Bodies are merged and continue as one Merged Body as provided in any merger agreement or the Special Resolution; and
 - (b) any Merging Company that is not a Survivor Company ceases to be incorporated as a separate Company.
- (2) When a merger is completed in which the Merged Body is a New Company:
 - (a) the New Company becomes entitled to all property and rights to which each Merging Body was entitled immediately before the merger was completed; and
 - (b) the New Company becomes subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which each of the Merging Body was subject immediately before the merger was completed; and
 - (c) any legal or other proceedings that, immediately before the merger, were commenced by or against any of the Merging Bodies may be continued by or against the New Company.
- (3) Entries made in the Register, as prescribed by the Rules made for this Part, are conclusive evidence of the following matters to which they refer:
 - (a) that, on the completion date specified in the entry, the Merging Bodies merged and are continued as the Merged Body; and
 - (b) that the requirements of these Regulations and the Rules in respect of the merger of the Merging Bodies, including the matters precedent and incidental to the merger, have been fully complied with.
- (4) The operation of this section is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong; or
 - (b) as a Breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or Liabilities; or
 - (c) as giving rise to any remedy by a party to a contract or other instrument, as an event of



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default or as causing or permitting its termination or the termination of any obligation or relationship.

123. Grounds for opinion relating to merger

- (1) A Person signing a certificate prescribed by the Rules under section 113(7) (Application and interpretation for Part 8) or a certificate under section 115 (Resolutions and certificates for merger) must have reasonable grounds for any opinion stated in the certificate.
- (2) Contravention of this section is punishable by a fine.



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PART 9: COMPROMISES AND ARRANGEMENTS

124. Power of Company to compromise with Creditors and Shareholders

- (1) This section applies if a compromise or arrangement is proposed between a Company and:
 - (a) its Creditors or a class of its Creditors; or
 - (b) its Shareholders or a class of its Shareholders.
- (2) The Court may, on the application of:
 - (a) the Company; or
 - (b) a Creditor or Shareholder of the Company; or
 - (c) for a Company being wound up—its liquidator;

order that a meeting of the Creditors or class of Creditors, or of the Shareholders or class of Shareholders, be held as the Court directs.
- (3) The Court may, by order, sanction a compromise or arrangement, but only if a majority in number representing:
 - (a) $\frac{3}{4}$ in value of the Creditors or that class of Creditors; or
 - (b) $\frac{3}{4}$ of the voting rights of the Shareholders or that class of Shareholders;

as the case may be, present and voting either in person or by proxy at the meeting, agree to the compromise or arrangement.
- (4) If the Court sanctions a compromise or arrangement under subsection (3), the compromise or arrangement is binding on:
 - (a) all the Creditors or that class of Creditors; or
 - (b) all the Shareholders or that class of Shareholders;

as the case may be, and also on the Company or, if the Company is being wound up, on the liquidator and contributories of the Company.
- (5) The Person on whose application the Court makes an order under subsection (3) must give a copy of the order, duly certified by the Registrar of the Court, to the Registrar as soon as practicable and, in any case, within 7 days after the day the order is made.
- (6) The Court order under subsection (3) has no effect, until a duly certified copy of that order is given to the Registrar by the Person on whose application the order was made or the Company.
- (7) The Registrar must, as soon as practicable after receiving a duly certified copy of the Court's order referred to in subsection (5), include the order in the Company's Articles of Association.
- (8) Contravention of subsection (5) is punishable by a fine.



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125. Information relating to compromise to be circulated

- (1) This section applies if a meeting of Creditors or a class of Creditors, or of Shareholders or a class of Shareholders, of a Company is called under section 124 (Power of Company to compromise with Creditors and Shareholders).
- (2) The notice calling for the meeting of Creditors or Shareholders must include a statement containing the following:
 - (a) an explanation of the effect of the compromise or arrangement;
 - (b) any material interests of Directors in the compromise or arrangement, including interests as an Officer, Creditor or Shareholder of the Company;
 - (c) if there any Debt Securities issued by the Company—how the arrangement or compromise would affect the rights of the Debt Security holders;
 - (d) any other matter that has a material impact on the Company, and its Creditors and Shareholders and Debt Security holders, resulting from the compromise or arrangement.
- (3) If the notice calling the meeting is given by advertisement, the advertisement must include either the statement referred to in subsection (2), or a notification of where or how the Creditors or Shareholders entitled to attend the meeting may obtain copies of the statement.
- (4) If a notice given by advertisement includes a notification that copies of the statement referred to in subsection (2) can be obtained by Creditors or Shareholders entitled to attend the meeting, the Company must give a Creditor or Shareholder, on application, a copy of the statement free of charge.
- (5) The Company, and each Officer of the Company, must ensure that every requirement of this section is complied with.
- (6) Contravention of subsection (5) by the Company or an Officer of the Company is punishable by a fine.

126. Provisions for facilitating Company reconstruction or amalgamation

If an application is made to the Court under section 124 (Power of Company to compromise with Creditors and Shareholders) for the sanctioning of a compromise or arrangement proposed between a Company and any Persons mentioned in that section, the Court may make any orders as it considers appropriate to facilitate the compromise or arrangement, including a reconstruction of the Company, or an amalgamation of the Company with any other Company.



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PART 10: ACCOUNTS, REPORTS AND AUDIT

CHAPTER 1—ACCOUNTS, REPORTS AND AUDIT: GENERAL

127. Application of Part 10

- (1) This Part does not apply to a Company that is exempt from these Regulations under any applicable AIFC Regulations.
- (2) The requirements of this Part about accounts and audit apply in relation to each financial year of a Company.

128. Waiver etc. by the Rules

- (1) The Rules may extend, exclude waive or modify the application of the provisions of this Part in relation to a specific Person or class of Persons.
- (2) Without limiting subsection (1), the Rules may make provision for or in relation to the following:
 - (a) the inclusion in accounts of group accounts dealing with the affairs of a Company and its Subsidiaries;
 - (b) the inclusion in accounts of a report by the Directors dealing with prescribed matters;
 - (c) the accounting standards or principles to be applied in the preparation of accounts, including the following:
 - (i) the creation or adoption of 1 or more accounting standards or principles, or codes of practice;
 - (ii) which of, and how, prescribed accounting standards or principles may apply to particular Companies and in particular circumstances;
 - (iii) periods in which an accounting standard or principle may apply;
 - (d) the extending or shortening of a financial year in certain circumstances, including to facilitate synchronisation of accounts;
 - (e) the appointment, qualifications, remuneration, removal, resignation, rights and duties of Auditors;
 - (f) the creation or adoption of auditing standards or codes of practice;
 - (g) the waiver of the requirement for the preparation of accounts and examination and reporting on accounts by Auditors.
- (3) The provisions of this section are subject to section 195 (Waivers and modifications of certain provisions).

CHAPTER 2—ACCOUNTS AND REPORTS

129. Accounting Records of Companies



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- (1) Every Company must keep Accounting Records that are sufficient to show and explain its transactions so as to:
 - (a) disclose with reasonable accuracy the financial position of the Company at any time; and
 - (b) enable the Directors to ensure that any accounts prepared by the Company under this Part comply with the requirements of these Regulations and the Rules.
- (2) A Company must ensure that its Accounting Records are:
 - (a) kept at the place that the Directors consider appropriate, except so far as the Rules otherwise require; and
 - (b) preserved by the Company for at least 6 years after the day they are created or, if the Rules prescribe another period, the other period; and
 - (c) open to inspection by an Officer or Auditor of the Company at all reasonable times; and
 - (d) otherwise kept and maintained as required by the Rules.
- (3) If a Company, for whatever reason, ceases to exist or ceases to be a Company within the meaning of these Regulations, the Directors immediately before the Company ceases to exist or ceases to be a Company shall ensure that its Accounting Records are preserved for the period prescribed in subsection 129(2)(b).
- (3)(4) If a Public Company keeps its Accounting Records outside of the AIFC, the Company must keep in the AIFC its returns in relation to the business it conducts in or from the AIFC.
- (4)(5) Contravention of this section is punishable by a fine.

130. Financial years

- (1) The first financial year of a Company starts on the day it is incorporated and lasts for a period not exceeding 18 months decided by the Directors.
- (2) However, if a Foreign Company has become a Company under section 151 (Transfer of incorporation to AIFC), the first financial year of the Company under these Regulations may, at the option of the Directors, be taken to have started at the end of the previous financial year of the Company in the jurisdiction from which it was continued as a Company. If the Directors exercise that option, the first financial year of the Company under these Regulations is the period of 12 months from the date it is taken to have started.
- (3) The second or any subsequent financial year of a Company starts at the end of the Company's previous financial year and lasts for 12 months or some other period, which is within 7 days either shorter or longer than the 12 months, as may be decided by the Directors.

131. Accounts

- (1) The Directors of every Company must ensure that accounts are prepared in relation to each financial year of the Company and that the accounts comply with the requirements in this section.



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- (2) The accounts must:
 - (a) be prepared in accordance with accounting principles or standards prescribed by the Rules or otherwise approved by the Registrar; and
 - (b) show a true and fair view of the profit or loss of the Company for the period and of the state of the Company's affairs at the end of the period; and
 - (c) comply with any other requirements of these Regulations and the Rules.
- (3) The Directors of a Company must approve the Company's accounts and must ensure that they are signed on their behalf by at least 1 Director.
- (4) The Directors of a Company must ensure that, within 6 months after the end of each financial year of the Company, the accounts for that year are:
 - (a) prepared and approved by the Directors; and
 - (b) examined and reported upon by an Auditor; and
 - (c) if the Company is a Public Company—laid before a General Meeting, together with a copy of the Auditor's report and Directors' report, for discussion and, if considered appropriate, approval by the Shareholders; and
 - (d) for all Companies—sent, together with (if applicable) a copy of the Auditor's report or Directors' report (or both), to every Shareholder, other than a Shareholder for whom the Company does not have a current postal address.
- (5) A Company must file with the Registrar, within 14 days after the day subsection (4)(d) is complied with in relation to a financial year, a copy of the accounts and the Auditor's report for the financial year and, if the Company is a Public Company, a copy of the Directors' report prepared under section 133 (Directors' reports for Public Companies) for the financial year.
- (6) Unless otherwise provided in its Articles of Association, a Private Company and its Directors are not required to comply with subsections (4)(b) and (5) if the Company, during the current year for which the accounts are being prepared and, if the Company has existed for more than 1 financial year, the year immediately before that financial year, has:
 - (a) an annual turnover of not more than U.S. \$5,000,000; and
 - (b) an average of not more than 20 Shareholders.
- (7) However, the Shareholders representing not less than 10% of the nominal value of the share capital of a Private Company to which subsection (6) applies may, by Written notice given to the Company no earlier than the start of any financial year and no later than 1 month before the end of the financial year, require the Company to obtain an audit of its accounts for financial year. The Directors of the Company must ensure that the request is complied with.
- (8) If a provision of this section requires the Directors of a Company to do something, each of the Directors are severally liable if the thing is not done as required by this section.
- (9) Contravention of this section is punishable by a fine.



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132. **Provision of copy of accounts to Shareholders**

- (1) Any Shareholder of a Company is entitled, on Written request made by the Shareholder to the Company and without charge, to be given:
 - (a) a copy of the Company's latest accounts, if section 131(6) (Accounts) applies; or
 - (b) in all other cases, the latest audited accounts and Auditor's report.
- (2) A Company must comply with a request under subsection (1) within 7 days after the day it receives the request.
- (3) Contravention of subsection (2) is punishable by a fine.

133. **Directors' report for Public Companies**

- (1) The Directors of a Public Company must prepare a Directors' report for each financial year of the Company.
- (2) The Directors' report for a financial year must:
 - (a) state the names of the persons who, at any time during the financial year, were Directors; and
 - (b) state the principal activities of the Company during the financial year; and
 - (c) state the amount (if any) that the Directors recommend should be paid by way of dividend or other Distribution; and
 - (d) include a business review containing:
 - (i) a fair view of the Company's business; and
 - (ii) a description of the risks and uncertainties facing the Company; and
 - (iii) an analysis of the development, performance and position of the Company's business; and
 - (iv) the other information necessary for an understanding of the development, performance and position of the Company's business; and
 - (e) state that the Directors are not aware of any relevant audit information of which the Company's Auditor is not aware, and that they have taken all reasonable steps to become aware of such relevant audit information; and
 - (f) include the other matters prescribed by the Rules.
- (3) The Directors' report must be signed on behalf of the Directors by a Director or the Secretary of the Company.
- (4) Each Director of a Company must ensure that the requirement of this section are complied with in



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relation to the Company in relation to each financial year of the Company.

- (5) Contravention of subsection (4) is punishable by a fine.

CHAPTER 3—AUDITORS

134. Qualification and registration of Auditors

- (1) In this Part, a reference to an *Auditor* is a reference to a Person who is registered by the Registrar as an auditor under this Chapter.
- (2) The Rules must prescribe the criteria that a Person must meet to be registered, and to maintain registration, as an auditor. The Rules may include requirements relating to the qualifications, experience and fitness and propriety of applicants.
- (3) The Rules may provide for requirements referred to in subsection (2) to be varied for applicants who are, at the time of application, regulated in a jurisdiction outside the AIFC.
- (4) The Registrar may:
- (a) grant or refuse to grant an application for registration as an auditor; and
 - (b) impose any restrictions or conditions on granting registration.
- (5) An Auditor must act within the scope of the Auditor's registration and comply with any restrictions and conditions imposed on the registration.
- (6) The Registrar may, by Written notice given to an Auditor on the Registrar's own initiative or at the request of the Auditor:
- (a) impose restrictions or conditions on the Auditor's registration; or
 - (b) vary or withdraw any restrictions or conditions imposed on the Auditor's registration; or
 - (c) suspend or withdraw the Auditor's registration.
- (8) In making a decision under this section, the Registrar must comply with any Rules applying in relation to the making of the decision.

135. Register of Auditors

- (1) The Registrar must keep and publish a register of current and past registrations of auditors under these Regulations, including any restrictions and conditions applying to registrations. The Rules may make provision for or in relation to the register.
- (2) The Registrar must make a current version of the register freely available for viewing by the public during the normal business hours of the Registrar.

136. Appointment and removal of Auditors

- (1) If a Company is required by these Regulations to have its accounts examined and reported on by an Auditor, the Company must appoint an Auditor to examine and report on, in accordance with



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these Regulations and the Rules, the accounts prepared under section 131 (Accounts).

- (2) A Person who is not an Auditor must not:
 - (a) consent to be appointed as an Auditor of a Company; or
 - (b) act as an Auditor of a Company; or
 - (c) prepare any report required by these Regulations and the Rules to be prepared by an Auditor.
- (3) Contravention of subsection (2) is punishable by a fine.
- (4) The appointment of a firm as an Auditor of a Company is taken to be an appointment of each Person who is a partner of the firm.
- (5) A Public Company must, at each Annual General Meeting at which the accounts for the previous financial year are laid, appoint an Auditor to hold office from the conclusion of that meeting to the conclusion of the next Annual General Meeting at which the accounts are laid.
- (6) A Private Company must, within 6 months after the end of a financial year or, if earlier, before the day the accounts are sent to the Shareholders, appoint an Auditor to hold office from that date until the end of the next period for appointing Auditors.
- (7) The appointment of an Auditor by a Private Company must be by a resolution of its Directors unless the Shareholders, at a General Meeting, have appointed an Auditor by an Ordinary Resolution.
- (8) The Directors of a Public Company may, at any time before the first General Meeting at which the accounts for the previous financial year are laid, appoint an Auditor to hold office to the conclusion of the first General Meeting.
- (9) The Directors of a Company may fill any casual vacancy in the office of Auditor on the terms they consider appropriate. An Auditor appointed to fill a casual vacancy holds office:
 - (a) for a Public Company—until the conclusion of the next General Meeting at which the accounts for the previous financial year are laid; or
 - (b) for a Private Company—until the end of the next period for appointing Auditors.
- (10) Subject to subsection (9), the Company may, by Ordinary Resolution, fix the Auditor's remuneration.
- (11) A Company must not appoint an Auditor under this section unless:
 - (a) the Auditor has, before the appointment, consented in Writing to the Company; and
 - (b) the Company is not, on reasonable inquiry, aware of any matter that should prevent the Auditor from giving the Auditor's consent under paragraph (a).
- (12) An Auditor must not consent to an appointment as an Auditor of a Company if:



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- (a) the Auditor has, or may reasonably be perceived to have, a conflict of interest; or
 - (b) the Auditor does not have, or may reasonably be perceived not to have, a requisite degree of independence from the Company; or
 - (c) the Auditor, or any associate of the Auditor in a firm or business undertaking, has acted as an Auditor of the Company within the earlier period or frequency prescribed by the Rules.
- (13) A Company may, despite anything in any agreement between it and its Auditor, remove the Auditor at any time by Resolution.
- (14) The Court may, on application made by the Registrar, order the removal of the Auditor of a Company.
- (15) This section does not deprive an Auditor removed under this section of compensation or damages payable to the Auditor in respect of the termination of the Auditor's appointment.
- (16) Every Company and its Officers must take reasonable efforts to provide the information and assistance required by an Auditor for the Exercise of the Auditor's Functions under these Regulations or the Rules.

137. Auditor's report to Company

- (1) A Company's Auditor must make a report to the Company's Shareholders on the accounts examined by the Auditor.
- (2) The Auditor's report must state:
 - (a) whether, in the Auditor's opinion, the accounts have been properly prepared in accordance with these Regulations and the Rules; and
 - (b) in particular, whether the accounts give a true and fair view of the profit or loss of the Company for the financial year and of the state of the Company's affairs at the end of the financial year; and
 - (c) any other matter or opinion required under these Regulations or the Rules.
- (3) Contravention of this section is punishable by a fine.

138. Auditors' Functions

- (1) A Company's Auditor must, in preparing a report in relation to the accounts of the Company, conduct the investigations necessary to enable the Auditor to form an opinion about the following matters:
 - (a) whether proper Accounting Records have been kept by the Company and proper returns adequate for the audit have been received from branches or offices not visited by the Auditor;
 - (b) whether the Company's accounts are in agreement with the Accounting Records and returns;



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- (c) whether the Company's accounts have been prepared in compliance with any applicable accounting principles or standards.
- (2) Contravention of subsection (1) is punishable by a fine.
- (3) If the Auditor is of the opinion that proper Accounting Records have not been kept by the Company, that proper returns adequate for the audit have not been received from branches or offices not visited by the Auditor, that the accounts are not in agreement with the Accounting Records and returns, or that the accounts do not comply with any applicable principles or accounting standards, the Auditor must state that opinion in the report.
- (4) The Auditor has a right of access, at all reasonable times, to the Company's Records, and is entitled to require from the Company's Officers all the information and explanations that the Auditor considers necessary for the purposes of the audit.
- (5) The Auditor is entitled to receive notice of, and attend, any meeting of Shareholders and to be heard on any part of the business of the meeting that concerns the Auditor.
- (6) If the Auditor does not obtain all the information and explanations that the Auditor considers, necessary for the purposes of the audit, the Auditor must state that fact in the report.
- (7) Contravention of subsection (6) is punishable by a fine.

139. Resignation of Auditor

- (1) An Auditor of a Company may resign from office by depositing a Written notice to that effect, together with a statement under subsection (2), at the Company's registered office. The notice operates to bring the Auditor's term of office to an end on the day the notice is deposited or, if a later date is stated in the notice, on that date. The Company must send a copy of the notice to the Registrar.
- (2) If an Auditor of a Company ceases to hold office for any reason, the Auditor must deposit at the Company's registered office either:
 - (a) a statement to the effect that there are no circumstances connected with the Auditor ceasing to hold office that the Auditor considers should be brought to the notice of the Shareholders or Creditors of the Company; or
 - (b) a statement of any circumstances mentioned in paragraph (a).
- (3) If an Auditor of a Company deposits a statement under subsection (2)(b), the Company must, within 14 days after the day the Auditor deposits the statement, send a copy of the statement to every Shareholder of the Company and to every Person entitled to receive notice of General Meetings.
- (4) If an Auditor of a Company ceases to hold office for any reason, the Directors of the Company must, within 30 days after the day the Auditor ceases to hold office, appoint a replacement under section 136(9) (Appointment and removal of Auditors).
- (5) If an Auditor of a Company ceases to hold office for any reason, the Registrar of Companies can require the Auditor to disclose such information as the Registrar of Companies considers relevant to it in the consideration of the affairs of the Company.



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~~(5)~~(6) Contravention of this section is punishable by a fine.

140. **Cooperation with Auditors**

- (1) A Company, or any Officer of a Company, must not, knowingly or recklessly:
 - (a) make a statement, or give information, (whether orally, in a Document or any other way) to an Auditor of the Company that is false or misleading in a material particular; or
 - (b) give a Document to an Auditor of the Company that is false or misleading in a material particular; or
 - (c) withhold any information from an Auditor of the Company if the withholding of the information makes information given by the Company or Officer to the Auditor false or misleading in a material particular or likely to mislead or deceive the Auditor; or
 - (d) conceal any information from the Auditor if the concealment is likely to mislead or deceive the Auditor.
- (2) A Company, an Officer of a Company, or a Person acting under the direction or authority of a Company or Officer of a Company, must not, without reasonable excuse, engage in conduct if the Company, Office or Person knows, or ought to know, that the conduct could:
 - (a) obstruct or hinder an Auditor of the Company in the Exercise of the Auditor's Functions; or
 - (b) result in the Company's accounts or any aspect of the Auditor's report being false or misleading in a material particular.
- (3) Without limiting subsection (2), that subsection applies to the following conduct:
 - (a) destroying or concealing a Document;
 - (b) coercing, manipulating, misleading, or improperly influencing the Auditor;
 - (c) Failing to provide access to information or Documents required by the Auditor;
 - (d) Failing to give the Auditor any information or explanation that the Person is able to give;
 - (e) Failing to give the Auditor any assistance in relation to the audit that the Company, Officer or Person is required and able to give.
- (4) Contravention of this section is punishable by a fine.

141. **Obligation of disclosure by Auditor**

- (1) An Auditor is subject to obligations of disclosure under section 196 (Obligation of disclosure to Registrar).
- (2) Without limiting any other provision of these Regulations, the Rules or any other Legislation Administered by the Registrar, an Auditor does not Contravene any duty to which the Auditor is



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subject merely because the Auditor:

- (a) makes a disclosure under section 196; or
- (b) gives the Registrar any other information or opinion in relation to a matter to which the disclosure applies or any related matter.

142. Court orders

- (1) This section applies if the Court is satisfied, on application of the Registrar that an Auditor:
 - (a) has Contravened these Regulations; or
 - (b) has Failed, whether within or outside the AIFC, to Exercise the Functions of Auditor adequately or properly; or
 - (c) is otherwise not a fit and proper Person to remain registered as an Auditor.
- (2) The Court may make 1 or more of the following orders:
 - (a) an order that the Registrar cancel, or suspend for a specified period, the registration of the Auditor;
 - (b) an order imposing conditions or restrictions on the future conduct of the Auditor;
 - (c) an order requiring the Auditor to do, or not do, anything;
 - (d) any other order that the Court considers appropriate.
- (3) This section does not affect the powers that any Person or the Court may have apart from this section.



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PART 11: OTHER TYPES OF COMPANY

143. Incorporation of prescribed types of Company

- (1) A Company may be incorporated as, or an existing Company may be converted into, a type of Company that is specified in this Part or prescribed under the Rules, if such a type of Company is desirable in the interests of the AIFC.
- (2) The Rules may:
 - (a) prescribe any of the following:
 - (i) the types of Companies;
 - (ii) the circumstances in which such a Company may be incorporated or an existing Company may be converted into, including any requirements for approval by another regulatory authority;
 - (iii) any requirements or restrictions in relation to such a Company's Articles of Association or its constitution generally;
 - (iv) forms and procedures for the incorporation and administration of such a Company; or
 - (b) extend, exclude, waive or modify the application of provisions of these Regulations, the Rules or any other Legislation Administered by the Registrar, with the exception of Part 1 (General), Part 2 (Appointment and role of Registrar) and Chapters 1 (Powers of inspection and investigation) and 3 (General Contraventions) of Part 14 (Powers and remedies) of these Regulations, if the Board of Directors of the AFSA considers it necessary or desirable to facilitate the incorporation of, conversion to, and management and Functions of, such a Company.
- (3) Except as otherwise provided by the Rules, these Regulations apply to a Company established under this section.



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PART 12: RECOGNISED COMPANIES

144. Foreign Companies

- (1) A Foreign Company must not conduct business in or from the AIFC as an AIFC Participant unless it is registered a Recognised Company under this Part.
- (2) The Rules may make provision about what is (or is not) *conducting business* for this Part.
- (3) Contravention of subsection (1) is punishable by a fine.
- (4) A Foreign Company may apply to the Registrar for registration as a Recognised Company in accordance with the Rules.
- (5) If a Recognised Company becomes a Company, the Registrar must cancel its registration as a Recognised Company.

145. Refusal to register Foreign Company

The Registrar may refuse to register a Foreign Company as a Recognised Company for any reason the Registrar considers to be a proper reason for refusing to register the company.

146. Effect of registration as Recognised Company

- (1) If the Registrar registers a Foreign Company as a Recognised Company, the Registrar must:
 - (a) issue a certificate of recognition; and
 - (b) assign a number to the Recognised Company, which is to be the Recognised Company's identification number; and
 - (c) enter the name of the Recognised Company in the Register.
- (2) A certificate of recognition issued by the Registrar is conclusive evidence:
 - (a) of the registration of a Foreign Company as a Recognised Company; and
 - (b) that the requirements of these Regulations, the Rules and any other Legislation Administered by the Registrar have been complied with in respect of the registration.
- (3) Without limiting subsection (1)(a), the Registrar may make alternative arrangements relating to the issue of certificates of recognition to Recognised Companies in circumstances prescribed by the Rules.
- (4) When the Registrar issues a certificate of recognition to a Recognised Company, the Registrar must issue a Commercial Licence to the company.

147. Requirements of Recognised Company

- (1) A Recognised Company must:
 - (a) appoint and retain at all times at least 1 Person who is authorised to accept service of any



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Document or notice on behalf of the Recognised Company and to Exercise any other Function prescribed by the Rules; and

- (b) have a place of business in the AIFC to which all communications and notices may be addressed; and
 - (c) file with the Registrar, in the form and way required by the Rules, notice of the following:
 - (i) the appointment of Persons authorised to accept service for the Recognised Company;
 - (ii) the address of the principal place of business of the Recognised Company in the AIFC;
 - (iii) details of Persons authorised to accept service and the address of its principal place of business in the AIFC;
 - (iv) details of the Recognised Company's shareholders or members;
 - (v) details of the Recognised Company's Directors and Secretary; and
 - (d) give the Registrar a copy of each annual return filed in its jurisdiction of incorporation, within 30 days after the day it files the annual return in that jurisdiction; and
 - (e) comply with any other requirement prescribed by the Rules.
- (2) The Rules or any other Legislation Administered by the Registrar may:
- (a) prescribe procedures in relation to the requirements under this Part; and
 - (b) exclude, waive or modify any requirements under this Part in relation to different cases or classes of case.
- (3) Contravention of this section is punishable by a fine.

148. **Notification of change in Registered Details of Recognised Company**

- (1) If any of the Registered Details of a Recognised Company change, the Recognised Company must notify the Registrar in Writing of the change within 14 days after the day the change happens and must comply with all other requirements applying to the Recognised Company under the Rules in relation to the change.
- (2) Contravention of this section is punishable by a fine.

149. **Accounting Records of Recognised Companies**

- (1) A Recognised Company must keep Accounting Records that are sufficient to show and explain its transactions so as to:
 - (a) disclose with reasonable accuracy the financial position of the Recognised Company at any time; and



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- (b) enable its Directors or managers to ensure that any accounts prepared by the Recognised Company under this Part comply with the requirements of these Regulations the Rules and any other Legislation Administered by the Registrar.
- (2) A Recognised Company must ensure that its Accounting Records are:
- (a) kept at the place that the Directors or managers consider appropriate except so far as the Rules otherwise require; and
 - (b) preserved by the Recognised Company for at least 6 years after the day they are created or, if the Rules prescribe another period, the other period; and
 - (c) open to inspection by an Officer or auditor of the Recognised Company at all reasonable times; and
 - (d) otherwise kept and maintained as required by the Rules.
- (3) Contravention of this section is punishable by a fine.

150. **Inspection and remedies**

Part 14 (Powers and remedies) applies, with any necessary modifications, to a Recognised Company as if it were a Company.



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PART 13: TRANSFER OF INCORPORATION

151. **Transfer of incorporation to AIFC**

- (1) A Foreign Company may, if authorised by the laws of the jurisdiction in which it is incorporated, apply to the Registrar of Companies for the continuation of the Foreign Company as a Company.
- (2) An application for continuation must be made to the Registrar in accordance with the Rules and must be:
 - (a) executed under seal and signed by an Officer of the Foreign Company, and verified by an affidavit, or other similar sworn statement, of the Officer signing the application; and
 - (b) accompanied by articles of continuation that comply with section 14(1), (2) and (3) (Articles of Association); and
 - (c) accompanied by any other Document required by the Registrar.
- (3) The articles of continuation must make any amendments to the original articles of association of the Foreign Company, as they have been amended, necessary to make the articles of continuation comply with these Regulations, the Rules, any other Legislation Administered by the Registrar and any other Acting Law of the AIFC.

152. **Certificate of continuation**

- (1) If the Registrar approves the application for continuation made by a Foreign Company under section 151 (Transfer of incorporation to AIFC), the Registrar must:
 - (a) issue a certificate of continuation on the terms and conditions the Registrar considers appropriate; and
 - (b) assign a number to the Company, which is to be the Company's identification number; and
 - (c) enter the name of the Company in the Register.
- (2) The Registrar may refuse to issue a certificate of continuation if the Registrar considers it appropriate to refuse to issue the certificate.

153. **Effect of certificate**

From the date of continuation stated in a certificate of continuation issued to a Foreign Company:

- (a) the Foreign Company becomes a Company to which these Regulations apply as if it had been incorporated under these Regulations; and
- (b) the articles of continuation become the Articles of Association of the Company; and
- (c) the certificate of continuation is treated as the certificate of incorporation of the Company.

154. **Copy of certificate of continuation**



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The Registrar must, if requested by a Company to which a certificate of continuation has been issued, send a copy of the certificate of continuation to the appropriate official or public body in the jurisdiction in which the application for continuation was authorised.

155. **Rights and Liabilities of continued Foreign Company**

If a Foreign Company is continued as a Company under these Regulations, the Company:

- (a) continues to have all the property, rights and privileges, and is subject to all the Liabilities, restrictions and debts, that it had before the continuation; and
- (b) remains a party in any legal proceedings commenced in any jurisdiction in which it was a party before the continuation.

156. **Transfer of incorporation from AIFC to another jurisdiction**

- (1) A Company may, if it is authorised by a Special Resolution or the Registrar in the way prescribed by the Rules, apply to the appropriate official or public body of a jurisdiction outside the AIFC (the *other jurisdiction*) to transfer its incorporation to the other jurisdiction and request that the Company be continued as a Foreign Company.
- (2) The Company must not apply under subsection (1) unless the laws of the other jurisdiction provide that the Foreign Company:
 - (a) continues to have all the property, rights and privileges, and is subject to all the Liabilities, restriction and debts, that it had before the continuation; and
 - (b) remains a party in any legal proceedings commenced in any jurisdiction in which it was a party before the continuation.
- (3) The Company ceases to be a Company within the meaning of these Regulations if the Company is continued as a Foreign Company and files with the Registrar a copy of the certificate or instrument of continuation certified by the appropriate official or public body of the other jurisdiction.
- (4) When the Registrar receives the other jurisdiction's certificate or instrument of continuation, the Registrar must strike the name of the Company off the Register.

157. **Refusal to grant authorisation to transfer incorporation**

The Registrar may refuse to authorise a Company to apply to be continued as a Foreign Company under section 156(1) (Transfer of incorporation from AIFC to another jurisdiction).



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PART 14: POWERS AND REMEDIES

CHAPTER 1—POWERS OF INVESTIGATION

158. Application and interpretation of Part 14

- (1) In this Part, a reference to a *Company* includes a reference to a Recognised Company, except where expressly provided otherwise.
- (2) In this Part, a reference to a *Regulated Entity* is a reference to a Company or to any other entity that is was registered, incorporated or otherwise formed under Legislation Administered by the Registrar, and includes, for example, any of the following entities:
 - (a) a General Partnership or Recognised Partnership under the AIFC General Partnership Regulations;
 - (b) an Incorporated Organisation under the AIFC Non-profit Incorporated Organisations Regulations;
 - (c) a Limited Liability Partnership or Recognised Limited Liability Partnership under the AIFC Limited Liability Partnership Regulations;
 - (d) a Limited Partnership or Recognised Limited Partnership under the AIFC Limited Partnership Regulations.
- (3) In this Part, a reference to a *Relevant Person* for a Regulated Entity is a reference to:
 - (a) a Person who is a director, officer, partner, member, employee, or agent, (however described) of the Regulated Entity;~~or~~
 - (b) an Auditor, or former auditor, of the Regulated Entity; or
 - ~~(b)~~(c) any other Person who is concerned in any way with the Regulated Entity's management.
- (4) In the application of subsection (3) to a Regulated Entity that is a Company:
 - (a) a reference to a director includes a reference to a Director (as defined in Schedule 1);
 - (b) a reference to an employee includes a reference to an Employee (as defined in Schedule 1).
- (5) Without limiting the powers available to the Registrar of Companies, the Registrar may exercise any power given to the Registrar under these Regulations, the Rules, or any other Legislation Administered by the Registrar, in relation to an entity that has ceased to be a Regulated Entity, or in relation to any Person who was a Relevant Person for a Regulated Entity or an entity that has ceased to be a Regulated Entity, within 3 years after the day the Registrar becomes aware of an act or omission that gives rise to the right to exercise the power.
- (6) For this section, the Registrar of Companies becomes aware of an act or omission in relation to a Contravention if the Registrar has information from which the Contravention can reasonably be inferred.



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159. Appointment of Inspectors

- (1) The Registrar of Companies may appoint a Person as an inspector to investigate and report on the affairs of a Regulated Entity (the *relevant Regulated Entity*), if the Registrar considers it necessary or desirable to do so in pursuit the Registrar's Objectives.
- (2) The Person appointed as an Inspector may, with the consent of the Registrar of Companies, also investigate and report on the affairs of another Regulated Entity that, in the Registrar's opinion, is or was related to the relevant Regulated Entity.
- (3) The Registrar of Companies must inform the AFSA before appointing an Inspector under subsection (1) to investigate and report on the affairs of a Regulated Entity licensed, registered or recognised by the AFSA.
- (4) The Registrar of Companies may also appoint a Person as an inspector to investigate and report on an alleged Contravention of these Regulations.

160. Powers of Inspectors to obtain information and Documents etc.

- (1) If an Inspector considers that a Person may be able to give information or produce a Document that is or may be relevant to the investigation for which the Inspector was appointed (including any investigation under section 159(2)), the Inspector may do any of the following:
 - (a) enter the business premises of the Person during normal business hours for the purpose of inspecting, obtaining and copying information or Documents, in any form, on the premises;
 - (b) require the Person to produce, or arrange for the production of, any books, Records or other Documents in the Person's custody or power relating to the investigation;
 - (c) require the Person to give, or arrange for the giving of, specified information relating to the investigation;
 - (d) require the Person to attend before the Inspector at a specified time and place (but on reasonable notice) and to answer all questions put to the Person by or on behalf of the Inspector relating to the investigation (a *compulsory interview*);
 - (e) require the Person to give reasonable assistance of any other kind to the Inspector in connection with the investigation.
- (2) The Inspector may, for the exercise of powers under subsection (1)(a) in relation to premises:
 - (a) require any appropriate Person to make available any relevant information or Documents, in any form, on the premises for inspection or copying; and
 - (b) require any appropriate Person to convert any relevant information or Documents on the premises into a form capable of being copied; and
 - (c) use the facilities of the occupier of the premises, free of charge, to make copies.
- (3) If the Inspector requires a Person (the *interviewee*) to attend a compulsory interview under subsection (1)(d), the Inspector may give directions:



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- (a) about who may be present at the compulsory interview, including a direction requiring the interviewee to answer questions put to the interviewee in private; and
 - (b) preventing any Person present during any part of the compulsory interview from disclosing to any other Person any information provided to the interviewee or questions asked by or on behalf of the Inspector during the compulsory interview; and
 - (c) about the conduct of any Person present at the compulsory interview, including about how the Person must participate in the interview; and
 - (d) requiring the interviewee to swear an oath or give an affirmation that the answers of the interviewee will be true; and
 - (e) requiring the interviewee to answer any questions relevant to the investigation; and
 - (f) requiring the interview to be audio or video recorded.
- (4) If an Inspector has reasonable grounds to suspect that a Relevant Person for a Regulated Entity the subject of the investigation maintains or has maintained a bank account of any description, whether alone or jointly with another Person, into or out of which has been paid amounts that are in any way related to the affairs of the Regulated Entity, the Inspector may require the Person to obtain and produce all books and Records in the Person's custody or power relating to the bank account.
- (5) If an Inspector makes a requirement of, or gives a direction to, a Person under this section, the Person must comply with the requirement.
- (6) A Person required under this section to answer a question that is put to the Person by or on behalf of an Inspector must not, knowingly or recklessly:
- (a) make a statement, or give information, (whether orally, in a Document or in any other way) that is false or misleading in a material particular; or
 - (b) withhold any information if withholding the information makes any information given by the Person false or misleading in a material particular or likely to mislead or deceive the Inspector.
- (7) An Inspector may exercise any of the powers under this section in respect of any Person within, or outside of, the AIFC. However, if the Person is outside the AIFC, the Inspector must either:
- (a) use any arrangements with a relevant authority in the jurisdiction in which the Person is resident or domiciled, or the premises are located, to assist it to exercise the power; or
 - (b) apply to the Court for an order compelling the Person to give or arrange for the giving of information, to produce or arrange for the production of Documents, to answer questions or to permit the Inspector or any Person assisting the Inspector to enter premises of the Person and exercise any powers on or in relation to the premises.
- (8) Contravention of subsection (5) or (6) is punishable by a fine.

161. Use and effect of information and Documents obtained for investigations



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- (1) Information or a Document given, produced or obtained because of the exercise by an Inspector of powers under section 160 (Powers of Inspectors to obtain information and Documents etc.) is admissible in evidence in any proceedings, if the information or Document complies with any requirements relating to the admissibility of evidence in the proceedings.
- (2) A requirement under section 160 to give, produce, or arrange for the giving or production of, information or a Document does not apply if the information or a Document is subject to legal professional privilege.
- (2A) Where information or a Document has not been produced to an Inspector on the grounds that it is subject to legal professional privilege and the Inspector disputes this, the Inspector may make an application to the Court for an order to produce that information or Document.
- (3) An Inspector must not disclose a statement made by a Person in answer to any question asked under section 160 to any law enforcement agency for the purpose of criminal proceedings against the Person unless:
 - (a) the Person consents to the disclosure; or
 - (b) the Inspector is required by law or court order to disclose the statement.
- (4) An Inspector may retain possession of any information and Document obtained under section 160 for so long as is necessary:
 - (a) for the purposes of the relevant investigation; or
 - (b) for a decision to be made about whether or not a proceeding to which the information or Document may be relevant should be commenced; or
 - (c) for a proceeding mentioned in paragraph (b) to be finally completed.
- (5) A Person is not entitled to claim a lien on a Document as a basis for Failing to comply with a requirement under section 160, but any lien is not otherwise prejudiced.
- (6) If a Person is unable to produce information or a Document in compliance with a requirement made by an Inspector under section 160, the Inspector may require the Person to state, to the best of the Person's knowledge or belief, where the information or Document may be found and who last had possession, custody or control of the information or Document.
- (7) If an Inspector considers that, if disclosed, the fact of the issuing of a notice requiring a Person to do anything under section 160, may hinder an investigation, the Inspector may direct the Person not to disclose any information about the notice or the Person's compliance with it to any other Person, other than the first Person's legal representative under a duty of confidentiality.
- (8) A Person is entitled to legal representation during the course of an investigation.

162. **Obstructing or hindering Inspectors**

- (1) A Person must not, without reasonable excuse, engage in conduct intended to obstruct or hinder an Inspector in the Exercise of any Functions under sections 160 (Powers of Inspectors to obtain information and Documents etc.) and 161 (Use and effect of information and Documents obtained for investigations) or any other provision of these Regulations, or under the Rules or any other



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Legislation Administered by the Registrar, including, for example, by engaging in any of the following conduct:

- (a) destroying or concealing a Document;
 - (b) Failing to give or produce information or a Document required by the Inspector;
 - (c) Failing to attend before the Inspector at a specified time and place to answer questions;
 - (d) making a statement, or giving information, (whether orally, in a Document or in any other way) that is false or misleading in a material particular;
 - (e) Failing to give any assistance in relation to an investigation that the Person is required and able to give;
 - (f) Failing to comply with any other requirement made of the Person, or any direction given to the Person, by the Inspector under these Regulations.
- (2) If a Person Fails to comply with a requirement or direction of an Inspector (whether under section 160 or 161 or otherwise), the Inspector may certify the Failure in Writing to the Court. The Court may inquire into the matter and make the orders that it considers appropriate.
 - (3) Contravention of subsection (1) is punishable by a fine.

163. **Inspectors' reports**

- (1) At the conclusion of an Inspector's investigation, the Inspector must give the Registrar of Companies a Written report on the investigation, in the form and covering the matters that the Registrar may require.
- (2) An Inspector must make the interim reports (if any) to the Registrar of Companies that the Registrar may require.
- (3) If the Registrar of Companies receives a report from an Inspector, the Registrar may do any 1 or more of the following:
 - (a) provide a copy of the report, or any part of the report, to any Regulated Entity to which the report relates, with or without a direction that it be disclosed to any shareholders, members, partners or any other Persons stated in the direction;
 - (b) provide a copy of the report, or any part of the report, to any Person whose financial interests may have been affected by the matters dealt with in the report;
 - (c) publish the report, or any part of the report, in the way the Registrar considers appropriate;
 - (d) if the report, or any part of the report, relates to a Regulated Entity licensed, registered or recognised by the AFSA—provide a copy of the report to the AFSA.

164. **Application to Court by Registrar of Companies**

- (1) The Registrar of Companies may apply to the Court for an order under this section if, from any report made or information or Document obtained under this Part the Registrar considers that:



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- (a) a Regulated Entity's affairs are being, or have been, conducted in a way that is:
 - (i) Contravenes these Regulations; or
 - (ii) unfairly prejudicial to the interests of the Regulated Entity's shareholders, members or partners generally or of any of its shareholders, member or partners or to any other Person or class of Persons with an interest in the Regulated Entity or its affairs; or
 - (b) an actual or proposed act of a Regulated Entity (including an act or omission on its behalf) Contravenes or would Contravene, these Regulation or is, or would be, so unfairly prejudicial.
- (2) If the Court is satisfied that an application by the Registrar of Companies under subsection (1) is well founded, the Court may make the order that it considers appropriate for giving relief in respect of the matters complained of.

CHAPTER 2—OTHER POWERS OF REGISTRAR OF COMPANIES

165. Direction to comply with Legislation Administered by the Registrar

- (1) This section applies if a Regulated Entity, or a Relevant Person for a Regulated Entity, Fails to comply with a requirement (however expressed and including, to remove any doubt, a requirement applying for the benefit of a Person other than the Registrar of Companies):
 - (a) under a provision of these Regulations, the Rules or any other Legislation Administered by the Registrar; or
 - (b) made by the Registrar under these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (2) The Registrar of Companies may, by Written notice, direct the Regulated Entity, the Relevant Person, or another Relevant Person for the Regulated Entity, to comply with the requirement, or ensure that the requirement is complied with, within the time stated in the notice.
- (3) If the Regulated Entity or Relevant Person Fails to comply with the direction under subsection (2), the Registrar of Companies may apply to the Court for 1 or more of the following orders:
 - (a) an order directing the Regulated Entity or Relevant Person, or another Relevant Person for the Regulated Entity, to comply with the direction or with any relevant provision of these Regulations, the Rules or any other Legislation Administered by the Registrar, or ensure that the direction is complied with, within the time stated in the order;
 - (b) an order directing the Regulated Entity or Relevant Person to pay any costs incurred by the Registrar or any other Person relating to:
 - (i) the giving of the direction by the Registrar; or
 - (ii) the relevant Contravention of these Regulations;
 - (c) any other order that the Court considers appropriate.



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- (4) This section does not affect the operation of any other provision of these Regulations, the Rules or any other Legislation Administered by the Registrar imposing penalties in respect of a Failure to comply with a requirement to which this section applies, or any powers that the Registrar, another Person or the Court may have under any other provision of these Regulations, the Rules or any other AIFC Regulations or AIFC Rules.

166. General power to obtain information

- (1) The Registrar of Companies may, by Written notice, require any Regulated Entity, or any Relevant Person for a Regulated Entity, to give specified information, produce specified Documents, or ensure that specified information or Documents are given or produced, to the Registrar. The Regulated Entity or Relevant Person must comply with the requirement within the time specified in the notice.
- (2) The Registrar may, by Written notice, require any Regulated Entity to allow the Registrar to enter any premises of the Regulated Entity during normal business hours, or at any other time agreed between the Registrar and the Regulated Entity, for the purpose of inspecting and copying information or Documents, in any form, on the premises. The Regulated Entity must comply with the requirement.
- (3) The Registrar of Companies may exercise a power under subsection (1) or (2) if the Registrar considers that it is necessary or desirable to do so for the Exercise of the Registrar's Functions under these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (4) Information or a Document given, produced or obtained because of the exercise by the Registrar of Companies of powers under subsection (1) or (2) is admissible in evidence in any proceedings, if the information or Document complies with any requirements relating to the admissibility of evidence in the proceedings.
- (5) Subsections (1) and (2) do not apply to information or a Document if the information or Document is subject to legal professional privilege.
- (6) The Registrar of Companies may apply to the Court for an order to require a Person to comply with a requirement under subsection (1) or (2), and the Court may make the orders that it considers appropriate.

167. Powers to strike off names of Companies from Register

- (1) The Registrar of Companies may strike the name of a Company off the Register if the Registrar has reason to believe that:
- (a) the Company is not conducting business or is not in operation; or
 - (b) the Company is Contravening these Regulations; ~~or~~
 - (c) it is prejudicial to the interests of the AIFC for the Company to remain in the Register.

(1A) The Registrar of Companies may conclude that a Company is not conducting business or is in operation where:

- (a) the annual return of the Company has not been filed by the relevant date pursuant to section 26; or



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(b) a fee due to the Registrar has not been paid on the date due,

and in each case, the Company has failed to respond to correspondence with the Registrar and a period of 9 months has elapsed since the date on which the annual return was due to be filed or the relevant fee was due to be paid.

- (2) The Registrar of Companies may also strike the name of a Company off the Register if the Company is being wound up in a creditors voluntary winding up and:
 - (a) the Registrar has reason to believe either that:
 - (i) no liquidator is acting; or
 - (ii) the affairs of the Company are fully wound up; and
 - (b) the returns required to be made by the liquidator have not been made for a period of at least 6 consecutive months.
- (3) In deciding whether to strike the name of a Company off the Register under subsection (1) or (2), the Registrar of Companies comply with the Decision-making Procedures and must also:
 - (a) publish a notice in the Appointed Publications of the Registrar's intention to strike the name of the Company off the Register and dissolve the Company before doing so; and
 - (b) if the Company is licensed, registered or recognised by the AFSA—obtain the AFSA's consent before publishing the notice under paragraph (a).
- (4) If an application is made by a Company to strike the Company's name off the Register following a voluntary winding up in accordance with the procedures under the AIFC Insolvency Regulations, the Registrar of Companies may strike the Company's name off the Register if the requirements of subsection (5) to (9) are met.
- (5) An application under subsection (4) must:
 - (a) be made on the Company's behalf by its Directors or a majority of them; and
 - (b) be in the form prescribed by the Rules.
- (6) Within 7 days after the day that an application under subsection (4) is made, the applicants must give a copy of the application to every Person who, on the day the application is made, is:
 - (a) a Shareholder of the Company; or
 - (b) an Employee of the Company; or
 - (c) a Creditor of the Company; or
 - (d) a Director of the Company who is not a party to the application.
- (7) An application must not be made on behalf of a Company under subsection (4):



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- (a) if at any time in the previous 3 months, the Company has:
 - (i) changed its name; or
 - (ii) traded or otherwise carried on business; or
 - (iii) made a disposal for value of property or rights held, before the disposal, for gain in the normal course of trading; or
 - (iv) engaged in any other activity, other than an activity that is necessary or desirable for the purposes of making an application under subsection (4) for concluding the affairs of the Company or complying with associated legal requirements; or
 - (b) at a time when any process in respect of the Company, or its property, has commenced under the AIFC Insolvency Regulations.
- (8) The Registrar of Companies must not strike the Company's name off the Register under subsection (4) unless the Registrar has published a notice in the Appointed Publications, containing the matters required by subsection (9), and at least 3 months have elapsed since the day of publication of the notice.
- (9) A notice under subsection (8) must:
- (a) state that the Registrar of Companies may exercise the power to strike the Company's name off the Register; and
 - (b) invite any Person to show cause why that should not be done.
- (10) If the name of a Company is struck off the Register under subsection (1), (2) or (4), the Liability of every Director and Shareholder of the Company continues and may be enforced as if the Company had not been dissolved.
- (11) If the Registrar of Companies strikes the name of the Company off the Register, the Company must be dissolved.
- (12) If the name of a Public Company is struck off the Register under this section, the Company must maintain its books and Records for a period of 6 years after the day its name is struck off the Register.

168. **Restoration of a Company**

- (1) The Court may, on application under subsection (2), make an order or orders to restore a Company to the Register and any other order that it considers appropriate.
- (2) The application may be made by any 1 or more of the following:
 - (a) the Registrar of Companies;
 - ~~(a)~~(b) any former Director of the Company;
 - ~~(b)~~(c) any Person with an interest in any property that was subject to rights vested in the Company or that was benefited by obligations owed by the Company;



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- ~~(d)~~ any Person who, apart from, the Company's dissolution would have been in a contractual relationship with it;
- ~~(e)~~ any Person with a potential legal claim against the Company;
- ~~(f)~~ any former Shareholder of the Company;
- ~~(g)~~ any Person who was a Creditor of the Company when its name was struck off the Register or it was dissolved;
- ~~(h)~~ any other Person appearing to the Court to have an interest in the matter.
- (3) However, an order under subsection (1) must not be inconsistent with any provision of the AIFC Insolvency Regulations relation to the dissolution of Companies.
- (4) If the Court makes an order under subsection (1) to restore a Company to the Register, general effect of the order is that the Company is taken to have continued existence as if its name had not been ~~struck~~ of the Register and it had not been dissolved. However, the Company is not liable to a fine for Failure to deliver accounts for any financial year in relation to which the period for filing accounts ended after the day of the striking off or dissolution and before the restoration of the Company to the Register.
- (5) If the Court makes an order under subsection (1) to restore a Company to the Register, the Court may give directions and make the provisions it considers just for placing the Company and all other Persons in the same position (as nearly as may be) as if the Company's name had not been ~~struck~~ off the Register and the Company had not been dissolved.
- (6) If the Court makes an order under subsection (1) to restore a Company to the Register, the applicant for the order must deliver a copy of the order to the Registrar of Companies within 14 days after the day the order is made or, if the Court allows a longer period, that longer period.
- (7) The Registrar of Companies must, as soon as practicable after receiving a copy of the Court order, restore the Company to the Register.
- (8) The restoration of the Company takes effect on a copy of the Court's order being delivered to the Registrar of Companies.
- (9) The Registrar of Companies may, without the need to make an application to the Court, reinstate a Company that has been struck off the Register by the Registrar of Companies where the Registrar of Companies is satisfied that the Company should be restored to the Register.

CHAPTER 3—GENERAL CONTRAVENTIONS

169. When does a Person Contravene these Regulations

- (1) A Person *Contravenes* these Regulations if the Person:
- (a) does something that the Person is prohibited from doing by or under these Regulations, the Rules or any other Legislation Administered by the Registrar; or
- (b) does not do something that the Person is required or directed to do (however described)



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by or under these Regulations, the Rules or any other Legislation Administered by the Registrar; or

- (c) otherwise Contravenes these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (2) This section does not apply to anything done, or omitted to be done, by the Governor, AFSA, AIFCA or Registrar of Companies.

170. Involvement in Contraventions of these Regulations

- (1) If a Person is **Knowingly Concerned** in a Contravention of these Regulations committed by another Person, the first Person as well as the other Person Contravenes these Regulations and is liable to be proceeded against and dealt with accordingly.
- (2) Without limiting subsection (1), if an Officer of a Company or another Body Corporate is **Knowingly Concerned** in a Contravention of these Regulations committed by the Body Corporate, the Officer as well as the Body Corporate Contravenes these Regulations and is liable to be proceeded against and dealt with accordingly.
- (3) If the affairs of a Body Corporate are managed by its members, subsection (2) applies in relation to the acts and omissions of a member in connection with the member's management Functions as if the member were an Officer of the Body Corporate.
- (4) For these Regulations, a Person is **Knowingly Concerned** in a Contravention of these Regulations if the Person:
 - (a) aided, abetted, counselled or procured the Contravention; or
 - (b) induced the Contravention, whether by threats or promises or otherwise; or
 - (c) was in any way, whether by act or omission and whether directly or indirectly, knowingly involved in, or a party to, the Contravention; or
 - (d) conspired with another Person or others to effect the Contravention; or
 - (e) whether alone or in concert with others and whether directly or indirectly, did, attempted or planned any of the following:
 - (i) concealing the existence, extent or nature of the Contravention;
 - (ii) obstructing, hindering, impeding or preventing competent authorities within the AIFC from detecting, investigating or prosecuting the Contravention.

- (5) In this section:

member, of a Body Corporate that is a Company, includes a Shareholder.

Officer, of a Company or other Body Corporate, includes a Person who is, acts as or purports to be any of the following:

- (a) a member of a committee of management of the Body Corporate, whether or not a Director



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- of the Body Corporate;
- (b) a chief executive officer, Secretary or similar officer of the Body Corporate;
 - (c) a controller of the Body Corporate.
- (6) This section does not apply to anything done, or omitted to be done, by the Governor, AFSA, AIFCA or Registrar of Companies.

CHAPTER 4—ENFORCEMENT

171. Enforceable agreements

- (1) The Registrar of Companies may accept a written undertaking given by a Person if the Registrar considers that accepting the undertaking is necessary or desirable in the pursuit of the Registrar's Objectives.
- (2) The Person may withdraw or vary the undertaking at any time, but only with the consent of the Registrar of Companies.
- (3) If the Registrar of Companies considers that the Person who gave the undertaking has Breached or is Breaching any of its terms, the Registrar may apply to the Court for an order under subsection (4).
- (4) The Registrar of Companies may, if it considers it appropriate, publish the terms of any undertaking given by a Person under this Section.
- (4)(5) If the Court is satisfied that the Person has Breached or is Breaching a term of the undertaking, the Court may make 1 or more of the following orders:
 - (a) an order directing the Person to comply with that term;
 - (b) an order directing the Person to pay to any other Person or to the Registrar an amount up to the amount of any profit, gain or benefit that the Person has obtained directly or indirectly and that is reasonably attributable to the Breach;
 - (c) any order that the Court considers appropriate directing the Person to compensate any other Person who has suffered loss or damage because of the Breach;
 - (d) any other order the Court considers appropriate.

172. Administrative censures

- (1) The Registrar of Companies may censure a Person if the Person Contravenes these Regulations or Contravenes any Guidance.
- (2) In deciding whether to censure a Person under subsection (1), the Registrar of Companies must comply with the Decision-making Procedures.
- (3) The Registrar of Companies may censure a Person by any means, including by way of publishing a notice of censure in any way the Registrar considers appropriate.



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173. Administrative imposition of fines

- (1) If the Registrar of Companies is satisfied that a Person has Contravened these Regulations and Contravention of the relevant provision or of a relevant requirement is expressed to be punishable by a fine, the Registrar may impose a fine on the Person.
- (2) In deciding whether to impose a fine on a Person and, if so, the amount of the fine to be imposed, the Registrar of Companies must comply with any applicable ~~the~~ Decision-making Procedures and any limits for fines set by the Rules.

CHAPTER 5—APPLICATIONS TO COURT

174. Orders for compensation

- (1) If a Person intentionally, recklessly or negligently Contravenes any requirement, direction, duty, prohibition, responsibility or obligation that is imposed by or under these Regulations, the Rules or any other Legislation Administered by the Registrar, the Person is liable to compensate any other Person for any loss or damage caused to the other Person because of the conduct, and is otherwise liable to restore the other Person to the position the other Person was in before the conduct.
- (2) If a Person suffers loss or damage caused because of conduct mentioned in subsection (1), the Court may, on application brought by the Person or the Registrar on behalf of the Person, make orders for the recovery of damages, for compensation or for the recovery of property or any other order as the Court considers appropriate, unless liability for the loss or damage is excluded under these Regulations, the Rules or any other AIFC Regulations or AIFC Rules.
- (3) This section does not limit or otherwise affect any rights that a Person may have, or any powers that the Court may have, apart from this section.

174A. Liability of officers and others

In circumstances where the actions (or lack thereof) of an individual have given rise to the award of a disqualification order under section 92 or a compensation order under section 175, and the Court believes that such actions (or lack thereof) were as a result of the direction of an officer of the Company or another Person in accordance with whose directors the Company is accustomed to act then the Court may make a disqualification order or a compensation order against that Person.

175. Orders for unfair prejudice to Shareholders

- (1) If a Company's affairs are being or have been conducted in a way that is unfairly prejudicial to the interests of its Shareholders generally or any of its Shareholders, or an actual or proposed act or omission of the Company (including an act or omission on its behalf) is or would be so unfairly prejudicial, the Court may, on application of a Shareholder, make 1 or more of the following orders:
 - (a) an order regulating the conduct of the Company's affairs in the future;
 - (b) an order requiring a Person to do, or not to do, anything;
 - (c) an order authorising proceedings to be brought in the name of and on behalf of the



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Company and on the terms the Court considers appropriate;

- (d) an order providing for the purchase of the rights of any Shareholders of the Company by other Shareholders or by the Company itself and, for a purchase by the Company itself, the reduction of the Company's capital accounts accordingly;
 - (e) any other order that the Court considers appropriate.
- (2) If an order under this section requires the Company not to make any, or any specified, amendments of its Articles of Association, the Company must not, without leave of the Court, make any such amendment.
 - (3) An amendment of the Articles of Association of the Company made under an order under this section has the same effect as if it had been duly made by Special Resolution of the Company, and these Regulations, the Rules and any other Legislation Administered by the Registrar apply to the Articles of Association as so amended accordingly.
 - (4) If the Court makes an order under this section amending the Company's Articles of Association, the Company must deliver a copy of the order to the Registrar of Companies for registration within 14 days after the day the order is made or, if the Court allows a longer period, the longer period.
 - (5) This section does not limit or otherwise affect any rights that a Person may have, or any powers that the Court may have, apart from this section.

176. **Compulsory winding up**

- (1) The Registrar of Companies may apply to the Court for the winding up of a Company if:
 - (a) either:
 - (i) a Company is Contravening or has Contravened these Regulations; or
 - (ii) it is in the interests of the Shareholders of the Company, or of the Creditors of the Company, for a Company to be wound up; and
 - (b) it is just and equitable and in the interests of the AIFC for the Company to be wound up and, if the Company is licensed, registered or recognised by the AFSA, the AFSA has given its prior consent for the application to be made.
- (2) The Court may make any orders that it considers necessary or desirable for the winding up of the Company.
- (3) This section does not limit or otherwise affect any rights that a Person may have, or any powers that the Court or Registrar of Companies may have, apart from this section.

177. **Appointment of receivers**

- (1) In this section:

relevant requirement means a requirement, duty, prohibition, responsibility or obligation that is imposed by or under these Regulations, the Rules or any other Legislation Administered by the Registrar.



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- (2) This section applies if:
 - (a) the Registrar of Companies has appointed an Inspector to conduct an investigation into the affairs of a Company; or
 - (b) a civil or regulatory proceeding has been instituted, by the Registrar or otherwise, against a Person because of the Person's conduct in relation to the affairs of a Company; or
 - (c) a Person has engaged, is engaging or is proposing to engage in conduct that was, is or will be a Contravention of a relevant requirement.
- (3) The Court may, on application of the Registrar of Companies or any other Person, make an order appointing a receiver or receiver and manager, with the powers that the Court considers appropriate, of the property or any of the property of the Company.
- (4) If the Company is licensed, registered or recognised by the AFSA, the Registrar of Companies may not make an application under subsection (3) unless the AFSA has given its prior consent to the Registrar making the application.
- (5) This section does not limit or otherwise affect any rights that a Person may have, or any powers that the Court or the Registrar of Companies may have, apart from this section.

178. **Power of Court to grant relief in certain cases**

- (1) If, in proceedings relating to any Contravention, default, negligence, or any Breach of duty, obligation, prohibition, requirement, responsibility or trust imposed by or under these Regulations, the Rules or any other Legislation Administered by the Registrar, commenced against an Officer of a Company or an auditor, it appears to the Court that the Officer or auditor is or may be liable for the conduct, but that the Officer or auditor has acted honestly and that, having regard to all the circumstances of the case (including those connected with the Officer's or auditor's appointment), the Officer or auditor ought fairly to be excused for the conduct, the Court may relieve the Officer or auditor, either wholly or partly, from liability for the conduct on the terms it considers appropriate.
- (2) If an Officer or auditor of a Company has reason to apprehend that a claim will or might be made against the Officer or auditor in respect of any Contravention, default, negligence, or any Breach of duty, obligation, prohibition, requirement, responsibility or trust imposed by or under these Regulations, the Rules or any other Legislation Administered by the Registrar, the Officer or auditor may apply to the Court for relief, and the Court has the same power on the application to relieve the Officer or auditor from liability for conduct as it would have had if proceedings had been brought against the Officer or auditor for the conduct.
- (3) In this section:

auditor means a Person who is registered by the Registrar of Companies as an auditor under these Regulations.

179. **Effect of provisions**

To remove any doubt, nothing in any section of this Part limits any other section of this Part, or limits any other provision of these Regulations, the Rules or any other Legislation Administered by the Registrar if



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the provision provides for administrative remedies or the commencement of proceedings in the Court.



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PART 15: GENERAL PROVISIONS

CHAPTER 1—BOARD OF DIRECTORS OF THE AFSA

180. Functions of Board of Directors of the AFSA in relation to the Registrar etc.

- (1) The Board of Directors of the AFSA may, from time to time:
 - (a) do anything that it considers necessary or desirable to ensure that the Registrar Exercises the Registrar's Functions in pursuit of the Registrar's Objectives; or
 - (b) review the Registrar's performance and the use of the Registrar's resources; or
 - (c) after consultation with the Governor, give the Registrar Written directions:
 - (i) to further any of the Registrar's Objectives; or
 - (ii) relating to the Exercise of the Registrar's Functions.
- (2) The Board of Directors of the AFSA may delegate any of its Functions, other than a Function under subsection (1), to the Registrar if the Board considers that the Functions may more efficiently and effectively be Exercised by the Registrar.
- (3) This section is additional to, and does not limit, any other Function of the Board of Directors of the AFSA, whether the Function is given by or under these Regulations or the Rules or otherwise.

181. Power to adopt Rules etc.

- (1) The Board of Directors of the AFSA may adopt Rules prescribing matters:
 - (a) required or permitted by these Regulations, or any other AIFC Regulations that are Legislation Administered by the Registrar, to be prescribed by the Board by the Rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (2) However, the Board may not adopt Rules under this section on matters related to the regulation of financial services and related operations in the AIFC.
- (3) Without limiting subsection (1), the Board may adopt Rules:
 - (a) with respect to any matters relating to the Registrar's Objectives or Functions; or
 - (b) to facilitate the administration of, or further the purposes of, these Regulations or any Legislation Administered by the Registrar; or
 - (c) prescribing model articles of association; or
 - (d) with respect to the procedures for the imposition or recovery of fines, including any circumstances in which the procedures do not apply to the imposition of a fine; or
 - (e) setting limits for fines and other penalties that may be imposed for Contraventions of these



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Regulations; or

- (f) the giving of waiver and modification notices under section 195 (Waivers and modifications of certain provisions), including the procedures for the making of application for, or giving of, notices; or
- (g) with respect to any of the following:
 - (i) forms, procedures and requirements under these Regulations, the Rules or any other Legislation Administered by the Registrar;
 - (ii) the keeping of public registers and databases;
 - (iii) the conduct of the Registrar and the Registrar's officers, employees, delegates and agents in relation to the Exercise of Functions, including discretionary Functions and the conduct of investigations and hearings.
- (4) Rules adopted by the Board may incorporate standards and codes of practice by reference. A standard or code of practice incorporated into Rules adopted by the Board has the same effect as it had been adopted in the Rules, except so far as the Rules otherwise provide.
- (5) Instead of incorporating a standard or code of practice into Rules adopted by the Board, the Board may adopt the standard or code of practice as non-binding guidance for AIFC Participants.
- (6) Without limiting subsection (1), Rules adopted by the Board may do any of the following:
 - (a) make different provision for different cases or circumstances;
 - (b) include supplementary, incidental and consequential provisions;
 - (c) make transitional and savings provisions.
- (7) If any Rules adopted by the Board purport to be adopted in the exercise of a particular power or powers, the Rules are taken also to be adopted in the exercise of all the powers under which they may be adopted.
- (8) Until Rules mentioned in subsection (3)(e) are adopted by the Board, there are no limits on the fines and other penalties that may be imposed for a Contravention of these Regulations.

182. **Publication of proposed Rules**

- (1) Before making Rules under section 181 (Power to adopt Rules etc.), the Board of Directors of the AFSA must publish a notice under this section.
- (2) The notice must include, or have attached to it:
 - (a) a summary of the proposed Rules; and
 - (b) the text of the Rules; and
 - (c) a statement of the substance and purpose of the material provisions of the Rules; and



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- (d) if the Rules incorporate a standard or code of practice by reference—a summary, and the text, of the standard or code of practice and a statement of the substance and purpose of the material provisions of the standard or code of practice.
- (3) The notice must invite interested Persons to make representations about the proposed Rules within a stated period of at least 30 days.
- (4) Subsections (1), (2) and (3) do not apply to the making of Rules if the Board of Directors of the AFSA considers:
 - (a) that any delay likely to arise because of complying with those subsections is prejudicial to the interests of the AFSA; or
 - (b) that the Rules are merely consequential on any other Rules adopted (or proposed to be adopted) by the Board; or
 - (c) that the Rules do not change, or significantly change, the policy intended to be give effect to by these Regulations and the Rules or any other AIFC Regulations or AIFC Rules.

CHAPTER 2-THE REGISTRAR

~~183.—Reporting by Registrar~~

- ~~(1) The Registrar must report to the Board of Directors of the AFSA in the way that the Board of Directors of the AFSA may direct.~~
- ~~(2) The Board of Directors of the AFSA must provide the Governor with a Written report on the Exercise of the Registrar's Functions and the Registrar's financial activities.~~
- ~~(3) A report must be prepared and provided before the end of the first quarter of the financial year of the Registrar or within any other period required by Governor and must relate to the previous financial year.~~
- ~~(4) A report must be published by the Board of Directors of the AFSA without undue delay and within the time the Governor may direct.~~

~~184.—Record keeping~~

~~The Registrar must make suitable arrangements for keeping appropriate Records in relation to the Exercise of the Registrar's Functions.~~

~~185.—Conflicts of interest~~

~~183. [intentionally omitted]~~

~~184. [intentionally omitted]~~

~~185. [intentionally omitted]~~

~~186. [intentionally omitted]~~

~~187. [intentionally omitted]~~



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188. ~~[intentionally omitted]~~

189. ~~[intentionally omitted]~~

190. ~~[intentionally omitted]~~

191. ~~[intentionally omitted]~~

192. ~~[intentionally omitted]~~

193. ~~[intentionally omitted]~~

194. ~~[intentionally omitted]~~

- ~~(1) — This section applies to an individual (a **relevant person**) who is the Registrar or an officer, employee, delegate, agent of the Registrar.~~
- ~~(2) — A relevant person must disclose all material conflicts of interest that the person has in Exercising the person's Functions. The disclosure must be made without undue delay to the person to whom the relevant person reports.~~
- ~~(3) — A relevant person must not take part in the making of a decision on a matter in relation to which the person has a material conflict of interest.~~
- ~~(4) — Contravention of subsection (3) in relation to a decision does not invalidate the decision.~~

~~186.1. Confidential information~~

- ~~(1) — For this section, information is **confidential** if:~~
 - ~~(a) — it is received by the Registrar, or an officer, employee, delegate or agent of the Registrar, in the Exercise of a Function under these Regulations, the Rules or any other Legislation Administered by the Registrar; and~~
 - ~~(b) — it has not been made available to the public in circumstances in which disclosure is not prohibited under these Regulations, the Rules or any other Legislation Administered by the Registrar.~~
- ~~(2) — Confidential information must not be disclosed by the Registrar, by an officer, employee, delegate or agent of the Registrar, or by any Person coming into possession of the information, without the consent of the Person to whom the duty of confidentiality is owed.~~
- ~~(3) — However, the Registrar may, and must if directed by the Board of Directors of the AFSA, disclose confidential information if the disclosure is:~~
 - ~~(a) — permitted or required to be made under these Regulations, the Rules or any other AIFC Regulations or AIFC Rules; or~~
 - ~~(b) — permitted or required to be made by or under any other law; or~~
 - ~~(c) — made to the AFSA for the purpose of assisting the AFSA to Exercise its regulatory Functions; or~~



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~~(d) made in good faith for the purposes of the Exercise of the Registrar's Functions.~~

~~187. Financial year of Registrar~~

~~The financial year of the Registrar commences on 1 January in each calendar year or, if the Governor specifies a different date, that date.~~

~~188. Annual budget of Registrar~~

~~(1) Before the end of each financial year the estimates of the annual income and expenditure of the Registrar for the next financial year must, be submitted to the Board of Directors of the AFSA as a part of the AFSA's annual budget.~~

~~(2) The estimates must include figures relating to levels of remuneration and entitlement to expenses of the Registrar and the officers, employees and agents of the AFSA.~~

~~(3) The Board of Directors of the AFSA may, within 30 days after the day it receives estimates for a financial year under subsection (1):~~

~~(a) approve the estimates; or~~

~~(b) on reasonable grounds, reject them~~

~~189. Funding and fees~~

~~(1) For each financial year of the Registrar, the office of the Board of Directors of the AFSA must provide financial resources to the Registrar to the extent necessary to ensure that the Registrar is able adequately to Exercise the Registrar's Functions.~~

~~(2) The Rules may require the payment to the AFSA of fees in respect of:~~

~~(a) the Exercise by the Registrar of prescribed Functions under or for these Regulations, the Rules or any other Legislation Administered by the Registrar, including the receipt by the Registrar of any Document that is required to be given or delivered to, or filed with, the Registrar (however described); and~~

~~(b) the inspection of Documents or other material held by the Registrar under these Regulations, the Rules or any other Legislation Administered by the Registrar.~~

~~(3) The Registrar may charge a fee for any services provided by the Registrar otherwise than under an obligation imposed on the Registrar by or under these Regulations, the Rules or any other Legislation Administered by the Registrar.~~

~~(4) If a fee is prescribed or charged under this section for the Exercise of a Function, or the provision of services, by the Registrar, no action need be taken by the Registrar until the fee is paid and, if the fee is payable on the receipt by the Registrar of a Document required to be given or delivered to, or filed with, the Registrar (however described), the Registrar is taken not to have received the Document until the fee is paid.~~

~~190. Accounts of Registrar~~



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- ~~(1) — The Registrar must keep proper accounts of the Registrar's financial activities.~~
- ~~(2) — The Registrar, before the end of the first quarter of the Registrar's financial year, prepares financial statements for the previous financial year in accordance with the accounting standards prescribed by the Rules.~~
- ~~(3) — The financial statements for a financial year must, in any event, give a true and fair view of the financial activities of the Registrar as at the end of the financial year and of the results of the Registrar's operations and cash flows in the financial year.~~
- ~~(4) — The Registrar must submit the financial statements prepared for a financial year to the Board of Directors of the AFSA for their approval.~~

~~191. — Audit for Registrar~~

- ~~(1) — The Board of Directors of the AFSA must appoint auditors to conduct an audit in relation to the Registrar's financial statements for each financial year of the Registrar.~~
- ~~(2) — The Board of Directors of the AFSA must, as soon as reasonably practicable after the preparation and approval of the Registrar's financial statements for a financial year, give the statements to the relevant auditor for audit.~~

~~192.1. — The auditor must prepare a report on the financial statements and give the report to the Board of Directors of the AFSA.~~

- ~~(3) — The report must, if appropriate, include a statement by the auditor about whether or not, in the auditor's opinion, the financial statements to which the report relates give a true and fair view of the state of the financial activities of the Registrar as at the end of the financial year to which the financial statements relate and of the results of the Registrar's operations and cash flows in that financial year.~~

~~193.1. — An auditor has a right of access, at all reasonable times, to all information that that is held or controlled by the Registrar, or any officer, employee or agent of the Registrar, and that is reasonably required by the auditor for the purposes of the audit.~~

- ~~(4) — The auditor is entitled reasonably to require from the officers, employees and agents of the Registrar the information and explanations that the auditor consider necessary for the purposes of the audit.~~
- ~~(5) — A Person must not, without reasonable excuse, intentionally engage in conduct that obstructs or hinders the auditor in the Exercise of the auditor's Functions under this section.~~
- ~~(6) — The Board of Directors of the AFSA must, before the end of the first quarter of the financial year of the Registrar or within the other period that the Governor may require, submit to the Governor copies of:
 - ~~(a) — the approved financial statements of the Registrar for the previous financial year; and~~
 - ~~(b) — the auditor's report on the financial statements.~~~~
- ~~(7) — In this section:~~



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auditor means a Person who is registered by the Registrar as an auditor under these Regulations.

~~194. Taxation~~

~~The income of the Registrar is subject to taxation in accordance with the Constitutional Statute.~~

~~193. Liability~~

~~(1) The Registrar may be sued in the Registrar's corporate capacity.~~

~~(2)(1) However, the Registrar, the AFSA, or an officer, employee, delegate or agent of the Registrar or AFSA, cannot be held liable for anything done or omitted to be done in the Exercise or purported Exercise of the Functions of the Registrar or the Board of Directors of the AFSA under these Regulations, the Rules or any other Legislation Administered by the Registrar.~~

~~(3)(1) Subsection (2) does not apply in relation to an act or omission if the act or omission is shown to have been in bad faith.~~

~~195. Independent review of Registrar~~

~~(1) The Governor may appoint an independent Person (the *reviewer*) to review and report to the Governor on any aspect of the efficiency and effectiveness of the Registrar in the use of the Registrar's resources.~~

~~(2) The office of the Governor must meet the reasonable expenses incurred by the reviewer in conducting the review and preparing the report.~~

~~(3) The reviewer has a right of access, at all reasonable times, to all information that is held or controlled by any officer, employee or agent of the Registrar and that is reasonably required by the reviewer for the purposes of the review.~~

~~(4) The reviewer is entitled reasonably to require from the Registrar, and the officers, employees and agents of the Registrar, the information and explanations that the reviewer considers necessary for the purposes of the review.~~

~~(5) A Person must not, without reasonable excuse, intentionally engage in conduct that obstructs or hinders the reviewer in the Exercise of the reviewer's Functions under this section.~~

CHAPTER 3—MISCELLANEOUS

~~196.195. Waivers and modifications of certain provisions~~

(1) In this section:

relevant provision means a provision of these Regulations, the Rules, or any other Legislation Administered by the Registrar, if the provision is expressed to be subject to this section or declared by the Rules to be a provision to which this section applies.

(2) On the application or with the consent of a Person, the Registrar may, by Written notice, provide that 1 or more relevant provisions:

(a) do not apply to the Person; or



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- (b) apply to the Person with the modifications stated in the notice.
- (3) The notice may be given subject to conditions.
- (4) If the notice is given subject to conditions, the Person must comply with the conditions. If the Person Contravenes a condition, the Registrar may, without limiting the Registrar's other powers, apply to the Court for the order that the Registrar considers appropriate, including an order that the Person comply with the condition, whether or not in a specified way.
- (5) Unless the Registrar is satisfied that it is inappropriate or unnecessary to do so, the Registrar must publish a notice under subsection (2) in a way the Registrar considers appropriate for bringing the notice to the attention of:
 - (a) Persons likely to be affected by it; and
 - (b) others who may be likely to become subject to a similar notice.
- (6) The Registrar may withdraw or vary a notice under subsection (2), on the Registrar's own initiative or on the application of the Person to whom the notice applies.

197-196. **Obligation of disclosure to Registrar**

- (1) A Regulated Entity or auditor of a Regulated Entity must disclose to the Registrar any matter that reasonably tends to show:
 - (a) that the Regulated Entity has or may have Contravened these Regulations; or
 - (b) anything else prescribed by the Rules or any other Legislation Administered by the Registrar.
- (2) Contravention of subsection (1) is punishable by a fine.
- (3) Subsection (1) does not require disclosure of a privileged communication.
- (4) A Regulated Entity must establish and maintain appropriate systems and internal procedures to enable it to comply with subsection (1).
- (5) Any provision in an agreement between a Regulated Entity and a Relevant Person for the Regulated Entity or an auditor, is void so far as it purports to hinder any Person from causing or assisting a Regulated Entity to comply with an obligation under subsection (1).
- (6) A Person must not be subjected to detriment, loss or damage merely because the Person does anything to cause or assist a Regulated Entity to comply with an obligation under subsection (1).
- (7) The Court may, on the application of an aggrieved Person, make any order for relief if the Person has been subjected to any detriment, loss or damage referred to in subsection (6).
- (8) In this section:

auditor includes a Person who is registered by the Registrar as an auditor under these Regulations.



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privileged communication means a communication attracting a privilege arising from the provision of professional legal advice or any other advice to which the relationship of lawyer and client or other similar relationship applies, but does not include a communication to which a general duty of confidentiality only applies.

Regulated Entity has the meaning given by section 158(2) (Application and interpretation of Part 14).

Relevant Person, for a Regulated Entity, has the meaning given by section 158(3) and (4).

~~198-197.~~ Disclosures to Registrar

- (1) A Person is not liable to any proceedings, subject to any Liability, or in Breach of any duty, merely because the Person gives or produces any information or Document to the Registrar in good faith, and in the reasonable belief that the information or Document is relevant to any of the Functions of the Registrar under these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (2) This section applies whether the information or Document is given or produced under a requirement at law or otherwise.

~~199-198.~~ Whistleblowing

- ~~(1) If a Person discloses to the Registrar a matter mentioned in subsection 196(1)(a) (Obligation of disclosure to Registrar) to the Registrar, to the auditor of a Company or a member of the audit team, or to a Director or other Officer of a Company and the disclosure complies with subsection (2), the Person is entitled to the protection set out in subsection (3).~~
- ~~(2) The disclosure complies with this subsection if it:~~
 - ~~(a) discloses the identity of the Person making the disclosure; and~~
 - ~~(b) is based on a reasonable suspicion that the relevant Company has or may have Contravened these Regulations; and~~
 - ~~(c) is made in good faith.~~
- ~~(3) If a Person makes disclosure under subsection (1):~~
 - ~~(a) the Person must not be subject to any civil or contractual Liability for making the disclosure; and~~
 - ~~(b) no contractual, civil or other remedy or right may be enforced against the Person by another Person for making the disclosure or any consequence resulting from the disclosure; and~~
 - ~~(c) the Person must not be dismissed from the Person's current employment, and must not otherwise be subject to any action by the Person's employer, or any related party of the employer, that is reasonably likely to cause detriment to the Person.~~
- ~~(4) Contravention of subsection (3)(c) is punishable by a fine.~~



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~~(5) In this section:~~

~~**auditor** means a Person who is registered by the Registrar as an auditor under these Regulations.
[intentionally omitted]~~

200-199. Irregularities

(1) In this section:

procedural irregularity includes a defect, irregularity or deficiency of notice or time.

procedure means any procedure, including, for example, the making of a decision, the conduct of a hearing, the giving of a notice, and any proceeding, whether or not a legal proceeding.

(2) A procedure under these Regulations, the Rules or any other Legislation Administered by the Registrar is not invalid because of any procedural irregularity unless the Court declares the procedure to be invalid.

(3) A Person may apply to the Court for an order:

(a) declaring that:

(i) anything purporting to have been done; or

(ii) any procedure purporting to have been commenced or undertaken;

under these Regulations, the Rules or any other Legislation Administered by the Registrar is not invalid because of any Contravention of these Regulations, the Rules or any other Legislation Administered by the Registrar; or

(b) extending or abridging the period for doing anything, or commencing or undertaking any procedure, under these Regulations, the Rules or any other Legislation Administered by the Registrar;

if the thing or procedure is essentially of a procedural nature.

201-200. Giving false or misleading information to Registrar etc.

(1) A Person must not:

(a) make a statement, or give information, to the Registrar (whether orally, in a Document or in any other way) that is false or misleading in a material particular; or

(b) give a Document to the Registrar that is false or misleading in a material particular; or

(c) conceal information or a Document if the concealment is likely to mislead or deceive the Registrar.

(2) Contravention of this section is punishable by a fine.

202-201. Compliance with orders etc. of Registrar



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- (1) If the Registrar makes an order, issues a direction, or makes a requirement, (however described) in relation to a Person under these Regulations, the Rules or any other Legislation Administered by the Registrar, the Person must comply with the order, direction or requirement.
- (2) Contravention of this section is punishable by a fine.

203-202. Notification of Registrar's decisions and reasons

- (1) This section applies if, under these Regulations, the Rules or any other Legislation Administered by the Registrar:
 - (a) the Registrar makes a decision (including a decision refusing to make a decision) on the application (however described) of a Person (the *affected Person* for the decision); or
 - (b) the Registrar makes a decision affecting the interests of a Person (the *affected Person* for the decision) on the Registrar's own initiative.
- (2) As soon as practicable after the Registrar makes the decision, the Registrar must give the affected Person Written notice of the decision.
- (3) Without limiting subsection (2), the notice must:
 - (a) if the decision is to take effect on the day after the day the notice is given to the Person—state that fact; or
 - (b) if the decision is to take effect at a different time—specify the time; or
 - (c) if the decision is to grant or issue (however described) a licence, permit, registration or anything else subject to conditions, restrictions or limitations of any kind—state the conditions, restrictions or limitations; or
 - (d) if the decision is to grant or issue (however described) a licence, permit, registration or anything else for a period—specify the period.
- (4) The notice must include, or be accompanied by, a statement of the Registrar's reasons for the decision.
- (5) However, if the decision was made on the application (however described) of the affected Person, subsection (4) does not apply to the decision so far as the decision was the decision the affected Person applied for.
- (6) Also, subsection (4) does not apply to the decision if a provision of any Legislation Administered by the Registrar expressly provides that the Registrar need not provide reasons for the decision.
- (7) This section is additional to, and does not limit, any other provision of any the AIFC Regulations or AIFC Rules.

204-203. Publication by AFSA

- (1) The AFSA must make Rules and Guidance available to the public without undue delay after they are adopted.



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- (2) The AFSA may publish, in the form and way the AFSA considers appropriate, information and statements relating to the practices and procedures of the Registrar, decisions of the Court, and any other matters that the Registrar considers relevant to the conduct of affairs in the AIFC.
- (3) Publications made under this section may be provided with or without charge, as the Board of Directors of the AFSA may decide.

205-204. **Public registers**

- (1) The Registrar must keep and publish registers of current and past registrations of Companies and Recognised Companies in accordance with any requirements prescribed by the Rules.
- (2) The Registrar must make a reasonably current version of each register kept under subsection (1) freely available for viewing by the public during the normal business hours of the Registrar.

206-205. **Language**

The Registrar may require communications to which the Registrar is a party (including communications under any other Legislation Administered by the Registrar) to be conducted in the English language.



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PART 16: ULTIMATE BENEFICIAL OWNERS

CHAPTER 1–EXEMPTIONS

206. The requirements in this Part 16 do not apply to a Relevant Person which:

- (1) has its securities listed or traded on a recognised exchange or is a wholly owned subsidiary of such an entity;
- (2) is regulated by a Financial Services Regulator in a Recognised Jurisdiction;
- (3) satisfies the Registrar of Companies that it is subject to equivalent international standards which ensure adequate transparency of ownership information in its home jurisdiction;
- (4) is wholly owned by a government or government agency of any jurisdiction; or
- (5) established under a law of Kazakhstan to perform governmental functions.

CHAPTER 2–BENEFICIAL OWNERSHIP OF RELEVANT PERSONS

207. Ultimate Beneficial Owner

- (1) For the purposes of this Part 16, an “Ultimate Beneficial Owner” of a Relevant Person means a natural person (other than a person acting solely in the capacity of a professional adviser or professional manager) who:
 - (a) in relation to a Company, holds or controls (directly or indirectly):
 - (i) (Shares or other Securities in the Relevant Person in excess of the Relevant Percentage;
 - (ii) voting rights in the Relevant Person in excess of the Relevant Percentage;
 - (iii) has the right to appoint the majority of the Board of Directors of the Company; or
 - (iv) has the legal right to exercise or actually exercises, significant control or influence over the activities of the Company; or
 - (b) in relation to a Partnership, Limited Partnership or a Limited Liability Partnership, has the legal right to exercise, or actually exercises, significant control or influence over the activities of the Partnership, Limited Partnership or Limited Liability Partnership, as the case may be.
- (2) If two (2) or more persons each own or control an interest in a Relevant Person, each of them is treated for the purposes of these Regulations as owning or controlling that interest.
- (3) Beneficial Ownership may be traced through any number of persons or arrangements of any description.
- (4) If no natural person is identified as an Ultimate Beneficial Owner of a Relevant Person under section 207(1), the Ultimate Beneficial Owner or owners shall be any natural persons upon whose



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instructions the Relevant Person or its Governing Body is, is required or is accustomed to act.

(5) If there is no Ultimate Beneficial Owner of a Relevant Person under either of section 207(1) or 207(4), each:

(a) member of the Governing Body of the Relevant Person who is a natural person; or

(b) Ultimate Beneficial Owner of a member of the Governing Body of the Relevant Person which is not a natural person,

shall be deemed, subject to Section 207(1), to be an Ultimate Beneficial Owner of the Relevant Person.

208. Ultimate Beneficial Ownership Information

(1) Each Relevant Person shall at all times take reasonable steps to obtain, maintain and hold adequate, accurate and current UBO Details in relation to each of its Ultimate Beneficial Owners.

(2) A Relevant Person shall be taken to have obtained, and shall hold, all information in relation to its Ultimate Beneficial Owners which is supplied to the Registrar of Companies in connection with its application for incorporation, registration or continuation (as the case may be).

(3) A Relevant Person who is provided with a share transfer or other document relating to a change in ownership shall not register, recognise or give effect to that transfer or document unless it is also provided with a statement by or on behalf of the transferee, which states whether the transfer will result in a change in the Ultimate Beneficial Ownership of the Relevant Person and, if it will result in such a change, the nature of the change and provides the UBO Details in respect of each new Ultimate Beneficial Owner as a result of the change.

209. Notice in respect of Ultimate Beneficial Ownership

(1) Without prejudice to the generality of section 198(1), a Relevant Person shall, subject to section 209(3), give to any person whom it has reasonable cause to believe is an Ultimate Beneficial Owner and whose UBO Details are not correctly recorded on its Beneficial Ownership Register, the notice referred to in section 209(2).

(2) The notice referred to in section 209(1) is a notice that:

(a) states that it is given under these Regulations;

(b) sets out the relevant UBO Details that the Relevant Person reasonably knows or believes to be the relevant particulars and leaves a space in the appropriate place to indicate that the relevant particular is not known;

(c) requests the addressee to:

(i) state whether or not he or she is a beneficial owner of the Relevant Person;,

(ii) confirm or correct any particulars that are included in the notice; and

(iii) supply any particulars that are missing; and



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- (d) states that should the addressee fail to comply with the notice within thirty (30) days of receipt of the notice, the notified particulars will be entered in the Beneficial Ownership Register maintained by the Relevant Person.
- (3) A Relevant Person is not required to give a notice under section 209(1), if:

 - (a) it has already been supplied with all the required UBO Details in respect of the person to whom notice was given under section 209(1), by that person or with the knowledge of that person; or
 - (b) the Relevant Person has made an inquiry (whether formal or informal) as to a natural person's status as an Ultimate Beneficial Owner of it, and thirty (30) days has not elapsed since the making of those enquiries.
- (4) For the purpose of identifying natural persons who are Ultimate Beneficial Owners, a Relevant Person is entitled to rely, without further enquiry, on the response of a person to a notice in writing sent in good faith by the Relevant Person, unless the Relevant Person has reason to believe that the response is misleading or false.
- (5) A Relevant Person who fails to comply with section 209(1) shall be liable to a fine.

CHAPTER 3: BENEFICIAL OWNERSHIP REGISTER

210. Requirements relating to Beneficial Ownership Register

- (1) A Relevant Person shall keep and maintain a Beneficial Ownership Register within the time specified in section 210(2), in which the UBO Details in respect of each of its Ultimate Beneficial Owners, shall be included.
- (2) Each Relevant Person which comes into existence shall establish a Beneficial Ownership Register within thirty (30) days of such coming into existence.
- (3) The Relevant Person shall cause the following information to be entered in its Beneficial Ownership Register in respect of each Ultimate Beneficial Owner:

 - (a) full legal name;
 - (b) residential address and, if different, an address for service of notices under these Regulations;
 - (c) date and place of birth;
 - (d) nationality;
 - (e) information identifying the person from their passport or other government-issued national identification document acceptable to the Registrar of Companies, including:

 - (i) identifying number;
 - (ii) country of issue; and
 - (iii) date of issue and of expiry;



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- (f) the date on which the person became an Ultimate Beneficial Owner of the Relevant Person; and
- (g) the date on which the person ceased to be an Ultimate Beneficial Owner of the Relevant Person.
- (4) If after having exhausted all reasonable means:
- (a) no natural person is identified as the Ultimate Beneficial Owner of the Relevant Person; or
 - (b) there is reasonable doubt that that any natural person so identified is an Ultimate Beneficial Owner of the Relevant Person,
- the Relevant Person shall enter on its Beneficial Ownership Register, the UBO Details of the natural persons who are deemed to be the Ultimate Beneficial Owners pursuant to section 207(5).
- (5) If a Relevant Person causes an entry to be made in its Beneficial Ownership Register naming a natural person as an Ultimate Beneficial Owner, and the information and particulars were not provided either by that natural person or with his or her knowledge, the Relevant Person shall within thirty (30) days of making the entry, notify the person whose name has been included in the Beneficial Ownership Register of that fact.
- (6) A Relevant Person who fails to comply with section 210(1) shall be liable to the fine.

211. Application to the Court to rectify the Beneficial Ownership Register

- (1) If:
- (a) the name of any person is, without sufficient cause, entered in or omitted from; or
 - (b) no entry is made in; or
 - (c) unnecessary delay takes place in:
 - (i) entering the name of any person in; or
 - (ii) removing the name of any person who has ceased to be a beneficial owner from,
- a Relevant Person's Beneficial Ownership Register, the person aggrieved or any other interested party may apply to the AIFC Court for rectification of the Beneficial Ownership Register.
- (2) Where an application is made under section 211(1), the AIFC Court may either:
- (a) refuse the application; or
 - (b) order rectification of the Beneficial Ownership Register and if appropriate order payment by the Relevant Person of compensation for any loss sustained by any party aggrieved.
- (3) On such an application, the AIFC Court may:



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- (a) decide any question as to whether the name of any person who is a party to the application should or should not be entered in or omitted from the Beneficial Ownership Register; and
 - (b) decide any question necessary or expedient to be decided for rectification of the Beneficial Ownership Register.
- (4) The reference in section 211(1) to “any other interested party” is a reference to:
- (a) any member of the Relevant Person; and
 - (b) any other person who is an Ultimate Beneficial Owner of the Relevant Person.

CHAPTER 4: NOMINEE DIRECTORS

212. Duty of Nominee Directors

- (1) A Nominee Director shall inform the company that he is a nominee and provide all the required particulars referred to in section 204(1)(a) to (e) of the person for whom the Nominee Director is a nominee within:
- (a) sixty (60) days of the Commencement Date, where the company is incorporated, registered or continued prior to the Commencement Date; or
 - (b) thirty (30) days of the later of:
 - (i) the date of incorporation or registration of the company; or
 - (ii) the Nominee Director becoming a nominee.
- (2) A Nominee Director shall inform the company of any change to the particulars provided under Section 203(1) within thirty (30) days of the change.
- (3) A Nominee Director shall also inform the company that he ceased to be a nominee within thirty (30) days of the cessation.
- (4) For the purposes of this Chapter 4, a Director is a Nominee Director if he is under an obligation to act in accordance with the directions, instructions or wishes of another person.

213. Register of Nominee Directors

- (1) A company which has one (1) or more Nominee Directors shall keep and maintain a Register of Nominee Directors in which there shall be entered, the following information obtained pursuant to section 212(1) or otherwise known by it, in relation to the person on whose behalf, each Nominee Director acts:
- (a) full legal name;
 - (b) residential address and, if different, an address for service of notices under these Regulations;
 - (c) date of birth;



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- (d) nationality;
 - (e) information identifying the person from their passport or other government-issued national identification document acceptable to the Registrar, including:
 - (i) identifying number;
 - (ii) country of issue; and
 - (iii) date of issue and of expiry,and, in respect of the Nominee Director:
 - (f) the date on which the Nominee Director became a Nominee Director of the Company; and
 - (g) the date on which the Nominee Director ceased to be a Nominee Director of the Company.
- (2) A company which fails to comply with section 213(1) shall be liable to a fine.

CHAPTER 5: PROVISION OF INFORMATION TO REGISTRAR OF COMPANIES

214. Access to Registers

- (1) A Relevant Person must not disclose, or make available for inspection, the Beneficial Ownership Register, the Register of Nominee Directors or any particulars contained in either register to any person, except:
 - (a) as provided in these Regulations;
 - (b) as required under any applicable law; or
 - (c) with the consent of the relevant Ultimate Beneficial Owner or Nominee Directors.
- (2) Each Relevant Person in existence at the Commencement Date shall within ninety (90) days of such date provide to the Registrar of Companies the names and other required particulars of:
 - (a) any Ultimate Beneficial Owner whose name is included in its Beneficial Ownership Register; and
 - (b) any Nominee Directors whose name is included in its Register of Companies of Nominee Directors.
- (3) Each Relevant Person which is incorporated, registered or converted after the Commencement Date shall be deemed to have provided to the Registrar the UBO Details of any Ultimate Beneficial Owners as part of the application for incorporation, registration or conversion.
- (4) A Relevant Person who fails to comply with Section 205(2) shall be liable to a fine.

215. Notification to the Registrar of Companies

- (1) A Relevant Person which makes a change in its Beneficial Ownership Register or Register of



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Nominee Directors, shall within thirty (30) days of the date of making the change, notify the Registrar of Companies of the particulars of the change.

- (2) A Relevant Person who has not complied with Section 214(2) or 215(1) prior to the lodgement of the Annual Return, shall make the notification referred to in Section 206(1) at the time of lodgement of the Annual Return.
- (3) The Registrar of Companies may prescribe forms for the giving of information pursuant to sections 214(2), 215(1) and 215(2) which forms may require the provision of such further information in relation to any Ultimate Beneficial Owner on the Beneficial Ownership Register or Nominee Directors on the Register of Nominee Directors, as the Registrar of Companies may require.
- (4) A Relevant Person who fails to comply with section 215(1) or 215(2) shall be liable to a fine.

216. Notices issued by the Registrar of Companies

- (1) The Registrar of Companies may, by notice in writing served on a Relevant Person or any other person (but without prejudice to any lien claimed by such a person on any documents produced by him) who may have information or documents related to Ultimate Beneficial Owners and/or Nominee Directors to:
 - (a) provide; or
 - (b) produce for the purposes of inspection; or
 - (c) furnish, to the Registrar of Companies' officers, servants or agents authorised for the purposes of inspection under this section 216, on production of evidence of such authority,
such information or documents, in such form and manner, within such time and at such place as may be specified in the notice, as the Registrar of Companies may require for the performance of his functions under these Regulations.
- (2) The powers conferred by section 216(1) to require a person to produce any documents include the power:
 - (a) where the documents are produced, to take copies of them or extracts from them, in circumstances where the Registrar of Companies is satisfied that the taking of such copies or extracts is necessary for the proper exercise of powers under or in relation to these Regulations;
 - (b) where the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are; and
 - (c) to attend at such time and place as may be required and explain and answer questions relating to any matters in relation to which the production of the information may be required.
- (3) A person to whom a notice or other request is directed is not required to provide any information that is subject to legal professional privilege.
- (4) If a Relevant Person is in the process of being wound up or dissolved, the liquidator or other person responsible for the winding up of the affairs of the Relevant Person shall deliver to the Registrar



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the Beneficial Ownership Register and (if applicable) the Register of Nominee Directors of the Relevant Person or a true copy thereof, within thirty (30) days of his or her appointment.

- (5) A Relevant Person who fails to comply with a notice issued under section 216(1) shall be liable to a fine.

CHAPTER 6: OBLIGATIONS OF REGISTRAR OF COMPANIES

217. Obligations of the Registrar of Companies

- (1) The Registrar shall collect and process information relating to Ultimate Beneficial Owners and Nominee Directors obtained by him under these Regulations only for the purposes of regulation in relation to money laundering and terrorism financing, unlawful organisations and sanctions compliance in the AIFC, or to comply with any other applicable laws in the AIFC.
- (2) Except as required for the purpose of section 217(1) or for the purposes of section 217(4), the Registrar of Companies shall:
- (a) not retain in his possession such information; and
 - (b) shall make arrangements for its secure destruction.
- (3) The Registrar of Companies shall, unless the Relevant Person consents to such disclosure, disclose such information only at the request of a regulator, a law enforcement agency or other government authority prescribed by law, and then only to the regulator, agency or authority which made the request for the purpose of such a request.
- (4) In the case of a Relevant Person that has been dissolved, terminated or struck off, the Registrar of Companies shall retain any records delivered to him pursuant to section 216(4) relating to that legal person as at the date of its dissolution, termination or striking off (as the case may be) for a period of 6 years after that date.

CHAPTER 7: ENFORCEMENT

218. Enforcement

If a Relevant Person, fails to comply with a requirement of this Part 16, the Registrar may, after following the Decision-making Procedures, strike the Relevant Person off the Register upon which it is listed.



PART 17: WHISTLEBLOWING

CHAPTER 1–INTERPRETATION

219. Meaning of protected report, protected reporter, worker and employer

In this Part:

protected report means a report that meets all of the following requirements:

- (1) it is about a Centre Participant or a person connected with a Centre Participant;
- (2) it is made to the Centre Participant itself or an authority or officer specified or referred to in section 220;
- (3) if it is made to an authority or officer, the authority or officer is responsible for matters of the kind reported;
- (4) it is given in good faith;
- (5) it gives information that the reporter reasonably believes shows that any of the following has happened, is happening, or is likely to happen:
 - (a) a criminal offence (whether under the law of the Republic of Kazakhstan or of another jurisdiction);
 - (b) a person is in contravention of a legal requirement, or is failing to comply with any legal obligation to which he is subject;
 - (c) the endangering of the health and safety of an individual;
 - (d) a breach of a Centre Participant’s policies and procedures (including, for example, a breach of any code of conduct or policy in relation to ethical behaviour); and
 - (e) the deliberate concealment of a matter referred to in any of (a) to (d).

protected reporter means a worker who makes a protected report.

worker means:

- (1) an individual who has entered into or works under (or, where employment has ceased, worked under):
 - (a) a contract of employment; or
 - (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;
- (2) an individual who is not a worker as defined by (1) but who:



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- (a) works or worked for a person in circumstances in which he is or was introduced or supplied to do that work by a third person and the terms on which he is or was engaged to do the work are or were in practice substantially determined not by him but by the person for whom he works or worked, by the third person or by both of them;
- (b) contracts or contracted with a person, for the purposes of that person's business, for the execution of work to be done in a place not under the control or management of that person and who would therefore fall within (1)(b) if for "personally" in that provision there were substituted "(whether personally or otherwise)"; or
- (c) is or was provided with work experience provided pursuant to a training course or programme or with training for employment (or with both) otherwise than under a contract of employment or on a course provided by any university, college, school or other educational establishment.

employer means:

- (1) in relation to a worker falling within (1)(a) the definition of "worker", the person by whom the worker is (or, where employment has ceased, was) employed;
- (2) in relation to a worker falling within (2)(a) of the definition of "worker", the person who substantially determines or determined the terms on which he is or was engaged; or
- (3) in relation to a worker falling within (2)(c) of the definition of "worker", the person providing the work experience or training.

CHAPTER 2–RIGHTS AND REMEDIES FOR WHISTLEBLOWERS

220. Protected reports and protected reporters

- (1) A protected report shall be protected provided that it is made to:
 - (a) the Centre Participant concerned;
 - (b) the AFSA;
 - (c) a legal adviser in the course of obtaining legal advice;
 - (d) a prosecuting authority;
 - (e) a law enforcement authority;
 - (f) a regulatory or governmental authority, body or agency in a jurisdiction outside the AIFC (whether in the Republic of Kazakhstan or not), including a body or officeholder responsible for enforcing the criminal law of that jurisdiction; or
 - (g) any other person designated under the laws of the AIFC.
- (2) A Centre Participant that receives a report that purports to be a protected report:
 - (a) must treat the individual who made the report as a protected reporter; and



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(b) must treat the report as a protected report;

until the Centre Participant has decided, acting reasonably and on the basis of a proper investigation, that the report is not a protected report.

(3) If a Centre Participant becomes aware that an individual has made a report that purports to be a protected report about the Centre Participant to an entity specified or referred to in subsection (1), then the Centre Participant must treat the individual as a protected reporter until the Centre Participant establishes, acting reasonably and on the basis of a proper investigation, that the report is not a protected report.

221. Right not to suffer detriment

(1) A protected reporter has the right:

(a) not to be subjected to any detriment by any act, or any deliberate failure to act, done by:

(i) his employer;

(ii) another worker of the protected reporter's employer in the course of that other worker's employment; or

(iii) an agent of the protected reporter's employer acting with the employer's authority,

on the ground that the protected reporter has made a protected report; and

(b) not to be dismissed where the reason (or, if more than one, the principal reason) for the dismissal is that protected reporter made a protected report.

(2) Where a protected reporter is subjected to detriment by anything done as mentioned in subsections (1)(a)(ii) or (iii), that thing is treated as also done by the worker's employer and it is immaterial, for the purposes of this subsection (2), whether the thing is done with the knowledge or approval of the worker's employer.

(3) A protected reporter may present a complaint to the AIFC Court that he has been subjected to a detriment in contravention of subsection (1)(a) or he has been dismissed in contravention of subsection (1)(b).

(4) In proceedings against a protected reporter's employer in respect of anything alleged to have been done as mentioned in subsection (1)(a)(ii), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker from doing that thing or from doing anything of that description.

(5) A worker or agent of a protected reporter's employer is not liable by reason of subsections (1)(a)(ii) or (iii) for an act that subjects the protected reporter to detriment if:

(a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this section; and

(b) it is reasonable for the worker or agent to rely on the statement,



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but this does not prevent the employer from being liable by reason of subsection (2).

222. Remedies where detriment is suffered

- (1) Where the AIFC Court finds a complaint made under section 221(3) well-founded, the AIFC Court:
 - (a) shall make a declaration to that effect; and
 - (b) may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates.
- (2) The amount of the compensation awarded shall be such as the AIFC Court considers just and equitable in all the circumstances having regard to:
 - (a) the infringement to which the complaint relates;
 - (b) any loss which is attributable to the act, or failure to act, which infringed the complainant's right; and
 - (c) the extent to which the complainant has taken steps reasonably available to him to mitigate the loss referred to in subsection (2)(b).
- (3) The loss shall be taken to include:
 - (a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates; and
 - (b) loss of any benefit which he might reasonably be expected to have had but for that act or failure to act.
- (4) Where the tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

CHAPTER 3–WHISTLEBLOWING POLICIES

223. Whistleblowing policy

- (1) A Centre Participant must establish a written policy on whistleblowing that:
 - (a) is approved by the its governing body;
 - (b) complies with this Part; and
 - (c) is appropriate for the nature, scale and complexity of the Centre Participant's business.
- (2) A Centre Participant that is a Branch, or is a member of a corporate group, may rely on the whistleblowing policy of its head office, or a group-wide protected reporting policy, provided that the policy substantially complies with this Part.

224. Content of whistleblowing policy



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- (1) A Centre Participant's whistleblowing policy must comply with all of the following requirements:
- (a) it must provide two or more independent channels for making a protected report, which may include any two of the following non-exhaustive examples:
 - (i) a dedicated email address to which reports may be sent;
 - (ii) a dedicated telephone number over which reports may be made; and
 - (iii) designated individual(s) within the Centre Participant to whom reports may be made.
 - (b) if appropriate, it must provide for a report to be made in a language other than English;
 - (c) it must recognise that a report may be made by anybody with the necessary information (not only by an officer or employee of the Centre Participant);
 - (d) it must allow a protected report to be made anonymously;
 - (e) to the extent that a protected reporter's identity is disclosed voluntarily or is revealed to, or inferred by, the Centre Participant following an investigation of the protected report, the policy must provide for the identity of that protected reporter to be kept confidential (so far as possible);
 - (f) it must provide for reasonable measures to protect a protected reporter, anyone who assists in investigating a protected report, and anyone who cooperates with the investigation, against retaliation or detriment;
 - (g) it must explicitly recognise a protected reporter's right (and, in certain cases, obligation) to report to or communicate with the entities or individuals listed in Section 220(1);
 - (h) it must provide a suitable set of guiding principles, and clear procedures, for the assessment, investigation and escalation of a protected report;
 - (i) it must provide for the investigation of a protected report to be independent of the individual or business unit concerned, for example through the appointment of a third party investigator;
 - (j) it must provide for a protected report to be acknowledged by the Centre Participant, and for the protected reporter who made it to be kept informed (to the extent that is appropriate in the circumstances) about the progress and outcome of the investigation;
 - (k) it must provide for the reporting, monitoring and investigation of retaliation, attempts at retaliation and threats of retaliation against, and any other actions causing detriment to, the protected reporter and any persons that assist in the conduct of the investigation;
 - (l) it must provide for retaliation, an attempt at retaliation, or a threat of retaliation and any other actions causing detriment to the protected reporter or a person assisting an investigation into a protected report to be treated as gross misconduct;
 - (m) it must provide for appropriate reporting to the Centre Participant's governing body and



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the AFSA about protected reports, the investigation of such reports and the outcome of the investigations.

- (2) The Centre Participant must set out the policy clearly in a document, and must ensure that all of the firm's officers and employees have access to, and understand, the document.
- (3) The policy must also clearly set out statements of:
 - (a) the benefits to the Centre Participant of the whistleblowing policy; and
 - (b) the Centre Participant's commitment to it.

225. Implementation of whistleblowing policy

- (1) The governing body of a Centre Participant must ensure that the Centre Participant's whistleblowing policy is fully implemented.
- (2) In particular, the Centre Participant's Governing Body must take reasonable steps to ensure that a protected reporter, anyone who assists in investigating a protected report, and anyone who cooperates in the investigation, are protected against retaliation and any other action causing detriment.
- (3) A Centre Participant must nominate an appropriately senior individual to oversee the implementation of the whistleblowing policy.
- (4) A Centre Participant that receives a protected report must notify the AFSA within five business days.
- (5) A Centre Participant's Governing Body must ensure that the whistleblowing policy is reviewed and, if necessary, updated at least once every three years by:
 - (a) the Centre Participant's internal auditor; or
 - (b) an independent and objective external reviewer.
- (6) A Centre Participant must provide regular training for all of its officers and employees on its whistleblowing policy and any relevant procedures contained in the policy. In particular, the Centre Participant must provide appropriate specialist training for the officers and employees who are responsible for key elements of the policy.
- (7) A Centre Participant may outsource the implementation of its whistleblowing policy. If the Centre Participant does so, it must ensure that the outsourcing agreement:
 - (a) nominates the individual referred to in subsection (3); and
 - (b) otherwise provides appropriately for the implementation of the firm's obligations under the policy.
- (8) In the event that the Centre Participant outsources the implementation of its whistleblowing policy, its rights and obligations under this Part shall remain unaltered, notwithstanding anything to the contrary in the outsourcing agreement.



PART 18: COMMON REPORTING STANDARD

CHAPTER 1–APPLICATION AND COMMENCEMENT

226. Application

This Part applies to:

- (1) any Reporting Financial Institution subject to the supervision of the Relevant Authority under these Regulations;
- (2) any Account Holder of a Reportable Account held with a Reporting Financial Institution subject to the supervision of the Relevant Authority under these Regulations; and
- (3) any other Person to whom a provision is specified to apply.

227. Commencement

This Part shall commence on [***].

CHAPTER 2–INTERPRETATION

228. In this Part:

Account Holder has the meaning given in Schedule 2.

Accounting Records means any records and underlying documents comprising initial and other accounting entries and associated supporting documents, such as:

- (1) cheques;
- (2) records of electronic funds transfers;
- (3) invoices;
- (4) contracts;
- (5) the general and subsidiary ledgers, journal entries and other adjustments to the financial statements that are not reflected in journal entries; and
- (6) work sheets and spread sheets supporting cost allocations, computations, reconciliations and disclosures.

Common Reporting Standard means the standard for automatic exchange of financial account information developed by the OECD as amended from time to time by the OECD, the current format of which is set out in Schedule 2 of these Regulations.

Competent Authority means the competent authority designated by the Government to facilitate the exchange of information under the Common Reporting Standard pursuant or any agreement or treaty entered into by the Government, or its permitted delegate or nominee, in connection therewith.



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Financial Institution has the meaning given in Schedule 2.

Government means the government of the Republic of Kazakhstan.

Inspector means any inspector appointed by the Relevant Authority under section 233.

New Account has the meaning given in Schedule 2.

Non-reporting Financial Institution has the meaning given in Schedule 2

OECD means the Organisation for Economic Co-Operation and Development which was established by the Convention on the Organisation for Economic Co-operation and Development signed in Paris on 14 December, 1960.

Pre-existing Account has the meaning given in Schedule 2.

President means the President of the Republic of Kazakhstan.

Relevant Authority means the AFSA.

Reportable Account has the meaning given in Schedule 2.

Reportable Person means an individual or entity that is resident in a jurisdiction which is identified in Schedule 2 to these Regulations.

Reporting Financial Institution has the meaning given in Schedule 2.

CHAPTER 3–ROLE OF THE RELEVANT AUTHORITY

229. Appointment of the relevant authority

(1) The Relevant Authority is hereby appointed to administer the provisions of this Part in the AIFC.

(2) In exercising its powers under this Part, the Relevant Authority shall act in an independent manner.

230. Objectives, functions and powers of the relevant authority

(1) In performing its functions and exercising its powers, the Relevant Authority shall pursue the following objectives:

(a) to promote good practices and observance of the requirements of this Part;

(b) to administer these Regulations in an effective and transparent manner;

(c) to prevent, detect and restrain conduct which is, or may be, in contravention of this Part;

(d) to maintain reliable and up-to-date information and provide access to such information to the Competent Authority, in accordance with this Part; and

(e) to assist the Government in complying with its obligations under any international treaty or other agreement relating to the Common Reporting Standard to which the Republic of Kazakhstan is a party.



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- (2) The Relevant Authority has such functions and powers as are conferred, or expressed to be conferred, on it:
- (a) by or under this Part;
 - (b) by the AIFC Authority;
 - (c) by the Competent Authority or the Government; or
 - (d) by or under any other Rule or Regulation or other legislation.
- (3) Without limiting the generality of section 230(2), such powers of the Relevant Authority shall include, so far as is reasonably practicable, powers to:
- (a) prepare or cause to be prepared draft Regulations or Rules;
 - (b) draft any guidance reasonably required to enable the Relevant Authority to perform its statutory functions under these Regulations;
 - (c) issue or prescribe forms to be used for any of the purposes of this Part;
 - (d) issue or prescribe procedures and requirements relating to this Part; and
 - (e) specify the method of delivery of information pursuant to this Part, whether by electronic or any other means.
- (4) The Relevant Authority may prescribe the use of an electronic or computer based system for the filing or delivery of information or documents required under or governed by this Part, or as may be required by the Competent Authority pursuant to its duties under the Common Reporting Standard, and may specify the circumstances in which persons shall be deemed to have signed or certified documents on an electronic or computer-based system for any purpose under this Part.
- (5) The Relevant Authority has the power to do whatever it deems necessary for, or in connection with, or reasonably incidental to, the exercise and performance of its powers and functions inclusive of the power of delegation.
- (6) Subject to section 230(7), neither the Relevant Authority nor any delegate or agent of the Relevant Authority can be held liable for anything done or omitted to be done in the performance of or purported performance of the functions of the Relevant Authority or in the exercise or purported exercise of any power or discretion of the Relevant Authority.
- (7) Section 230(6) does not apply if the act or omission is shown to have been in bad faith.

CHAPTER 4–REPORTING, RECORDS, INVESTIGATIONS AND INSPECTIONS

231. Collecting, reporting and keeping records of information

- (1) A Reporting Financial Institution must collect and report to the Competent Authority the information required by the Common Reporting Standard by way of the reporting system provided by the Relevant Authority for this purpose in the manner and on the dates prescribed in Schedule 2.



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- (2) A Reporting Financial Institution shall establish and implement appropriate systems and internal procedures to enable its compliance with this Part.
- (3) A Reporting Financial Institution shall keep records of the steps undertaken and any evidence relied upon for the performance of the due diligence procedures and measures to obtain those records that the Reporting Financial Institution obtains or creates for the purpose of complying with this Part.
- (4) All records required to be kept by Reporting Financial Institutions pursuant to the provisions of this Part shall be retained in an electronically readable format for a retention period of six (6) years after the date upon which such records are created.
- (5) A Reporting Financial Institution that obtains or creates records for any purpose under this Part, in a language other than English shall, upon request, provide an English translation to the Relevant Authority.
- (6) A Reporting Financial institution must each year following the first year in which a person becomes a Reportable Person, notify such Person of the information relating to that Person which is required to be reported under this Part to the Competent Authority.

232. Investigations and inspections

The _____



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- (1) Relevant Authority may request information from a Reporting Financial Institution and, at all reasonable times, be permitted to enter any premises or place of business of a Reporting Financial Institution for the purposes of:
- (a) determining whether information:
 - (i) included in an information return made pursuant to these Regulations by the Reporting Financial Institution is correct and complete; or
 - (ii) omitted from an information return made by the Reporting Financial Institution was correctly omitted; or
 - (b) examining the systems and internal procedures put in place by a Reporting Financial Institution for the purposes of ensuring compliance with its obligations under these Regulations.
- (2) A Reporting Financial Institution shall keep records of the steps undertaken and any evidence relied upon for the performance of the due diligence procedures and measures to obtain those records that the Reporting Financial Institution obtains or creates for the purpose of complying with these Regulations.
- (3) The Relevant Authority may require a Reporting Financial Institution to provide records, information, explanations and particulars and to give all the required assistance which it may reasonably require in connection with the administration or enforcement of these Regulations.
- (4) The Relevant Authority may request information from an Account Holder that has a Reportable Account held with a Reporting Financial Institution, inclusive of (but not limited to) Accounting Records and all other records held in connection with the information or certifications provided to the Reporting Financial Institution pursuant to these Regulations, and the Relevant Authority may ask a Reporting Financial Institution to assist it to obtain such information or records from an Account Holder.
- (5) Where an Account Holder does not comply in full with any request for information by the Relevant Authority under section 232(3), the Relevant Authority may, after informing the Competent Authority, order a Reporting Financial Institution to:
- (a) block or suspend transfers or payments to or from any Reportable Accounts relevant to the Account Holder; or
 - (b) close any Reportable Accounts held by the Account Holder with the Reporting Financial Institution in the AIFC.

233. Appointment of inspectors

- (1) The Relevant Authority may, if it considers it necessary or desirable in the pursuit of the objectives of this Part, appoint one or more Inspectors to investigate the affairs of a Reporting Financial Institution and to submit such written report as the Relevant Authority may direct.
- (2) The Relevant Authority shall inform the Competent Authority prior to appointing an Inspector to investigate the affairs of a Reporting Financial Institution.

234. Powers of inspectors to obtain information and documents



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- (1) If an Inspector has reason to believe that any Reporting Financial Institution may be able to give information or produce a document which is or may be relevant to an investigation relevant to the provisions of this Part, he may:
- (a) enter the business premises of such Reporting Financial Institution during normal business hours for the purpose of inspecting, obtaining and copying information or documents stored in any form on such premises;
 - (b) require such Reporting Financial Institution to produce, or procure the production of, any books, records or other documents under its control relating to the investigation;
 - (c) require such Reporting Financial Institution to give, or procure the giving of, specified information relating to the investigation;
 - (d) require such Reporting Financial Institution to attend before them at specified times and on reasonable notice and answer all questions put to them relating to the investigation (a “compulsory interview”); and
 - (e) require such Reporting Financial Institution to give reasonable assistance to them in connection with the investigation.
- (2) Where an Inspector exercises his powers under section 234(1), he may:
- (a) require a Reporting Financial Institution to make available any relevant information stored at those premises for inspection or copying;
 - (b) require a Reporting Financial Institution to convert any relevant information into a form capable of being copied;
 - (c) use the facilities of the Reporting Financial Institution, free of charge, to make copies.
- (3) Where an Inspector exercises his power under section 234(1)(d) to conduct a compulsory interview, he may give a direction:
- (a) concerning who may be present;
 - (b) preventing any Person present during any part of the compulsory interview from disclosing to any other Person any information provided to the interviewee or questions asked by the interviewer during the compulsory interview;
 - (c) concerning the conduct of any Person present, including as to the manner in which they shall participate in the interview;
 - (d) requiring the interviewee to swear an oath or give an affirmation that the answers are true to the best of his knowledge;
 - (e) requiring the interviewee to answer any questions relevant to the investigation;
 - (f) requiring the interview to be audio or video recorded.
- (4) A Reporting Financial Institution required under this section 234 to answer any question which is



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put to such Person by an Inspector shall not:

- (a) knowingly or recklessly make a statement which is false, misleading or deceptive; or
- (b) knowingly or recklessly withhold any information the omission of which makes the information which is furnished misleading or deceptive.

235. Use and effect of information and documents obtained for investigations

- (1) Information given or a document produced as a result of the exercise by the Inspectors of powers under section 234 is admissible in evidence in any proceedings, provided that any such information or document also complies with any requirements relating to the admissibility of evidence in such proceedings.
- (2) The requirement to give, produce or procure the information or documents specified under section 234 shall not apply if such information or documents constitute a Privileged Communication.
- (3) Other than for the purpose of these Regulations, an Inspector shall not disclose a statement made by a Reporting Financial Institution in answer to any question asked pursuant to a requirement made of the Reporting Financial Institution under section 234 to any individual or entity unless:
 - (a) the Reporting Financial Institution consents to the disclosure; or
 - (b) the Inspector is required by law or court order to disclose the statement.
- (4) The Inspector may retain possession of any information and documents given to him pursuant to a requirement made under section 234 for so long as is necessary:
 - (a) for the purposes of the investigation to which the notice relates;
 - (b) for a decision to be made about whether or not a proceeding to which the information or documents would be relevant should be commenced; or
 - (c) for such a proceeding to be completed.
- (5) A Reporting Financial Institution is not entitled to claim a lien on any documents as a basis for failing to comply with a requirement made under section 234, or any other provision under these Regulations, but any such lien shall not otherwise be prejudiced as a consequence the Reporting Financial Institution complying with the provisions of this Part.
- (6) Where a Reporting Financial Institution is unable to produce information or documents in compliance with a requirement made under section 234, the Inspector may require the Reporting Financial Institution to state, to the best of its knowledge or belief, where the information or documents may be found and who last had possession, custody or control of the information or documents.
- (7) Where the Inspector considers that, if disclosed, the fact of the issuing of a notice requiring a Reporting Financial Institution to:
 - (a) produce documents;
 - (b) give information;



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(c) attend a compulsory interview; or

(d) give assistance.

may hinder the investigation to which it relates, the Inspector may direct any Person who receives such notice not to disclose the receipt of a notice or any information relating to compliance therewith to any other Person, other than his legal representative under a duty of confidentiality.

(8) A Reporting Financial Institution is entitled to legal representation during the course of an investigation conducted pursuant to the provisions of this Part.

236. Obstruction of inspectors

(1) A Reporting Financial Institution shall not, without reasonable excuse, engage in conduct, including without limitation the:

(a) destruction of documents;

(b) failure to give or produce information or documents specified by an Inspector;

(c) failure to attend before an Inspector at a specified time and place to answer questions;

(d) giving of information that is false or misleading; or

(e) failure to give any assistance in relation to an investigation which the Reporting Financial Institution is able to give such assistance,

that is intended to obstruct an Inspector in the exercise of any of his powers under section 234.

237. Powers of the Relevant Authority to apply to AIFC Court

(1) The Relevant Authority may apply to the AIFC Court for an order to compel a Reporting Financial Institution to adhere to the provisions of this Part.

(2) If the AIFC Court is satisfied that an application by the Relevant Authority under section 237(1) is well founded, it may make such order as it thinks fit to ensure compliance with the provisions of these Regulations.

CHAPTER 5-PENALTIES, ENFORCEMENT AND APPEALS

238. Contraventions

(1) A Reporting Financial Institution which:

(a) does an act or thing that is prohibited under this Part;

(b) does not do an act or thing that it is required or directed to do under this Part; or

(c) otherwise contravenes this Part,

commits a contravention of this Part and is liable to a fine, or to perform any action directed by the Relevant Authority pursuant to section 238(1)(c), or any combination thereof.



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- (2) If a Reporting Financial Institution, person or intermediary enters into any arrangement, the main purpose or one of the main purposes, of which is to avoid an obligation imposed under section 232(1), such Reporting Financial Institution, Person or intermediary is subject to the obligation as if the Reporting Financial Institution, Person or intermediary had not entered into the arrangement.
- (3) If any Reporting Financial Institution or Account Holder contravenes this Part, or refuses to answer any question put to such Person by an Inspector for the purpose of an investigation, the Relevant Authority may certify such contravention or refusal in writing to the AFSA. The AFSA may thereupon inquire into the case and take such action or make such orders in respect of such Reporting Financial Institution or Account Holder as it sees fit under applicable law, which shall be in addition to any fines imposed or action directed by the Relevant Authority under this Part.

239. Enforcement and appeals

- (1) Where the Relevant Authority, or its delegate, considers that a Reporting Financial Institution has contravened a provision of this Part, it may by written notice to such Reporting Financial Institution:

 - (a) allege that the Reporting Financial Institution has committed the relevant contravention and state the particulars of the facts it relies on;
 - (b) order that a fine be paid by the Reporting Financial Institution in respect of each contravention; and/or
 - (c) order that certain action(s) be taken in order to comply with this Part.
- (2) The imposition of any fine under section 238(1)(b) shall be made within the period of twelve (12) months on the later of:

 - (a) the date that the Reporting Financial Institution becomes liable to pay the fine; or
 - (b) the date that the contravention first came to the attention of the Relevant Authority.
- (3) A Reporting Financial Institution shall not be liable to pay a fine under section 238(1)(b) if the Relevant Authority is satisfied that there is a reasonable defence for contravening these Regulations.
- (4) Neither of the following shall be considered to be a reasonable defence for the purpose of section 238(3):

 - (a) the Reporting Financial Institution having insufficient funds to do something required to be done under these Regulations; or
 - (b) the Reporting Financial Institution relying on another Person to do something required to be done under these Regulations.
- (5) If the Relevant Authority determines that a Reporting Financial Institution has a reasonable defence for contravening these Regulations up to a particular time or event, the Reporting Financial Institution shall not be liable to pay a fine if it can show that any subsequent contravention of these Regulations was remedied without unreasonable delay after it became aware that the reason(s) providing the reasonable defence had ceased to apply.



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- (6) A Reporting Financial Institution may appeal against any fine imposed or action ordered under section 238(1)(b) on any one or more of the following grounds:
- (a) it disputes the grounds or reasons for the fine provided by the Relevant Authority;
 - (b) it disputes the amount of the fine imposed; or
 - (c) it disputes the validity of any action ordered by the Relevant Authority.
- (7) Any appeal by a Reporting Financial Institution to a fine or action ordered under section 238(1) shall be instituted by a written notice of appeal setting out the grounds of appeal delivered to the Relevant Authority within a period of thirty (30) days from the date of the relevant notice provided to it under section 238(1).
- (8) When considering a notice of appeal delivered pursuant to section 238(1)(7), the Relevant Authority may, after due consideration of the grounds of appeal:
- (a) confirm, cancel, increase or reduce any fine originally imposed; or
 - (b) confirm, change or cancel any action originally ordered,
- and the Relevant Authority shall confirm such finding in writing to the Reporting Financial Institution, provided that the Reporting Financial Institution shall have the right to challenge any such finding by way of a judicial review application to the AIFC Court, which shall stay any pending or further enforcement action under these Regulations until the final determination thereof by the AIFC Court.
- (9) A fine imposed or action ordered by a Relevant Authority under section 238(1), or confirmed pursuant to section 238(8), shall be paid or performed by the Reporting Financial Institution within thirty (30) days after the date of the relevant written notice provided by the Relevant Authority, failing which the Relevant Authority may apply to the AIFC Court for the enforcement thereof, and the AIFC Court may:
- (a) make an order requiring payment of the fine;
 - (b) make an order that the required action be taken; or
 - (c) make any further order it deems fit.
- (10) The Relevant Authority may prescribe forms and procedures in relation to:
- (a) the imposition and recovery of any penalties imposed pursuant to this section 238;
 - (b) the enforcement of actions required by the Relevant Authority pursuant to this section 238; and
 - (c) any objection or right of appeal in respect of any such fine, action required or the enforcement thereof.
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SCHEDULE 1: INTERPRETATION

Note: See section 6.

1. **Meaning of *Legislation Administered by the Registrar***

Each of the following is *Legislation Administered by the Registrar*:

- (a) these Regulations and the Rules;
- (b) any other AIFC Regulations or AIFC Rules if the Regulations or Rules declare that they are administered by the Registrar;
- (c) a provision of any other AIFC Regulations or AIFC Rules if the provision gives a Function to the Registrar or relates to the Exercise of a Function given to the Registrar by another provision of the AIFC Regulations or AIFC Rules.

2. **Meaning of *Subsidiary, Wholly-Owned Subsidiary, Holding Company, and Ultimate Holding Company***

- (1) A Body Corporate (the *first Body Corporate*) is a *Subsidiary* of another Body Corporate (the *second Body Corporate*) if:
 - (a) the second Body Corporate:
 - (i) holds a majority of the voting rights in the first Body Corporate; or
 - (ii) is a shareholder of the first Body Corporate and has the right to appoint or remove a majority of the board of Directors or managers of the first Body Corporate; or
 - (iii) is a shareholder of the first Body Corporate and controls alone, under an agreement with other shareholders, a majority of the voting rights in the first Body Corporate; or
 - (b) the first Body Corporate is a Subsidiary of another Body Corporate that is itself a Subsidiary of the second Body Corporate, which is its Holding Company.
- (2) A Body Corporate is a *Wholly-Owned Subsidiary* of another Body Corporate if the first Body Corporate has no shareholders except:
 - (a) the second Body Corporate; and
 - (b) Wholly-Owned Subsidiaries of, or Persons acting on behalf of, the second Body Corporate or the second Body Corporate's Wholly-Owned Subsidiaries.
- (3) A Body Corporate is the *Holding Company* of another Body Corporate if the second Body Corporate is a Subsidiary of the first Body Corporate.
- (4) A reference to a *Holding Company* includes a reference to an Ultimate Holding Company.
- (5) A *Holding Company* is a holding Body Corporate that is a Company.



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- (6) A reference to an *Ultimate Holding Company* is a reference to a Holding Company that is:
- (a) not itself a Subsidiary of another Body Corporate; and
 - (b) the top-most Holding Company of a chain of Bodies Corporate that have a Subsidiary and Holding Company relationship with each other.
- (7) In paragraph (a)(i) and (iii), a reference to the voting rights in a Body Corporate is a reference to the rights given to shareholders in respect of their shares, or, for a Body Corporate not having a share capital, on partners, to vote at general meetings of the Body Corporate on all or substantially all matters.
- (8) In paragraph 3(1)(a)(ii), the reference to the right to appoint or remove a majority of the board of Directors or managers is a reference to the right to appoint or remove Directors or managers holding a majority of the voting rights at meetings of the board on all or substantially all matters; and for that provision:
- (a) a Body Corporate is taken to have the right to appoint to a directorship or manager position if:
 - (i) a Person's appointment to it follows necessarily from the Person's appointment as Director or manager of the Body Corporate; or
 - (ii) the directorship or manager position is held by the Body Corporate itself; and
 - (b) a right to appoint or remove that is exercisable only with the consent or concurrence of another Person is not to be taken into account unless no other Person has a right to appoint or, as the case may be, remove in relation to the directorship or manager position.
- (9) Rights that are exercisable only in certain circumstances may be taken into account only:
- (a) when the circumstances have arisen, and for so long as they continue to apply; or
 - (b) when the circumstances are within the control of the Person having the rights;
- and rights that are normally exercisable, but are temporarily incapable of exercise, must continue to be taken into account.
- (10) Rights held by a Person in a fiduciary capacity must be treated as not held by the Person.
- (11) Rights held by a Person as nominee for another Person must be treated as held by the other Person; and rights must be regarded as held as nominee for another Person if they are exercisable only on the other Person's instructions or with the other Person's consent or concurrence.
- (12) Rights attached to shares held by way of security must be treated as held by the Person providing the security if:
- (a) apart from the right to exercise them for the purpose of preserving the value of the security or of realising it, the rights are exercisable only in accordance with the Person's instructions; and



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- (b) the shares are held in connection with the granting of loans as part of normal business activities and, apart from the right to exercise them for the purpose of preserving the value of the security or of realising it, the rights are exercisable only in the Person's interests.
- (13) Rights must be treated as held by a Body Corporate if they are held by any of its Subsidiaries.
- (14) For subsection (12), rights must be treated as being exercisable in accordance with the instructions or in the interests of a Body Corporate if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of:
 - (a) any Subsidiary or holding Body Corporate of the first body Corporate; or
 - (b) any Subsidiary of a holding Body Corporate of the first Body Corporate.
- (15) For this section, the voting rights in a Body Corporate must be reduced by any rights held by the Body Corporate itself.
- (16) In subsections (10) to (13) a reference to rights held by a Person include rights falling to be treated as held by the Person under any other provision of those subsections.

3. **Provision of information**

- (1) If any provision of these Regulations, the Rules, or any other Legislation Administered by the Registrar, requires a Company to provide any information to a Shareholder or to any other Person (however expressed), the Company may provide the information either in print or in electronic form if it is accessible in electronic form to the Shareholder or other Person.
- (2) To remove any doubt, a Company may, with the consent of a Shareholder, communicate with the Shareholder by electronic means.

4. **Definitions for these Regulations**

In these Regulations:

Accounting Records means Records and underlying Documents comprising initial and other accounting entries and associated supporting Documents, including, for example, any of the following:

- (a) cheques;
- (b) Records of electronic funds transfers;
- (c) invoices;
- (d) contracts;
- (e) the general and subsidiary ledgers, journals entries and other adjustment to the financial statements that are not reflected in journal;
- (f) worksheets and spreadsheets supporting costs allocations, computations, reconciliations and disclosures.



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Acting Law of the AIFC has the meaning given by article 4 of the Constitutional Statute.

AFSA means the Astana Financial Services Authority.

AIFC means the Astana International Financial Centre.

AIFCA means the Astana International Financial Centre Authority.

AIFC Bodies has the meaning given by article 9 of the Constitutional Statute and the document entitled *The Structure of the Bodies of the Astana International Financial Centre* adopted by the Management Council on 26 May 2016.

AIFC Participants has the meaning given by article 1(5) of the Constitutional Statute.

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 and includes, for example, the Rules made under these Regulations.

Allotment, of Shares in a Company, means a transaction by which a Person acquires the unconditional right to be included in the Company's Register of Shareholders as the holder of the Shares.

Annual General Meeting, of a Company, means the General Meeting held by the Shareholders of the Company as an Annual General Meeting.

Annual Return means the annual return required pursuant to section 26 of these Regulations;

Appointed Publications: a notice or other Document is published in the **Appointed Publications** if either:

- (a) it is published on a website written in English that is appointed by the Registrar; or
- (b) it is published in a newspaper published in English with national circulation in the Republic of Kazakhstan and, if different, a newspaper with national circulation in the country where the relevant Company or other Body Corporate has its principal place of business.

Articles of Association, of a Company, means its Articles of Association as originally framed or as amended in accordance with these Regulations.

Auditor, in Part 10 (Accounts, reports and audits), has the meaning given by section 134(1) (Qualification and registration of Auditors).

Beneficial Ownership Register shall be construed in accordance with section 201;

Body Corporate includes a company or other body corporate incorporated outside the AFC.

Breach includes Contravene.

Commercial Licence means a Commercial Licence issued by the Registrar under these Regulations.

Company means a Private Company or a Public Company and, in Part 14 (Powers and Remedies), has the extended meaning given by section 158(1) (Application and interpretation of Part 14).



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Company Limited by Shares means a Company incorporated in the AIFC as a Company Limited by Shares.

Connected Person has the meaning given by section 86(4) (Ratification of interest of interest in existing transaction or arrangement).

Constitutional Documents, of a Company, means the Articles of Association of the Company and any other Resolutions and agreements to which section 28 applies (Filing of Special Resolutions and certain other Resolutions and agreements).

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

Contravene includes Fail to comply with.

Contravenes these Regulations has the meaning given by section 169 (When does a Person *Contravene* these Regulations).

Court means the Astana International Financial Centre Court.

Creditor includes a present, prospective or contingent creditor.

Debt Security, of a Company, means a Security of the Company evidencing indebtedness of the Company, whether or not constituting or benefiting from a charge on assets of the Company.

Decision-making Procedures, in relation to the making of a decision by the Registrar, means the procedures prescribed by the Rules that apply to the making of the decision by the Registrar.

Director, in relation to a Company or another Body Corporate, means a Person, by whatever name called, who is:

- (a) appointed to the position of a director; or
- (b) appointed to the position of an alternate director, and is acting in that capacity; or
- (c) not validly appointed as a director, but is acting in the position of a director (that is, a de facto director).

Distribution, in relation to a Company, has the meaning given by section 72(7) (Restrictions on Distributions).

Document includes any summons, notice, statement, return, account, order and other legal process, and any register.

Employee, of a Company, means an individual who is appointed or employed by the Company and whose services are provided to, or for the purposes of, the Company, and includes an Officer of the Company.

Employee Share Scheme, in relation to a Company, means a scheme or arrangement for encouraging or facilitating the holding of Shares in the Company by or for the benefit of:

- (a) the genuine Employees or former Employees of the Company, a Subsidiary or Holding Company of the Company or a Subsidiary of the Company's Holding Company; or



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(b) the spouses or minor children or minor step-children of the individuals referred to in paragraph (a).

Equity Securities, of a Company, means:

- (a) Ordinary Shares in the Company; or
- (b) rights to subscribe for, or to convert other Securities into, Ordinary Shares in the Company.

Exercise a Function includes perform the Function.

Fail includes refuse.

Foreign Company means a body corporate incorporated in any jurisdiction other than the AIFC.

Function includes authority, duty and power.

General Meeting, of a Company, means a meeting of the Company's Shareholders.

Governor means the Governor of the Astana International Financial Centre.

Group Merger, in Part 8 (Mergers), has the meaning given by section 113 (Application and interpretation of Part 8).

Guidance means:

- (a) guidance adopted by the Registrar under section 10(4)(b) (Registrar's Objectives and Functions); or
- (b) a standard or code of practice adopted as guidance by the Board of Directors of the AFSA under section 181(5) (Power to adopt Rules etc.).

Holding Company has the meaning given by section 2 of this Schedule.

Incorporator, of a Company (or proposed Company), means a Person to whom Shares in the Company (or proposed Company) are Allotted (or are to be Allocated) on the incorporation of the Company (or proposed Company).

Inspector means a Person who is appointed by the Registrar under section 159 (Appointment of Inspectors) as an inspector.

Knowingly Concerned in a Contravention of these Regulations has the meaning given by section 170(4) (Involvement in Contraventions of these Regulations).

Legislation Administered by the Registrar has the meaning given by section 1 of this Schedule.

Liability includes any debt or obligation.

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



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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.

Merged Body, in Part 8 (Mergers), has the meaning given by section 113 (Application and interpretation of Part 8).

Merged Company, in Part 8 (Mergers), has the meaning given by section 113.

Merging Body, in Part 8 (Mergers), has the meaning given by section 113.

Merging Company, in Part 8 (Mergers), has the meaning given by section 113.

New Body, in Part 8 (Mergers), has the meaning given by section 113.

New Company, in Part 8 (Mergers), has the meaning given by section 113.

Nominee Director, has the meaning given in section 212(4).

Objectives, of the Registrar, has the meaning given by section 9(1) (Registrar's Objectives and Functions).

Officer, of a Company or another Body Corporate, includes any of the following in relation to the Body Corporate:

- (a) a Director or Secretary;
- (b) a senior manager;
- (c) a receiver or a receiver and manager;
- (d) an administrator of a deed of arrangement;
- (e) an official manager;
- (f) a liquidator or provisional liquidator.

Ordinary Resolution, of a Company, means a resolution passed by a simple majority of the votes of the Shareholders (or the Shareholders of the relevant class of Shares) who (being entitled to do so) vote in person or, if proxies are allowed, by proxy, at a General Meeting for which notice specifying the intention to propose the resolution was duly given, and includes an Ordinary Resolution in writing passed under section 100 (Resolution in writing of Private Companies).

Ordinary Share, in a Company, means a Share in the Company, other than a Share that carries a right to participate in dividends or capital (that is, Distributions) only up to a specified amount.

Paid-up includes credited as paid-up.

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

Personal Representative, in relation to an individual who has died, means the Person who is the individual's executor or administrator.



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Private Company means a body corporate that is incorporated as, or converted to, a Private Company under these Regulations.

Public Company means a body corporate that is incorporated as, or converted to, a Public Company under these Regulations.

Recognised Company means a Foreign Company that is registered under these Regulations as a Recognised Company.

Records means Documents, information and other records, in whatever form and however stored.

Register means the Register of Companies maintained by the Registrar under these Regulations.

Registered Details, of a Company or Recognised Company, means information about the Company or Recognised Company included in the Register.

Registrar means the Registrar of Companies.

Registrar of Companies means the individual who is appointed as the Registrar of Companies under section 9 (Appointment of Registrar).

Regulated Entity, in Part 14 (Powers and remedies), has the meaning given by section 158(2) (Application and interpretation of Part 14).

Regulated Market means a multilateral system or facility that:

- (a) is operated or managed (or both) by a market operator; and
- (b) brings together or facilitates the bringing together of multiple third parties buying and selling interests in securities; and
- (c) operates in accordance with its non-discretionary rules in a way that results in contracts in respect of the financial instruments admitted to trading on it; and
- (d) is authorised by the AFSA and functions regularly.

Relevant Percentage means 25%;

Relevant Person, for a Regulated Entity and in Part 14 (Powers and Remedies), has the meaning given by section 158(3) (Application and interpretation of Part 14).

Relevant Person means any Body Corporate, arrangement or ownership structure incorporated, registered, continued or carrying on business in the AIFC;

Resolution, of a Company, means Special Resolution or Ordinary Resolution of the Company, as appropriate.

Rules means rules adopted by the Board of Directors of the AFSA under section 181, whether for these Regulations or any other Legislation Administered by the Registrar.

Secretary, of a Company or another Body Corporate, means a Person occupying the position of secretary of the Body Corporate, by whatever name called.



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Security, of a Company, means any transferable instrument issued by a Company (including, for example, any Share, Debt Security, warrant, certificate, unit or option issued by the Company).

Share, in a Company, means a share in the share capital of the Company, of whatever class of share it may be.

Share Capital, of a Company and in Chapter 7 (Reduction of capital) of Part 7 (Private Companies and Public Companies), includes any capital reserves of the Company.

Shareholder, of a Company, means a Person entered in the Company's Register of Shareholders as the holder of a Share in the Company.

Special Resolution, of a Company, means a resolution passed by at least 75% of the votes of the Shareholders (or the Shareholders of the relevant class of Shares) who (being entitled to do so) vote in person or, if proxies are allowed, by proxy, at a General Meeting for which notice specifying the intention to propose the resolution was duly given, and includes a Special Resolution in writing passed under section 100 (Resolutions in writing of Private Companies).

Standard Articles means model articles of association prescribed by the Rules.

Subsidiary has the meaning given by section 2 of this Schedule.

Survivor Body, in Part 8 (Mergers), has the meaning given by section 113 (Application and interpretation of Part 8).

Survivor Company, in Part 8 (Mergers), has the meaning given by section 113 (Application and interpretation of Part 8).

Takeover Offer, in relation to a Company and in Chapter 11 (Protection of Minorities in Takeovers) of Part 7 (Private Companies and Public Companies), has the meaning given by section 105(1) (Takeovers).

The Company, in Chapter 11 (Protection of Minorities in Takeovers) of Part 7 (Private Companies and Public Companies), has the meaning given by section 105(7) (Takeovers).

The Offeror, in Chapter 11 (Protection of Minorities in Takeovers) of Part 7 (Private Companies and Public Companies), has the meaning given by section 105(7) (Takeovers).

UBO Details is a reference to the particulars set out in Section 201(4) of these Regulations.

Wholly-Owned Subsidiary has the meaning given by section 2 of this Schedule.

Writing includes:

- (a) in relation to a certificate, instrument, notice or other thing—the thing in any form that preserves a record of the information contained in it and is capable of being reproduced in tangible form, including by electronic means; and
- (b) in relation to a communication—any method of communication that preserves a record of the information contained in it and is capable of being reproduced in tangible form, including by electronic means.



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SCHEDULE 2

COMMON STANDARD ON REPORTING AND DUE DILIGENCE FOR FINANCIAL ACCOUNT INFORMATION

SECTION I: GENERAL REPORTING REQUIREMENTS

- A. Subject to paragraphs C through E, each Reporting Financial Institution must collect and report to the Competent Authority the following information with respect to each Reportable Account of such Reporting Financial Institution:
1. the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of the due diligence procedures consistent with Sections V, VI and VII, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, jurisdiction(s) of residence and TIN(s) of the Entity and the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth of each Reportable Person;
 2. the account number (or functional equivalent in the absence of an account number);
 3. the name and identifying number (if any) of the Reporting Financial Institution;
 4. the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or, if the account was closed during such year, the closure of the account;
 5. in the case of any Custodial Account:
 - (a) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year; and
 - (b) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
 6. in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year; and
 7. in the case of any account not described in subparagraph A(5) or (6), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year.
- B. The information reported must identify the currency in which each amount is denominated.
- C. Notwithstanding subparagraph A(1), with respect to each Reportable Account that is a Pre-existing Account or with respect to each Financial Account that is opened prior to becoming a Reportable Account, the TIN(s) or date of birth is not required to be reported if such TIN(s) or date of birth is not in the records of



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the Reporting Financial Institution and is not otherwise required to be collected by such Reporting Financial Institution under domestic law. However, a Reporting Financial Institution is required to use reasonable efforts to obtain the TIN(s) and date of birth with respect to Pre-existing Accounts by the end of the second calendar year following the year in which Pre-existing Accounts were identified as Reportable Accounts.

- D. Notwithstanding subparagraph A(1), the TIN is not required to be reported if (i) a TIN is not issued by the relevant Reportable Jurisdiction or (ii) the domestic law of the relevant Reportable Jurisdiction does not require the collection of the TIN issued by such Jurisdiction.
- E. Notwithstanding subparagraph A(1), the place of birth is not required to be reported unless the Reporting Financial Institution is otherwise required to obtain and report it under domestic law and it is available in the electronically searchable data maintained by the Reporting Financial Institution.
- F. Each Reporting Financial Institution must file an information return with the Relevant Authority containing the information described in paragraph A on or before 30th June of the year following the calendar year to which the return relates.
- G. If a Reporting Financial Institution applies the due diligence procedures described in Sections V, VI and VII for a calendar year and no Financial Account is identified as a Reportable Account, the institution shall file an information return, which provides that the institution maintains no such Reportable Accounts in respect of that year, with the Relevant Authority on or before 30th June of the year following the calendar year to which the return relates.

SECTION II: GENERAL DUE DILIGENCE REQUIREMENTS

- A. A Reporting Financial Institution must establish, maintain and document the due diligence procedures set out in Sections II through VII that are designed to identify Reportable Accounts maintained by the institution.
- B. An account is treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in Sections II through VII and, unless otherwise provided, information with respect to a Reportable Account must be reported annually in the calendar year following the year to which the information relates.
- C. The balance or value of an account is determined as of the last day of the calendar year.
- D. Where a balance or value threshold is to be determined as of the last day of a calendar year, the relevant balance or value must be determined as of the last day of the reporting period that ends with or within that calendar year.
- E. A Reporting Financial Institution may use a service provider to fulfil the reporting and due diligence obligations imposed on such institution, but these obligations shall remain the responsibility of the Reporting Financial Institutions.
- F. A Reporting Financial Institution may apply:
 - (a) the due diligence procedures for New Accounts to all Pre-existing Accounts or with respect to any clearly identified group of Pre-existing Accounts, and the rules otherwise applicable to Pre-existing Accounts continue to apply; and
 - (b) the due diligence procedures for High Value Accounts to Lower Value Accounts.



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SECTION III: DUE DILIGENCE FOR PRE-EXISTING INDIVIDUAL ACCOUNTS

The following procedures apply with respect to Pre-existing Individual Accounts.

A. Accounts Not Required to be Reviewed, Identified, or Reported. A Pre-existing Individual Account that is a Cash Value Insurance Contract or an Annuity Contract is not required to be reviewed, identified or reported, provided the Reporting Financial Institution is effectively prevented by law from selling such Contracts to residents of a Reportable Jurisdiction

B. Lower Value Accounts. The following procedures apply with respect to Lower Value Accounts.

1. Residence Address. If the Reporting Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person.

2. Electronic Record Search. If the Reporting Financial Institution does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth in subparagraph B(1), the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the following indicia and apply subparagraphs B(3) to (6):

(a) identification of the Account Holder as a resident of a Reportable Jurisdiction;

(b) current mailing or residence address (including a post office box) in a Reportable Jurisdiction;

(c) one or more telephone numbers in a Reportable Jurisdiction and no telephone number in the jurisdiction of the Reporting Financial Institution;

(d) standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Reportable Jurisdiction;

(e) currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction; or

(f) a “hold mail” instruction or “in-care-of” address in a Reportable Jurisdiction if the Reporting Financial Institution does not have any other address on file for the Account Holder.

3. If none of the indicia listed in subparagraph B(2) are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more indicia being associated with the account, or the account becomes a High Value Account.

4. If any of the indicia listed in subparagraph B(2)(a) through (e) are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified, unless it elects to apply subparagraph B(6) and one of the exceptions in that subparagraph applies with respect to that account.

5. If a “hold mail” instruction or “in-care-of” address is discovered in the electronic search and no



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other address and none of the other indicia listed in subparagraph B(2)(a) through (e) are identified for the Account Holder, the Reporting Financial Institution must, in the order most appropriate to the circumstances, apply the paper record search described in subparagraph C(2), or seek to obtain from the Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution must report the account as an undocumented account to the Competent Authority.

6. Notwithstanding a finding of indicia under subparagraph B(2), a Reporting Financial Institution is not required to treat an Account Holder as a resident of a Reportable Jurisdiction if:

(a) the Account Holder information contains a current mailing or residence address in the Reportable Jurisdiction, one or more telephone numbers in the Reportable Jurisdiction (and no telephone number in the jurisdiction of the Reporting Financial Institution) or standing instructions (with respect to Financial Accounts other than Depository Accounts) to transfer funds to an account maintained in a Reportable Jurisdiction, and the Reporting Financial Institution obtains, or has previously reviewed and maintains, a record of:

(i) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Reportable Jurisdiction; and

(ii) Documentary Evidence establishing the Account Holder's residence for tax purposes other than such Reportable Jurisdiction;

(b) the Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in the Reportable Jurisdiction, and the Reporting Financial Institution obtains, or has previously reviewed and maintains, a record of:

(i) a self-certification from the Account Holder of the jurisdiction(s) of residence of such Account Holder that does not include such Reportable Jurisdiction; or

(ii) Documentary Evidence establishing the Account Holder's residence for tax purposes other than such Reportable Jurisdiction.

C. Enhanced Review Procedures for High Value Accounts. The following enhanced review procedures apply with respect to High Value Accounts.

1. Electronic Record Search. With respect to High Value Accounts, the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the indicia described in subparagraph B(2).

2. Paper Record Search. If the Reporting Financial Institution's electronically searchable databases include fields for, and capture all of the information described in, subparagraph C(3), then a further paper record search is not required. If the electronic databases do not capture all of this information, then with respect to a High Value Account, the Reporting Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Financial Institution within the last five (5) years for any of the indicia described in subparagraph B(2):

(a) the most recent Documentary Evidence collected with respect to the account;



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- (b) the most recent account opening contract or documentation;
 - (c) the most recent documentation obtained by the Reporting Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;
 - (d) any power of attorney or signature authority forms currently in effect; and
 - (e) any standing instructions (other than with respect to a Depository Account) to transfer funds currently in effect.
3. Exception To The Extent Databases Contain Sufficient Information. A Reporting Financial Institution is not required to perform the paper record search described in subparagraph C(2) to the extent the Reporting Financial Institution's electronically searchable information includes the following:
- (a) the Account Holder's residence status;
 - (b) the Account Holder's residence address and mailing address currently on file with the Reporting Financial Institution;
 - (c) the Account Holder's telephone number(s) currently on file, if any, with the Reporting Financial Institution;
 - (d) in the case of Financial Accounts other than Depository Accounts, whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Financial Institution or another Financial Institution);
 - (e) whether there is a current "in-care-of" address or "hold mail" instruction for the Account Holder; and
 - (f) whether there is any power of attorney or signatory authority for the account.
4. Relationship Manager Inquiry for Actual Knowledge. In addition to the electronic and paper record searches described in subparagraphs C(1) and (2), the Reporting Financial Institution must treat as a Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with that High Value Account) if the relationship manager has actual knowledge that the account is held by a resident for tax purposes in a Reportable Jurisdiction.
5. Effect of Finding Indicia.
- (a) If none of the indicia listed in subparagraph B(2) are discovered in the enhanced review of High Value Accounts described in paragraph C, and the account is not identified as held by a resident for tax purposes in a Reportable Jurisdiction in subparagraph C(4), then further action is not required until there is a change in circumstances that results in one or more indicia being associated with the account.
 - (b) If any of the indicia listed in subparagraphs B(2)(a) through (e) are discovered in the enhanced review of High Value Accounts described in paragraph C, or if there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder



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as a resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified unless it elects to apply subparagraph B(6) and one of the exceptions in that subparagraph applies with respect to that account.

(c) If a “hold mail” instruction or “in-care-of” address is discovered in the enhanced review of High Value Accounts described in paragraph C, and no other address and none of the other indicia listed in subparagraphs B(2)(a) through (e) are identified for the Account Holder, the Reporting Financial Institution must obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain such self-certification or Documentary Evidence, it must report the account as an undocumented account to the Competent Authority.

6. If a Pre-existing Individual Account is not a High Value Account as of [***], but becomes a High Value Account as of the last day of a subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in paragraph C with respect to such account within the calendar year following the year in which the account becomes a High Value Account. If based on this review such account is identified as a Reportable Account, the Reporting Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person.

7. Once a Reporting Financial Institution applies the enhanced review procedures described in paragraph C to a High Value Account, the Reporting Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in subparagraph C(4), to the same High Value Account in any subsequent year unless the account is undocumented where the Reporting Financial Institution should re-apply them annually until such account ceases to be undocumented.

8. If there is a change of circumstances with respect to a High Value Account that results in one or more indicia described in subparagraph B(2) being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Reportable Jurisdiction for which an indicium is identified unless it elects to apply subparagraph B(6) and one of the exceptions in that subparagraph applies with respect to that account.

9. A Reporting Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in a Reportable Jurisdiction, the Reporting Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply subparagraph B(6), is required to obtain the appropriate documentation from the Account Holder.

D. Review of Pre-existing High Value Individual Accounts must be completed by [***] and review of Pre-existing Lower Value Individual Accounts must be completed by [***].

E. Any Pre-existing Individual Account that has been identified as a Reportable Account under this Section must be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Reportable Person.

SECTION IV: DUE DILIGENCE FOR NEW INDIVIDUAL ACCOUNTS

The following procedures apply with respect to New Individual Accounts.



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- A. With respect to New Individual Accounts, upon account opening, the Reporting Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.
- B. If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account and the self-certification must also include the Account Holder's TIN with respect to such Reportable Jurisdiction (subject to paragraph D of Section I) and date of birth.
- C. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder.

SECTION V: DUE DILIGENCE FOR PRE-EXISTING ENTITY ACCOUNTS

The following procedures apply with respect to Pre-existing Entity Accounts.

- A. Entity Accounts Not Required to Be Reviewed, Identified or Reported. Unless the Reporting Financial Institution elects otherwise, either with respect to all Pre-existing Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Pre-existing Entity Account with an aggregate account balance or value that does not exceed USD 250 000 as of 31 December [***] is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds that amount as of the last day of any subsequent calendar year.
- B. Entity Accounts Subject to Review. A Pre-existing Entity Account that has an aggregate account balance or value that exceeds USD 250 000 as of 31 December [***], and a Pre-existing Entity Account that does not exceed USD 250 000 as of 31 December [***] but the aggregate account balance or value of which exceeds USD 250 000 as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D.
- C. Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required. For Pre-existing Entity Accounts described in paragraph B, a Reporting Financial Institution must apply the following review procedures:
 - 1. Determine the Residence of the Entity.
 - (a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine the Account Holder's residence. For this purpose, information indicating that the Account Holder's residence includes a place of incorporation or organisation, or an address in a Reportable Jurisdiction.
 - (b) If the information indicates that the Account Holder is a Reportable Person, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person.



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2. Determine the Residence of the Controlling Persons of a Passive NFE. With respect to an Account Holder of a Pre-existing Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons and determine the residence of such Controlling Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs C(2)(a) through (c) in the order most appropriate under the circumstances.
- (a) Determining whether the Account Holder is a Passive NFE. For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.
- (b) Determining the Controlling Persons of an Account Holder. For the purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
- (c) Determining the residence of a Controlling Person of a Passive NFE. For the purposes of determining the residence of a Controlling Person of a Passive NFE, a Reporting Financial Institution may rely on:
- (i) information collected and maintained pursuant to AML/KYC Procedures in the case of a Pre-existing Entity Account held by one or more NFEs with an aggregate account balance or value that does not exceed USD 1 000 000; or
- (ii) a self-certification from the Account Holder or such Controlling Person of the jurisdiction(s) in which the controlling person is resident for tax purposes. If a self-certification is not provided, the Reporting Financial Institution will establish such residence(s) by applying the procedures described in paragraph C of Section III.

D. Timing of Review and Additional Procedures Applicable to Pre-existing Entity Accounts.

1. Review of Pre-existing Entity Accounts with an aggregate account balance or value that exceeds USD 250 000 as of 31 December [***], must be completed by 31 December [***].
2. Review of Pre-existing Entity Accounts with an aggregate account balance or value that does not exceed USD 250 000 as of 31 December [***], but exceeds USD 250 000 as of 31 December of a subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds USD 250 000.
3. If there is a change of circumstances with respect to a Pre-existing Entity Account that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account in accordance with the procedures set forth in paragraph C.



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SECTION VI: DUE DILIGENCE FOR NEW ENTITY ACCOUNTS

The following procedures apply with respect to New Entity Accounts.

A. Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required. For New Entity Accounts, a Reporting Financial Institution must apply the following review procedures:

1. Determine the Residence of the Entity.
 - (a) Obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. If the Entity certifies that it has no residence for tax purposes, the Reporting Financial Institution may rely on the address of the principal office of the Entity to determine the residence of the Account Holder.
 - (b) If the self-certification indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account, unless it reasonably determines based on information in its possession or that is publicly available that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.
2. Determine the Residence of the Controlling Persons of a Passive NFE. With respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons and determine the residence of such Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs A(2)(a) through (c) in the order most appropriate under the circumstances.
 - (a) Determining whether the Account Holder is a Passive NFE. For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must rely on a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.
 - (b) Determining the Controlling Persons of an Account Holder. For purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
 - (c) Determining the residence of a Controlling Person of a Passive NFE. For purposes of determining the residence of a Controlling Person of a Passive NFE, a Reporting Financial Institution may rely on a self-certification from the Account Holder or such Controlling Person.

SECTION VII: SPECIAL DUE DILIGENCE RULES



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The following additional rules apply in implementing the due diligence procedures described above:

- A. Reliance on Self-Certifications and Documentary Evidence. A Reporting Financial Institution may not rely on a self- certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.
- B. Alternative Procedures for Financial Accounts held by Individual Beneficiaries of a Cash Value Insurance Contract or an Annuity Contract and for a Group Cash Value Insurance Contract or Group Annuity Contract. A Reporting Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract or an Annuity Contract receiving a death benefit is not a Reportable Person and may treat such Financial Account as other than a Reportable Account unless the Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person. A Reporting Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected by the Reporting Financial Institution and associated with the beneficiary contains indicia as described in paragraph B of Section III. If a Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person, the Reporting Financial Institution must follow the procedures in paragraph B of Section III.

A Reporting Financial Institution may treat a Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to the employee/certificate holder or beneficiary, if the Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract meets the following requirements:

- (a) the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employees/certificate holders;
- (b) the employee/certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the employee's death; and
- (c) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed USD 1 000 000.

The term "Group Cash Value Insurance Contract" means a Cash Value Insurance Contract that (i) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group; and (ii) charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group.

The term "Group Annuity Contract" means an Annuity Contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group.

C. Account Balance Aggregation and Currency Rules.

1. Aggregation of Individual Accounts. For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Financial Institution is required to aggregate all Financial Accounts maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of



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applying the aggregation requirements described in this subparagraph.

2. Aggregation of Entity Accounts. For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.
3. Special Aggregation Rule Applicable to Relationship Managers. For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a financial account is a High Value Account, a Reporting Financial Institution is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.
4. Amounts Read to Include Equivalent in Other Currencies.
 - (a) All dollar amounts are in US dollars and shall be read to include equivalent amounts in other currencies, as determined by domestic law.
 - (b) In determining the balance or value of an account denominated in a currency (other than US dollars) for the purposes of these Regulations, the financial institution shall translate the relevant US dollars threshold amount described in these Regulations into the other currency by reference to the spot rate of exchange on the date for which the institution is determining the threshold amounts.
5. Accounts with negative balance. An account with a balance or value that is negative is deemed to have a balance or value equal to nil.

SECTION VIII: DEFINED TERMS

The following terms have the meanings set forth below:

A. Reporting Financial Institution

1. The term “Reporting Financial Institution” means any Financial Institution in the AIFC that is not a Non-Reporting Financial Institution. The term “Jurisdiction Financial Institution” means: (i) any Financial Institution that is resident in the AIFC, but excludes any branch of that Financial Institution that is located outside of the AIFC; and (ii) any branch of a Financial Institution that is not resident in the AIFC, if that branch is located in the AIFC.
2. The term “Participating Jurisdiction Financial Institution” means (i) any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction; and (ii) any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.
3. The term “Financial Institution” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.



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4. The term “Custodial Institution” means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity's gross income during the shorter of: (i) the three-year period that ends on 31 December prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.
5. The term “Depository Institution” means any Entity that accepts deposits in the ordinary course of a banking or similar business.
6. The term “Investment Entity” means any Entity:
- (a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
 - (i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
 - (ii) individual and collective portfolio management; or
 - (iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or
 - (b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a).

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for the purposes of subparagraph A(6)(b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50% of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. The term “Investment Entity” does not include an Entity that is an Active NFE because that Entity meets any of the criteria in subparagraphs D(9)(d) through (g).

This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Financial Action Task Force Recommendations.

7. The term “Financial Asset” includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term “Financial Asset” does not include a non-debt, direct interest in real property.
8. The term “Specified Insurance Company” means any Entity that is an insurance company (or the



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holding company of an insurance company) which issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

B. Non-Reporting Financial Institution

1. The term “Non-Reporting Financial Institution” means any Financial Institution that is:

- (a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;
- (b) a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;
- (c) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in subparagraphs B(1)(a) and (b), and is included in the list of Non-Reporting Financial Institutions referred to in Annex 1 of these Regulations, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of these Regulations;
- (d) an Exempt Collective Investment Vehicle; or
- (e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.

2. The term “Governmental Entity” means the government of a jurisdiction, any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a jurisdiction or of any one or more of the foregoing (each, a “Governmental Entity”). This category is comprised of the integral parts, controlled entities, and political subdivisions of a jurisdiction.

- (a) An “integral part” of a jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.
- (b) A “controlled entity” means an Entity which is separate in form from the jurisdiction or that otherwise constitutes a separate juridical entity, provided that:
 - (i) the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;
 - (ii) the Entity's net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and
 - (iii) the Entity's assets vest in one or more Governmental Entities upon dissolution.



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- (c) Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a Governmental Entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.
3. The term “International Organisation” means any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation) (i) that is comprised primarily of governments; (ii) that has in effect a headquarters or substantially similar agreement with the jurisdiction; and (iii) the income of which does not inure to the benefit of private persons.
4. The term “Central Bank” means an institution that is by law or government sanction the principal authority, other than the government of the jurisdiction itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of the jurisdiction, whether or not owned in whole or in part by the jurisdiction.
5. The term “Broad Participation Retirement Fund” means a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries who are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund:
- (a) does not have a single beneficiary with a right to more than 5% of the fund's assets;
 - (b) is subject to government regulation and provides information reporting to the tax authorities; and
 - (c) satisfies at least one of the following requirements:
 - (i) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;
 - (ii) the fund receives at least 50% of its total contributions (other than transfers of assets from other plans described in subparagraphs B(5) through (7) or from retirement and pension accounts described in subparagraph C(17)(a)) from the sponsoring employers;
 - (iii) distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in subparagraphs B(5) through (7) or retirement and pension accounts described in subparagraph C(17)(a)), or penalties apply to distributions or withdrawals made before such specified events;
or
 - (iv) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed USD 50 000 annually, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.



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6. The term “Narrow Participation Retirement Fund” means a fund established to provide retirement, disability, or death benefits to beneficiaries who are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that:
- (a) the fund has fewer than 50 participants;
 - (b) the fund is sponsored by one or more employers that are not Investment Entities or Passive NFEs;
 - (c) the employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in subparagraph C(17)(a)) are limited by reference to earned income and compensation of the employee, respectively;
 - (d) participants that are not residents of the jurisdiction in which the fund is established are not entitled to more than 20 % of the fund's assets; and
 - (e) the fund is subject to government regulation and provides information reporting to the tax authorities.
7. The term “Pension Fund of a Governmental Entity, International Organisation or Central Bank” means a fund established by a Governmental Entity, International Organisation or Central Bank to provide retirement, disability, or death benefits to beneficiaries or participants who are current or former employees (or persons designated by such employees), or who are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the Governmental Entity, International Organisation or Central Bank.
8. The term “Qualified Credit Card Issuer” means a Financial Institution satisfying the following requirements:
- (a) the Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
 - (b) beginning on or before [***], the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.
9. The term “Exempt Collective Investment Vehicle” means an Investment Entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through individuals or Entities that are not Reportable Persons, except a Passive NFE with Controlling Persons who are Reportable Persons.

C. Financial Account

1. The term “Financial Account” means an account maintained by a Financial Institution, and



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includes a Depository Account, a Custodial Account and:

- (a) in the case of an Investment Entity, any equity or debt interest in the Financial Institution. Notwithstanding the foregoing, the term “Financial Account” does not include any equity or debt interest in an Entity that is an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of, or (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity;
- (b) in the case of a Financial Institution not described in subparagraph C(1)(a), any equity or debt interest in the Financial Institution, if the class of interests was established with the purpose of avoiding reporting in accordance with Section I; and (c) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an Excluded Account.

The term “Financial Account” does not include any account that is an Excluded Account.

- 2. The term “Depository Account” includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.
- 3. The term “Custodial Account” means an account (other than an Insurance Contract or Annuity Contract) which holds one or more Financial Assets for the benefit of another person.
- 4. The term “Equity Interest” means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.
- 5. The term “Insurance Contract” means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.
- 6. The term “Annuity Contract” means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.
- 7. The term “Cash Value Insurance Contract” means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value.
- 8. The term “Cash Value” means the greater of (i) the amount that the policyholder is entitled to



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receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan); and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term “Cash Value” does not include an amount payable under an Insurance Contract:

- (a) solely by reason of the death of an individual insured under a life insurance contract;
- (b) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
- (c) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;
- (d) as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in subparagraph C(8)(b); or
- (e) as a return of an advance premium or premium deposit for an Insurance Contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.

9. The term “Pre-existing Account” means a Financial Account maintained by a Reporting Financial Institution as of [***].

The term “Pre-existing Account” means

- (a) a Financial Account maintained by a Reporting Financial Institution as of [***];
- (b) any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, if:
 - (i) the Account Holder also holds with the Reporting Financial Institution (or with a Related Entity within the same jurisdiction as the Reporting Financial Institution) a Financial Account that is a Pre-existing Account under subparagraph C(9)(a);
 - (ii) the Reporting Financial Institution (and, as applicable, the Related Entity within the same jurisdiction as the Reporting Financial Institution) treats both of the aforementioned Financial Accounts, and any other Financial Accounts of the Account Holder that are treated as Pre-existing Accounts under this subparagraph, as a single Financial Account for purposes of satisfying the standards of knowledge requirements described in paragraph A of Section VII, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds;
 - (iii) with respect to a Financial Account that is subject to AML/KYC Procedures, the Reporting Financial Institution is permitted to satisfy such AML/KYC Procedures for the Financial Account by relying upon the AML/KYC Procedures performed for the Pre-existing Account described in subparagraph C(9)(a); and



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- (iv) the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for the purposes of this Directive.
10. The term “New Account” means a Financial Account maintained by a Reporting Financial Institution opened on or after [***] unless it is treated as a Pre-existing Account under subparagraph C(9)(b).
11. The term “Pre-existing Individual Account” means a Pre-existing Account held by one or more individuals.
12. The term “New Individual Account” means a New Account held by one or more individuals.
13. The term “Pre-existing Entity Account” means a Pre-existing Account held by one or more Entities.
14. The term “Lower Value Account” means a Pre-existing Individual Account with an aggregate balance or value as of 31 December [***] that does not exceed USD 1 000 000.
15. The term “High Value Account” means a Pre-existing Individual Account with an aggregate balance or value that exceeds USD 1 000 000 as of 31 December [***], or 31 December of any subsequent year.
16. The term “New Entity Account” means a New Account held by one or more Entities.
17. The term “Excluded Account” means any of the following accounts:
- (a) a retirement or pension account that satisfies the following requirements:
- (i) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
- (ii) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
- (iii) information reporting is required to the tax authorities with respect to the account;
- (iv) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
- (v) either (i) annual contributions are limited to USD 50 000 or less; or (ii) there is a maximum lifetime contribution limit to the account of USD 1 000 000 or less, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of subparagraph C(17)(a)(v) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of subparagraph



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C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of subparagraphs B(5) through (7);

(b) an account that satisfies the following requirements:

- (i) the account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement;
- (ii) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
- (iii) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
- (iv) annual contributions are limited to USD 50 000 or less, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of subparagraph C(17)(b)(iv) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of subparagraph C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of subparagraphs B(5) through (7);

(c) a life insurance contract with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:

- (i) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
- (ii) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
- (iii) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
- (iv) the contract is not held by a transferee for value;

(d) an account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate;

(e) an account established in connection with any of the following:



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- (i) a court order or judgment;
- (ii) a sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:
 - i. the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a Financial Asset that is deposited in the account in connection with the sale, exchange, or lease of the property,
 - ii. the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease,
 - iii. the assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates,
 - iv. the account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset, and
 - v. the account is not associated with an account described in subparagraph C(17)(f);
- (iii) an obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time;
- (iv) an obligation of a Financial Institution solely to facilitate the payment of taxes at a later time;
- (f) a Depository Account that satisfies the following requirements:
 - (i) the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and
 - (ii) beginning on or before [***], the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns;
- (g) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in subparagraphs C(17)(a) through (f), and is included in the list of Excluded Accounts referred to in [***], provided that the



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status of such account as an Excluded Account does not frustrate the purposes of the Common Reporting Standard.

D. Reportable Account

1. The term “Reportable Account” means a Financial Account that is maintained by a Reporting Financial Institution and is held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person, provided it has been identified as such pursuant to the due diligence procedures described in Sections II through VII.
2. The term “Reportable Person” means a Reportable Jurisdiction Person other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a Related Entity of a corporation described in clause (i); (iii) a Governmental Entity; (iv) an International Organisation; (v) a Central Bank; or (vi) a Financial Institution.
3. The term “Reportable Jurisdiction Person” means an individual or Entity that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a Reportable Jurisdiction. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement, which has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.
4. The term “Reportable Jurisdiction” means a jurisdiction published in the list [***].
5. The term “Participating Jurisdiction” means a jurisdiction which is identified in Annex 4 to these Regulations.
6. The term “Controlling Persons” means the natural persons who exercise control over an Entity. In the case of a trust, that term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term “Controlling Persons” must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.
7. The term “NFE” means any Entity that is not a Financial Institution.
8. The term “Passive NFE” means any: (i) NFE that is not an Active NFE; or (ii) an Investment Entity described in subparagraph A(6)(b) that is not a Participating Jurisdiction Financial Institution.
9. The term “Active NFE” means any NFE that meets any of the following criteria:
 - (a) less than 50% of the NFE’s gross income for the preceding calendar year is passive income and less than 50% of the assets held by the NFE during the preceding calendar year are assets that produce or are held for the production of passive income;
 - (b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
 - (c) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
 - (d) substantially all of the activities of the NFE consist of holding (in whole or in part) the



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outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;

- (e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
- (f) the NFE was not a Financial Institution in the past five (5) years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- (g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or
- (h) the NFE meets all of the following requirements:
 - (i) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
 - (ii) it is exempt from income tax in its jurisdiction of residence;
 - (iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
 - (iv) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
 - (v) the applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision thereof.

E. Miscellaneous

1. The term "Account Holder" means the person listed or identified as the holder of a Financial



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Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of this Directive, and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.

2. The term “AML/KYC Procedures” means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such Reporting Financial Institution is subject under domestic law.
3. The term “Entity” means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.
4. An Entity is a “Related Entity” of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity.

An Entity is a “Related Entity” of another Entity if (a) either Entity controls the other Entity; (b) the two Entities are under common control; or (c) the two Entities are Investment Entities described in subparagraph A(6)(b), are under common management, and such management fulfils the due diligence obligations of such Investment Entities. For this purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity.

5. The term “TIN” means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number).
6. The term “Documentary Evidence” includes any of the following:
 - (a) a certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident;
 - (b) with respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes;
 - (c) with respect to an Entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction in which it claims to be a resident or the jurisdiction in which the Entity was incorporated or organised;
 - (d) any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report.

With respect to a Pre-existing Entity Account, Reporting Financial Institutions may use as Documentary Evidence any classification in the Reporting Financial Institution's records with



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respect to the Account Holder that was determined based on a standardised industry coding system, that was recorded by the Reporting Financial Institution consistent with its normal business practices for purposes of AML/KYC Procedures or another regulatory purposes (other than for tax purposes) and that was implemented by the Reporting Financial Institution prior to the date used to classify the Financial Account as a Pre-existing Account, provided that the Reporting Financial Institution does not know or does not have reason to know that such classification is incorrect or unreliable. The term “standardised industry coding system” means a coding system used to classify establishments by business type for purposes other than tax purposes.

SECTION IX: COMPLEMENTARY REPORTING AND DUE DILIGENCE RULES FOR FINANCIAL ACCOUNT INFORMATION

A. Change in circumstances

1. A “change in circumstances” includes any change that results in the addition of information relevant to a person's status or otherwise conflicts with such person's status. In addition, a change in circumstances includes any change or addition of information to the Account Holder's account (including the addition, substitution, or other change of an Account Holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules described in subparagraphs C(1) through (3) of Section VII of Annex I) if such change or addition of information affects the status of the Account Holder.
2. If a Reporting Financial Institution has relied on the residence address test described in subparagraph B(1) of Section III of Annex I and there is a change in circumstances that causes the Reporting Financial Institution to know or have reason to know that the original Documentary Evidence (or other equivalent documentation) is incorrect or unreliable, the Reporting Financial Institution must, by the later of the last day of the relevant calendar year, or 90 calendar days following the notice or discovery of such change in circumstances, obtain a self-certification and new Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain the self-certification and new Documentary Evidence by such date, the Reporting Financial Institution must apply the electronic record search procedure described in subparagraphs B(2) through (6) of Section III.

B. Self-certification for New Entity Accounts

With respect to New Entity Accounts, for the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may only rely on a self-certification from either the Account Holder or the Controlling Person.

C. Residence of a Financial Institution

1. A Financial Institution is “resident” in a Participating Jurisdiction if it is subject to the jurisdiction of such Participating Jurisdiction in that the Participating Jurisdiction is able to enforce reporting by the Financial Institution).
2. In the case of a trust that is a Financial Institution (irrespective of whether it is resident for tax purposes in a Participating Jurisdiction), the trust is considered to be subject to the jurisdiction of a Participating Jurisdiction if one or more of its trustees are resident in such jurisdiction except if the trust reports all the information required to be reported under these Regulations with respect to Reportable Accounts maintained by the trust to another Participating Jurisdiction because it is resident for tax purposes in such other jurisdiction.



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3. Where a Financial Institution (other than a trust) does not have a residence for tax purposes (for example, because it is treated as fiscally transparent, or it is located in a jurisdiction that does not have an income tax), it is considered to be subject to the jurisdiction of a Participating Jurisdiction and it is, thus, a Participating Jurisdiction Financial Institution if:
 - (a) it is incorporated under the laws of the Participating Jurisdiction;
 - (b) it has its place of management (including effective management) in the Participating Jurisdiction; or
 - (c) it is subject to financial supervision in the Participating Jurisdiction.
4. Where a Financial Institution (other than a trust) is resident in two or more Participating Jurisdiction, such Financial Institution will be subject to the reporting and due diligence obligations of the Participating Jurisdiction in which it maintains the Financial Account(s).

D. Account maintained

1. In general, an account would be considered to be maintained by a Financial Institution as follows:
 - (a) in the case of a Custodial Account, by the Financial Institution that holds custody over the assets in the account (including a Financial Institution that holds assets in street name for an Account Holder in such institution);
 - (b) in the case of a Depository Account, by the Financial Institution that is obligated to make payments with respect to the account (excluding an agent of a Financial Institution regardless of whether such agent is a Financial Institution);
 - (c) in the case of any equity or debt interest in a Financial Institution that constitutes a Financial Account, by such Financial Institution;
 - (d) in the case of a Cash Value Insurance Contract or an Annuity Contract, by the Financial Institution that is obligated to make payments with respect to the contract.

E. Trusts that are Passive NFEs

1. An Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes, according to subparagraph D(3) of Section VIII, shall be treated as resident in the jurisdiction in which its place of effective management is situated. For these purposes, a legal person or a legal arrangement is considered “similar” to a partnership and a limited liability partnership where it is not treated as a taxable unit in a Participating Jurisdiction under the tax laws of such jurisdiction. However, in order to avoid duplicate reporting (given the wide scope of the term “Controlling Persons” in the case of trusts), a trust that is a Passive NFE may not be considered a similar legal arrangement.

F. Address of Entity's principal office

1. One of the requirements described in subparagraph E(6)(c) of Section VIII is that, with respect to an Entity, the official documentation includes either the address of the Entity's principal office in a jurisdiction in which it claims to be a resident or a jurisdiction in which the Entity was incorporated or organised. The address of the Entity's principal office is generally the place in which its place of effective management is situated.



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2. The address of a Financial Institution with which the Entity maintains an account, a post office box, or an address used solely for mailing purposes is not the address of the Entity's principal office unless such address is the only address used by the Entity and appears as the Entity's registered address in the Entity's organisational documents.
3. An address that is provided subject to instructions to hold all mail to that address is not the address of the Entity's principal office.

ANNEX 1 – ADDITIONAL DEFINITIONS

For purposes of the application of the Law in the AIFC, unless the context indicates otherwise, the defined terms listed below shall have the corresponding meanings:

Non-Reporting Financial Institutions: means any Centre Participant that is:

- (1) a governmental entity of any jurisdiction, an international organisation or central bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Financial Institution;
- (2) a pension fund;
- (3) a pension fund of a governmental entity, international organisation or central bank;
- (4) any other entity designated by the AIFC from time to time that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the entities described in subparagraphs (a) and (b), provided that the status of such entity as a Non-Reporting Financial Institution does not frustrate the purposes of these Regulations;
- (5) an Exempt Fund; or
- (6) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to these Regulations.

Excluded Accounts: means accounts listed in this regard in Annex II of the Model 1 Intergovernmental Agreement as published by the US Department of Treasury on its website from time to time.

Reportable Jurisdictions: means the jurisdictions listed in this regard by the Competent Authority on its website from time to time.

Participating Jurisdictions: means the jurisdictions listed in this regard by the Competent Authority on its website from time to time.

Resident Person: means:

- (a) an individual who is:
 - (i) a Kazakhstan national; or
 - (ii) resident in Kazakhstan holding a valid Kazakhstan residency visa and a valid residency identity card;
- (b) an entity which is incorporated, registered, managed and controlled within the territory of



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Kazakhstan.

In this section, the underlining indicates a new text and the striking through indicates deleted text in the proposed amendments

PROPOSED AMENDMENTS to AIFC COMPANIES RULES



PART 7: MISCELLANEOUS

7.1. Public registers

7.1.1 For section 204(1) (Public registers) of the AIFC Companies Regulations, the Registrar of Companies must keep and publish registers of current and past registrations of Companies and Recognised Companies, [the separate register of Restricted Scope Companies under Part 9 of these Rules](#) and the separate register of Special Purpose Companies under the AIFC Special Purpose Company Rules, by recording in the relevant register the following details, so far as they may be relevant, in relation to each company that is, or has been, incorporated or registered in the AIFC:

- (a) current name;
- (b) identification number;
- (c) date of registration;
- (d) type of company;
- (e) each former name;
- (f) the date of registration of each change of name;
- (g) the address of the current registered office;
- (h) the address of each of the former registered office;
- (i) the date of registration of each change of registered office;
- (j) the names of each of the current Directors;
- (k) the date each of the current Directors became a Director;
- (l) the names of each former Director;
- (m) the dates each of the former Directors became and ceased to be a Director;
- (n) the names of the current Secretary or, if there are 2 or more joint Secretaries, each joint Secretary;
- (o) the date the current Secretary became Secretary or the dates each joint Secretary became a joint Secretary, as the case may be;
- (p) the names of each former Secretary or, if there have at any time been 2 or more joint Secretaries, the names of each former joint Secretary;
- (q) the dates each of the former Secretaries or joint Secretaries became and ceased to be a Secretary or joint Secretary;
- (r) the number and class of issued Shares or membership interests, the nominal value of Shares, and the amount of Paid-up share capital;



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- (s) names of Shareholders or members of the company or, if the Shares are listed on an exchange for trading, the 20 members holding the most number of Shares;
- (t) for a Recognised Company—the jurisdiction in which the company is incorporated;
- (u) for a Recognised Company—the address of the company’s current registered principal place of business in the AIFC or, if the company is no longer registered, the address of its last registered principal place of business in the AIFC;
- (v) for a Recognised Company—the addresses of the company’s former registered principal places of business in the AIFC;
- (w) for a Recognised Company—the date of registration of every change of the company’s registered principal place of business in the AIFC;
- (x) for a Recognised Company—the name and address of the each Person currently registered as authorised to accept service on behalf of the company or, if the company is no longer registered, the name and address of each Person last registered as authorised to accept service on behalf of the company;
- (y) for a Recognised Company—the name and address of each Person formerly registered as authorised to accept service on behalf of the company;
- (z) for a Recognised Company—the date of registration of every change in the details of the Persons authorised to accept service on behalf of the company;
- (za) the Company’s financial year end;
- (zb) the dates of the commencement and ending of each scheme of arrangement, receivership or liquidation in relation to the Company;
- (zc) the name and address of the following in relation to the company:
 - (i) each Nominee for a proposed Voluntary Arrangement, or Supervisor of a Voluntary Arrangement, within the meaning of the AIFC Insolvency Regulations;
 - (ii) each Administrator within the meaning of the AIFC Insolvency Regulations;
- (zd) the dates each Nominee, Supervisor or Administrator mentioned in paragraph (zc) became and ceased to be a Nominee, Supervisor or Administrator in relation to the Company and, for an Administrator, whether the Administrator was a Receiver, Administrative Receiver or Liquidator;
- ~~(zde)~~ the date of the company’s dissolution; and
- (zf) the Company’s annual accounts for each year filed with the Registrar in accordance with section 131(5) of the AIFC Companies Regulations.

7.1.2 A certificate that appears to be signed by or on behalf of the Registrar of Companies, and states any matter that appears in a register kept by the Registrar under section 204(1) of the AIFC Companies Regulations, is evidence of the matter.

7.1.3 The Court must accept a certificate under subrule 7.1.2 as proof of the matters stated in it if there



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is no evidence to the contrary.



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- 7.1.4 A Document that appears to be a copy of the certificate of registration of a Company or a certificate of recognition of a Recognised Company, and to be certified by the Registrar of Companies, is evidence of the matters stated in it.
- 7.1.5 The Court must accept a Document mentioned in subrule 7.1.4 as evidence of the matters stated in it unless the contrary is established.

7.2. Forms

- 7.2.1 If the Registrar of Companies issues or prescribes a form (an *approved form*) to be used for a particular purpose under or in connection with the AIFC Companies Regulations, these Rules or any other Legislation Administered by the Registrar, the form must be used for that purpose.
- 7.2.2 If the AFSA issues or prescribes a form (also an *approved form*) to be used for a particular purpose under or in connection with the AIFC Companies Regulations or these Rules, the form must be used for that purpose.
- 7.2.3 Substantial compliance with an approved form is sufficient.
- 7.2.4 However, an approved form is properly completed only if each mandatory requirement applying to the form is complied with.
- 7.2.5 For subrule 7.2.3, a *mandatory* requirement is any requirement mentioned in subrule 7.2.6 and any other requirement that the form states is a mandatory requirement.
- 7.2.6 Each of the following is a mandatory requirement for every approved form, except so far as a particular approved form otherwise provides or the AFSA or Registrar of Companies exempts a Person from the requirement:
- (a) the form must be on white paper of international A4 size;
 - (b) the form must be clearly printed or written in black in a way that is permanent and can be reproduced or copied by photographic or electronic means;
 - (c) the form must contain, where applicable, the original signatures of the Person or Persons indicated on the form and the date on which they signed;
 - (d) if the form relates to a Person—the form must state the Person’s full name and, if the Person has an identification number, the identification number;
 - (e) if the form has an annexure—the annexure must be endorsed with the following words ‘This is the (*or, if appropriate, an*) annexure to the (*insert the name of the form or a description of it*) relating to (*insert the name of the Person the form relates to*) dated (*insert date of form*);
 - (f) the form must be completed in the English language.
- 7.2.7 Without limiting subrule 7.2.5, an approved form may state that any of the following requirements is a mandatory requirement:
- (a) that the form be signed or witnessed, or signed and witnessed in a particular way;



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- (b) that the form, or information or a Document given with or attached to the form, be in a particular format (for example, in Writing or a particular electronic format);
- (c) that particular information be included in the form, or a particular Document be attached to or given with the form;
- (d) that the form, information in the form, or a Document attached to or given with the form, be verified in a particular way.

7.3. Decision-Making Procedures for Registrar

- 7.3.1 If a provision of any Legislation Administered by the Registrar requires or permits the Registrar of Companies to make a decision (including a decision to refuse to make a decision), the procedures prescribed by Schedule 2 (Decision-making Procedures for Registrar of Companies) are, so far as they are relevant to the making of the decision and not inconsistent with a provision of any AIFC Regulations, any other provision of these Rules or a provision of any other AIFC Rules, the Decision-making Procedures applying to the making of the decision by the Registrar.
- 7.3.2 To remove any doubt, the procedures prescribed by Schedule 2 are prescribed for the definition of Decision-making Procedures in Schedule 1 (Interpretation) of the AIFC Companies Regulations and any definition corresponding to that definition in any other Legislation Administered by the Registrar.
- 7.3.3 However, Schedule 2 does not apply in relation to the making of a decision by the Registrar of Companies so far as that Schedule provides that that it does not apply in relation to the making of the decision.
- 7.3.4 To remove any doubt, Schedule 2 does not prevent the Registrar of Companies from establishing a mechanism under which a decision made in accordance with that Schedule is reviewed by officers, employees or agents of the AFSA who were not involved in making the decision or by an independent third party who the Registrar considers competent to conduct the review.

7.3(A) Retention

All Documents filed with the Registrar must be retained by the Registrar for a minimum of six years from the date of filing, irrespective of the status of the Company to which such Documents relate.

7.4. Fine limits

The maximum fine that may be imposed on a Person by the Registrar of Companies for a Contravention of a provision of the AIFC Companies Regulations mentioned in column 2 of an item of the table in Schedule 3 (Fine limits) is the amount specified in column 4 of the item.



PART 8 – PROTECTED CELL COMPANIES

8.1. Protected Cell Companies prescribed type of Company for Companies Regulations

For Part 11 (Other types of Company) of the AIFC Companies Regulations, a Protected Cell Company is prescribed as a type of Company.

8.2. Protected Cell Companies: modification of Companies Regulations and general powers of AFSA

8.2.1 In accordance with section 143(2)(b) (Incorporation of prescribed type of Company) of the AIFC Companies Regulations, the application of section 74 (Directors) of those Regulations is modified in relation to its application to a Protected Cell Company to permit a Protected Cell Company to be managed by 1 Director, which may be a Body Corporate.

8.2.2 This Part is additional to the provisions of any AIFC Regulations or any other provisions of AIFC Rules that may apply to the incorporation of, or conversion to, a Protected Cell Company, or that may apply to the operations and affairs and winding up of a Protected Cell Company, including, for example, the provisions of the AIFC Companies Regulations, the AIFC Financial Services Framework Regulations, the AIFC Insolvency Regulations and the AIFC Insolvency Rules.

8.2.3 This Part does not limit any powers of the AFSA under AIFC Financial Services Framework Regulations or any other Legislation Administered by the AFSA.

8.3. Incorporation of, or conversion into, Protected Cell Company

8.3.1 Subject to AIFC Companies Regulations and any other provisions of these Rules:

- (a) a Company may be incorporated, under section 143 (Incorporation of prescribed types of Company) of those Regulations, as a Protected Cell Company; or
- (b) an existing Company may, if authorised by its Articles of Association and by a Special Resolution, be converted, under that section, into a Protected Cell Company.

8.3.2 A Company shall not be incorporated as, or operate as, a Protected Cell Company, and an existing company shall not be converted into, or operate as, a Protected Cell Company, unless:

- (a) the Company is formed, and will operate, for the main purpose of conducting captive insurance business; and
- (b) the AFSA has given its prior written consent.

8.3.3 An application for consent under rule 8.3 (Incorporation of, or conversion into, Protected Cell Company) in relation to a Company must be made to the AFSA by the Company or the Incorporator and must be in the form, contain the information and be accompanied by the documents and additional information, required by the AFSA.

8.3.4 The AFSA may, in its absolute discretion, refuse to give its consent if it considers it necessary or appropriate to do so in the interests of the AIFC. If the AFSA refuses to give its consent, the AFSA must, as soon as practicable after it makes the decision, give the applicants Written notice of the decision and, if requested by an applicant, give the applicants Written reasons for the decision.

8.3.5 Where under subrule 8.3.2, the AFSA grants consent following any representations from an applicant as to the proposed activities or objectives of the Protected Cell Company, including any such representations in a business plan, the Protected Cell Company must not carry out any activity or pursue any objective contrary to the effect of those representations without obtaining the further



prior written consent of the AFSA.

8.3.6 A Protected Cell Company must, ensure that, whenever it uses its name, the name is immediately followed by the words 'Protected Cell Company' or the abbreviation 'PCC'.

8.3.7 To remove any doubt, the relevant words or abbreviations mentioned in subrule 8.3.7 must be used instead of any words or abbreviation that the Protected Cell Company would otherwise have been required or permitted to use immediately following its name under section 37 (Name of Private Company) or 38 (Name of Public Company) of the AIFC Companies Regulations.

8.3.8 Also, to remove any doubt, subrule 8.3.3 does not limit section 21 (Prohibition against use of misleading, deceptive or conflicting Company names) of the AIFC Companies Regulations.

8.3.9 Each Cell of a Protected Cell Company shall have its own distinct name or designation.

8.3.10 The Articles of Association of a Protected Cell Company must state that it is a Protected Cell Company.

8.3.11 A Protected Cell Company may alter its Articles of Association by Special Resolution to comply with this Part and any requirements imposed by the AFSA under or for those Rules.

8.4. Protected Cell Companies: revocation of AFSA consents

8.4.1 The AFSA may, at any time and at its absolute discretion, revoke a consent given for a Protected Cell Company under rule 8.3 (Incorporation of, or conversion into, Protected Cell Company) if it considers it necessary or appropriate to do so in the interests of the AIFC.

8.4.2 Before revoking the consent, the AFSA must consider whether any necessary and appropriate steps have been taken to secure 1 or more of the following under the AIFC Insolvency Regulations:

- (a) the appointment of a Cell Receiver in respect of 1 or more Cells;
- (b) the appointment of a Receiver or Administrative Receiver for the Protected Cell Company; or
- (c) the winding up of the Protected Cell Company.

8.4.3 If the AFSA revokes the consent, the AFSA must, as soon as practicable after it makes the decision, give the Protected Cell Company Written notice of the decision and, if requested by the Company, give the Protected Cell Company Written reasons for the decision.

8.4.4 On receipt of the notice under subrule 8.4.3, the Protected Cell Company must immediately give Written notice of the revocation of the AFSA's consent to:

- (a) each regulatory authority in every jurisdiction to which the consent related before its revocation; and
- (b) each Shareholder of the Protected Cell Company.

8.5. Protected Cell Companies: directions by AFSA

8.5.1 The AFSA may, in the interests of the AIFC, give a direction under this rule to a Protected Cell



Company or any of its Directors.

8.5.2 Without limiting subrule 8.5.1, a direction under this rule may:

- (a) require the Protected Cell Company to cease the issue or redemption, or both the issue and redemption, of Shares or any class of Shares in the Protected Cell Company; or
- (b) require the Protected Cell Company, or any Director of the Company, to apply to the Court under the AIFC Insolvency Regulations or AIFC Insolvency Rules for any 1 or more of the following:
 - (i) make a Cell Receivership Order in relation to one or more Cells;
 - (ii) the appointment of a Receiver or Administrative Receiver for the Company;
 - (iii) the winding up of the Company; or
- (c) require that the affairs of the Protected Cell Company be wound up otherwise than by the Court.

8.5.3 If a consent given for a Protected Cell Company under rule 8.3 (Incorporation of, or conversion into, Protected Cell Company) is revoked, the revocation does not affect the operation of any direction that is then in force in relation to the Protected Cell Company under this rule; and a direction may be given in relation to a Protected Cell Company under this rule if a direction was in force under this rule in relation to the Protected Cell Company when the consent was revoked.

8.5.4 However, a direction may not be given under this rule in relation to a Protected Cell Company if a Cell Receivership Order, an order appointing a Receiver or Administrative Receiver, or a winding up order, has been made by the Court in relation to the Company.

8.5.5 If a direction is in force under this rule in relation to a Protected Cell Company, the AFSA may, on its own initiative or on the application of the Protected Cell Company, revoke or the direction if it considers it necessary or appropriate to do so in the interests of the AIFC.

8.5.6 A direction under this rule takes effect:

- (a) immediately, if the notice states that it is to take effect immediately; or
- (b) on the date specified in the notice.

8.5.7 If the AFSA proposes to give a direction to a Person under this rule, or gives a direction to a Person under this rule with immediate effect, it must give a Written notice about the direction to the Person. If the AFSA gives a notice to a Director of the Protected Cell Company, it must also give a Written notice about the direction to the Protected Cell Company.

8.5.8 A notice given to the Protected Cell Company or a Director of the Protected Cell Company must:

- (a) give details of the direction; and
- (b) explain when the direction takes effect; and
- (c) state the AFSA's reasons for giving the direction and for its decision about when the direction takes effect; and



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(d) tell the Protected Cell Company or Director that the Protected Cell Company or Director may make representations to the AFSA within the period specified in the notice.

8.5.9 If, having considered any representations made by the Protected Cell Company or Director within the period specified in the notice, the AFSA decides:

(a) to give, or not to give, the direction in the way proposed; or

(b) to give the direction in a way other than the way proposed; or

(c) if the direction has been given—to revoke, or not to revoke, the direction;

the AFSA must, as soon as practicable after it makes the decision, give the Company or Director Written notice of the decision and must, if the Company or Director requests, give the Company or Director Written reasons for the decision.

8.6. Protected Cell Companies: Cell Shares and Share Capital

8.6.1 Unless the context requires otherwise, for the purposes of application of the AIFC Companies Regulations and these Rules to a Protected Cell Company, a reference to a Share is taken to include a reference to a Cell Share and a reference to a Shareholder is taken to include a reference to a holder of Cell Shares.

8.6.2 A Protected Cell Company may, in respect of any of its Cells, create and issue Cell Shares. The Cell Share Capital shall be comprised in the Cellular Assets attributable to the Cell in respect of which the Cell Shares were issued.

8.6.3 The proceeds of the issue of Shares other than Cell Shares created and issued by a Protected Cell Company shall be comprised in the Company's Non-Cellular Assets.

8.6.4 A Protected Cell Company may pay Cellular Dividends in respect of Cell Shares.

8.6.5 Cellular Dividends may be paid in respect of Cell Shares by reference only to the Cellular Assets and liabilities, or the profits and losses, attributable to the Cell in respect of which the Cell Shares were issued; and accordingly, in determining for the purposes of Chapter 8 of Part 7 of the AIFC Companies Regulations, whether or not profits are available for the purpose of paying a Cellular Distribution, no account need be taken of:

(a) the profits and losses, or the assets and liabilities, attributable to any other Cell; or

(b) Non-Cellular Assets and liabilities or profits and losses.

8.7. Protected Cell Companies: Shares and Register of Shareholders

8.7.1 A Protected Cell Company may issue fractions of Shares if authorised by its Articles of Association.

8.7.2 The AFSA may prescribe in rules made under the AIFC Financial Services Framework Regulations the form and contents of Share certificates of a Protected Cell Company and how Share certificates may be delivered by a Protected Cell Company.

8.7.3 Nothing in subrule 8.7.2 must prevent a Protected Cell Company issuing Share certificates in a dematerialised (electronic) form.



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8.7.4 Every Protected Cell Company must keep an index of the names of its Shareholders, which index must:

- (a) contain, in relation to each Shareholder, a sufficient indication to enable the account of that Shareholder in the register to be readily found;
- (b) specify the particular Cell or Cells to which an account or accounts of that Shareholder relate;
- (c) be readily searchable by reference to the account of the Shareholder or by reference to a Cell;
- (d) be kept at all times at the same place as the register of Shareholders; and
- (e) be altered where necessary within fourteen days after the date of any alteration made to the register of Shareholders.

8.8. Protected Cell Companies: Share transfers and redemptions

8.8.1 The Articles of Association of a Protected Cell Company may contain provisions about any matter in relation to Share transfers for which provision is not made by the AIFC Companies Regulations or these Rules.

8.8.2 If any Shares of a Protected Cell Company are transferred to the Protected Cell Company, the Protected Cell Company must cancel the Shares.

8.8.3 For section 54 (Transfer and registration of Shares and Debt Securities) of the AIFC Companies Regulations, a Protected Cell Company may refuse to register a transfer of Shares if the transfer would result in a Contravention of any provision of the Protected Cell Company's Articles of Association.

8.8.4 A Protected Cell Company must not purchase any Shares of any class of which it is the issuer, unless it does so on an Exchange Facility or another open market approved by the AFSA.

8.9. Protected Cell Companies: Cellular and Non-Cellular Assets

8.9.1 The assets of a Protected Cell Company shall be either Cellular Assets or Non-Cellular Assets.

8.9.2 The Cellular Assets of a Protected Cell Company comprise the assets of the Company attributable to the Cells of the Company.

8.9.3 The assets attributable to a Cell of a Protected Cell Company comprise:

- (a) assets represented by the proceeds of Cell Share Capital and reserves, including retained earnings, capital reserves and share premiums, attributable to the Cell; and
- (b) all other assets attributable to the Cell.

8.9.4 The Non-Cellular Assets of a Protected Cell Company comprise the assets of the Company which are not Cellular Assets.

8.9.5 Income, receipts and other property or rights of, or acquired by, a Protected Cell Company not otherwise attributable to any Cell shall be applied to, and comprised in, the Company's Non-Cellular Assets.



8.10. Prohibition on dealings or transactions between Cells

8.10.1 A Protected Cell Company shall not:

- (a) transfer a Cellular Asset attributable to one of its Cell to another of its Cell; or
- (b) amalgamate or consolidate a Cell of the Company with, or into, one or more other Cells of the Company;

except under the authority of, and in accordance with the terms and conditions of, an order of the Court.

8.10.2 In considering whether or not to make an order referred to in subrule 8.10.1, the Court may:

- (a) require the applicant to establish to the satisfaction of the Court:
 - (i) that the creditors of the Protected Cell Company entitled to have recourse to the Cellular Assets attributable to the relevant Cells consent to the transfer, amalgamation or consolidation as the case may be or otherwise would not be unfairly prejudiced; and
 - (ii) that the Shareholders of the Protected Cell Company and of each relevant Cell consent to the transfer, amalgamation or consolidation as the case may be or otherwise would not be unfairly prejudiced; and
- (b) hear the representations, if any, of the AFSA.

8.10.3 The Court, on hearing an application for an order under this rule 8.10, may make an interim order or an order adjourning the hearing, conditionally or unconditionally.

8.11. Separation of assets

8.11.1 In this rule 8.10.3, 'Officer' means:

- (a) an Officer as defined in the AIFC Companies Regulations;
- (b) a Cell Receiver as defined in the AIFC Insolvency Rules;
- (c) a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of a Protected Cell Company; or
- (d) a person in accordance with whose instructions or wishes the Directors of a Protected Cell Company are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Directors or the Protected Cell Company).

8.11.2 Directors and Officers of a Protected Cell Company shall:

- (a) keep Cellular Assets separate and separately identifiable from Non-Cellular Assets; and
- (b) keep Cellular Assets attributable to each Cell separate and separately identifiable from Cellular Assets attributable to other Cells.



8.11.3 The duty imposed by subrule 8.11.2 is not breached solely by reason that:

- (a) the Directors and Officers of a Protected Cell Company cause or permit Cellular Assets and Non-Cellular Assets to be held:
 - (i) by or through a nominee; or
 - (ii) by a company the shares and capital interests of which may be Cellular Assets or Non-Cellular Assets, or a combination of both; or
- (b) the Directors and Officers of a Protected Cell Company cause or permit Cellular Assets or Non-Cellular Assets, or a combination of both, to be collectively invested, or collectively managed by an investment manager, provided that the assets in question remain separately identifiable.

8.11.4 In the event of a contravention of subrule 8.11.2:

- (a) each Director or Officer in contravention, as the case may be, shall incur personal liability for any loss or damage as a consequence of the contravention; and
- (b) each such Director or Officer shall severally have a right of indemnity against the Non-Cellular Assets of the Company, unless he was fraudulent, reckless or negligent, or acted in bad faith.

8.11.5 Subrule 8.11.4 is subject to subrule 8.13.1.

8.12. Disclosure of dealings with Protected Cell Company

8.12.1 A Protected Cell Company shall:

- (a) inform any Person with whom it transacts that it is a Protected Cell Company;
- (b) for the purposes of that transaction, identify or specify the Cell in respect of which that Person is transacting, unless that transaction is not a transaction in respect of a particular Cell; and
- (c) where the transaction is in respect of a particular Cell, inform the person that the Cellular Assets of that Cell, and only those assets, are available to pay the obligations and liabilities of that Cell.

8.12.2 If, in contravention of subrule 8.12.1, a Protected Cell Company:

- (a) fails to inform a Person that he is transacting with a Protected Cell Company, and that person is otherwise unaware that, and has no reasonable grounds to believe that, he is transacting with a Protected Cell Company;
- (b) fails to identify or specify the Cell in respect of which a Person is transacting, and that person is otherwise unaware of, and has no reasonable basis of knowing, which Cell he is transacting with; or
- (c) fails to inform a person that the Cellular Assets of that Cell, and only those assets, are available to pay the obligations and liabilities of that Cell;

then, in any such case:



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- (d) the Directors shall incur personal liability to that Person in respect of the transaction; and
- (e) each Director shall severally have a right of indemnity against the Non-Cellular Assets of the Company, unless he was fraudulent, reckless or negligent, or acted in bad faith.

8.12.3 Subrule 8.12.2 is subject to subrule 8.13.1.

8.13. Further provisions concerning personal liability

8.13.1 Notwithstanding subrules 8.11.4 and 8.12.2, the Court may relieve a Director or Officer, as the case may be, of all or part of his personal liability thereunder if he satisfies the Court that he ought fairly to be so relieved because:

- (a) he was not aware of the circumstances giving rise to his liability and, in being not so aware, he was neither fraudulent, reckless or negligent, nor acted in bad faith; or
- (b) he expressly objected, and exercised such rights as he had as such a Director or Officer, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his liability.

8.13.2 Where, pursuant to subrule 8.13.1, the Court relieves a director or officer of all or part of his personal liability under subrules 8.11.4 and 8.12.2, the Court may order that the liability in question shall instead be met from such of the:

- (a) assets of the relevant Cell in respect of which the person was dealing or transacting; or
- (b) Non-Cellular Assets of the Protected Cell Company,

as may be specified in the order.

8.13.3 Any provision in the Articles of a Protected Cell Company, or any other contractual provision under which the Company may be liable, which purports to:

- (a) avoid the incurring of personal liability upon a director or officer in the circumstances described in subrules 8.11.4 and 8.12.2; or
- (b) indemnify directors or officers in respect of conduct which would otherwise disentitle them to an indemnity against Non-Cellular Assets by virtue of subrules 8.11.4 or 8.12.2,

shall be void.

8.14. Rights of creditors and implied terms

8.14.1 The rights of creditors of a Protected Cell Company shall correspond with the liabilities provided for in rule 8.17.

8.14.2 No such creditor shall have any rights other than the rights referred to in this rule 8.14 and in rules 8.15 and 8.16.

8.14.3 The following terms shall be implied in every transaction entered into by a Protected Cell Company:

- (a) that no Person shall seek, whether in any proceedings or by any other means, to use or apply any Cellular Assets attributable to any Cell to satisfy a liability not attributable to that Cell;



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(b) that if any Person shall succeed by any means in using or applying any Cellular Assets attributable to any Cell to satisfy a liability not attributable to that Cell, that Person shall be liable to the Protected Cell Company to pay a sum equal to the value of the benefit thereby obtained by that Person; and

(c) that if any Person shall succeed in seizing or attaching or otherwise levying execution against any Cellular Assets attributable to any Cell to satisfy a liability not attributable to that Cell, that Person shall hold those assets or their proceeds in a fiduciary capacity for the Protected Cell Company and shall keep those assets or proceeds separate and identifiable for that purpose.

8.14.4 All sums recovered by a Protected Cell Company as a result of any such obligation as is described in subrule 8.14.3(c) shall be credited against any concurrent liability imposed under the implied term set out in subrule 8.14.3(b).

8.14.5 Any asset or sum recovered by a Protected Cell Company pursuant to the implied term set out in subrules 8.14.3(b) or (c) or by any other means in the events referred to in those subrules shall, after the deduction or payment of any costs of recovery, be applied by the Company so as to compensate the Cell affected.

8.14.6 In the event of any Cellular Assets attributable to a Cell being seized, attached, levied or otherwise taken in execution in respect of a liability not attributable to that Cell, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the Cell affected, the Protected Cell Company shall:

(a) cause or procure its auditor, acting as expert and not as arbitrator, to certify the value of the assets lost to the Cell affected; and

(b) transfer or pay to the Cell affected, from the Cellular or Non-Cellular Assets to which the liability was attributable, assets or sums sufficient to restore to the Cell affected the value of the assets lost.

8.14.7 Where under subrule 8.14.6(b) a Protected Cell Company is obliged to make a transfer or payment from Cellular Assets attributable to a Cell of the Company, and those assets are insufficient, the Company shall so far as possible make up the deficiency from its Non-Cellular Assets.

8.15. Availability of Cellular Assets to creditors

8.15.1 Without prejudice to the provisions of rules 8.14 and 8.16:

(a) Cellular Assets attributable to a particular Cell:

(i) are available only to the creditors of the Protected Cell Company who are creditors in respect of that Cell and who are thereby entitled to have recourse to the Cellular Assets attributable to that Cell; and

(ii) shall be absolutely protected from the Shareholders of the Protected Cell Company and from the creditors of the Protected Cell Company who are not creditors in respect of that Cell and who accordingly are not entitled to have recourse to the Cellular Assets attributable to that Cell; and

(b) Cellular Assets not attributable to a particular Cell of a Protected Cell Company shall not be used to satisfy any liability attributable to that Cell.



8.16. Satisfaction of liabilities attributable to Cells

8.16.1 Where any liability arises which is attributable to a particular Cell of a Protected Cell Company:

- (a) the Cellular Assets attributable to that Cell shall be used to satisfy the liability; and
- (b) a creditor in respect of that Cell shall not be entitled to have recourse against the Cellular Assets of any other Cell or the Non-Cellular Assets of the Protected Cell Company.

8.16.2 Where any liability arises which is not attributable to a particular Cell of a Protected Cell Company:

- (a) the liability shall be satisfied solely from the Protected Cell Company's Non-Cellular Assets; and
- (b) a creditor in respect of that liability shall not be entitled to have recourse to the Cellular Assets of any Cell of the Protected Cell Company.

8.17. Disputes as to liabilities attributable to Cells

8.17.1 In the event of any dispute as to:

- (a) whether any right is or is not in respect of a particular Cell;
- (b) whether any creditor is or is not a creditor in respect of a particular Cell;
- (c) whether any liability is or is not attributable to a particular Cell; or
- (d) the amount to which any liability is limited;
the Court, on the application of the Protected Cell Company or of the creditor in dispute with the Protected Cell Company, and without prejudice to any other right or remedy of any Person, may issue a declaration in respect of the matter in dispute.

8.18. Transfer of Cellular Assets from Protected Cell Company

8.18.1 In this rule 8.18, a *Cell Transfer Order* is an order of the Court authorising the transfer of Cellular Assets attributable to any Cell, but not the Non-Cellular Assets, to another Person, wherever resident or incorporated, and whether or not a Protected Cell Company.

8.18.2 Subject to subrule 8.18.3, no transfer of Cellular Assets attributable to a Cell of a Protected Cell Company may be made except under the authority of, and in accordance with the terms and conditions of, a Cell Transfer Order.

8.18.3 Nothing in this rule 8.18 requires a Protected Cell Company to obtain a Cell Transfer Order to invest, and change investment of, Cellular Assets or otherwise to make payments or transfers from Cellular Assets in the ordinary course of the Protected Cell Company's business.

8.18.4 In considering whether or not to make a Cell Transfer Order in relation to a Cell, the Court may:

- (a) require the applicant to establish to the satisfaction of the Court:
 - (i) that the creditors of the Company entitled to have recourse to the Cellular Assets attributable to the Cell consent to the transfer; or



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(ii) that those creditors would not be unfairly prejudiced by the transfer; and

(iii) hear the representations, if any, of the AFSA thereon.

8.18.5 The Court, on hearing an application for a Cell Transfer Order, may make an interim order or an order adjourning the hearing, conditionally or unconditionally.

8.18.6 The Court may attach such conditions as it thinks fit to a Cell Transfer Order, including conditions as to the discharging of claims of creditors entitled to have recourse to the Cellular Assets attributable to the Cell in relation to which the order is sought.

8.18.7 The Court may make a Cell Transfer Order in relation to a Cell notwithstanding that:

(a) a Receiver, Administrative Receiver, or Liquidator has been appointed to act in respect of the Protected Cell Company; or

(b) a Cell Receiver has been appointed in respect of the Cell or any other Cell of the Protected Cell Company.

8.18.8 A transfer under a Cell Transfer Order of Cellular Assets attributable to a Cell of a Protected Cell Company shall not of itself entitle creditors of that Protected Cell Company to have recourse to the assets of the person to whom the Cellular Assets were transferred.

8.18.9 The provisions of this rule 8.18 are without prejudice to any power of a Protected Cell Company lawfully to make payments or transfers from the Cellular Assets attributable to any Cell to a person entitled, in conformity with the provisions of this Part 8 (Protected Cell Companies).



PART 9 – RESTRICTED SCOPE COMPANIES

9.1. Restricted Scope Companies prescribed type of Company for Companies Regulations

For Part 11 (Other types of Company) of the AIFC Companies Regulations, a Restricted Scope Company is prescribed as a type of Company.

9.2. Restricted Scope Companies: modification of Companies Regulations and general powers of AFSA

9.2.1 This Part is additional to the provisions of any AIFC Regulations or any other provisions of AIFC Rules that may apply to the incorporation of, or conversion to, a Restricted Scope Company, or that may apply to the operations and affairs and winding up of a Restricted Scope Company, including, for example, the provisions of the AIFC Companies Regulations, the AIFC Financial Services Framework Regulations, the AIFC Insolvency Regulations and the AIFC Insolvency Rules.

9.2.2 This Part does not limit any powers of the AFSA under AIFC Financial Services Framework Regulations or any other Legislation Administered by the AFSA.

9.3. Restricted Scope Companies limited to certain Private Companies

9.3.1 A Company shall only be incorporated as, or operate as, a Restricted Scope Company, and an existing Company shall not be converted into, or operate as, a Restricted Scope Company, if:

- (a) it is a Private Company (except in respect of such requirements as may be specifically disappplied in relation to Restricted Scope Companies); and
- (b) it is a subsidiary undertaking of another body corporate that prepares and publishes group accounts under the AIFC Companies Regulations or such other enactment as the Registrar may recognise for the purposes of this section; or
- (c) it is directly or indirectly wholly-owned by:
 - (i) one person; or
 - (ii) a group of persons who are members of the same family.

For the purposes of this subsection (ii) the members of a person's family are that person's parents, spouse and children (including step-children).

9.3.2 A Restricted Scope Company must not conduct activities that are the conduct of Financial Services under the AIFC Financial Services Framework Regulations unless it is authorised by the AFSA to conduct the activities.

9.4. Revocation of incorporation as Restricted Scope Company

9.4.1 The Registrar of Companies may revoke the status of a Restricted Scope Company as a Restricted Scope Company if:

- (a) the Restricted Scope Company no longer complies with subrule 9.3.1; or
- (b) the Restricted Scope Company asks the Registrar to revoke its status as a Restricted Scope Company.

9.4.2 Before acting under subrule 9.4.1(a), the Registrar of Companies must, by Written notice given to the Restricted Scope Company, tell the Restricted Scope Company:



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(a) that the Registrar is considering whether to revoke its status as a Restricted Scope Company; and

(b) that the Restricted Scope Company may make representations, in the way stated in the notice, about the matter within the period specified in the notice.

9.4.3 The Registrar of Companies must consider any representations made by the Restricted Scope Company in accordance with the notice (if any) given to the Restricted Scope Company under subrule 9.4.2.

9.4.4 If the Registrar of Companies revokes the status of the Restricted Scope Company as a Restricted Scope Company, the Restricted Scope Company ceases to be incorporated as a Restricted Scope Company and these Rules cease to apply to it as a Restricted Scope Company, but it remains a Company Limited by Shares.

9.4.5 If the Registrar of Companies revokes the status of the Restricted Scope Company as a Restricted Scope Company, the Registrar must make appropriate changes to the registers kept by the Registrar under these Rules and the AIFC Companies Regulations.

9.5. Restricted Scope Company: Formation and Registration

9.5.1 Articles of Association

(a) The Articles of Association of a Restricted Scope Company must state that it is a Restricted Scope Company.

(b) The Registrar of Companies may, from time to time, adopt, and publish, model Articles of Association for Restricted Scope Companies (model articles).

(c) If model articles are in force under subrule 9.5.1(a) at the time that an application for incorporation of a Restricted Scope Company is filed with the Registrar, the Restricted Scope Company must adopt those model articles as its initial Articles of Association, despite anything in section 14 (Articles of Association) of the AIFC Companies Regulations.

(d) However, the Incorporators may choose to modify the model articles. The Registrar of Companies may object to any modification of the model articles if the Registrar considers that the modification is inappropriate having regard to the nature of a Restricted Scope Company.

(e) If an amendment of the Articles of Association of a Restricted Scope Company is submitted to the Registrar of Companies under section 19(2) of the AIFC Companies Regulations, the Registrar may object to the amendment if the Registrar considers that the amendment is inappropriate having regard to the nature of a Restricted Scope Company.

9.5.2 Incorporation of Restricted Scope Companies

(a) Despite section 15(1) (Decision on incorporation application etc.) of the AIFC Companies Regulations, if an application is made under the AIFC Companies Regulations for the incorporation of a Restricted Scope Company, the Registrar of Companies must incorporate it as a Restricted Scope Company if satisfied that it is eligible to be incorporated as a Restricted Scope Company.

(b) The certificate of incorporation issued under section 16(1)(a) (Effect of incorporation) of the AIFC Companies Regulations for a Restricted Scope Company must state that the Company is incorporated as a Restricted Scope Company.



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- (c) On the incorporation of a Restricted Scope Company and registration of its Articles of Association, the Registrar of Companies must, in addition to entering the name of the company in the Register of Companies under section 16(1)(c) of the AIFC Companies Regulations, enter the name of the company in the Restricted Scope Companies Register.
- (d) For section 204(1) (Public registers) of the AIFC Companies Regulations, the Registrar of Companies must keep and publish a separate register of current and past registrations of Restricted Scope Company (the Restricted Scope Company Register) (in place of any other public register), by recording in the relevant register the following details, so far as they may be relevant, in relation to each Restricted Scope Company that is, or has been, incorporated or registered in the AIFC:
- (i) current name;
 - (ii) identification number;
 - (iii) date of registration;
 - (iv) type of company;
 - (v) each former name;
 - (vi) the date of registration of each change of name;
 - (vii) the address of the current registered office;
 - (viii) the address of each of the former registered office;
 - (ix) the date of registration of each change of registered office.

The Registrar shall not make any information in relation to a Restricted Scope Company public or publicly available, other than is set out above in this sub-rule 9.5.2(d).

9.5.3 Name

A Restricted Scope Company must use only the name of the Company that is entered in the Register, and must ensure that, whenever it uses that name, the name is immediately followed by the words 'Restricted Limited' or 'Restricted Ltd.' To remove any doubt, this requirement is in place of the requirement in section 37(1) of the AIFC Companies Regulations, but does not otherwise limit the application of AIFC Companies Regulations.

9.6. Disapplication of other provisions of Companies Regulations and Companies Rules

9.6.1 In accordance with section 143(2)(b) (Incorporation of prescribed type of Company) of the AIFC Companies Regulations, the application of Section 56 (Inspection of registers) of the AIFC Companies Regulations is modified in relation to its application to a Restricted Scope Company such that a Restricted Scope Company has no obligation to ensure that its Register of Shareholders and its Register of Debt Security Holders (if any) are open for inspection by any Person. Shareholders or Debt Security Holders may apply to inspect the Register of Shareholders and its Register of Debt Security Holders (if any), respectively, such application to comply with Section 56(3) of the AIFC Companies Regulations, provided that the Restricted Scope Company may decline such application at its discretion.

9.6.2 Provisions of the AIFC Companies Regulations relating to Recognised Companies, transfer of incorporation to the AIFC, Protected Cell Companies, and Investment Companies of the AIFC Companies Rules, do not apply to a Restricted Scope Company.



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SCHEDULE 3: FINE LIMITS

Note: See rule 7.4.

3.1. Table of fine limits

The following table sets the maximum fines that may be imposed for certain Contraventions of the AIFC Companies Regulations:

column 1 item	column 2 provision contravened	column 3 relevant section heading	column 4 maximum fine US\$
1	7	Prohibition against conduct of business without holding Commercial Licence etc.	50,000
2	8(2) or (6)	Commercial Licences	25,000
3	17	Notification of change in Registered Details of Company	2,000
4	20	Copies of Articles of Association for Shareholders	10,000
5	21	Prohibition against use of misleading, deceptive or conflicting Company names	15,000
6	22(1) or (2)	Change of Company name	15,000
7	23(3)	Power to require change of name	25,000
8	24(1) or (3)	Registered office and conduct of business	25,000
9	25	Particulars in Company communications	5,000
10	26(1) or (3)	Annual returns	10,000
11	28(3)	Filing of Special Resolutions and certain other Resolutions and agreements	5,000
12	37	Name of Private Company	10,000
13	38	Name of Public Company	15,000
14	44(3)	Alteration of share capital	10,000
15	46(5) or (6)	Non-cash consideration for Shares in Public Company	10,000
16	48	Shareholders' pre-emption rights	25,000
17	50(1)	Prohibition of public offers by Private Companies	30,000
18	52	Register of Shareholders	10,000
19	53	Register of Debt Security Holders	10,000
20	54	Transfer and registration of Shares and Debt Securities	10,000
21	55	Place where registers must be kept	10,000
22	56(1) or (5)	Inspection of registers	10,000
23	57(4)	Rectification of registers	10,000
24	58	Share certificates	10,000
25	60(5) (including 60(5) as applied by section 61(5))	Power to issue redeemable Shares	10,000
26	61	Power of Company to purchase its own Shares	10,000
27	63	Prohibition on financial assistance to acquire Shares	15,000
28	64(6)	Reduction of Share Capital	15,000
29	65(3)	Reduction of Share Capital by Private Company supported by solvency statement	10,000
30	66(7)	Reduction of Share Capital by Special Resolution confirmed by Court order	10,000
31	72	Restrictions on Distributions	20,000



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32	90	Register of Directors and Secretaries	15,000
33	92(4)	Disqualification orders	25,000
34	94(2)	Annual General Meeting	30,000
35	96(2)	Registrar's power to call meeting in default	15,000
36	106(4) or (5)	Right of The Offeror to buy out minority Shareholders	10,000
37	108(3)	Right of minority Shareholder to be bought out by The Offeror	10,000
38	123	Grounds for opinion relating to merger	25,000
39	124(5)	Power of Company to compromise with Creditors and Shareholders	25,000
40	125(5)	Information relating to compromise to be circulated	15,000
41	129	Accounting Records of Companies	25,000
42	131	Accounts	10,000
43	132(2)	Provision of copy of accounts to Shareholders	5,000
44	133(4)	Directors' report for Public Companies	10,000
45	136(2)	Appointment and removal of Auditors	15,000
46	137	Auditor's report to Company	15,000
47	138(1) or (6)	Auditors' Functions	10,000
48	139	Resignation of Auditor	15,000
49	140(2)	Cooperation with auditors	5,000
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SCHEDULE 4: INTERPRETATION

Note: See rule 1.5.

4.1. Meaning of *Legislation Administered by the AFSA*

Each of the following is *Legislation Administered by the AFSA*:

- (a) the AIFC Financial Services Framework Regulations and the rules adopted under those Regulations;
- (b) any other AIFC Regulations or AIFC Rules if the Regulations or Rules declare that they are administered by the AFSA;
- (c) a provision of any other AIFC Regulations or AIFC Rules if the provision gives a Function to the AFSA or relates to the Exercise of a Function given to the AFSA by another provision of the AIFC Regulations or AIFC Rules.

4.2. Definitions for these Rules

In these Rules:

Administrative Receiver, in relation to a Company, has the meaning given by Schedule 3 (Interpretation) of the AIFC Insolvency Regulations.

Ancillary Service Provider means an Ancillary Service Provider under Legislation Administered by the AFSA.

Authorised Firm means an Authorised Firm under the AIFC Financial Services Framework Regulations.

Authorised Market Institution means an Authorised Market Institution under the AIFC Financial Services Framework Regulations.

Cell is a Cell created by a Protected Cell Company for the purpose of segregating and protecting Cellular Assets in the manner provided by Part 8 (Protected Cell Companies).

Cell Receiver has the meaning given by the AIFC Insolvency Rules.

Cell Receivership Order has the meaning given by the AIFC Insolvency Rules.

Cell Share Capital comprises the proceeds of the issue of Cell Shares.

Cell Shares are Shares created and issued by a Protected Cell Company in respect of one of its Cells pursuant to the provisions of Part 9 (Protected Cell Companies) the proceeds of the issue of which, the Cell Share Capital, shall be comprised in the Cellular Assets attributable to that Cell.

Cell Transfer Order is an order within the meaning given in rule 8.18.

Cellular Assets comprise the assets of the Protected Cell Company attributable to the Company's Cells pursuant to rule 8.9.

A Cellular Dividend is a dividend payable by a Protected Cell Company in respect of Cell Shares.

Non-Cellular Assets are assets of a Protected Cell Company which are not Cellular Assets, pursuant to rule



8.9:

Closed-Ended Investment Company means an Investment Company that is not an Open-Ended Investment Company.

Exchange Facility means a facility, for the transfer of Shares in an Open-Ended Investment Company, administered by an Authorised Market Institution under the AIFC Financial Services Framework Regulations.

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

Fund and ***Fund Manager*** have the meanings respectively given under the AIFC Collective Investment Rules.

Group means a group of entities that includes:

- (a) an entity (the ***first entity***); and
- (b) any parent of the first entity; and
- (c) any Subsidiary (direct or indirect) of any parent of the first entity.

Investment Company means a Company that is incorporated as, or converted into, an Investment Company in accordance with Part 6 (Investment Companies).

Legislation Administered by the AFSA has the meaning given by rule 4.1 of this Schedule.

Liquidator, in relation to a Company, has the meaning given by Schedule 3 (Interpretation) of the AIFC Insolvency Regulations.

Open-Ended Investment Company means an Investment Company whose Articles of Association state that is an Open-Ended Investment Company with a variable share capital and otherwise comply with Part 6 (Investment Companies).

Protected Cell Company means a company incorporated as, or converted into, a Protected Cell Company in accordance with the Part 8 (Protected Cell Companies).

Receiver, in relation to a Company, has the meaning given by Schedule 3 (Interpretation) of the AIFC Insolvency Regulations.

Restricted Scope Company means a company incorporated as a Restricted Scope Company in accordance with the Part 9 (Restricted Scope Companies).

Umbrella Fund has the meaning given by the AIFC Collective Investment Rules.

In this section, the underlining indicates a new text and the striking through indicates deleted text in the proposed amendments

PROPOSED AMENDMENTS to AIFC SPECIAL PURPOSE COMPANY RULES



AIFC SPECIAL PURPOSE COMPANY RULES

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AIFC SPECIAL PURPOSE COMPANY RULES

PART 1: GENERAL

~~1.1~~

1.1 Name

These Rules are the *AIFC Special Purpose Company Rules 2017* (or SPCoR).

~~1.2~~

1.2 Commencement

These Rules commence on ~~1 January~~ [***] 2018.

~~1.3~~

1.3 Legislative authority

These Rules are adopted by the Board of Directors of the AFSA under section 181 (Power to adopt Rules etc.) of the AIFC Companies Regulations, including, for example, that section as it applies in relation to section 92 (Rules made in relation to these Regulations) of the AIFC Insolvency Regulations.

~~1.4~~

1.4 Special Purpose Company prescribed type of Company for Companies Regulations

For Part 11 (Other types of Company) of the AIFC Companies Regulations, a Special Purpose Company is prescribed as a type of Company.

~~1.5~~

1.5 Application of these Rules

~~1.5.1~~

~~1.3.1~~ 1.5.1 These Rules apply within the jurisdiction of the AIFC.

~~1.5.2~~

~~1.3.2~~ 1.5.2 If a provision of these Rules is inconsistent with a provision of any Legislation Administered by the AFSA, the provision of the Legislation Administered by the AFSA prevails to the extent of the inconsistency. However, a provision must not be treated as inconsistent with another provision merely because the provisions deal with the same matter if each provision can be obeyed without contravening the other.

~~1.6~~

1.6 Definitions etc.

~~1.6.1~~

~~1.4.1~~ 1.6.1 Schedule 1 contains definitions used in these Rules.

~~1.6.2~~

~~1.4.2~~ 1.6.2 Terms used in these Rules (other than terms defined in Schedule 1) have the same meanings as they have, from time to time, in the AIFC Companies Regulations, or the relevant provisions of those Regulations, unless the contrary intention appears.

Note:- For definitions in the AIFC Companies Regulations applying to these Rules, see Schedule 1 of those Regulations. The definitions in that Schedule relevant to these Rules include the following:

- AFSA
- AIFC
- AIFC Regulations
- AIFC Rules
- Annual General Meeting
- Articles of Association
- Commercial Licence
- Company
- Company Limited by Shares
- Contravene
- Director

- Exercise
- Function
- Incorporator
- Person
- Registrar of Companies (or Registrar)
- Security
- Share
- Shareholder
- Subsidiary
- Writing.

~~1.6.3~~

~~1.4.3~~1.6.3 Subject to subrule 1.6.2, terms used in these Rules (other than terms defined in Schedule 1 or the AIFC Companies Regulations) have the same meanings as they have, from time to time, in the AIFC Insolvency Regulations, or the relevant provisions of those Regulations, unless the contrary intention appears.

Note: For definitions in the AIFC Insolvency Regulations applying to these Rules, see Schedule 3 of those Regulations. The following definition in that Schedule is relevant to these Rules:

•• Resolution for Voluntary Winding Up.

~~1.7~~

1.7 **Administration of these Rules**

These Rules are administered by the Registrar of Companies.

PART 2: PURPOSE AND ACTIVITIES OF SPECIAL PURPOSE COMPANIES

~~2.1~~

2.1 Special Purpose Companies limited to Exempt Activities

~~2.1.1~~

2.1.1 The Articles of Association of a Special Purpose Company must provide that the purpose of the Company is limited to conducting Exempt Activities.

~~2.1.2~~

2.1.2 A Special Purpose Company must not conduct an activity that is not an Exempt Activity. ~~2.1.3~~

2.1.3 Contravention of subrule 2.1.2 is punishable by a fine of not more than US\$ 5000.

~~2.2~~

2.2 Use of Special Purpose Companies etc.

~~2.2.1~~

2.2.1 A Special Purpose Company must not be:

- (a) the trustee of an Investment Trust; or
- (b) the general partner of an Investment Partnership; or
- (c) an Investment Company.

~~2.2.2~~

2.2.2 A Special Purpose Company must not conduct activities that are the conduct of Financial Services under the AIFC Financial Services Framework Regulations unless it is authorised by the AFSA to conduct the activities.

~~2.3~~

2.3 Revocation of incorporation as Special Purpose Company

~~2.3.1~~

2.3.1 The Registrar of Companies may revoke the status of a Special Purpose Company as a Special Purpose Company if:

- (a) the company conducts an activity that is not an Exempt Activity; or
- (b) a Person other than a Person mentioned in ~~rulesubrule~~ 4.1.2(a), (b) or (c) (Shareholders and Shares) becomes a Shareholder of the Company; except as is permitted under subrule 4.1.3; or
- (c) the company asks the Registrar to revoke its status as a Special Purpose Company.

~~2.3.2~~

2.3.2 Before acting under subrule 2.3.1(a) or (b), the Registrar of Companies must, by Written notice given to the Special Purpose Company, tell the company:

- (d) that the Registrar is considering whether to revoke its status as a Special Purpose Company; and
- (e) that the company may make representations, in the way stated in the notice, about the matter within the period specified in the notice.

~~2.3.3~~

2.3.3 The Registrar of Companies must consider any representations made by the Special Purpose Company in accordance with the notice (if any) given to the company under subrule 2.3.2.

~~2.3.4~~

2.3.4 If the Registrar of Companies revokes the status of the Special Purpose Company as a Special Purpose Company, the company ceases to be incorporated as a Special Purpose Company and these Rules cease to apply to it as a Special Purpose Company, but it remains a Company Limited

by Shares.

~~2.3.5~~

~~2.1.1~~2.3.5 If the Registrar of Companies revokes the status of the Special Purpose Company as a Special Purpose Company, the Registrar must make appropriate changes to the registers kept by the Registrar under these Rules and the AIFC Companies Regulations

PART 3: SPECIAL PURPOSE COMPANY FORMATION AND REGISTRATION

~~3.1~~

3.1 Formation of special purpose companies

~~3.1.1~~

~~3.1.1~~ For section 13 (Formation of companies) of the AIFC Companies Regulations, a Person applying for the incorporation of a ~~special purpose company~~ Special Purpose Company must be an Incorporator, a Corporate Service Provider or any law or accounting firm.

~~3.1.2~~ ~~3.1.2~~ For section 13(4) of the AIFC Companies Regulations, an application for incorporation of a ~~special purpose company~~ Special Purpose Company must also include confirmation from each Incorporator that the ~~company~~ Special Purpose Company will only conduct Exempt Activities.

~~3.1.3~~

~~3.1.3~~ For section 13(4)(d) of the AIFC Companies Regulations, there is no minimum requirement for the initial share capital stated in an application for incorporation of a special purpose company must be at least US\$100 and must be stated in a multiple of US\$100 Special Purpose Company.

~~3.2~~

3.2 Articles of Association

~~3.2.1~~

~~3.2.1~~ The Registrar of Companies may, from time to time, adopt, and publish, model Articles of Association for Special Purpose Companies (*model articles*).

~~3.2.2~~

~~3.2.2~~ If model articles are in force under subrule 3.2.1 at the time that an application for incorporation of a ~~special purpose company~~ Special Purpose Company is filed with the Registrar, the company must adopt those model articles as its initial Articles of Association, despite anything in section 14 (Articles of Association) of the AIFC Companies Regulations.

~~3.2.3~~

~~3.2.3~~ However, the Incorporators may choose to modify the model articles. The Registrar of Companies may object to any modification of the model articles if the Registrar considers that the modification is inappropriate having regard to the nature of a Special Purpose Company and the activities that it is permitted to conduct.

~~3.2.4~~

~~3.2.4~~ If an amendment of the Articles of Association of a Special Purpose Company is submitted to the Registrar of Companies under section 19(2) of the AIFC Companies Regulations, the Registrar may object to the amendment if the Registrar considers that the amendment is inappropriate having regard to the nature of a Special Purpose Company and the activities that it is permitted to conduct.

~~3.3~~

3.3 Incorporation of Special Purpose Companies

~~3.3.1~~

~~3.3.1~~ Despite section 15(1) (Decision on incorporation application etc.) of the AIFC Companies Regulations, if an application is made under the AIFC Companies Regulations for the incorporation of a Special Purpose Company, the Registrar of Companies must incorporate it as a Special Purpose Company if satisfied that it is eligible to be incorporated as a Special Purpose Company.

~~3.3.2~~

~~3.3.2~~ The certificate of incorporation issued under section 16(1)(a) (Effect of incorporation) of the AIFC Companies Regulations for a Special Purpose Company must state that the company is incorporated as a Special Purpose Company.

~~3.3.3~~

~~3.3.3~~ On the incorporation of a Special Purpose Company and registration of its Articles of Association, the Registrar of Companies must, in addition to entering the name of the company in the Register of Companies under section 16(1)(c) of the AIFC Companies Regulations, enter the name of the company in the Special Purpose Companies Register.

~~3.3.4~~ For section 204(1) (Public registers) of the AIFC Companies Regulations, the Registrar of Companies must keep and publish a separate register of current and past registrations of Special

Purpose Companies (the Special Purpose Companies Register).

~~3.4~~

3.4 Conduct of business by Special Purpose Company

~~3.4.1~~

3.4.1 A Special Purpose Company must receive its corporate administration services from a Corporate Service Provider. A Special Purpose Company may receive administration services for its assets from a third party asset administration or management provider.

~~3.4.2~~

3.4.2 For the purposes of section 7 (Prohibition against conduct of business without holding Commercial Licence etc.) of the AIFC Companies Regulations, a Special Purpose Company is exempted from the requirement to hold a Commercial Licence.

~~3.4.3~~

3.4.3 Section 24(3) (Registered office and conduct of business) of the AIFC Companies Regulations does not apply to a Special Purpose Company.

PART 4: SHARES

~~4.1~~

4.1 Shareholders and Shares

~~4.1.1~~

4.1.1 A Special Purpose Company must ~~not~~ have ~~more than~~ at least 1 Shareholder.

Subject to subrule 4.1.3-Shareholders-

4.1.2 ~~4.1.2 A,~~ a Person must not be a Shareholder of a Special Purpose Company unless:

- (a) the Person is the Initiator or another participant in the Transaction; or
- (b) the Person is another Special Purpose Company; or
- (c) the Person is a Nominee holding Shares in the Special Purpose Company on trust for discretionary purposes, and the beneficiaries are wholly or mainly Persons mentioned in paragraph (a).

~~4.1.3~~

4.1.3 The Corporate Service Provider or the law or accounting firm (or a subsidiary or affiliate thereof) that is applying for the incorporation of the Special Purpose Company in accordance with subrule 3.1.1 may also be the Incorporator and Shareholder of such Special Purpose Company, provided that such Special Purpose Company is not permitted to conduct any business prior to the time that all of the issued Shares of such Special Purpose Company have been transferred to one or more Persons that are permitted to be Shareholders of a Special Purpose Company in accordance with subrule 4.1.2.

4.1.4 Part 6 (Class rights) of the AIFC Companies Regulations does not apply to a Special Purpose Company.

PART 5: MEETINGS

5.1 Meetings

Section 103 (Demand for poll) of the AIFC Companies Regulations does not apply to a Special Purpose Company.

PART 6: DIRECTORS AND SECRETARY

~~6.1~~

6.1 Directors of Special Purpose Company

~~6.1.1~~ The

~~A~~ Special Purpose Company must have at least ~~2 Directors~~ 1 Director. A Director of a Special Purpose Company may be an individual or a Body Corporate. A Director of a Special Purpose Company who is an individual is not required to reside in Kazakhstan.

~~6.1.2~~ The majority of the Directors of a Special Purpose Company must be employees of its Corporate Service Provider.

~~6.2~~ **Secretary of Special Purpose Company**

~~The Secretary of the Special Purpose Company must be its Corporate Service Provider or any Subsidiary of the Corporate Service Provider.~~

PART 7: ACCOUNTS AND AUDIT

7.1. Accounts and audit

Part 10 (Accounts, reports and audit) of the AIFC Companies Regulations does not apply to a Special Purpose Company unless ~~the Special Purpose Company has obtained a listing on any stock exchange of Securities issued by it;~~

- (a) the Special Purpose Company has obtained a listing on any stock exchange of Securities issued by it; or
- (b) the Special Purpose Company is a subsidiary of a Public Company.

PART 8: ANNUAL RETURNS

8.1. Annual returns

Section 26 (Annual returns) of the AIFC Companies Regulations does not apply to a Special Purpose Company.

PART 9: REPORTING

~~9.1~~

9.1 Reporting

~~9.1.1~~

9.1.1 In January each year after the year of its registration, a Special Purpose Company must give the Registrar of Companies a Written confirmation that since its registration or last confirmation under this paragraph, as the case may be, there has been no amendment of its Articles of Association that was required to be submitted to the Registrar that has not been submitted to the Registrar.

~~9.1.2~~

9.1.2 If any of the following changes happen in relation to a Special Purpose Company, the Special Purpose Company must file notice of the change with the Registrar of Companies, in the form required by the Registrar, 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 Shareholders;
- (c) any change to its name;
- (d) any change in its principal business activities.

~~9.1.3~~

To remove any doubt, these Rules do not exempt a Special Purpose Company from the reporting 9.1.3 requirements of any listing authority or rating agency involved in the Transaction.

PART 10: AIFC INSOLVENCY REGULATIONS

~~10.1~~

10.1 Application of AIFC Insolvency Regulations to Special Purpose Companies

~~10.1.1~~

10.1.1 Despite anything in the AIFC Insolvency Regulations, a Resolution for Voluntary Winding Up of a Special Purpose Company may only be passed if there are no outstanding liabilities of the Special Purpose Company.

~~10.1.2~~

10.1.2 For the application of the AIFC Insolvency Regulations to Special Purpose Company, the company is taken not to have preferential creditors.

~~10.1.3~~

10.1.3 For section 67 (Power to disclaim onerous property) of the AIFC Insolvency Regulations, *onerous property* does not include contracts and other property arising from the Exempt Activities of a Special Purpose Company.

~~10.1.4~~

10.1.4 Sections 9 (Moratorium), 97 (Preferences) and 99 (Invalid security interests) of the AIFC Insolvency Regulations do not apply to a Special Purpose Company.

PART 11: DISAPPLICATION OF OTHER PROVISIONS

~~11.1~~

11.1 Disapplication of other provisions of Companies Regulations and Companies Rules

~~11.1.1~~

11.1.1 The following provisions of the AIFC Companies Regulations do not apply to a Special Purpose Company:

- (a) Chapter 10 (Meetings) of Part 7 (Private Companies and Public Companies);
- (b) Part 12 (Recognised Companies);
- (c) the provisions of Part 13 (Transfer of incorporation) about the transfer of incorporation to the AIFC (sections 151 to 155).

~~11.1.2~~

11.1.2 Provisions of the AIFC Companies Regulations relating to Recognised Companies, transfer of incorporation to the AIFC, Protected Cell Companies, and Investment Companies of the AIFC Companies Rules, do not apply to a Special Purpose Company.

SCHEDULE 1: INTERPRETATION

1. **1. Meaning of Legislation Administered by the AFSA**

Each of the following is *Legislation Administered by the AFSA*:

- (a) the AIFC Financial Services Framework Regulations and the rules adopted under those Regulations;
- (b) any other AIFC Regulations or AIFC Rules if the Regulations or Rules declare that they are administered by the AFSA;
- (c) a provision of any other AIFC Regulations or AIFC Rules if the provision gives a Function to the AFSA or relates to the Exercise of a Function given to the AFSA by another provision of the AIFC Regulations or AIFC Rules.

2. **2. Definitions for these Rules**

In these Rules:

Corporate Service Provider means a Person authorised (however described) to conduct corporate services business in the AIFC or another jurisdiction approved by the AFSA or the Registrar of Companies.
~~business in the AIFC or another jurisdiction approved by the AFSA or the Registrar of Companies.~~

Exempt Activity, in relation to a Special Purpose Company, means any of the following activities, whether undertaken in an Islamic or conventional way:

- (a) the acquisition (by way of leasing, title transfer, risk transfer or otherwise), the holding and the disposal of any asset (tangible or intangible, including, for example, receivables and Shares) in connection with and for the purpose of a Transaction;
- (b) the obtaining of any type of financing (banking or capital markets), the granting of any type of security interest over its assets, the providing of any indemnity or similar support for the benefit of its Shareholders or any of its Subsidiaries, or the entering into any type of hedging arrangements, in connection with and for the purpose of a Transaction;
- (c) the financing of the Initiator or another Special Purpose Company;
- (d) the acting as trustee or agent for any participant in the Transaction;
- (e) any other activity approved in Writing by the Registrar;
- (f) any activity ancillary to an activity mentioned in paragraphs (a) to (e).

Initiator, in relation to a Special Purpose Company, means the Person for whose Transaction the company has been established.

Investment Company means a Company that is an Investment Company under the AIFC Companies Rules.

Investment Partnership means a limited partnership under the AIFC Limited Partnership Regulations formed for the sole purpose of collective investment.

Investment Trust means a trust created under the Legislation Administered by the AFSA for the purpose

of collective investment.

Legislation Administered by the AFSA has the meaning given by section 1 of this Schedule.

Nominee means a Person authorised (however described) to conduct trust or fiduciary business in the AIFC or another jurisdiction approved by the AFSA or the Registrar of Companies.

Special Purpose Company means a Company Limited by Shares that is incorporated as Special Purpose Company (with or without other relevant Persons).

Transaction, in relation to a Special Purpose Company, means the Islamic or conventional structured finance transaction for the benefit of the Initiator in connection with which the company has been established, and includes, for example, any type of securitisations or other capital markets transaction.

In this section, the underlining indicates a new text and the striking through indicates deleted text in the proposed amendments

PROPOSED AMENDMENTS to AIFC GENERAL PARTNERSHIP REGULATIONS



AIFC GENERAL PARTNERSHIP REGULATIONS

PART 2: FORMATION AND REGISTRATION

12. Registration as General Partnership

- (1) On the formation of a general partnership in the AIFC, the partners may apply for registration of the general partnership, and for the registration of each of the partners, by signing, and filing with the Registrar of Companies, an application for registration.
- (2) The application must set out:
 - (a) name of the general partnership, which must end with the word 'Partnership' or 'and Partners' or '& Co.'; and
 - (b) the address of the registered office of the general partnership in the AIFC; and
 - (c) the nature of the business, purpose or activity to be conducted by the general partnership in or from the AIFC; ~~and~~
 - (d) the name and address of each of the partners of the general partnership; ~~and~~
 - (e) - the particulars required by Section 16 of the AIFC Companies Regulations.
- (3) The Registrar of Companies may require the partners to provide additional information reasonably required by the Registrar of Companies to decide the application.
- (4) The Registrar of Companies may refuse to register a general partnership, or any partner of a general partnership, under this section for any reason the Registrar of Companies considers to be a proper reason for refusing the registration.
- (5) The Registrar of Companies may register a general partnership, and the partners of the partnership, under this section in accordance with the Rules.
- (6) A general partnership formed in the AIFC is registered under this section as a General Partnership.



AIFC GENERAL PARTNERSHIP REGULATIONS

PART 9: ULTIMATE BENEFICIAL OWNERS

61. Ultimate Beneficial Owners

The provisions of Part 16 of the AIFC Companies Regulations apply to Limited Partnerships as set out therein.

In this section, the underlining indicates a new text and the
striking through indicates deleted text in the proposed
amendments

PROPOSED AMENDMENTS to AIFC LIMITED PARTNERSHIP REGULATIONS



AIFC LIMITED PARTNERSHIP REGULATIONS

PART 2: FORMATION AND REGISTRATION

12. Limited Partnerships: registration

- (1) A limited partnership formed in the AIFC may be registered under this section in accordance with these Regulations and the Rules.
- (2) On the formation of a limited partnership in the AIFC, the general partners may apply for registration of the limited partnership, and for the registration of each of the partners, by signing, and filing with the Registrar of Companies, an application for registration.
- (3) The application must set out:
 - (a) name of the limited partnership, which must end with the words 'Limited Partnership'; and
 - (b) the address of the registered office of the limited partnership in the AIFC; and
 - (c) the nature of the business, purpose or activity to be conducted by the limited partnership in or from the AIFC; ~~and~~
 - (d) the other particulars (if any) required by the Registrar of Companies or the Rules; ~~and~~
 - (e) the particulars required by Section 16 of the AIFC Companies Regulations
- (4) For subsection (3)(c), it is sufficient for the application to state that the purpose of the Limited Partnership is to conduct any lawful business, purpose or activity, without specifying the nature of that business, purpose or activity.
- (5) A copy of the entire partnership agreement must be filed with the application.
- (6) The Registrar of Companies may require the general partners to provide additional information reasonably required by the Registrar to decide the application.
- (7) The Registrar of Companies must comply with the Decision-making Procedures and may refuse to register the limited partnership, or any partner of the limited partnership, under this section for any reason the Registrar considers to be proper reason for refusing the registration.
- (8) If the Registrar of Companies decides to register the limited partnership, the Registrar must:
 - (a) issue a certificate of registration confirming that the partnership is registered and stating that the partnership is registered as a 'Limited Partnership'; and
 - (b) assign a number to the partnership, which is to be the partnership's identification number; and
 - (c) enter the partnership's name in the appropriate register kept by the Registrar under these Regulations; and
 - (d) issue a Commercial Licence to the partnership under the AIFC Companies Regulations; and



AIFC LIMITED PARTNERSHIP REGULATIONS

- (e) register the general partners and the limited partners that the Registrar has decided to register; and
- (f) register the partnership agreement that accompanied the application for incorporation.



AIFC LIMITED PARTNERSHIP REGULATIONS

PART 5: RIGHTS AND LIABILITIES OF LIMITED PARTNERSHIP PARTNERS

30. Limited Partnerships: rights and Liabilities of General Partner

- (1) A General Partner of a Limited Partnership has all the rights and powers required to Exercise its Functions as a general partner, including those incidental to the Exercise of the partner's Functions as a General Partner, subject only to the limitations and Liabilities applying to the partner under the partnership agreement, these Regulations and the Rules.
- (2) A General Partner of a Limited Partnership must Exercise all the Functions necessary for, and connected with, the conduct of the partnership's business, purpose or activity, and must discharge all obligations imposed on a General Partner, in the partner's capacity as a General Partner of the partnership or on the partnership itself, unless otherwise provided under the partnership agreement, these Regulations or the Rules.
- (3) A General Partner of a Limited Partnership must not, without the prior Written consent of all the Limited Partners:
 - (a) do anything that restricts, in any way, the partnership's ability to conduct its business, purpose or activity in accordance with the partnership agreement; or
 - (b) use or dispose of any partnership property, or any rights in partnership property, for a purpose other than those permitted under the partnership agreement, these Regulations or the Rules, unless immediate action is required in the best interest of all the Partners.
- (4) If immediate action is taken as mentioned in subsection (3)(b) without prior Written consent of all the Limited Partners, the General Partners must take all reasonable steps to have all the Limited Partners ratify the action as soon as possible.
- (5) Any property of a Limited Partnership that is transferred to, vested in or held on behalf of any 1 or more of the General Partners, or that is transferred into or vested in the name of the partnership, must be held (or taken to be held) by the General Partner (or, if by 2 or more General Partners, by the General Partners jointly) as an asset of the partnership in accordance with the terms of the partnership agreement.
- (6) Any Liability incurred by a General Partner of a Limited Partnership in the conduct of the partnership's business, purpose or activity is a Liability of the partnership.
- (7) Each General Partner of a Limited Partnership is liable in the insolvency of the partnership for all of the partnership's Liabilities.



AIFC LIMITED PARTNERSHIP REGULATIONS

PART 6: DISSOLUTION OF LIMITED PARTNERSHIPS

38. Limited Partnerships: statement of dissolution

- (1) Subject to section 39 (Limited Partnerships: winding up of affairs on dissolution) and section 40 (Limited Partnerships: dissolution of partnership on death etc. of sole General Partner), a Limited Partnership must not be dissolved by an act of the Partners until a statement of dissolution signed by all the General Partners has been delivered by a General Partner to the Registrar of Companies.
- (2) When the statement of dissolution is delivered to the Registrar of Companies, the Registrar must cancel the registration of the Limited Partnership.
- (3) Contravention of subsection (1) is punishable by a fine.



AIFC LIMITED PARTNERSHIP REGULATIONS

PART 11: ULTIMATE BENEFICIAL OWNERS

60. Ultimate Beneficial Owners

The provisions of Part 16 of the AIFC Companies Regulations apply to Limited Partnerships as set out therein.



AIFC LIMITED PARTNERSHIP REGULATIONS

In this section, the underlining indicates a new text and the striking through indicates deleted text in the proposed amendments

**PROPOSED AMENDMENTS to AIFC NON-PROFIT INCORPORATED
ORGANISATIONS REGULATIONS**



AIFC NON-PROFIT INCORPORATED ORGANISATIONS REGULATIONS

PART 2: ACTIVITIES

9. Authorised Activities of Incorporated Organisations

- (1) An Incorporated Organisation must not conduct an activity unless the activity is an Authorised Activity.
- (2) For these Regulations, Authorised Activities are the following:
 - (a) professional and financial services activities, except so far as the activities are activities declared by the Rules not to be authorised activities;
 - (b) activities related to the promotion and development of financial services, so far as the activities are approved at the discretion of the Registrar of Companies in relation to the Incorporated Organisation, a class of Incorporated Organisations or Incorporated Organisations generally;
 - (c) any activity (whether or not of a kind mentioned in paragraphs (a) and (b)) declared to be an authorised activity under the Rules.
- (3) However, Authorised Activities do not include activities contrary to public interest and public morals of the Republic of Kazakhstan.
- (4) Contravention of subsection (1) is punishable by a fine.



AIFC NON-PROFIT INCORPORATED ORGANISATIONS REGULATIONS

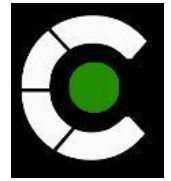
PART 5: FOUNDING MEMBERS AND ORDINARY MEMBERS

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.
- (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 Person resident ~~in~~ 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.

In this section, the underlining indicates a new text and the striking through indicates deleted text in the proposed amendments

PROPOSED AMENDMENTS to AIFC MARKET RULES



2 GOVERNANCE OF REPORTING ENTITIES

2.3.2 Directors' duties

A Director of a Reporting Entity must act:

- (a) on a fully informed basis;
- (b) in good faith;
- (c) honestly;
- (d) with due diligence and care;
- (e) in the best interests of the Reporting Entity and its shareholders.

Guidance: Directors' duties

In order to meet the obligation to act with due diligence and care, a Director should (amongst other things) ensure that he has enough time and capacity available to devote to the job. See also the best practice standards in MAR Schedule 3 which apply to Directors of Reporting Entities who are subject to Corporate Governance Principles.

The directors; duties contained in the AIFC Companies Regulations should also be carefully considered and adhered to. These include the duty to promote the success of the Company. This is a subjective test – in other words, the duty on a Director is to act in a way he or she considers to be in the best interests of the Reporting Entity to promote its success.

2.3.8 Other matters requiring shareholder approval

- (a) The Board of a Reporting Entity must, subject to (b), ensure that a majority of shareholders in voting approves:
 - (i) any alteration of the constitutional documents of the Reporting Entity including any alteration to the memorandum of association, articles of association, bylaws or any other instrument constituting the Reporting Entity;
 - (ii) an alteration of the issued Share capital of the Reporting Entity which is more than 25% of the existing issued Share capital;
 - (iii) any acquisition or disposal of an asset of the Reporting Entity where the value of the asset involved is 25% or more of the value of the net assets of the Reporting Entity as at its last published financial reports;



AIFC MARKET RULES

- (iv) the appointment or removal of a Director of the Reporting Entity and the terms of such appointment;
 - (v) the appointment or removal of the Auditor of the Reporting Entity; ~~and~~
 - (vi) the placing of the Reporting Entity into voluntary liquidation;
 - (vii) an acquisition or series of acquisitions in any twelve month period: (a) the value of which exceeds 100% of the value of the net assets of the Reporting Entity as at its last published financial reports; or (b) which would result in a fundamental change in its business, board or voting control; and
 - (viii) a disposal by the Reporting Entity which, when aggregated with any other disposals over the previous twelve months with a value in excess of 75% of the value of the of the value of the net assets of the Reporting Entity as at its last published financial reports-
- (b) The requirement in (a) does not apply, subject to any requirements in the constitutional documents of the Reporting Entity, in relation to the appointment or removal of a Director or Auditor of a Reporting Entity in circumstances where the immediate appointment or removal is necessary in the interests of the Reporting Entity.



Schedule 3: CORPORATE GOVERNANCE BEST PRACTICE STANDARDS

Principle 3 – Board composition and resources

“The Board and its committees must have an appropriate balance of skills, experience, independence and knowledge of the Reporting Entity’s business, and adequate resources, including access to expertise as required and timely and comprehensive information relating to the affairs of the Reporting Entity.”

Balance of skills and independence

26. All Directors should be subject to election by shareholders at the first annual general meeting after their appointment, and to re-election thereafter at intervals of no more than three years. The Board should satisfy itself that there is adequate succession planning in respect of Board membership and the senior management, so as to ensure an orderly and smooth change-over of positions whilst maintaining an appropriate balance of skills and experience within the Reporting Entity and on the Board.

26A. The Board should include key executive officers such as the chief executive officer and the chief financial officer.

In this section, the underlining indicates a new text and the striking through indicates deleted text in the proposed amendments

**PROPOSED AMENDMENTS to AIFC FINANCIAL SERVICES
FRAMEWORK REGULATIONS**



Part 10- CO-OPERATION AND EXCHANGE OF INFORMATION

131. Guiding Principles

(1) The AFSA seeks to:

- (a) comply with applicable financial services legislation, consistent with relevant international standards
- (b) provide the fullest mutual assistance to other Financial Services Regulators regarding cooperation and the exchange of confidential information according to standards and procedures that are equivalent to those prescribed in the IOSCO Multilateral Memorandum of Understanding;
- (c) ensure that AIFC or foreign laws or regulations about confidentiality or secrecy do not prevent the AFSA from obtaining, securing or disclosing confidential information where required for lawful regulatory purposes;
- (d) limit the disclosure of confidential information to other Financial Services Regulators and enforcement agencies to what is required for lawfully ensuring compliance with, and enforcement of, applicable financial services and criminal legislation;
- (e) apply international best practices in obtaining and disclosing confidential information;
- (f) implement robust internal control systems and procedures that meet international best practices for the handling, storing, processing and securing of confidential information; and
- (g) implement data protection procedures that are equivalent to those prescribed in the European Union Directives so as to protect individual privacy rights according to international best practices.

132. Relevant Legislation

The main legislative provisions governing the provision of information to the AFSA are set out in the Framework Regulations.

- (2) Like other Financial Services Regulators, the AFSA has comprehensive statutory powers to carry out its authorisation, supervision and enforcement functions regarding Financial Services in and from the AIFC. The Framework Regulations confer powers to require reports, conduct on-site inspections of business premises of Authorised Persons, investigate and compel the production of documents, testimony and other information.



- (3) The AFSA can also use its powers to obtain information from third party suppliers, including intermediaries and companies that have accepted outsourced functions for regulated entities. These include subsidiaries established in the AIFC and branches in the AIFC of firms authorised in other jurisdictions. The AFSA may also exercise these powers at the request, and on behalf, of foreign regulators and authorities to assist them in performing their regulatory or enforcement functions. Why, when and how this is permissible is described in more detail below.
- (4) Because the AFSA's statutory mandate is to regulate all financial services provided in and from the AIFC, the AFSA has broad access to confidential information about individuals and firms participating in or connected to the provision of financial services in the AIFC. This includes all Authorised Firms and their officers and directors.
- (5) For example, this means that the AFSA will treat accounts that are booked and held in foreign jurisdictions, but serviced and managed in or from the AIFC, in the same way as if the accounts were booked, held, serviced and managed entirely within the AIFC. Legally and practically the AFSA has complete access to the account information in both situations because the regulated financial service is provided in or from the AIFC. However, if an Authorised Person books, holds, services and manages an account entirely in a foreign jurisdiction, the AFSA has no authority to access confidential client account information unless the laws of the foreign jurisdiction permit such access and disclosure.

133. Confidential Information

- (6) Subject to sections 5 and 6, confidential information must not be disclosed by the AFSA or by any of its officers, employees or agents, or by any Person coming into possession of the information, without the consent of the Person to whom the duty of confidentiality is owed.
- (7) Information is confidential when:
- (a) it is received by the AFSA or any of its officers, employees or agents in the course of the performance by such person of a function under any Rule or Regulation or under any other legislation administered by the AFSA; and
 - (b) it has not been made available to the public in circumstances in which disclosure is not prohibited under any Rule or Regulation or other legislation.

134. Authorised Powers of Disclosure

- (8) The AFSA is permitted to disclose information obtained from Authorised Persons under any Rule or Regulation (including pursuant to the exercise of any of its powers contained in Parts 8 and 9 of the Framework Regulations) where such disclosure:



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- (a) is permitted or required under any Rule or Regulation or under other any other legislation administered by the AFSA;
- (b) is permitted or required by any other law;
- (c) is made to:
- (i) the Registrar of Companies;
 - (ii) a Financial Services Regulator;
 - (iii) a governmental or regulatory authority exercising powers and performing functions relating to AML compliance;
 - (iv) a self-regulatory body or organisation exercising and performing powers and functions in relation to Financial Services;
 - (v) a civil or criminal law enforcement agency; or
 - (vi) a governmental or other regulatory authority, including a self-regulatory body, or organisation exercising powers and performing functions in relation to the regulation of auditors, accountants or lawyers;
- for the purpose of assisting the performance by any such person mentioned under subsection 7(1)(c) of its regulatory functions; or
- (d) is made in good faith for the purposes of the performance and exercise of the functions and powers of the AFSA.
- (9) Under section 117(2) of the Framework Regulations, the AFSA is prohibited from disclosing an individual's compelled testimony to any law enforcement agency for the purpose of criminal proceedings against the person unless the person consents to the disclosure or the AFSA is required by law or court order to disclose the statement.
- (10) When the AFSA is requested to disclose confidential information to an entity referred to in section 7(1), in circumstances other than those referred to in section 117(2) of the Framework Regulations, the AFSA recognises that the information to be provided is to be used for the sole purpose of assisting the requesting entity in performing its regulatory functions. Consequently, the AFSA requires the requesting entity to keep the information confidential and not to disclose it to any other person without the written consent of the AFSA.
- (11) In summary, the above restrictions mean that:



- (a) the AFSA may only use or disclose confidential information to fulfil a AFSA regulatory purpose or legal obligation;
- (b) the AFSA may only disclose confidential information to domestic and foreign regulators and authorities if it is for the purpose of assisting them in the performance of their specific regulatory or enforcement functions regarding Financial Services and/or any relevant criminal legislation; and
- (c) the AFSA may only disclose an individual's compelled testimony to a law enforcement agency for the purpose of criminal proceedings against the person if the person consents to the disclosure or if the AFSA is required by law or court order to disclose such testimony.

135. Exercising Regulatory Powers on Behalf of Other Authorities

- (12) In addition, section 114 of the Framework Regulations gives the AFSA specific statutory authority to exercise its power to conduct an investigation at the request of a Financial Services Regulator. This means that the AFSA may obtain confidential information from listed companies, Authorised Firms and individuals, and their clients on behalf of other authorities.
- (13) The existence and content of requests for assistance by a Financial Services Regulator and any subsequent consultations between the AFSA and the Financial Services Regulator must not be disclosed by the AFSA or by any of its officers, employees or agents, or by any Person coming into possession of the information, without the consent of the Financial Services Regulator in question unless, and to the extent that, the AFSA is required by law or court order to disclose such information.
- (14) As a matter of policy the AFSA will assist a Financial Services Regulator under section 114 of the Framework Regulations unless:
 - (a) the request would require the AFSA to act in a manner that would violate applicable criminal laws of the Republic of Kazakhstan, any Rule or Regulation or AFSA policies;
 - (b) the request is in relation to criminal or enforcement proceedings that have already been initiated in the AIFC or the Republic of Kazakhstan relating to the same facts or same persons, or the same persons have already been penalised or sanctioned on substantively the same allegations or charges and to the same degree by the AFSA or the competent authorities in the Republic of Kazakhstan;
 - (c) the request would be prejudicial to the public interest of the AIFC;
 - (d) the requesting authority refuses to give corresponding assistance to the AFSA;



- (e) complying with the request would be so burdensome as to prejudice or disrupt the performance of AFSA regulatory functions and duties; or
- (f) the requesting authority fails to demonstrate a legitimate reason for the request.
- (15) If the AFSA decides to obtain and disclose confidential information on behalf of another Financial Services Regulator under section 114 of the Framework Regulations, then it must do so in accordance with sections 9 and 10 of this Schedule.
- (16) In deciding whether to comply with a request to disclose confidential information, the AFSA as a matter of policy will satisfy itself that there are legitimate reasons for the request and that the authority requesting the information has the appropriate standards in place for dealing with confidential information. What the AFSA considers to be legitimate reasons are discussed below.

136. Factors Determining Legitimacy of Requests for Confidential Information

- (17) Every request to disclose confidential information will be assessed by the AFSA on a case-by-case basis to determine whether there is a legitimate reason to comply with the request. In determining the legitimacy of a request, the AFSA may consider, in addition to sections 9 to 10 of this Schedule:

 - (a) whether the request will enable the requesting authority to discharge more effectively its regulatory responsibilities to enforce and secure compliance with the financial services laws administered by the requesting authority;
 - (b) whether the request is for the purpose of actual or possible criminal, civil or administrative enforcement proceedings relating to a violation of financial services laws administered by the requesting authority;
 - (c) whether the requesting authority is governed by laws that are substantially equivalent to those governing the AFSA concerning regulatory confidentiality, data protection, legal privilege and procedural fairness;
 - (d) whether the request involves the administration of justice of a law, regulation or requirement that is related to enforcing and securing compliance with the financial services laws of the requesting jurisdiction;
 - (e) whether any other authority, governmental or non-governmental, is cooperating with the requesting authority or seeking information from the confidential files of the requesting authority; and
 - (f) whether fulfilling the request will foster the integrity of, and confidence in, the financial services industry in the AIFC and the requesting jurisdiction.



137. Civil Proceedings in the AIFC Court

The AIFC Court's enabling legislation, the Constitutional Law, gives it exclusive judicial jurisdiction in proceedings other than criminal and administrative proceedings in the AIFC and over AIFC bodies including the AFSA. Therefore, the AFSA is obliged by law to disclose confidential information if it is compelled to do so under an order from the AIFC Court.

138. Criminal Prosecutions in the UAE Courts

As the criminal laws of the Republic of Kazakhstan apply in the AIFC, the AFSA is obliged to comply with any legally enforceable demand or order from a competent authority responsible for administering the criminal laws in the UAE. This includes orders or demands to disclose confidential information.

139. The Effect of Foreign Secrecy Laws in the AIFC

- (18) Foreign banking secrecy laws do not apply in the AIFC and do not apply to Authorised Firms and their clients in relation to Financial Services business conducted in or from the AIFC. This is because foreign banking secrecy laws or confidentiality provisions do not have extraterritorial effect. Similarly, the AFSA does not have extraterritorial or direct access to confidential client information if the client's business is booked, held, serviced and managed exclusively in foreign jurisdictions subject to a strict banking secrecy regime.
- (19) A request by the AFSA to a Financial Services Regulator or a financial institution for disclosure of confidential client account information will be governed by and be subject to the secrecy laws, if any, of the foreign jurisdiction.

140. Applications to Request Confidential Information

- (20) Generally, for the AFSA to agree to provide confidential information to an authority referred to in section 10 in connection with a request by a Financial Services Regulator under section 114 of the Framework Regulations (the "requesting authority"), the requesting authority will be required to:
- (a) make the request in writing, or if urgent make the request orally and, unless otherwise agreed, confirm it in writing within ten business days;
 - (b) describe the confidential information requested and the purpose for which the requesting authority seeks the information;
 - (c) provide a brief description of the facts supporting the request and the relevant legal powers authorising the request;



AIFC FINANCIAL SERVICES FRAMEWORK REGULATIONS

- (d) specify whether the purpose of the request is for actual or possible criminal, civil or administrative enforcement proceedings relating to a violation of the laws and regulations administered by the requesting authority;
 - (e) agree that it will not use the confidential information for any other purpose than that for which it was requested unless it has the express permission of the AFSA;
 - (f) indicate, if known, the identity of any Persons whose rights or interests may be adversely affected by the disclosure of confidential information;
 - (g) indicate whether obtaining the consent of, or giving notice to, the Person to whom the request for confidential information relates would jeopardise or prejudice the purpose for which the information is sought;
 - (h) specify whether any other authority, governmental or non-governmental, is co-operating with the requesting authority or seeking information from the confidential files of the requesting authority;
 - (i) specify whether onward disclosure of confidential information is likely to be necessary and the purpose such disclosure would serve;
 - (j) agree to revert to the AFSA in the event that it seeks to use the confidential information for any purposes other than those specified in the request;
 - (k) agree to keep requested confidential information confidential, including the fact that a request for confidential information was made, except as it conforms to this policy or in response to a legally enforceable demand;
 - (l) agree, in the event of a legally enforceable demand, that it, the requesting authority, will notify the AFSA prior to complying with the demand, and will assert such appropriate legal exemptions or privileges with respect to such confidential information as may be available;
 - (m) agree that, prior to providing information to a self-regulatory organisation, the requesting authority will ensure that the self-regulatory organisation is able and will comply on an ongoing basis with the confidentiality provisions agreed to between the requesting authority and the AFSA; and
 - (n) agree to use its best efforts to protect the confidentiality of confidential information received from the AFSA pursuant to the provisions in sections 9, 10 and this section 16 of this Schedule.
- (21) In an international securities fraud or money laundering investigation the kind of documents the AFSA may provide to a requesting authority may include: documents from



contemporaneous records sufficient to reconstruct all securities, derivatives and bank transactions; records of all funds and assets transferred into and out of bank and brokerage accounts relating to these transactions; records that identify the beneficial owner and controller and, for each transaction, the account holder, the particulars of the transaction, and the individual and the authorised financial or market institution that handled the transaction.

141. Procedural Fairness

- (22) When the AFSA intends to disclose confidential information to other bodies in connection with the exercise of any of its powers in cases where that information has been obtained from another Financial Services Regulator or supervisory agency, the AFSA will notify and consult with the Financial Services Regulator or supervisory agency that provided the information. In these instances, subject to the exceptions set out in subsection 17-2 below, the AFSA will not normally notify the Persons potentially affected by the disclosure.
- (23) The AFSA will normally give notice and an opportunity to make representations and challenge the disclosure to the Person(s) to whom the disclosure relates in the following circumstances:
- (a) where the disclosure relates to a Person's compelled testimony to a law enforcement agency for the purpose of criminal proceedings against the Person. Under section 117(2) of the Framework Regulations, the AFSA must not disclose a Person's compelled testimony to any law enforcement agency for the purpose of criminal proceedings against the Person unless the Person consents to the disclosure or the AFSA is required by law or court order to disclose the statement;
 - (b) where the disclosure of confidential information relates to private civil litigation. In these circumstances, the body requesting the confidential information will be required to obtain an AIFC Court order compelling the AFSA to disclose the confidential information. The AFSA will notify the Person who is the subject of the request so that the Person has an opportunity to challenge the request according to the Rules of the AIFC Court;
 - (c) where the fairness of the case requires it. Notice may be appropriate where there are serious and legitimate concerns about the appropriateness of the disclosure, for example, where the body requesting the confidential information does not perform a financial services related regulatory function. In addition there may be some other obvious reason why it might be helpful (in order to enable a fully informed decision to be made) to give notice in order to get a response from the subject of disclosure or the source of the information. One of the relevant considerations is whether the body receiving the confidential information is itself



obliged to provide the Person concerned with an opportunity to make representations, should it decide to rely on the information disclosed to it.

(24) The AFSA will not normally give notice in the following circumstances:

- (a) where it may prejudice an ongoing or pending investigation, whether carried out by the AFSA or another Financial Services Regulator or supervisory agency or prejudice actions which the AFSA or the Financial Services Regulator or supervisory agency may want to take as a result of an investigation (e.g. freezing assets before they disappear);
- (b) where it may reveal the identity of informants or Persons who provided the AFSA with information about potential misconduct of firms or individuals in accordance with the [Protected Reporting Regulations] in the expectation that their identity would be kept confidential;
- (c) where it may prejudice or jeopardise the AFSA's ability to effectively discharge its monitoring and other regulatory functions particularly in its supervisory function where there is frequently a need for real-time disclosures of confidential information by telephone, e-mail or fax;
- (d) where it is agreed or understood that the regulatory practice is that certain confidential information will be passed on without notice, particularly in the context of disclosure to Financial Services Regulators that supervise international firms;
- (e) where the information disclosed to the Financial Services Regulator or supervisory agency is not adverse to the Person concerned (e.g. letters to Financial Services Regulators indicating that there is no adverse information, or information as to the authorisation status of firms and individuals);
- (f) where it may undermine other Financial Services Regulators' fitness and propriety tests; or
- (g) where it may seriously prejudice the AFSA's relations with Financial Services Regulators, considering the AFSA's bilateral and international obligations and the need for effective mutual cooperation and information sharing.

142. Right to obtain confidential information

(25) The AFSA may obtain confidential information pursuant to a Memorandum of Understanding (MoU) with another Financial Services Regulator.



(26) This part describes how the AFSA protects, uses and discloses confidential information that it receives pursuant to a MOU.

143. Procedures for assessing disclosure

(27) Section 9 ensures the confidentiality of information provided to the AFSA. This includes any confidential information received by the AFSA from a Financial Services Regulator under a MOU or similar arrangement. All information received under a MOU will be expressly marked to indicate that it is confidential regulatory information provided under a MOU from an identified Financial Services Regulator.

(28) Section 10 enables the AFSA to release confidential information to certain bodies for the purposes of assisting the performance of their regulatory functions. The release of any confidential information by the AFSA to a third party and the method of releasing this information will be assessed and approved by a senior officer of the AFSA with delegated authority to make such a release. The delegated senior officer will consider the relevant provisions of these Regulations (particularly sections 16 and 17) in deciding whether to release confidential information to third parties.

(29) Any AFSA staff member identifying the possible release of any confidential information will ensure that the delegated senior officer assessing and approving the release is aware of the origin(s) of the information and the legal basis upon which the release is required to be made.

(30) The AFSA staff member and the delegated senior officer assessing and approving the release will ensure that:

(a) the receiving party is made fully aware of the protected status of the confidential information;

(b) the providing Financial Services Regulator has been approached to seek written approval for the information's release to the receiving party;

(c) where a providing Financial Services Regulator does not approve the release of the confidential information, the AFSA takes all reasonable efforts, including any legal steps, to protect the information from disclosure;

(d) if the AFSA's efforts to protect the confidential information from disclosure are unsuccessful, e.g. to a Court, the AFSA informs the providing Financial Services Regulator, and requests the receiving party to ensure that the confidential information is not made public.

(31) Generally, the AFSA will ensure that information released under section 10 retains its confidential status by imposing conditions on the receiving party that the information



should only be used for a regulatory purpose and will not be released to any third party without the prior consent of the AFSA.

144. Where information is subject to a legally enforceable demand

(32) In cases where the confidential information obtained from a Financial Services Regulator under a MoU is subject to a legally enforceable demand (such as a subpoena, notice or court order), the AFSA will notify the providing authority when the demand is received by the AFSA.

(33) In the event of a legally enforceable demand, the AFSA will assert any legal rights, exemptions or privileges to protect such confidential information that are legally available to it. These may include, for example, objections to disclosure based on a claim of public interest immunity (see section 21 below).

145. Disclosure to a Court

(34) The AIFC Court deals exclusively with all cases and claims arising out of the AIFC and its operations. The AIFC Court has jurisdiction over civil and commercial matters only and do not have jurisdiction in criminal and administrative proceedings. All criminal matters are heard and determined by the courts of the Republic of Kazakhstan.

(35) The AIFC Court's enabling legislation, the Constitutional Law, gives it exclusive judicial jurisdiction in the AIFC and over AIFC bodies including the AFSA. Therefore, the AFSA is obliged by law to disclose confidential information if it is compelled to do so pursuant to an order from the AIFC Court.

(36) As the criminal laws of the Republic of Kazakhstan apply in the AIFC, the AFSA is obliged to comply with any legally enforceable demand or order from a competent authority responsible for administering the criminal laws in Kazakhstan. This includes orders or demands to disclose confidential information.

146. Public interest immunity and similar claims

In an appropriate case, and particularly where a party to court proceedings seeks disclosure of confidential information obtained by the AFSA under a MoU (see section 19 above), the AFSA will seek to invoke a claim of public interest immunity (PII) to resist the disclosure. In common law, where a government department or other public body considers that the disclosure of particular information in the course of civil or criminal litigation would be seriously harmful to the public interest, the department or body may ask the court not to order disclosure, by making a claim, in civil litigation, of PII, and, in the case of criminal litigation, a similar claim in substance. The AFSA considers that a PII claim would be appropriate, in the context of its functions, where disclosure would prejudice its ability to perform those functions or jeopardise its ability to receive information



in the future from certain sources, including Financial Services Regulators, and in such a case it would make the claim on the source's behalf.

In this section, the underlining indicates a new text and the striking through indicates deleted text in the proposed amendments

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PROPOSED AMENDMENTS to AIFC INSOLVENCY RULES

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PART 1: GENERAL

1.1. Name

These Rules are the [~~AIFC Insolvency Rules 2017 (or IR)~~].

1.2. Commencement

These Rules commence on ~~1 January 2018~~.~~***~~.

1.3. Legislative authority

These Rules are adopted by the Board of Directors of the AFSA under section 181 (Power to adopt rules etc.) of the AIFC Companies Regulations.

1.4. Application of these Rules

These Rules apply within the jurisdiction of the AIFC.

1.5. Definitions etc.

1.5.1 Schedule 4 (Interpretation) contains definitions used in these Rules.

1.5.2 Terms used in these Rules (other than terms defined in Schedule 4) have the same meanings as they have, from time to time, in the AIFC Insolvency Regulations, or the relevant provisions of those Regulations, unless the contrary intention appears.

Note: For definitions in the AIFC Insolvency Regulations applying to these Rules, see Schedule 3 of those Regulations. The definitions in that Schedule relevant to these Rules include the following:

- Administrative Receiver, in relation to a Company
- Administrator, in relation to a Company
- AFSA
- AIFC
- AIFC Regulations
- AIFC Rules
- AIFCA
- Company
- Contravention
- Court
- Creditors Voluntary Winding Up, in relation to a Company
- Document
- Exercise
- Fail
- Function
- Goes into Liquidation
- Insolvency, in relation to a Company
- Insolvency Practitioner
- Liquidator, in relation to a Company
- Members Voluntary Winding Up, in relation to a Company
- Nominee, in relation to a proposed Voluntary Arrangement for a Company

- Official Liquidator
- Person
- Provisional Liquidator, in relation to a Company
- Receiver, in relation to a Company
- Registrar of Companies (or Registrar)
- Supervisor, in relation to a Voluntary Arrangement for a Company
- Unable to Pay its Debts, in relation to a Company or Recognised Company
- Voluntary Arrangement
- Voluntary Winding Up
- Writing.

~~1.5.3~~

1.5.3 Subject to subrule 1.5.2, terms used in these Rules (other than terms defined in Schedule 4 or the AIFC Insolvency Regulations) have the same meanings as they have, from time to time, in the AIFC Companies Regulations or the AIFC Companies Rules, or the relevant provisions of those Regulations, unless the contrary intention appears.

Note: For definitions in the AIFC Companies Regulations applying to these Rules, see Schedule 1 of those Regulations. The definitions in that Schedule relevant to these Rules include the following:

- Acting Law of the AIFC
- Articles of Association
- Share
- Shareholder.

~~1.6.~~

Note: For definitions in the AIFC Companies Rules applying to these Rules, see Schedule 4 of those Rules. The definitions in that Schedule relevant to these Rules include the following:

- Cell
- Cell Receiver
- Cell Receivership Order
- Cell Shares
- Cell Transfer Order
- Cellular Assets
- Protected Cell Company
- Non-Cellular Assets.

1.6. Administration of these Rules

These Rules are administered by the Registrar of Companies.

PART 2: VOLUNTARY ARRANGEMENTS

~~2.1.~~

2.1. Preparation of proposal etc.

~~2.1.1~~

2.1.1 If the Directors of a Company wish to propose a Voluntary Arrangement under section 8 (Company arrangements) of the AIFC Insolvency Regulations, the Directors must appoint an Insolvency Practitioner under that section as the Nominee and prepare and give to the Nominee a proposal that includes the following matters:

~~(a)~~

(a) an estimate of the value of the Company's assets (other than assets that are Excluded Property);

~~(b)~~

(b) a statement of the extent (if any) to which those assets are secured in favour of the Company's creditors;

~~(c)~~

(c) a statement of the extent (if any) to which particular assets of the Company are to be excluded from the arrangement;

~~(d)~~

(d) particulars of any property, other than assets of the Company itself, that is proposed to be included in the arrangement, the source of the property, and the terms on which it is to be made available for inclusion;

~~(e)~~

(e) a statement of the nature and amount of the Company's liabilities (other than liabilities in relation to Excluded Property) and, so far as it is within the Directors' immediate knowledge, how those liabilities are proposed to be met, modified, postponed or otherwise dealt with under the arrangement, and, in particular:

(i) how it is proposed to deal with Preferential Creditors and creditors of the Company who are, or claim to be, secured; and

(ii) how Persons connected with the Company who are creditors are proposed to be treated under the arrangement; and

(iii) whether there are, to the Directors' knowledge, any circumstances giving rise to the possibility that, if the Company were to go into liquidation, claims may be made under section 96 (Transactions at undervalue), 97 (Preferences) or 99 (Invalid security interests) of the AIFC Insolvency Regulations and, if any such circumstances exist, whether and, if so how, it is proposed under the arrangement to make provision for completely or partly indemnifying the Company in relation to the claims;

~~(f)~~

(f) for Excluded Property of the Company—the information mentioned in paragraphs (a), (b), (d) and (e);

~~(g)~~

(g) a statement of whether any, and, if so, what, guarantees have been given of the Company's debts by other Persons, and, if there are any such guarantees, which of the guarantors are Persons connected with the Company;

~~(h)~~

(h) a statement of the proposed duration of the arrangement;

~~(i)~~

(i) information about the proposed dates of distributions to creditors and estimates of the amounts of the distributions;

- (j) a statement of how it is proposed to deal with the claims of any Persons who do not consent to the arrangement;
- (k) a statement of the amount proposed to be paid to the Nominee for remuneration and expenses;
- (l) a statement of how it is proposed that the Supervisor of the arrangement should be remunerated and the Supervisor's expenses defrayed;
- (m) a statement of whether, for the purposes of the arrangement, any guarantees are to be offered by Directors, or other Persons and, if so, whether any Security Interest is to be given or sought;
- (n) a statement of how funds held for the purposes of the arrangement are to be banked, invested, or otherwise dealt with, pending distribution to creditors;
- (o) a statement of how funds held for the purpose of payment to creditors, and not paid to creditors on the termination of the arrangement, are to be dealt with;
- (p) a statement of how the business of the Company is proposed to be conducted during the course of the arrangement;
- (q) details of any further credit facilities that are intended to be arranged for the Company, and a statement of how the debts arising from them are to be paid;
- (r) a statement of the Functions to be Exercised by the Supervisor of the arrangement;
- (s) a statement of whether it is likely that there will be other proceedings in other jurisdictions.

~~2.1.2~~

2.1.2 If the Company is an Authorised Person, the Directors must obtain the consent of the AFSA before giving the proposal to the Nominee.

~~2.2.~~

2.2. **Statement of affairs for proposal**

~~2.2.1~~

2.2.1 The Directors of the Company must, within 7 days after the day their proposal is given to the Nominee under rule 2.1 (Preparation of proposal etc.) or any longer time that the Nominee may allow, give the Nominee a statement of the Company's affairs (the *statement of affairs*).

~~2.2.2~~

2.2.2 The statement of affairs must include particulars of the matters mentioned in Schedule 3 (Required content for statement of affairs).

~~2.2.3~~

2.2.3 The statement of affairs must be made up to a date not earlier than 2 weeks before the day the proposal is given to the Nominee. However, the Nominee may allow an extension of that period to the nearest practicable date (not earlier than 2 months before that day).

~~2.2.4~~

2.2.4 Two or more Directors of the Company (or, if the Company has only 1 Director, the Director) must certify that the statement of affairs is correct to the best of the Directors' (or Director's) knowledge and belief.

~~2.3.~~

2.3. **Nominee may ask for additional information in relation to proposal**

The Nominee may ask the Directors of the Company to provide any additional information that the Nominee considers necessary. The Directors must take all reasonable steps to comply with the request.

~~2.4.~~

2.4. Calling meetings for proposed Voluntary Arrangement

~~2.4.1~~

2.4.1 Notice of a meeting called by the Nominee under section 10 (Calling of meetings for Voluntary Arrangement proposal) of the AIFC Insolvency Regulations must be accompanied by the following:

- (a) a copy of the Directors' proposal;
- (b) a copy of the statement of affairs given to the Nominee under rule 2.2 (Statement of affairs for proposal) or, if the Nominee considers appropriate, a summary of it;
- (c) the Nominee's comments on the proposal.

~~2.4.2~~

2.4.2 A summary under subrule 2.4.1(b) must include a list of creditors and the amounts of their debts.

~~2.5.~~

2.5. Majority required at creditors meeting for proposed Voluntary Arrangement

At the meeting of the Company's creditors called under section 10 (Calling of meetings for Voluntary Arrangement proposal) of the AIFC Insolvency Regulations, a resolution approving any proposal or modification is taken to have been passed only if it is passed by a majority of more than three-quarters in value of the creditors present in person or by Proxy and voting on the resolution.

~~2.6.~~

2.6. Handover of property to Supervisor etc.

~~2.6.1~~

2.6.1 If an approved Voluntary Arrangement for the Company takes effect under section 12 (Effect of approval of Voluntary Arrangement proposal) of the AIFC Insolvency Regulations, the Directors, and other Persons connected with the Company with power to do so, must immediately do everything necessary to give the Supervisor possession of the assets included in the Voluntary Arrangement and, if applicable, give the Supervisor control of any Excluded Property included in the Voluntary Arrangement.

~~2.6.2~~

2.6.2 If the Company is in liquidation, the Supervisor must on taking possession of the assets either discharge any amount due to the Liquidator by way of remuneration or on account of fees, costs, charges and expenses properly incurred and payable under the AIFC Insolvency Regulations or these Rules or, before taking possession, give the Liquidator a written undertaking to discharge any amount due out of the first realisation of assets.

~~2.6.3~~

2.6.3 The Supervisor has a Security Interest in the assets (other than any Excluded Property) included in the Voluntary Arrangement for payment of any amount due to the Liquidator, subject only to the deduction from realisations by the Supervisor of the proper costs and expenses of the realisations.

~~2.6.4~~

2.6.4 The Supervisor must, from time to time, out of the realisation of assets (other than any Excluded Property) discharge all guarantees properly given by the Liquidator for the benefit of the Company and must pay all of the Liquidator's expenses.

~~2.7.~~

2.7. Supervisor's duties in relation to Excluded Property

~~2.7.1~~

2.7.1 If the Company's assets or liabilities include Excluded Property, the Supervisor of the Voluntary Arrangement must comply with any requirements applying to the Company under the AIFC Personal Property Regulations or any AFSA Rules in relation to the Excluded Property.

~~2.7.2~~

2.7.2 Without limiting subrule 2.7.1, the Supervisor must comply with any instruction made under

section 37 (Right of Transfer against insolvent Investment Intermediary) of the AIFC Personal Property Regulations.

~~2.8.~~

2.8. Supervisor's accounts and reports

~~2.8.1~~

2.8.1 The Supervisor of the Voluntary Arrangement for the Company must keep accounts and records of the Supervisor's acts and dealings in and in connection with the Voluntary Arrangement, including records of all receipts and payments

~~2.8.2~~

2.8.2 The Supervisor must, not less often than once in every 12 months beginning with the date of the Supervisor's appointment, prepare an abstract of all receipts and payments of the Supervisor in and in connection with the Voluntary Arrangement, and send copies of it, accompanied by the Supervisor's comments on the progress and efficacy of the arrangement, to the following:

- (a) the Court;
- (b) the Registrar of Companies;
- (c) the Company;
- (d) all of the Company's creditors who are bound by the arrangement;
- (e) the members of the Company who are bound by the arrangement;
- (f) if the Company is not in liquidation—the Company's auditors.

~~2.8.3~~

2.8.3 However, if in any 12-month period the Supervisor makes no payments, and has no receipts, in or in connection with the Voluntary Arrangement, the Supervisor must at the end of that period send a statement to that effect to all the Persons mentioned in subrule 2.8.2.

~~2.9.~~

2.9. Fees, costs, charges and expenses for Voluntary Arrangement

The fees, costs, charges and expenses that may be incurred for any of the purposes of the Voluntary Arrangement are:

- (a) any disbursements made by the Nominee before the arrangement took effect, and any remuneration for the Nominee's services agreed between the Nominee and the Company (or, as the case may be, the Administrator of the Company); and
- (b) any fees, costs, charges or expenses that:
 - (i) are in accordance with the terms of the arrangement; or
 - (ii) would be payable, or correspond to those that would be payable, in a winding up. ~~2.10.~~

(#)2.10. Completion or termination of Voluntary Arrangement

~~2.10.1~~

2.10.1 Not later than 28 days after the day of the completion or termination of the Voluntary Arrangement, the Supervisor must send to the creditors and members of the Company who were bound by it notice that the Voluntary Arrangement has been fully implemented or has terminated.

~~2.10.2~~

2.10.2 The notice must be accompanied by a copy of a report by the Supervisor summarising all receipts and payments made by the Supervisor in or in connection with the Voluntary Arrangement,

explaining in relation to implementation of the arrangement any departure from the arrangement as it took effect, and, if the arrangement has terminated, explaining why the arrangement has terminated.

~~2.10.3~~

2.10.3 The Supervisor must, within the 28-day period mentioned in subrule 2.10.1, send a copy of the notice under that subrule and the report under subrule 2.10.2 to the Registrar of Companies and the Court.

~~2.10.4~~

2.10.4 The Supervisor may not vacate office until this rule has been complied with.

PART 3: MORATORIUM

~~3.1.~~

3.1. Preparation of proposal by Directors to obtain a moratorium

~~3.1.1~~

3.1.1 If the Directors of a Company eligible for a moratorium under section 9 of the AIFC Insolvency Regulations intend to make a proposal for a Voluntary Arrangement and wish to take steps to obtain a moratorium for the Company, the Directors must prepare a proposal for the moratorium. The Document containing the proposal must explain why the Directors consider that a moratorium would be of benefit to creditors. The proposal may be accompanied by the supporting Documents that the Directors consider relevant. The proposal for the Voluntary Arrangement and the proposal for the moratorium may be made in the same Document.

~~3.1.2~~

3.1.2 The proposal for the moratorium and the supporting Documents (if any) must be given to the Nominee for the proposed Voluntary Arrangement or to a Person authorised to accept service of Documents on behalf of the Nominee. On receipt of the Documents, the Nominee must immediately acknowledge receipt of them to the Directors. The acknowledgement must indicate the date the Documents were received by or on behalf of the Nominee.

~~3.1.3~~

3.1.3 The Nominee must apply to the Court for a moratorium. The Court may grant the application.

~~3.2.~~

3.2. Advertisement and notice of beginning of moratorium

~~3.2.1~~

3.2.1 If the Court grants the Nominee's application for a moratorium for the Company, the Nominee must, as soon as possible, advertise the coming into force of the moratorium once in the newspaper the Nominee considers most appropriate for ensuring that its coming into force comes to the notice of the Company's creditors. The advertisement must specify the date the moratorium came into force.

~~3.2.2~~

3.2.2 The Nominee must, as soon as possible, also notify the Registrar of Companies, the Company, and any creditor of the Company of whose claim the Nominee is aware, of the coming into force of the moratorium. The notification must specify the date the moratorium came into force.

~~3.3.~~

3.3. Advertisement and notice of end of moratorium

~~3.3.1~~

3.3.1 As soon as possible after the moratorium for the Company comes to an end, the Supervisor of the Voluntary Arrangement for the Company must advertise its coming to an end once in the newspaper the Supervisor considers most appropriate for ensuring that its coming to an end comes to the notice of the Company's creditors. The advertisement must specify the date the moratorium came to an end.

~~3.3.2~~

3.3.2 The Supervisor must, as soon as possible, also notify the Registrar of Companies, the Court, the Company, and any creditor of the Company of whose claim the Supervisor is aware, of the moratorium coming to an end. The notification must specify the date the moratorium came to an end.

~~3.4.~~

3.4. Eligibility for moratorium

~~3.4.1~~

3.4.1 A Company is eligible for a moratorium under section 9 (Moratorium) of the AIFC Insolvency Regulations unless:

~~(a)~~

(a) it is an Authorised Person and:

~~(i)~~

(i) effects or carries out contracts of insurance; or

- (ii) accepts deposits; or
- (iii) is an Investment Intermediary; or
- (iv) holds Money to which any AFSA Rules relating to the holding of client Money apply; or
- (b) it is the debtor under a Security Interest of a type prescribed under the AIFC Security Rules for this paragraph; or
- (c) it or any of its property is subject to the business rules of an Authorised Market Institution; or
- (d) it is the subject of any kind of Insolvency Proceedings; or
- (e) it has incurred any liability under an agreement of US\$20 million or more; or
- (f) it is a party to a capital market arrangement.

3.4.2

3.4.2 For subrule 3.4.1, an arrangement is a *capital market arrangement* if, under the arrangement:

- (a) a party to the arrangement has issued securities (within the meaning given by the AIFC Security Regulations); and
- (b) any of the following conditions is satisfied:
 - (i) a Person holds a Security Interest as nominee or agent for a Person who holds the securities;
 - (ii) at least one party guarantees or provides a Security Interest in relation to the performance of obligations of another party;
 - (iii) the arrangement involves a Future.

3.5.

3.5. **Effect of moratorium**

During the period for which a moratorium is in force for a Company:

- (a) no petition may be presented for the winding up of the Company; and
- (b) no meeting of the Company may be called or requested, except with the consent of the Supervisor or with the leave of the Court and subject to the terms that the Court may decide; and
- (c) no resolution may be passed or order made for the winding up of the Company; and
- (d) no application may be made for the appointment of an Administrator for the Company, and no Administrator of the Company may be appointed; and
- (e) no lessor or other Person to whom rent is payable may exercise any right of forfeiture in relation to premises let to the Company for a Failure by the Company to comply with its tenancy of the premises, except with the leave of the Court and subject to the terms that the Court may decide;

and

- (f) no other steps may be taken to enforce any Security Interest in the Company's property, or to repossess goods in the Company's possession under any hire-purchase agreement, except with the leave of the Court and subject to the terms the Court may decide, and
- (g) no other proceedings, and no execution or other legal process, may be commenced or continued, and no distress may be levied, against the Company or its property, except with the leave of the Court and subject to the terms that the Court may decide.

~~3.6.~~

3.6. Security Interests in moratorium

~~3.6.1~~

3.6.1 If a moratorium is in force for a Company, a Secured Party under a Security Interest over substantially all of the property of the Company must not take any step to enforce the Security Interest until the moratorium has come to an end.

~~3.6.2~~

3.6.2 If a Security Interest is granted by a Company at a time when a moratorium is in force for the Company, the Security Interest may only be enforced if, at that time, there were reasonable grounds for believing that it would benefit the Company.

~~3.7.~~

3.7. Requirements for invoices, obtaining credit etc. in moratorium

~~3.7.1~~

3.7.1 This rule applies in relation to a Company if a moratorium is in force for the Company.

~~3.7.2~~

3.7.2 Every invoice, order for goods, or business letter, issued by or on behalf of the Company, and on or in which the Company's name appears, must also contain the Supervisor's name and a statement that a moratorium is in force for the Company.

~~3.7.3~~

3.7.3 The Company must not obtain credit of US\$500 or more from a Person who has not been told that a moratorium is in force for the Company.

~~3.7.4~~

3.7.4 The reference in subrule 3.7.3 to the Company *obtain credit* includes a reference to the following cases:

- (a) if goods are bailed to the Company under a hire-purchase agreement, or goods are agreed to be sold to the Company under a conditional sale agreement;
- (b) if the Company is paid in advance (whether or not in money) for the supply of goods or services.

~~3.7.5~~

3.7.5 The Company may only dispose of any of its property otherwise than in the ordinary course of business if:

- (a) there are reasonable grounds for believing that the disposal will benefit the Company, and
- (b) the disposal is approved by the Supervisor

~~3.7.6~~

3.7.6 The Company may only make a payment in relation to any debt or other liability of the Company in existence before the beginning of the moratorium if:

- (a) there are reasonable grounds for believing that the payment will benefit the Company, and
- (b) the payment is approved by the Supervisor.

~~3.7.7~~

3.7.7 Subrule 3.7.6 does not apply to a payment of any fees or costs, or to any reimbursement of expenses, expressly permitted under these Rules.

~~3.7.8~~

3.7.8 If any property of the Company is subject to a Security Interest, the Company may dispose of the property free of any interest of the Secured Party if the Secured Party consents or the Court gives leave.

~~3.7.9~~

3.7.9 Subrule 3.7.8 does not affect any right that the Secured Party may have in relation to the proceeds of the disposal of the property.

~~3.7.10~~

3.7.10 If any goods are in the Company's possession under a hire-purchase agreement, the Company may dispose of the goods free of any interest of the owner of the goods if the owner consents or the Court gives leave.

~~3.7.11~~

3.7.11 A consent or leave under subrule 3.7.8 or 3.7.10 may be given on the condition that:

- (a) the net proceeds of the disposal; and
- (b) if the net proceeds are less than the amount that may be agreed, or decided by the Court, to be the net amount that would be realised on a sale of the property or goods in the open market by a willing vendor—the amount necessary to make good the difference;

must be applied towards discharging the amount secured by the Security Interest or payable under the hire-purchase agreement.

~~3.7.12~~

3.7.12 If the condition under subrule 3.7.11 relates to 2 or more Security Interests, the condition is taken to require the proceeds and amounts mentioned in that subrule to be applied towards discharging the amounts secured by the Security Interests in the order of their priorities.

~~3.7.13~~

3.7.13 The Company must not enter into any transaction, or give any Security Interest, subject to the business rules of an Authorised Market Institution.

~~3.7.14~~

3.7.14 The fact that the Company enters into a transaction in Contravention of this rule does not:

- (a) make the transaction void; or
- (b) make it to any extent unenforceable by or against the Company.

PART 4: RECEIVERSHIP

~~4.1.~~

4.1. Types of receivership etc.

The types of receivership and the Functions of Receivers and Administrative Receivers are as set out in section 14 (Appointment and Functions of Receivers and Administrative Receivers) of the AIFC Insolvency Regulations.

~~4.2.~~

4.2. Application of Rules to Company with Administrative Receiver-

These Rules apply to a Company in Administration as if:

- (a) the Exercise of the Administrative Receiver's Functions in relation to the Company were the winding up of the Company; and
- (b) all other necessary changes were made.

~~4.3.~~

4.3. Notice of appointment etc.

~~4.3.1~~

4.3.1 If a Person is appointed as a Receiver or Administrative Receiver for a Company, the Person must publish once, in the newspaper the Person considers most appropriate for ensuring that it comes to the notice of the Company's creditors, a notice that includes the following information:

- (a) the registered name of the Company, as at the date of the appointment, and its registered number;
- (b) any other name with which the Company has been registered in the 12 months before that date;
- (c) any name under which the Company has traded at any time in those 12 months, if the name is substantially different from its then registered name;
- (d) the Person's name and address, and the date of the Person's appointment;
- (e) the name of the Person by whom the appointment was made;
- (f) the date of the instrument appointing the Person, and a brief description the Person's Functions under the instrument;
- (g) if the Person is appointed as a Receiver—a brief description of the property of the Company over which the Person is appointed as a Receiver.

~~4.3.2~~

4.3.2 If the Company is an Authorised Person, the Person must also immediately notify the AFSA in Writing of the appointment and must not Exercise any of the Person's Functions as Receiver or Administrative Receiver unless the AFSA as given its prior Written consent to the Exercise of the Functions.

~~4.4.~~

4.4. Requirement to prepare statement of affairs etc.

~~4.4.1~~

4.4.1 An Administrative Receiver of a Company may require a statement of the Company's affairs (the *statement of affairs*) to be prepared and given to the Administrative Receiver by the Directors of the Company and by the other Persons that the Administrative Receiver considers should be made responsible for the statement of affairs.

~~4.4.2~~

4.4.2 If the Administrative Receiver decides to require the statement of affairs to be prepared, the Administrative Receiver must, by notice given to each Director and other Person mentioned in subrule 4.4.1, require them to prepare the statement of affairs, and give it to the Administrative Receiver, within the period specified in the notice.

~~4.4.3~~

4.4.3 The statement of affairs prepared under this rule must include particulars of the matters mentioned in Schedule 3 (Required content for statement of affairs).

~~4.4.4~~

4.4.4 A Person making or contributing to the statement of affairs must be allowed, and paid by the Administrative Receiver out of the Administrative Receiver's receipts, any expenses incurred by the Person in doing so that the Administrative Receiver considers reasonable.

~~4.5.~~

4.5. **Creditors committee**

If a creditors committee is not established under section 22(1) (Creditors committee) of the AIFC Insolvency Regulations for a Company for which an Administrative Receiver is appointed, the Administrative Receiver may appoint a creditors committee for the Company.

~~4.6.~~

4.6. **Disposal of charged property**

If the Court makes an order under section 18 (Power of Administrative Receiver to dispose of charged property) of the AIFC Insolvency Regulations in relation to property of a Company that is subject to a Security Interest, the Administrative Receiver of the Company must, as soon as possible, give notice of the order to the Person who is the holder of the Security Interest if the Person was not a party to the proceeding in which the order was made.

~~4.7.~~

4.7. **Receiver's duties in relation to Excluded Property etc.**

~~4.7.1~~

4.7.1 A Receiver or Administrative Receiver of a Company whose assets or liabilities include Excluded Property must comply with any requirements applying to the Company under the AIFC Personal Property Regulations, or any AFSA Rules, in relation to the Excluded Property.

~~4.7.2~~

4.7.2 Without limiting subrule 4.7.1, the Receiver or Administrative Receiver must comply with any instruction made under section 37 (Right of Transfer against insolvent Investment Intermediary) of the AIFC Personal Property Regulations.

~~4.8.~~

4.8. **Abstracts of receipts and payments by Administrative Receiver**

An Administrative Receiver of a Company must prepare an abstract of all receipts and payments as Administrative Receiver, and send it to the Registrar of Companies, the Company and the Person by whom the Administrative Receiver was appointed:

(a) within 2 months after the end of the period of 12 after the date of the Administrative Receiver's appointment, and after every subsequent period of 12 months; and

(b) within 2 months after ceasing to be Administrative Receiver.

~~4.9.~~

4.9. **Resignation of Receiver or Administrative Receiver**

~~4.9.1~~

4.9.1 A Receiver or Administrative Receiver of a Company (the *receiver*) may resign by giving notice of the resignation in accordance with this rule.

~~4.9.2~~

4.9.2 The notice must be given to each of the following:

- (a) the Person by whom the receiver was appointed;
- (b) the Company or, if it is then in liquidation, its Liquidator;
- (c) if the Company has a creditors committee—the members of the committee.

~~4.9.3~~

4.9.3 The notice must specify the date the resignation is to take effect. The date specified must not be earlier than 7 days after the day the notice is given to each of the Persons mentioned in subrule ~~4.9.2 or, if the notice is given to them on 2 or more different days, the last of those days.~~

4.9.2 or, if the notice is given to them on 2 or more different days, the last of those days.

PART 5: WINDING UP

~~5.1.~~

5.1. Disapplication of provisions of Part 5 for Voluntary Winding Up

~~5.1.1~~

5.1.1 If a Company is subject to a Members Voluntary Winding Up, only the following provisions of Part 5 (Winding up) apply in relation to the winding up:

- (a) rules 5.6 to 5.8;
- (b) rules 5.16 to 5.30;
- (c) rule 5.53.

~~5.1.2~~

5.1.2 If a Company is subject to a Creditors Voluntary Winding Up, the following provisions of Part 5 do not apply in relation to the winding up:

- (a) rules 5.2 to 5.5;
- (b) rule 5.10;
- (c) rule 5.11.

~~5.2.~~

5.2. Statutory demand

~~5.2.1~~

5.2.1 A written demand served by a creditor on a Company under section 50(1)(a) of the AIFC Insolvency Regulations is called the *statutory demand*.

~~5.2.2~~

The statutory demand must be dated, and be signed either by the creditor personally or by a Person

5.2.2 stating that the Person is authorised to make the demand on the creditor's behalf.

~~5.2.3~~

5.2.3 The statutory demand must state the amount of the Debt then due and how it arises, include an explanation of the purpose of the demand, and state that, if the demand is not complied with, proceedings may be commenced for the winding up of the Company.

~~5.2.4~~

5.2.4 The statutory demand must provide information about how the Debt may be paid, and give information about a Person whom the Company can contact, including an address and telephone number.

~~5.3.~~

5.3. Presentation of winding up petition etc.

~~5.3.1~~

5.3.1 A winding up order under section 49 (Circumstances in which Company may be wound up by Court) of the AIFC Insolvency Regulations may be made by the Court on the presentation of a petition by a Person permitted to present the petition.

~~5.3.2~~

5.3.2 For section 51 (Application for winding up) of the AIFC Insolvency Regulations, if a Company is an Authorised Person, the AFSA may also make an application to the Court for the winding up of the Company.

~~5.3.3~~

5.3.3 A petition for the winding up of a Company must be filed in the Court and, if the petitioner is not the Company, must be served on the Company.

~~5.3.4~~

5.3.4 If the Company is an Authorised Person and the petitioner is not the AFSA, the petitioner must serve a copy of the petition on the AFSA.

~~5.3.5~~

5.3.5 If, to the petitioner's knowledge, an Administrative Receiver or Receiver has been appointed in relation to assets of the Company, the petitioner must serve a copy of the petition on the Administrative Receiver or Receiver.

~~5.3.6~~

5.3.6 If the Company intends to oppose the petition, it must notify the Court of its intention not later than 7 days before the date fixed for the hearing.

~~5.4.~~

5.4. **Advertisement of petition**

Unless the Court otherwise directs, the petitioner must, not later than 7 business days after the day the petition is served on the Company, advertise the presentation of the petition in the newspaper the petitioner considers most appropriate for ensuring that the presentation of the petition comes to the notice of the Company's creditors and members.

~~5.5.~~

5.5. **Notice of winding up order and appointment of Provisional Liquidator**

~~5.5.1~~

5.5.1 If a winding up order is made for a Company, the Court must, as soon as possible, give notice of the making of the order to the Company, the petitioner (if the Company is not the petitioner), the AFSA (if the Company is an Authorised Person and the AFSA is not the petitioner) and any other Person represented at the hearing of the petition.

~~5.5.2~~

5.5.2 The Court must also publish notice of the making of the order once in the newspaper the Court considers most appropriate for ensuring that the making of the order comes to the notice of the Company's creditors and members.

~~5.6.~~

5.6. **Requirement to prepare statement of affairs etc.**

~~5.6.1~~

5.6.1 The Liquidator may require a statement of the Company's affairs (the *statement of affairs*) to be prepared and given to the Liquidator by the Directors of the Company and by the other Persons that the Liquidator considers should be made responsible for the statement of affairs.

~~5.6.2~~

5.6.2 If the Liquidator decides to require the statement of affairs to be prepared, the Liquidator must, by notice given to each Director and other Person mentioned in subrule 5.6.1, require them to prepare the statement of affairs, and give it to the Liquidator, within the period specified in the notice.

~~5.6.3~~

5.6.3 The statement of affairs prepared under this rule must include particulars of the matters mentioned in Schedule 3 (Required content for statement of affairs).

~~5.6.4~~

5.6.4 The Liquidator must make the statement of affairs publicly available. However, the Liquidator is not required to make the statement, or any part of it, publicly available if the Liquidator considers that the publication of the statement, or that part of it, might reduce the amount recovered in the liquidation.

~~5.6.5~~

5.6.5 The Liquidator may agree to authorise an allowance, payable out of the assets of the Company, towards expenses incurred in preparing the statement of affairs.

~~5.7.~~

5.7. **Access of Liquidator to accounts etc.**

~~5.7.1~~

5.7.1 The Liquidator of a Company is entitled to demand access to, and copies of, the accounts, books and records of the Company for the period the Liquidator considers necessary.

~~5.7.2~~

5.7.2 If a Person is required to provide accounts to the Liquidator, the Liquidator may authorise an

allowance, payable out of the assets of the Company, towards expenses incurred by the Person in employing others to assist the Person to prepare the accounts.

~~5.8.~~

5.8. Liquidator may require further disclosure

The Liquidator may, at any time, require any Person to provide information, in Writing, amplifying, modifying or explaining any matter contained in any statement of affairs or accounts prepared, or given to the Liquidator, (however described) under the AIFC Insolvency Regulations or these Rules.

~~5.9.~~

5.9. General rule about reporting

~~5.9.1~~

5.9.1 The Court may, on the Liquidator's application, relieve the Liquidator of any duty of the Liquidator under these Rules, or authorise the Liquidator to perform the duty in a way different to the way required under these Rules.

~~5.9.2~~

5.9.2 In considering an application under subrule 5.9.1, the Court must have regard to the cost of carrying out the relevant duty, the amount of the assets of the Company available, and the extent of the interest of creditors or members or any particular class of them.

~~5.10.~~

5.10. First meetings of creditors and contributories

~~5.10.1~~

5.10.1 If, under section 57(1) (Choice of Liquidator by Court or meetings of creditors and contributories) of the AIFC Insolvency Regulations, the Liquidator decides to call meetings of the Company's creditors and contributories to nominate a Person to be liquidator of the Company, the Liquidator must fix the Venue for each meeting. The meetings must be fixed to be held no later than 4 months after the date of the winding up order.

~~5.10.2~~

5.10.2 The notice to creditors must specify a time and date, not more than 4 days before the date fixed for the meeting, by which they must lodge their Proofs to be entitled to vote at the meeting and by which they must lodge any Proxies for the meeting. The notice to contributories must specify a date and time, not more than 4 days before the date fixed for the meeting, by which they must lodge any Proxies for the meeting.

~~5.10.3~~

5.10.3 Notice of the meetings must also be given by public advertisement.

~~5.10.4~~

5.10.4 The meetings (if any) called by the Liquidator under this rule are respectively referred to as the *First Meeting of Creditors* and the *First Meeting of Contributories*.

~~5.10.5~~

5.10.5 If the Company is an Authorised Person, a copy of the notice to creditors must also be given to the AFSA.

~~5.11.~~

5.11. First Meeting of Creditors and First Meeting of Contributories

~~5.11.1~~

5.11.1 At the First Meeting of Creditors, only the following resolutions may be taken:

- (a) a resolution to appoint a named Official Liquidator to be the Liquidator or to appoint 2 or more Official Liquidators as joint Liquidators;
- (b) a resolution to appoint a liquidation committee;
- (c) unless liquidation committee has been appointed, a resolution specifying the terms on which the Liquidator is to be remunerated, or to defer consideration of that matter;

- (d) if 2 or more Persons are appointed to act jointly as the Liquidators—a resolution specifying whether acts are to be done by both or all of them, or by only one and, if so, which one of them;
- (e) a resolution authorising payment out of the assets of the Company, as an expense of the liquidation, of the cost of calling and holding the meeting;
- (f) a resolution to adjourn the meeting for not longer than 3 weeks;
- (g) any other resolution that the chair of the meeting considers should, for special reasons, be allowed.

~~5.11.2~~

5.11.2 Subrule 5.11.1 also applies, with any necessary changes, to the First Meeting of Contributories, but that meeting must not pass any resolution to the effect of the resolutions mentioned in subrule 5.11.1(c) or (e).

~~5.11.3~~

5.11.3 Rule 5.11.1, except paragraph (e), applies, with any necessary changes, to a meeting of creditors called under section 35 (Effect of Company's insolvency) or section 38 (Meeting of creditors) of the AIFC Insolvency Regulations.

~~5.12.~~

5.12. Report by Directors updating statement of affairs

~~5.12.1~~

5.12.1 If, at any meeting, the statement of the Company's affairs presented to the meeting does not state the Company's affairs as at the date of the meeting, the Directors of the Company must cause to be made to the meeting, either by a Director or another Person with knowledge of the relevant matters, a report (whether written or oral) on any material transactions relating to the Company happening between the date of the making of the statement and that of the meeting.

~~5.12.2~~

5.12.2 Any report under subrule 5.12.1 must be recorded in the minutes of the meeting.

~~5.13.~~

5.13. Specific provisions about creditors meetings in liquidation

~~5.13.1~~

5.13.1 This rule applies in relation to a meeting of creditors in the winding up of a Company.

~~5.13.2~~

5.13.2 For a resolution for the appointment of the Liquidator:

- (a) if there is more than 1 Official Liquidator nominated, and one of them has a clear majority over the others together—that Official Liquidator is appointed; and
- (b) in any other case—the chair of the meeting must continue to take votes (disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support last time), until a clear majority is obtained for a nominee.

~~5.13.3~~

5.13.3 The chair may at any time put to the meeting a resolution for the joint appointment of any 2 or more nominees.

~~5.13.4~~

5.13.4 If a resolution is proposed that affects a Person in relation to the Person's remuneration or conduct as Liquidator, or as proposed or former Liquidator, the vote of the Person, and of any partner or employee of the Person, must not be counted in the majority required for passing the resolution. This subrule applies in relation to a vote given by a Person (whether personally or by Proxy) either as creditor or member or as the holder of a Proxy for a creditor or member.

~~5.13.5~~

5.13.5 Subject to rule 5.14 (Admission and rejection of Proofs at creditors meetings), a Person is entitled

to vote as a creditor only if:

- (a) a Proof of the creditor's Debt has been duly lodged (in a winding up by the Court, by the time and date stated in the notice of the meeting) and the claim has been admitted under that rule for the purpose of entitlement to vote; and
- (b) any Proxy necessary for that entitlement has been duly lodged by the time and date stated in the notice of the meeting.

~~5.13.6~~

5.13.6 However, the Court may, in exceptional circumstances, by order declare that the creditors, or the creditors of any class, are entitled to vote at creditors meetings without being required to Prove their Debts.

~~5.13.7~~

5.13.7 If a creditor is entitled to vote at creditors meetings under subrule 5.13.6, the Court may, on the application of the Liquidator, make the consequential orders that it considers appropriate (for example, an order treating a creditor as having Proved the creditor's Debt for the purpose of permitting payment of a dividend).

~~5.13.8~~

5.13.8 Also, a creditor must not vote in relation to a Debt for an unliquidated amount, or a Debt with an unascertained value, unless the chair of the meeting agrees to put an estimated minimum value on the Debt for the purpose of entitlement to vote and admits the Proof for that purpose.

~~5.13.9~~

5.13.9 In addition, a secured creditor is entitled to vote only in relation to the balance (if any) of the creditor's Debt after deducting the value of the creditor's Security Interest as estimated by the creditor.

~~5.13.10~~

5.13.10 The chair of the meeting may also allow a creditor to vote even though the creditor has Failed to comply with subrule 5.13.5, if satisfied that the failure was caused by circumstances beyond the creditor's control.

~~5.14.~~

5.14. Admission and rejection of Proofs at creditors meetings

~~5.14.1~~

5.14.1 At any creditors meeting for a Company, the chair of the meeting may admit or reject, all or any part of, a creditor's Proof for the purpose of the creditor's entitlement to vote.

~~5.14.2~~

5.14.2 Any creditor or member of the Company may appeal to the Court against a decision of the meeting chair under this rule.

~~5.14.3~~

5.14.3 If the chair of the creditors meeting is in doubt about whether a creditor's Proof should be admitted or rejected, the chair must mark it as objected to and allow the creditor to vote, subject to the vote being subsequently declared invalid.

~~5.14.4~~

5.14.4 If on an appeal a decision of the chair is reversed or varied, or a creditor's vote is declared invalid, the Court may order that another meeting be called or make any other order that it considers just. However, the Court may make an order under this subrule only if it considers that there has been unfair prejudice or material irregularity.

~~5.14.5~~

5.14.5 The chair of the meeting is not personally liable for costs incurred by any Person in relation to an appeal under this rule.

~~5.15.~~

5.15. Additional meeting provisions for Authorised Persons

~~5.15.1~~

5.15.1 This rule applies if a Company that is an Authorised Person Goes into Liquidation or proposes to

Go into Liquidation.

~~5.15.2~~

5.15.2 The Directors of the Company must give notice of any meeting of the Company at which it is intended to propose a resolution for its winding up to the AFSA, and any other regulator that the AFSA may require by notice to the Company, (the *Authorities*).

~~5.15.3~~

5.15.3 If a creditors meeting is called by the Liquidator, the Liquidator must give notice of the meeting to the Authorities.

~~5.15.4~~

5.15.4 If the Company is being wound up by the Court, the Liquidator must give notice of the First Meeting of Creditors and the First Meeting of Contributories to the Authorities.

~~5.15.5~~

5.15.5 If, in the winding up (whether voluntary or by the Court), a meeting of creditors or members of the Company is called for the purpose of:

- (a) receiving the Liquidator's resignation; or
- (b) removing the Liquidator; or
- (c) appointing a new Liquidator;

the Convener of the meeting must give notice of the meeting to the Authorities.

~~5.15.6~~

5.15.6 If the Authorities are entitled to be given notice of a meeting under this rule, the Authorities are entitled to be represented at the meeting. If the Authorities (or any of them) are to compensate any creditor of the Company, they are entitled to exercise the creditor's vote. If the AFSA has decided to compensate a creditor for only part of the creditor's claim, that part is taken to be a separate claim and this subrule applies in relation to it.

~~5.16.~~

5.16. **Proof of Debts in liquidation**

~~5.16.1~~

5.16.1 If a Company is being wound up, a Person claiming to be a creditor of the Company and wishing to recover the Person's Debt, in whole or part, must submit a Written claim to the Liquidator. A creditor who makes a claim is referred to as *Proving* the creditor's Debt, and a Document by which the creditor seeks to establish the creditor's claim is the creditor's *Proof*. A creditor's Proof may be in any form.

~~5.16.2~~

If a Company was in Administration immediately before the commencement of its winding up, a

5.16.2 creditor proving in the Administration is taken to have Proved in the winding up.

~~5.16.3~~

5.16.3 The following matters must be stated in a creditor's Proof of Debt:

- (a) the creditor's name and address and, if the creditor is a Company, its company registration number or equivalent;
- (b) the total amount of the creditor's claim (including any sales or value added tax) as at the date the Company Went into Liquidation;
- (c) whether or not that amount includes outstanding uncapitalised interest;
- (d) particulars of how and when the Debt was incurred by the Company;
- (e) particulars of any Security Interest held, the date it was given, and the value that the

creditor puts on it;

- (f) details of any reservation of title in relation to goods to which the Debt relates;
- (g) if the Proof is not signed personally by the creditor—the name, address and authority of the Person signing the Proof.

~~5.16.4~~

5.16.4 The Proof must specify any Documents by reference to which the creditor's Debt can be substantiated.

~~5.16.5~~

5.16.5 A Person who is the Liquidator, or the Convener or chair of any meeting, may call for any Document or other evidence to be produced to the Person, if the Person considers it necessary for the purpose of substantiating the whole or any part of the claim made in the Proof.
~~the purpose of substantiating the whole or any part of the claim made in the Proof.~~

~~5.16.6~~

5.16.6 A Person who is affected by a decision of the Convener or chair of a meeting under this rule may appeal to the Court against the decision.

~~5.17.~~

5.17. Particulars of creditor's claim

~~5.17.1~~

5.17.1 A Person who is the Liquidator, or the Convener or chair of any meeting, in the winding up of a Company may, if the Person considers it necessary for the purpose of clarifying or substantiating the whole or any part of a claim made in a creditor's Proof, call for details of any matter mentioned in rule 5.16.3 (Proof of Debts in liquidation), or for the production to the Person of the Documents or other evidence that the Person may require.

~~5.17.2~~

5.17.2 Every creditor bears the cost of Proving the creditor's own Debt, including the cost of providing any Documents or evidence under subrule 5.17.1. However, costs incurred by the Liquidator in estimating the value of any Debt under rule 5.22 (Debts without a certain value) are payable out of the assets, as an expense of the liquidation.

~~5.17.3~~

5.17.3 A Person who is affected by a decision of the Convener or chair of a meeting under this rule may appeal to the Court against the decision.

~~5.18.~~

5.18. Liquidator must allow inspection of Proofs

The Liquidator in the winding up of a Company must, while Proofs given to the Liquidator are in the Liquidator's possession, allow them to be inspected, at all reasonable times on any business day, by any of the following Persons:

- (a) any creditor who has submitted the creditor's Proof (unless the Proof has been completely rejected for purposes of dividend or otherwise);
- (b) any member of the Company;
- ~~(c) any Person acting on behalf of a Person mentioned in paragraph (a) or (b).~~5.19.

~~(e)~~5.19. Admission and rejection of Proofs for dividend

~~5.19.1~~

5.19.1 A creditor's Proof in the winding up of a Company may be admitted for a dividend either for the whole amount claimed by the creditor or for part of that amount.

~~5.19.2~~

5.19.2 If the Liquidator rejects a Proof in whole or part, the Liquidator must, as soon as possible, give the creditor Written reasons for the rejection.

~~5.20.~~

5.20. Appeal against decision on Proof

~~5.20.1~~

5.20.1 This rule applies to a decision of the Liquidator under rule 5.19 (Admission and rejection of Proofs for dividend) in the winding up of a Company to admit or reject the Proof of a creditor in whole or part (including any decision on the question of preference).

~~5.20.2~~

5.20.2 If the creditor is dissatisfied with the Liquidator's decision, the creditor may apply to the Court for the decision to be reversed or varied. The application must be made within 21 days after the creditor is given reasons for the decision under rule 5.19.2.

~~5.20.3~~

5.20.3 If a member or any other creditor of the Company is dissatisfied with the Liquidator's decision, the member or creditor may apply to the Court for the decision to be reversed or varied. The application must be made within 21 days after the day the member or creditor becomes aware of the Liquidator's decision.

~~5.21.~~

5.21. Withdrawal or variation of Proof

A creditor's Proof in the winding up of a Company may at any time be withdrawn, or the amount claimed in the Proof varied, by agreement between the creditor and the Liquidator.

~~5.22.~~

5.22. Debts without a certain value

~~5.22.1~~

5.22.1 In the winding up of a company, the Liquidator must estimate the value of any Debt that does not have a certain value because it is subject to a contingency or for any other reason. The Liquidator may revise any previous estimate to take account of any change of circumstances or information that has become available to the Liquidator.

~~5.22.2~~

5.22.2 The Liquidator must tell the creditor about the estimate and any revision of it.

~~5.22.3~~

5.22.3 If the value of a Debt is estimated under this rule or by the Court, the amount provable in the winding up for the Debt is amount of the estimate for the time being.

~~5.23.~~

5.23. Secured creditors

~~5.23.1~~

5.23.1 If a secured creditor realises the secured creditor's Security Interest, the secured creditor may Prove for the balance of the Debt, after deducting the amount realised.

~~5.23.2~~

5.23.2 If a secured creditor voluntarily surrenders the secured creditor's Security Interest for the general benefit of creditors, the secured creditor may Prove for the whole Debt, as if it were unsecured.

~~5.24.~~

5.24. Discounts

In the winding up of a Company, a creditor's claim must be reduced by all trade and other discounts (other than any discount for immediate, early or cash settlement) that would have been available to the Company if it were not in liquidation.

~~5.25.~~

5.25. Mutual credits and set-off

~~5.25.1~~

5.25.1 This rule applies if, before a Company Goes into Liquidation, there have been mutual credits, mutual Debts or other mutual dealings between the Company and any creditor of the Company Proving or claiming to Prove for a Debt in the liquidation. However, if the Company is an Authorised Market Institution, this rule is subject to the business rules of the Authorised Market

Institution.

~~5.25.2~~

5.25.2 The reference in subrule 5.25.1 to *mutual credits, mutual Debts or other mutual dealings* does not include:

~~(a)~~

(a) any Debt of a creditor arising out of an obligation incurred when the creditor had actual notice:

- (i) that a meeting of creditors had been called under section 38 (Meeting of creditors) of the AIFC Insolvency Regulations; or
- (ii) that a petition for the winding up of the Company was pending; or

~~(b)~~

(b) any Debt of a creditor arising out of an obligation if:

- (i) the Company was in Administration immediately before the commencement of the winding up; and
- (ii) when the obligation was incurred, the creditor had actual notice that an application for the appointment of an Administrator was pending or that a Person had given notice of intention to appoint an Administrator; or

~~(c)~~

(c) any Debt of a creditor arising out of an obligation incurred while the Company was in Administration if the Company was in Administration immediately before the commencement of the winding up; or

~~(d)~~

(d) any Debt acquired by a creditor, by assignment or otherwise, under an agreement between the creditor and any other Person if the agreement was entered into:

- (i) after the Company Went into Liquidation; or
- (ii) when the creditor had actual notice that a meeting of creditors of the Company had been called under the AIFC Insolvency Regulations; or
- (iii) when the creditor had actual notice that a winding up petition for the Company was pending; or
- (iv) if the Company was in Administration immediately before the commencement of the winding up—when the creditor had actual notice that an application for an order to appoint an Administrator was pending or a Person had given notice of intention to appoint an Administrator; or
- (v) during a time when the Company was in Administration if the Company was in Administration immediately before the commencement of the winding up; or

~~(e)~~

(e) any credit, Debt or dealing in Excluded Property.

~~5.25.3~~

5.25.3 An account must be taken of what is due from each party to the other in relation to the mutual dealings, and the amounts due from one party must be set off against the amounts due from the other.

~~5.25.4~~

5.25.4 An amount is taken to be due to or from the Company for subrule 5.25.3 whether:

- (a) it is payable at present or in the future; or
- (b) the obligation under which it is payable is certain or contingent; or
- (c) its amount is fixed or liquidated, or is estimated under rule 5.22, or can be ascertained by fixed rules or as a matter of opinion.

~~5.25.5~~

5.25.5 For subrule 5.24.3, credits and Debts arising under business rules to which section 38 (Insolvency of clearing and settlement intermediaries or Authorised Market Institutions) of the AIFC Personal Property Regulations applies must be determined in accordance with the business rules, despite any provision of these Rules to the contrary.

~~5.25.6~~

5.25.6 Rule 5.22 (Debts without a certain value) applies for this rule to any obligation to or from the Company that does not have a certain value because it is subject to a contingency or for any other reason.

~~5.25.7~~

5.25.7 Rules 5.26 (Debts in foreign currency), 5.27 (Payments of periodic nature) and 5.28 (Interest on Debts) apply for this rule in relation to any amounts due to the Company:

- (a) that are payable in a currency other than US Dollars; or
- (b) that are of a periodical nature; or
- (c) that bear interest.

~~5.25.8~~

5.25.8 Rule 5.29 (Debts payable at future times) applies for this rule to any amount due to or from the Company that is payable in the future.

~~5.25.9~~

5.25.9 Only the balance (if any) of the account owed to the creditor is provable in the liquidation. Alternatively, the balance (if any) owed to the Company must be paid to the Liquidator as part of the assets unless all or part of the balance results from a contingent or prospective Debt owed by the creditor and, if so, the balance (or the part of it that results from the contingent or prospective Debt) must be paid if and when the Debt becomes due and payable.

~~5.25.10~~

5.25.10 In this rule:

obligation means an obligation however arising, whether under an agreement, rule of law or otherwise.

~~5.26.~~

5.26. Debts in foreign currency

~~5.26.1~~

5.26.1 For the purpose of Proving a Debt incurred or payable in a currency other than United States Dollars, the amount of the Debt must be converted into United States Dollars at the official exchange rate on the day the Company Went into Liquidation or, if the Company was in Administration immediately before the commencement of the winding up, on the day the Company entered Administration.

~~5.26.2~~

5.26.2 In this rule:

official exchange rate, for a day, means the middle exchange rate on the New York Foreign Exchange Market at the close of business as published for that day or, if there is not a published rate for that day, the rate that the Court determines.

~~5.27.~~

5.27. Payments of periodical nature

~~5.27.1~~

5.27.1 For rent and other payments of a periodical nature, a creditor of the Company may Prove for any amounts due and unpaid up to the day the Company Went into Liquidation or, if the Company was in Administration immediately before the commencement of the winding up, up to the day the Company entered Administration.

~~5.27.2~~

5.27.2 If on that day any payment was accruing due, the creditor may Prove for so much of the payment as would have fallen due on that day, if accruing from day-to-day.

~~5.28.~~

5.28. Interest on Debts

If a Debt Proved in the liquidation bears interest, the interest is provable as part of the Debt except so far as it is payable in relation to any period after the day that the Company Went into Liquidation or, if the Company was in Administration immediately before the commencement of the winding up, any period after the day the Company entered Administration.

~~5.29.~~

5.29. Debts payable at future times

Subject to rule 5.45.8 (Distributing assets), a creditor may Prove for a Debt if payment of the Debt was not yet due on the day the Company Went into Liquidation or, if the Company was in Administration immediately before the commencement of the winding up, on the day the Company entered Administration.

~~5.30.~~

5.30. Secured creditors

~~5.30.1~~

5.30.1 A secured creditor may, with the agreement of the Liquidator or the leave of the Court, at any time alter the value that the creditor has put on creditor's Security Interest in the creditor's Proof.

~~5.30.2~~

5.30.2 If a secured creditor omits to disclose the creditor's Security Interest in the creditor's Proof, the secured creditor must surrender the Security Interest for the general benefit of creditors, unless the Court, on application by the creditor, relieves the creditor from the effect of this subrule on the ground that the omission was inadvertent or because of an honest mistake. If the Court grants relief, it may require or allow the creditor's Proof to be amended on the terms the Court considers just.

~~5.30.3~~

5.30.3 The Liquidator may at any time give notice to a creditor whose Debt is secured that the Liquidator proposes, at the end of 28 days after the date of the notice, to redeem the Security Interest at the value put on it in the creditor's Proof.

~~5.30.4~~

5.30.4 If a creditor is given a notice under subrule 5.30.3, the creditor has 21 days (or, if the Liquidator allows a longer period, the longer period) to revalue the creditor's Security Interest. If the creditor revalues the Security Interest, the Liquidator may only redeem at the new value. If the Liquidator redeems the Security Interest, the cost of transferring it is payable out of the assets.

~~5.30.5~~

5.30.5 A secured creditor may at any time, by notice given to the Liquidator, ask the Liquidator to elect whether the Liquidator will or will not exercise the Liquidator's power to redeem the creditor's Security Interest at the value then placed on it. If the secured creditor gives notice to the Liquidator, the Liquidator has 6 months after the day the Liquidator is given the notice in which to exercise the power or decide not to exercise it.

~~5.30.6~~

5.30.6 If the Liquidator is dissatisfied with the value that a secured creditor has put on the creditor's Security Interest (whether in the creditor's Proof or by revaluation under subrule 5.30.4), the Liquidator may require any property to which the Security Interest applies to be offered for sale. The terms of sale must be as agreed or as the Court directs. However, if the sale is by auction, the

Liquidator on behalf of the Company, and the creditor on the creditor's own behalf, may appear and bid.

~~5.30.7~~

5.30.7 If a creditor who has valued the creditor's Security Interest subsequently realises it (whether or not at the instance of the Liquidator):

(a) the net amount realised must be substituted for the value previously put by the creditor on the Security Interest; and

(b) that amount must be treated in all respects as an amended valuation made by the creditor.-
~~5.31.~~

~~(b)~~**5.31. Appointment of Liquidator by creditors or members**

~~5.31.1~~

5.31.1 This rule applies if a Person is appointed as Liquidator of a Company by a meeting of creditors or by a meeting of members.

~~5.31.2~~

5.31.2 The chair of the meeting must certify the appointment. The date of the certification must be endorsed on the certificate.

~~5.31.3~~

5.31.3 The Liquidator's appointment takes effect on the date the appointment is certified. The chair of the meeting (if the chair is not the Liquidator) must give the certificate to the Liquidator and must, in any event, file a copy of it in the Court.

~~5.31.4~~

5.31.4 If the Liquidator is appointed by a creditors or members meeting, or by the Company in general meeting, the Liquidator must, on receiving the Liquidator's certificate of appointment, give notice of the appointment in the newspaper that the Liquidator most appropriate for ensuring that it comes to the notice of the Company's creditors and members.

~~5.31.5~~

5.31.5 The expense of giving notice under this rule must be borne initially by the Liquidator. But the Liquidator is entitled to be reimbursed out of the assets, as an expense of the liquidation.

~~5.31.6~~

5.31.6 In a winding up by the Court, the Liquidator must notify the Registrar of Companies of the Liquidator's appointment.

~~5.32.~~

5.32. Final meeting of creditors before dissolution

~~5.32.1~~

5.32.1 This rule applies to the meeting of creditors called by the Liquidator of a Company under section 43 (Final meetings before dissolution) of the AIFC Insolvency Regulations.

~~5.32.2~~

5.32.2 The Liquidator's account of the winding up given to the meeting must include a summary of the Liquidator's receipts and payments and a statement of the amounts paid to unsecured creditors.

~~5.32.3~~

5.32.3 At the meeting, the creditors may question the Liquidator about any matter dealt with in the Liquidator's account, and may resolve against the Liquidator being released.

~~5.32.4~~

5.32.4 After the meeting has been held, the Liquidator must give notice to the Court that the meeting has been held. The notice must state whether the meeting resolved against Liquidator being released, and must be accompanied by a copy of the account given to the meeting.

~~5.32.5~~

5.32.5 If the creditors did not resolve at the meeting against the Liquidator being released, the Liquidator is released when the notice under subrule 5.32.4 is filed in the Court. If the creditors resolved against the Liquidator being released, the Liquidator must obtain a release from the Court.

~~5.32.6~~

5.32.6 If there was not a quorum present at the meeting, the Liquidator must report to the Court that the meeting was called in accordance with these Rules, but a quorum was not present. On filing of the report in the Court, the meeting is taken to have been held, the creditors are taken not to have resolved at the meeting against the Liquidator being released and the Liquidator is released.

~~5.33.~~

5.33. Liquidator's remuneration

~~5.33.1~~

5.33.1 The Liquidator in the winding up of a Company is entitled to receive remuneration for the Liquidator's services as Liquidator.

~~5.33.2~~

5.33.2 The remuneration must be fixed either:

- (a) as a percentage of the value of the assets that are realised or the amounts distributed, or as a combination of both; or
- (b) by reference to the time properly given by the Liquidator and the Liquidator's employees in attending to matters arising in the winding up.

~~5.33.3~~

5.33.3 It is for the liquidation committee (if there is one) or a creditors meeting (if there is not a liquidation committee) to determine whether the remuneration is to be fixed under subrule 5.33.2(a) or (b) and, if it is to be fixed under subrule 5.33.2(a), to determine any percentage to be applied for subrule 5.33.2(a).

~~5.33.4~~

5.33.4 If no remuneration is fixed, the Liquidator is entitled to receive remuneration for the Liquidator's services as Liquidator of an amount equal to 5% of the value of the assets realised plus 2.5% of the amounts distributed.

~~5.34.~~

5.34. Orders by Court about Liquidator's remuneration

~~5.34.1~~

5.34.1 If the Liquidator in the winding up of a Company considers that the remuneration to which the Liquidator is entitled under rule 5.33.4 (Liquidator's remuneration) is insufficient, the Liquidator may apply to the Court for an order increasing its amount or rate.

~~5.34.2~~

5.34.2 Any creditor of the Company may, with the agreement of any other creditor or creditors who together hold at least 25% of the total value of the assets of the Company, apply to the Court for an order that the Liquidator's remuneration be reduced on the ground that it is, in all the circumstances, excessive.

~~5.34.3~~

5.34.3 If the Court considers the Liquidator's remuneration should be reduced on the ground mentioned in subrule 5.34.2, it must make an order fixing the remuneration at a reduced amount or rate.

~~5.34.4~~

5.34.4 Unless the Court orders otherwise, the costs of the application under subrule 5.34.2 must be paid by the applicant, and are not payable out of the assets.

~~5.35.~~

5.35. Power of Court to set aside certain transactions

~~5.35.1~~

5.35.1 If the Liquidator of a Company enters into a transaction with a Person who is an associate of the Liquidator, the Court may, on the application of any Person interested, set the transaction aside and order the Liquidator to compensate the Company for any loss suffered as a result of it.

~~5.35.2~~

5.35.2 Subrule 5.35.1 does not apply to a transaction if:

~~(a)~~

- (a) the transaction was entered into with the prior consent of the Court; or

~~(b)~~

(b) it is shown to the Court's satisfaction that the transaction was for value, and that it was entered into by the Liquidator without knowing, or having any reason to suspect, that the Person the transaction was with an associate of the Liquidator.

~~5.35.3~~

5.35.3 This rule does not affect any rule of law or equity in relation to the Liquidator's dealings with trust property or the fiduciary obligations of any Person.

~~5.36.~~

5.36. Rule against solicitation

~~5.36.1~~

5.36.1 If the Court is satisfied that any improper solicitation has been used by or on behalf of the Liquidator of a Company in obtaining Proxies for, or otherwise bringing about, the Liquidator's appointment, it may order that no remuneration out of the assets be allowed to any Person by whom, or on whose behalf, the solicitation was exercised.

~~5.36.2~~

5.36.2 An order of the Court under this rule overrides any resolution of the liquidation committee or the creditors or any other provision of these Rules relating to the Liquidator's remuneration.

~~5.37.~~

5.37. Obligations of Liquidator to liquidation committee

~~5.37.1~~

5.37.1 It is the duty of the Liquidator of a Company to report to the liquidation committee on all matters that appear to the Liquidator to be, or that the committee has indicated to the Liquidator as being, of concern to the members of the committee in relation to the winding up.

~~5.37.2~~

5.37.2 The Liquidator need not comply with any request by the committee for information if it appears to the Liquidator:

- (a) that the request is frivolous or unreasonable; or
- (b) that the cost of complying with request would be excessive, having regard to the relative importance of the information; or
- (c) that there are not sufficient assets to enable the Liquidator to comply with the request.

~~5.37.3~~

5.37.3 If the liquidation committee is appointed more than 28 days after the day the Liquidator is appointed, the Liquidator must report to the committee, in summary form, about the action the Liquidator has taken since the Liquidator's appointment, and must answer all questions that the committee puts to the Liquidator about the Liquidator's conduct of the winding up.

~~5.37.4~~

5.37.4 If an individual becomes a member of the liquidation committee at any time after it is established, the individual is not entitled to require a report by the Liquidator, otherwise than in summary form, of any matters arising before the individual's appointment.

~~5.37.5~~

5.37.5 This rule does not prevent the liquidation committee, or any member of it, from being entitled to have access to the Liquidator's records of the liquidation, or from seeking an explanation of any matter within the committee's responsibility.

~~5.38.~~

5.38. Meetings of liquidation committee etc.

~~5.38.1~~

5.38.1 Subject to this rule, meetings of the liquidation committee must be held when and where the Liquidator decides.

~~5.38.2~~

5.38.2 The Liquidator must call a first meeting of the committee to take place within 3 months after the

day of the Liquidator's appointment or the committee's establishment (whichever is the later). After the first meeting of the committee, the Liquidator must call a meeting:

- (a) if requested by a Creditor Member or the representative of a Creditor Member; and
- (b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

~~5.38.3~~

5.38.3 A meeting called because of a request under subrule 5.38.2(a) must be called for a date not later than 21 days after the day Liquidator receives the request.

~~5.38.4~~

5.38.4 The Liquidator must give 7 days notice of the Venue of a meeting to every member of the committee (or the member's representative, if designated for that purpose), unless in any case the requirement of the notice has been waived by or on behalf of any member.

~~5.38.5~~

5.38.5 Waiver may be indicated either at or before the meeting.

~~5.38.6~~

5.38.6 The chair of any meeting of the committee must be the Liquidator or a Person nominated in Writing by the Liquidator.

~~5.38.7~~

5.38.7 A Person nominated by the Liquidator must be either:

- (a) an Official Liquidator; or
- (b) an employee of the Liquidator or the Liquidator's firm who is experienced in Insolvency Proceedings.

~~5.38.8~~

5.38.8 A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least 2 Creditor Members are present or represented.

~~5.38.9~~

5.38.9 A member of the committee may, in relation to the business of the committee, be represented by another individual authorised by the member for that purpose.

~~5.38.10~~

5.38.10 However, a committee member may not be authorised to represent another committee member, and an individual may not be authorised to represent 2 or more committee members at the same time.

~~5.38.11~~

5.38.11 The chair at any meeting of the committee may call on an individual claiming to represent a member to produce the individual's letter of authority, and may exclude the individual if it appears that the authority is deficient.

~~5.38.12~~

5.38.12 If a member's representative signs a Document on the member's behalf, the fact that the representative signs on the member's behalf must be stated below the representative's signature.

~~5.38.13~~

5.38.13 A member of the committee may resign by notice given to the Liquidator. ~~5.38.14~~

5.38.14 A member of the committee automatically ceases to be a member if:

- (a) the member becomes bankrupt; or
- (b) the member is not present or represented at 3 consecutive meetings of the committee (unless at the third of those meetings it is resolved that this paragraph is not to apply to the member in relation to some or all of those meetings).

~~5.38.15~~

5.38.15 A Creditor Member of the committee also automatically ceases to be a member if the member ceases to be, or is found never to have been, a creditor or, if the member is an individual authorised to act on behalf of another Person who is not an individual, the other Person ceases to be, or is found never to have been, a creditor.

~~5.38.16~~

5.38.16 A Creditor Member of the committee may be removed by a resolution passed at a meeting of creditors. A member of the committee appointed by the Company may be removed by a resolution passed at a meeting of the Company. In either case, at least 14 days notice must be given of the resolution.

~~5.39.~~

5.39. Creditor Member vacancy on liquidation committee

~~5.39.1~~

5.39.1 This rule applies if a member of the liquidation committee appointed by the creditors, or under this rule, ceases to be a member of the committee.

~~5.39.2~~

5.39.2 The Liquidator may appoint any individual to fill the vacancy, if a majority of the Creditor Members agree to the appointment, and the individual consents to act.

~~5.39.3~~

5.39.3 Alternatively, a meeting of creditors may resolve that an individual be appointed (with the individual's consent) to fill the vacancy. At least 14 days notice must have been given of the resolution to make the appointment, but the individual need not have been named in the notice.

~~5.39.4~~

5.39.4 However, if there are, for the time being, at least 3 Creditor Members of the committee appointed, the vacancy need not be filled if the Liquidator and a majority of the remaining Creditor Members agree.

~~5.40.~~

5.40. Liquidation committee: voting rights and resolutions

~~5.40.1~~

5.40.1 At any meeting of the liquidation committee in the winding up of a Company, each member of the committee (whether present personally or by the member's representative) has 1 vote.

~~5.40.2~~

5.40.2 A resolution is passed if a majority of the Creditor Members present or represented vote in favour of it.

~~5.40.3~~

5.40.3 The votes of any members appointed by the Company do not count towards the number required for passing a resolution, but the way in which they vote on any resolution must be recorded.

~~5.40.4~~

5.40.4 Every resolution passed must be recorded in Writing, either separately or as part of the minutes of the meeting. The record must be signed by the chair of the meeting and kept with the records of the liquidation.

~~5.41.~~

5.41. Liquidator's reports to liquidation committee

~~5.41.1~~

5.41.1 The Liquidator in the winding up of a Company must, as and when directed by the liquidation committee (but not more often than once in any 2 month period), send a written report to every member of the committee setting out the position generally of the progress of the winding up, and matters arising in connection with it to which the Liquidator considers the committee's attention should be drawn.

~~5.41.2~~

5.41.2 In the absence of directions by the liquidation committee, the Liquidator must send the members of the committee a report under subrule 5.41.1 not less often than once in every 6 month period.

~~5.42.~~

5.42. Expenses of members of liquidation committee

The Liquidator in the winding up of a Company must reimburse, out of the assets of the Company in the prescribed order of priority, any reasonable travelling expenses directly incurred by members of the liquidation committee or their representatives in relation to their attendance at committee meetings or otherwise on committee business.

~~5.43.~~

5.43. Formal defects in relation to liquidation committee

The acts of the liquidation committee established in the winding up of a Company are valid despite any defect in the appointment, election or qualifications of any member of the committee or any member's representative or in the formalities of its establishment.

~~5.44.~~

5.44. General duties of Liquidator

~~5.44.1~~

5.44.1 Any duties imposed on the Court by the AIFC Insolvency Regulations in relation to the collection of a Company's assets in its winding up, and their application in discharge of its Liabilities, are discharged by the Liquidator as an officer of the Court subject to its control.

~~5.44.2~~

5.44.2 For the purpose of acquiring and retaining possession of the Company's property (other than any Excluded Property), the Liquidator has the same powers as a Receiver appointed by the Court, and the Court may on the Liquidator's application enforce the acquisition or retention accordingly.

~~5.44.3~~

5.44.3 If the Company's assets or liabilities include Excluded Property, the Liquidator must comply with any requirements applying to the Company under the AIFC Personal Property Regulations, or any AFSA Rules, in relation to the Excluded Property.

~~5.44.4~~

5.44.4 Without limiting subrule 5.44.3, the Liquidator must comply with any instruction made under section 37 (Right of Transfer against insolvent Investment Intermediary) of the AIFC Personal Property Regulations.

~~5.45.~~

5.45. Distributing assets

~~5.45.1~~

5.45.1 Whenever the Liquidator has sufficient funds for the purpose, the Liquidator must, subject to the retention of the amounts that may be necessary for the expenses of the winding up, declare and distribute dividends among the creditors in relation to the Debts that they have respectively Proved.

~~5.45.2~~

5.45.2 The Liquidator must give notice of the Liquidator's intention to declare and distribute a dividend.

~~5.45.3~~

5.45.3 If the Liquidator declares a dividend, the Liquidator must give notice of it to the creditors. The notice must state how the dividend is proposed to be distributed. The notice must contain sufficient particulars in relation to the Company, and its assets and affairs, to enable the creditors to understand the calculation of the amount of the dividend and the manner of its distribution.

~~5.45.4~~

5.45.4 In the calculation and distribution of a dividend, the Liquidator must make provision for:

- (a) any Debts that appear to the Liquidator to be due to Persons who, because of the distance of their place of residence, may not have had sufficient time to submit and establish their Proofs; and
- (b) any Debts that are the subject of claims that have not yet been determined; and
- (c) disputed Proofs and claims.

~~5.45.5~~

5.45.5 If a creditor has not Proved the creditor's Debt before the declaration of any dividend, the creditor is not entitled to disturb, because the creditor has not participated in it, the distribution of that dividend or any other dividend declared before the creditor's Debt is Proved. However:

- (a) when the creditor has Proved the Debt, the creditor is entitled to be paid, out of any amount for the time being available for the payment of any further dividend, any dividend or dividends that the creditor has failed to receive; and
- (b) any dividend or dividends payable under paragraph (a) must be paid before **any amount available for payment of dividends** is applied to the payment of any further dividend.

~~5.45.6~~

5.45.6 An action may not be brought against the Liquidator for a dividend. However, if the Liquidator refuses to pay a dividend that the Liquidator has declared, the Court may order the Liquidator to pay it and also to pay, out of the Liquidator's own money:

- (a) interest on the dividend, at the rate payable on judgement debts, from when it was withheld; and
- (b) the costs of the proceeding in which the order to pay is made.

~~5.45.7~~

5.45.7 Without affecting the provisions of the AIFC Insolvency Regulations about disclaimer, the Liquidator may, with the permission of the liquidation committee, divide any property (other than Excluded Property) in its existing form among the Company's creditors, according to its estimated value, if the property cannot be readily or advantageously sold because of its peculiar nature or other special circumstances.

~~5.45.8~~

5.45.8 If a creditor has Proved for a Debt that is not due at the date of the declaration of a dividend, the creditor is entitled to a dividend equally with other creditors, but for the purpose of dividend (and no other purpose), the amount of the creditor's admitted Proof (or, if a distribution has previously been made to the creditor, the amount remaining outstanding in relation to the creditor's admitted Proof) must be reduced to the net present value of the amount due to the creditor assessed as at the relevant date.

~~5.45.9~~

5.45.9 In subrule 5.45.8:

relevant date, in relation to the Company, means:

- (a) if the Company was not in Administration immediately before the commencement of the winding up—the date the Company Went into Liquidation or
- (b) if the company was in Administration immediately before the commencement of the winding up—the date the Company entered Administration.

~~5.46-~~

5.46. **Debts of Company to rank equally**

~~5.46.1~~

5.46.1 Debts other than preferential Debts rank equally between themselves in the winding up of a Company and, after the preferential Debts, must be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.
~~meeting them, in which case they abate in equal proportions between themselves.~~

~~5.46.2~~

5.46.2 Subrule 5.46.1 applies whether or not the Company is Unable to Pay its Debts. ~~5.47-~~

5.47. **Final distribution**

~~5.47.1~~

5.47.1 When the Liquidator has realised all the Company's assets or so much of them as can, in the Liquidator's opinion, be realised without needlessly protracting the liquidation, the Liquidator must give notice either:

- (a) of the Liquidator's intention to declare a final dividend; or
- (b) that no dividend, or further dividend, will be declared.

~~5.47.2~~

5.47.2 The notice must include particulars of the matters mentioned in Schedule 3 (Required content for statement of affairs) that are required to be included a statement of a Company's affairs and must require claims against the assets to be established by a date specified in the notice.
~~require claims against the assets to be established by a date specified in the notice.~~

~~5.47.3~~

5.47.3 After that date, the Liquidator must:

- (a) defray any outstanding expenses of the winding up out of the assets; and
- (b) if the Liquidator intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any Person in relation to a Debt not already Proved.

~~5.47.4~~

5.47.4 The Court may, on the application of any Person, postpone the date specified in the notice.

~~5.47.5~~

5.47.5 A final distribution must not be made until all Excluded Property has been divested by the Company.

~~5.48.~~

5.48. Disclaiming onerous property

~~5.48.1~~

5.48.1 A notice given by the Liquidator of a Company disclaiming onerous property under section 67 (Power to disclaim onerous property) of the AIFC Insolvency Regulations must contain sufficient particulars of the property to enable it to be easily identified.

~~5.48.2~~

5.48.2 The notice must be filed in the Court.

~~5.48.3~~

5.48.3 Within 7 days after the day the notice is filed in the Court, the Liquidator must comply with subrules 5.48.4 to 5.48.6.

~~5.48.4~~

5.48.4 If the property disclaimed is of leasehold property, the Liquidator must give a copy of the notice to every Person who, to the Liquidator's knowledge, claims under the Company as sub-lessee or Secured Party for a Security Interest.

~~5.48.5~~

5.48.5 The Liquidator must in any case give a copy of the notice to every Person who, to the Liquidator's knowledge:

- (a) claims an interest in the disclaimed property; or
- (b) is under any liability in relation to the property that is not discharged by the disclaimer.

~~5.48.6~~

5.48.6 If the disclaimer is of an unprofitable contract, the Liquidator must give a copy of the notice to every Person who, to the Liquidator's knowledge, is a party to the contract or has an interest under it.

~~5.48.7~~

5.48.7 If subsequently it comes to the Liquidator's knowledge that a Person has an interest in the disclaimed property that would have entitled the Person to have been given a copy of the notice

under subrule 5.48.4 or 5.48.5, the Liquidator must, as soon as possible, give a copy of the notice to the Person. However, the Liquidator need not give a copy of the notice to the Person if:

- (a) the Liquidator is satisfied that the Person has already been made aware of the disclaimer and its date; or
- (b) the Court, on the Liquidator's application, orders that the Liquidator need not give a copy of the notice to the Person.

~~5.48.8~~

The Liquidator may also, at any time, give notice of the disclaimer to any Person who in the 5.48.8 Liquidator's opinion ought, in the public interest or otherwise, to be informed of it.

~~5.48.9~~

5.48.9 If, for property that the Liquidator has the right to disclaim, it appears to the Liquidator that a Person claims, or may claim, to have an interest in the property, the Liquidator may, by notice given to the Person, require the Person to declare, by notice given to the Liquidator within 14 days after the day the Person is given the notice, whether the Person claims any interest in the property and, if so, the nature and extent of it. If the Person Fails to comply with the notice, the Liquidator is entitled to assume that the Person does not have an interest in the property that will prevent or impede its disclaimer.

~~5.49-~~

5.49. **Contributories**

~~5.49.1~~

5.49.1 Subject to this rule, the Liquidator of a Company must, as soon as practicable after the Liquidator's appointment, settle a list of the Company's contributories.

~~5.49.2~~

5.49.2 The Liquidator may make any call that may be outstanding in relation to any obligations owed by contributories and may, with the Court's approval, rectify the Company's Register of Shareholders.

~~5.49.3~~

5.49.3 The Liquidator must include in the list of contributories every member and other Person who is liable to make a contribution to the Company's assets because of an order of the Court under section 79(c) (Remedies by Court to protect assets) of the AIFC Insolvency Regulations. The Liquidator's duties under this rule are performed by the Liquidator as an officer of the Court subject to the Court's control.

~~5.49.4~~

5.49.4 The list must identify:

- (a) the several classes of the Company's shares (if there is more than 1 class); and
- (b) the several classes of members; and
- (c) any contributories who are not members.

~~5.49.5~~

5.49.5 Having settled the list, the Liquidator must, as soon as possible, give notice to every Person included in the list that the list has been settled. The notice given to each Person must state:

- (a) in what character, and for what reason, the Person is included in the list; and
- (b) the amounts due from the Person; and
- (c) that the Person's inclusion in the list may result in the unpaid capital being called; and
- (d) that, if the Person objects to any entry in, or omission from, the list, the Person should inform the Liquidator in Writing within 21 days after the day the Person is given the

notice.

~~5.49.6~~

5.49.6 If the Liquidator is given an objection by a Person under subrule 5.49.5(d), the Liquidator must within, 14 days after the day the Liquidator is given the objection, give the Person notice either:

- (a) that the Liquidator has amended the list (specifying the amendment); or
- (b) that the Liquidator considers that the objection is not well-founded and has declined to amend the list.

~~5.49.7~~

5.49.7 If a Person objects to any entry in, or exclusion from, the list of contributories as settled by the Liquidator and, despite notice by the Liquidator declining to amend the list, maintains the objection, the Person may apply to the Court for an order removing the entry to which the Person objects or otherwise amending the list. The application must be made within 21 days after the day the Person is given the Liquidator's notice under subrule 5.49.6.

~~5.49.8~~

5.49.8 Subject to this rule, the Liquidator may from time to time vary or add to the list of contributories as previously settled by the Liquidator.

~~5.49.9~~

5.49.9 The Liquidator is not personally liable for any costs incurred by a Person in relation to an application to set aside or vary an act or decision of the Liquidator in settling the list of contributories, or varying or adding to the list, and is only liable as Liquidator if the Court makes an order to that effect.

~~5.49.10~~

5.49.10 The powers given to the Liquidator under the AIFC Insolvency Regulations in relation to the making of calls on contributories are exercisable by the Liquidator as an officer of the Court subject to the Court's control.

~~5.49.11~~

5.49.11 If the Liquidator proposes to make a call on contributories, and there is a liquidation committee, the Liquidator may call a meeting of the committee for the purpose of obtaining its approval.

~~5.49.12~~

5.49.12 Notice of a call on contributories must be given to each of the contributories, and must specify:

- (a) the amount or balance due from the contributory in relation to it; and
- (b) whether the call is made with the approval of the Court or the liquidation committee.

~~5.49.13~~

5.49.13 Payment of the amount or balance due from any contributory may be enforced by order of the Court.

~~5.50-~~

5.50. General rule about priority

The expenses of the liquidation of a Company are payable out of the assets in the following order of priority:

- (a) expenses or costs that are properly chargeable or incurred by the Liquidator in preserving, realising or getting in any of the assets of the Company or otherwise relating to the conduct of any legal proceedings that the Liquidator has power to bring or defend, whether in the Liquidator's own name or the name of the Company;
- (b) any other expenses incurred or disbursements made by the Liquidator or under the Liquidator's authority, including expenses incurred or disbursement made in carrying on the business of the Company;

- (c) the fees payable to the Court or to any official body in relation to the proceedings;
- (d) any repayable deposit lodged under these Rules;
- (e) the cost of any Security Interest provided by a Provisional Liquidator or Liquidator in accordance with the AIFC Insolvency Regulations or these Rules;
- (f) the remuneration of the Provisional Liquidator (if any);
- (g) any deposit lodged on an application for the appointment of a Provisional Liquidator;
- (h) the costs of the petitioner and of any Person appearing on the petition whose costs are allowed by the Court;
- (i) any amount payable to a Person employed to assist in the preparation of a statement of the Company's affairs or of accounts;
- (j) any allowance made, by order of the Court, towards costs on an application for release from the obligation to prepare and provide a statement of the Company's affairs or for an extension of time for preparing and providing a statement of the Company's affairs;
- (k) any necessary disbursements by the Liquidator in the course of the Liquidator's administration (including any expenses incurred by members of the liquidation committee or their representatives and allowed by the Liquidator, but not including any payment of tax in circumstances mentioned in paragraph (n));
- (l) the remuneration and allowances of any Person who has been employed by the Liquidator to perform any services for the Company, as required or authorised under the AIFC Insolvency Regulations or these Rules;
- (m) the remuneration of the Liquidator;
- (n) the amount of any tax on chargeable gains accruing on the realisation of any asset of the Company (without regard to whether the realisation is effected by the Liquidator, a secured creditor, or a receiver or manager appointed to deal with a Security Interest);
- (o) any other expenses properly chargeable by the Liquidator in Exercising the Liquidator's Functions in the liquidation.

~~5.51.~~

5.51. Priority for winding up commencing as Voluntary Winding Up

If the winding up of a Company by the Court follows immediately on a Voluntary Winding Up (whether a Creditors Voluntary Winding Up or a Members Voluntary Winding Up) of the Company, the remuneration of the Liquidator in the Voluntary Winding Up, and costs and expenses of the Voluntary Winding Up, allowed by the Court rank in priority with the expenses mentioned in rule 5.50(a) (General rule about priority).

~~5.52.~~

5.52. Saving for powers of the Court

~~5.52.1~~

5.52.1 In a winding up by the Court, the priorities provided by rule 5.50 (General rule about priority) are subject to the power of the Court to make orders under section 70 (Reference of questions to Court) of the AIFC Insolvency Regulations, if the assets are insufficient to satisfy the Liabilities.

~~5.52.2~~

5.52.2 These Rules do not apply to or affect the power of the Court, in proceedings by or against the Company, to order costs to be paid by the Company or the Liquidator. These Rules also do not affect the rights of any Person to whom costs are ordered to be paid by the Company or the Liquidator.

~~5.53.~~

5.53. Confidentiality of Documents

~~5.53.1~~

5.53.1 The Responsible Insolvency Practitioner in any Insolvency Proceedings in relation to a Company may refuse to allow a Person to inspect a Document forming part of the records of the Insolvency Proceedings, even though the Person would otherwise be entitled to inspect the Document, if the Insolvency Practitioner considers that the Document:

- (a) should be treated as confidential; or
- (b) is of such a nature that its disclosure would be unreasonably injurious to the interests of the members or the creditors of the Company in its winding up.

~~5.53.2~~

5.53.2 Without limiting subrule 5.53.1, the Responsible Insolvency Practitioner may, under that subrule, refuse to allow the members of a liquidation committee or creditors committee to inspect a Document.

~~5.53.3~~

5.53.3 If the Responsible Insolvency Practitioner refuses to allow a Person to inspect a Document under subrule 5.53.1, the Person may apply to the Court for an order allowing the Person inspect the Document. The Court may make the orders on the application that it considers just.

~~Document.~~

PART 6: REGISTRATION OF INSOLVENCY PRACTITIONERS AND OFFICIAL LIQUIDATORS

6.1. _____

6.1. Members of recognised professional bodies

Any Person who is a member of a professional body recognised by the AFSA for the purpose is qualified to be registered as an insolvency practitioner or official liquidator, as the case may be, under the AIFC Insolvency Regulations.

6.2. _____

6.2. Individual recognition by Court

The Court may, on the application of a Person, make an order to the effect that the Person is qualified to be registered an insolvency practitioner or official liquidator (or both).

PART 7: FINANCIAL MARKETS

~~7.1.~~

7.1. Business rules of Authorised Market Institutions

~~7.1.1~~

7.1.1 Despite anything in these Rules, in any Insolvency Proceedings, to the extent that a claim:

- (a) is to an Investment Entitlement subject to the control of an Authorised Market Institution;
and
- (b) is subject of a provision of the business rules of the Authorised Market Institution relating to the finality of acquisitions or dispositions effected under the business rules;

the claim must be decided in accordance with the provision.

~~7.1.2~~

7.1.2 In any Insolvency Proceedings, a transaction made by, or claim by or against, a Person under a provision mentioned in subrule 7.1.1 is not subject to any provision of these Rules reversing, voiding, disclaiming or staying, enabling or empowering the reversal, voiding, disclaimer or staying of relating to, or imposing any other requirement on, such a transaction or claim.

~~7.2.~~

7.2. Eligible Security Interests

~~7.2.1~~

7.2.1 In this rule:

eligible Security Interest means a Security Interest granted:

- (a) by a Person other than an individual; and
- (b) to a Secured Party that is an Investment Intermediary (including, to remove any doubt, an Authorised Market Institution).

financial collateral means financial assets held in an Investment Account, or Money, if the financial assets or Money secures an eligible Security Interest.

~~7.2.2~~

7.2.2 An eligible Security Interest in financial collateral may be enforced despite any provision of these Rules reversing, voiding, disclaiming or staying, enabling or empowering the reversal, voiding, disclaimer or staying of, or imposing any other requirement on, the enforcement of Security Interests, if the eligible Security Interest attached to the financial collateral before the commencement of insolvency proceedings (whether within the AIFC or otherwise) of the debtor.

PART 8: MISCELLANEOUS

~~8.1.~~

8.1. Claims provable as Debts

In any Insolvency Proceedings in relation to a Company, all claims by creditors (other than claims in relation to Excluded Property) are provable as Debts against the Company whether they are present or future, certain or contingent, ascertained or sounding only in damages.

~~8.2.~~

8.2. Conduct of meetings generally

~~8.2.1~~

8.2.1 If the AIFC Insolvency Regulations or these Rules require or permit a meeting of creditors or members or contributories to be held, the provisions of Schedule 1 apply in relation to the meeting.

~~8.2.2~~

8.2.2 In the application of Schedule 1 to a meeting of contributories, that Schedule has effect as if a reference to a meeting of members included a reference to a meeting of contributories, a reference to a member included a reference to a contributory, and all other necessary changes were made.

~~8.2.3~~

8.2.3 If the AIFC Insolvency Regulations or these Rules require or permit a committee of creditors to be established, the provisions of Schedule 2 apply in relation to the committee.

~~8.2.4~~

8.2.4 If a provision of these Rules (other than a provision of Schedule 1 or Schedule 2) is inconsistent with a provision of Schedule 1 or Schedule 2, the first provision prevails to the extent of the inconsistency, but the provisions must not be treated as inconsistent merely because the provisions deal with the same matter if the second provision can both be obeyed without contravening the first provision.

~~8.3.~~

8.3. Provisions relating to Administrators appointed by Court

~~8.3.1~~

8.3.1 If the Court appoints an Administrator for a Company under the AIFC Insolvency Regulations, the appointment takes effect from the date specified in the Court's order.

~~8.3.2~~

8.3.2 The Administrator must, within 28 days after the day of the Administrator's appointment, give notice of the appointment to all creditors and members of the Company of whom the Administrator is aware. Alternatively, if the Court allows, the Administrator may advertise the appointment in accordance with the Court's directions.

~~8.4.~~

8.4. Handover of assets to new Administrator

~~8.4.1~~

8.4.1 If an Administrator of a Company intends to vacate office, whether by resignation or otherwise, the Administrator must give notice of the Administrator's intention to the Court and to all relevant parties.

~~8.4.2~~

8.4.2 If any property (or any relevant property) of the Company has not been realised, applied, distributed or otherwise fully dealt with in the Administrator's administration, the notice must include details of the nature of the property, its value (or the fact that it has no value), its location, any action taken by the Administrator to deal with the property or any reason for not dealing with it, and the current position in relation to it.

~~8.4.3~~

8.4.3 If a Person who is an Administrator of a Company ceases to be an Administrator of the Company, the Person must, as soon as possible, deliver up to the Person's successor as Administrator the assets of the Company held by the Person (after deducting any expenses properly incurred and distributions made). The Person must also deliver up to the successor:

- (a) the records of the Person's administration, including any correspondence, Proofs and other related papers; and
- (b) the Company's books, papers and other records.

~~8.4.4~~

8.4.4 If the Liquidator of a Company vacates office after the final meeting of creditors, the Liquidator must deliver up to the Court the Company's books, papers and other records that have not already been disposed of in the course of the liquidation.

~~8.4.5~~

8.4.5 If an Administrator (**A2**) of a Company is appointed in succession to another Administrator (**A1**) (including a Provisional Liquidator), A2 must, on taking possession of the Company's assets, discharge any balance owing to A1 on account of:

- (a) expenses properly incurred by A1 and payable under the AIFC Insolvency Regulations or these Rules; and
- (b) any advances made by A1 in relation to the assets, together with interest on the advances as may be appropriate.

Alternatively, A2 may (before taking office) give A1 a written undertaking to discharge any balance out of the first realisation of assets.

~~8.4.6~~

8.4.6 A1 has a Security Interest in the Company's assets in relation to any amounts due to A1 under subrule 8.4.5. But, if A2 realises assets to pay the amounts, A1's Security Interest does not apply to amounts deductible by A2 from the proceeds of realisation for expenses properly incurred in realising the assets.

~~8.4.7~~

8.4.7 A2 must, from time to time out of the proceeds of realisation of Company property, discharge all guarantees properly given by A1 for the benefit of the Company.

~~8.4.8~~

8.4.8 A1 must give A2 all information relating to the affairs of the Company, and the course of A1's administration, as A1 considers to be reasonably necessary for the effective discharge of A2's duties as Administrator.

~~8.5.~~

8.5. Proxies

~~8.5.1~~

8.5.1 For these Rules, a **Proxy** is an authority given by a Person (the **principal**) to another Person (the **proxy-holder**) to attend a meeting and speak and vote as the principal's representative.

~~8.5.2~~

8.5.2 Only 1 Proxy may be given by a Person for any meeting at which the Person wishes to be represented, and it may only be given to 1 Person who is an individual aged 18 years or older. But the principal may specify 1 or more other individuals aged 18 years or older to be proxy-holder in the alternative, in the order in which they are named in the Proxy.

~~8.5.3~~

8.5.3 A Proxy for a particular meeting may be given to the Person who is to be the chair of the meeting.

~~8.5.4~~

8.5.4 A Person given a Proxy under subrule 8.5.3 cannot decline to be the proxy-holder in relation to the Proxy.

~~8.5.5~~

8.5.5 A Proxy requires the proxy-holder to give the principal's vote on matters arising for decision at the meeting, to abstain, or to propose, in the principal's name, a resolution to be voted on by the meeting, either as directed or in accordance with the proxy-holder's own discretion.

~~8.5.6~~

8.5.6 Proxies used for voting at any meeting must be kept by the chair of the meeting, and must be given, as soon as possible after the meeting, to the Responsible Insolvency Practitioner (if the chair is not the Responsible Insolvency Practitioner).

~~8.6.~~

8.6. Service of notices etc.

~~8.6.1~~

8.6.1 This rule applies to a notice or other Document that is required or permitted under the AIFC Insolvency Regulations or these Rules to be served on a Person (whether the word 'deliver', 'give', 'notify', 'send' or another word is used).

~~8.6.2~~

8.6.2 If the Document is a notice (however described), the Document must be served on the Person in Writing, unless the AIFC Insolvency Regulations or these Rules otherwise provide or the Court requires or permits the notice to be given in another way.

~~8.6.3~~

8.6.3 The Document may be served on the Person:

- (a) by personal service; or
- (b) by sending it to the Person by prepaid, certified post.

~~8.6.4~~

8.6.4 Subrule 8.6.3 does not affect the operation of a provision of any AIFC Regulations or any other provision of any AIFC Rules that requires or permits the Document to be served on the Person otherwise than as provided in that subrule.

~~8.6.5~~

8.6.5 If 2 or more Persons are acting jointly as the Responsible Insolvency Practitioner in any Insolvency Proceedings, service of the Document on any of them is taken to be service of the Document on all of them.

~~8.6.6~~

8.6.6 If the Document is a notice (however described) that is required or permitted to be served by the Responsible Insolvency Practitioner in any Insolvency Proceedings, service of the Document may be proved by means of a certificate, stating that the Document was duly posted, given by the Responsible Insolvency Practitioner, the practitioner's authorised representative, or a partner or employee of either of them.

PART 9: PROTECTED CELL COMPANIES

9.1. Cell Receivership Orders

9.1.1 Subject to the provisions of this rule 9.1, if in relation to a Protected Cell Company, the Court is satisfied:

(a) that the Cellular Assets attributable to a particular Cell of the Company are or are likely to be insufficient to discharge the claims of creditors in respect of that Cell; and

(b) that the making of an order under this rule 9.1 would achieve one or more of the purposes set out in 9.1.3 below;

the Court may make an order (a "Cell Receivership Order") under this rule 5.1 in respect of that Cell.

9.1.2 A Cell Receivership Order may be made in respect of one or more Cells.

9.1.3 A Cell Receivership Order is an order directing that the business and Cellular Assets of or attributable to a Cell shall be managed by a person specified in the order (the "Cell Receiver") for one or more of the purposes of:

(a) the survival as a going concern of the Cell;

(b) the more advantageous realisation of the business and assets of or attributable to the Cell than would be achieved by the winding up of the Cell; or

(c) the orderly winding up of the business of or attributable to the Cell and the distribution of the Cellular Assets attributable to the Cell to those entitled to have recourse thereto.

9.1.4 Where a Receiver, an Administrative Receiver or a Liquidator has been appointed to a Protected Cell Company, the Court may not make a Cell Receivership Order in relation to a Cell of the Company unless the Court is satisfied that it is desirable to do so in order to protect the interests of members or creditors, or potential members or creditors, of the Cell.

9.1.5 A Cell Receivership Order in relation to a Cell of a Protected Cell Company shall cease to be of effect, but without prejudice to prior acts, upon the appointment of a Receiver, an Administrative Receiver or Liquidator to act in respect of the Company unless the Court orders otherwise on being satisfied that it is desirable to do so in order to protect the interests of members or creditors, or potential members or creditors, of the Cell.

9.1.6 A Cell Receiver appointed under this rule 9.1 must be a person who is registered as an insolvency practitioner under Part 9 of the AIFC Insolvency Regulations.

9.2. Applications for Cell Receivership Orders

9.2.1 An application for a Cell Receivership Order in respect of a cell of a Protected Cell Company may be made by:

(a) the Company;

(b) the directors of the Company;

(c) any creditor of the Company in respect of that Cell;

(d) a member in respect of Cell Shares of that Cell;

(e) the AFSA; or

(f) the Registrar.

9.2.2 The Court, on hearing an application for a Cell Receivership Order, may make an interim order or adjourn the hearing, conditionally or unconditionally.

9.2.3 Notice of an application to the Court for a Cell Receivership Order in respect of a cell of a Protected Cell Company shall be served upon:

(a) the Company;

(b) a Liquidator, Receiver or Administrative Receiver, if any, appointed in relation to the Company;

(c) the Registrar;

(d) the AFSA; and

(e) such other persons, if any, as the Court may direct

who shall each be given an opportunity of making representations to the Court before the order is made.

9.3. Functions and powers of a Cell Receiver

9.3.1 The Cell Receiver of a Cell:

(a) may do all such things as may be necessary for one or more of the purposes set out in subrule 9.1.3; and

(b) shall have all the functions and powers of the directors in respect of the business and Cellular Assets of or attributable to the Cell.

9.3.2 The Cell Receiver may at any time apply to Court:

(a) for directions as to the extent or exercise of any function or power;

(b) for the Cell Receivership Order to be discharged or varied; or

(c) for an order as to any matter arising in the course of his Cell Receivership.

9.3.3 In exercising his functions and powers the Cell Receiver is deemed to act as the agent of the Protected Cell Company, and shall not incur personal liability except to the extent that he is fraudulent, reckless, grossly negligent, or acts in bad faith.

9.3.4 Any person dealing with the Cell Receiver in good faith need not enquire whether the cell receiver is acting within his powers.

9.3.5 When an application has been made for, and during the period of operation of, a Cell Receivership Order:

(a) no proceedings may be instituted or continued by or against the Protected Cell Company in relation to the relevant Cell; and

(b) no steps may be taken to enforce any security or in execution of legal process in respect of the business or Cellular Assets of or attributable to the relevant Cell;

except by leave of the Court, which may be conditional or unconditional.

9.3.6 During the period of operation of a Cell Receivership Order the functions and powers of the directors of the Protected Cell Company shall cease in respect of the business and Cellular Assets of or attributable to the Cell in respect of which the order was made.

9.4. Discharge and variation of Cell Receivership Orders

9.4.1 The Court shall not discharge a Cell Receivership Order unless it appears to the Court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

9.4.2 The Court, on hearing an application for the discharge or variation of a Cell Receivership Order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

9.4.3 Upon the Court discharging a Cell Receivership Order in respect of a Cell of a Protected Cell Company on the ground that the purpose for which the order was made has been achieved or substantially achieved:

(a) the Court may direct that any payment made by the Cell Receiver to any creditor of the Company in respect of that Cell shall be deemed full satisfaction of the liabilities of the Company to that creditor in respect of that Cell; and

(b) the creditor's claims against the Company in respect of that Cell shall be thereby deemed extinguished but nothing in this subrule 9.4.3 shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the Company.

9.4.4 Subject to the provisions of:

(a) this Part 9 and any other applicable AIFC Regulations or AIFC Rules; and

(b) any agreement between the Protected Cell Company and any creditor thereof as to the subordination of the Debts due to that creditor to the Debts due to the Company's other creditors;

the Company's Cellular Assets attributable to any Cell of the Company in relation to which a Cell Receivership Order has been made shall, in the winding up of the business of or attributable to that Cell, be realised and used to satisfy the liabilities attributable to that Cell, and for this purpose all such liabilities rank equally and abate proportionately until the Cellular Assets have all been exhausted.

9.4.5 Any surplus shall thereafter be distributed, unless the articles provide otherwise:

(a) among the holders of the Cell Shares or the person otherwise entitled to the surplus; or

(b) where there are no Cell Shares and no such persons, among the holders of the other shares;

in each case according to their respective rights and interests in or against the Company.

9.4.6 The Court may, upon discharging a Cell Receivership Order in respect of a Cell of a Protected Cell Company, direct that the Cell shall be dissolved on such date as the Court may specify.

9.4.7 Immediately upon the dissolution of a Cell of a Protected Cell Company, the Company may not undertake business or incur liabilities in respect of that Cell.

9.5. Remuneration of a Cell Receiver

The remuneration of a Cell Receiver and any expenses properly incurred by him shall be payable, in priority to all other claims, from the Cellular Assets attributable to the Cell in respect of which the Cell Receiver was appointed but not from any other assets of the Protected Cell Company.

9.6. Appointment of Receivers and Liquidators to a Protected Cell Company

9.6.1 Subject to subrule 9.6.2 and any other provisions of these Rules, Parts 3, 4, 5, 9 and 10 of the AIFC Insolvency Regulations, and any other applicable AIFC Regulations or AIFC Rules, shall apply to a Protected Cell Company and, in so doing, to the Cells of such Company as if, where the context admits:

- (a) each Cell were a separate Company;
- (b) the members of each Cell were the members of that separate Company; and
- (c) the Cellular Assets attributable to a Cell were the assets of that separate Company.

9.6.2 A Receiver, Administrative Receiver, or Liquidator shall not be appointed in respect of a Protected Cell Company except by order of the Court.

9.6.3 Without limiting the application of any other provisions of the AIFC Insolvency Regulations or these Rules, a Receiver or Administrative Receiver of a Protected Cell Company may in accordance with Article 14 of the AIFC Insolvency Regulations, and a Liquidator may in accordance with Article 70 of the AIFC Insolvency Regulations, apply to the Court for:

- (a) directions as to the extent or exercise of any function or power;
- (b) a Cell Transfer Order under rule 8.18 of the AIFC Companies Rules permitting, in an appropriate case, the transfer of the Cellular Assets and liabilities of a Cell to another person, wherever resident or incorporated, and whether or not a Protected Cell Company; or
- (c) an order as to any matter arising in the course of his administration, including in relation to any Cell within the Company.

9.7. Remuneration of Receivers and Liquidators

9.7.1 The remuneration of a Receiver, an Administrative Receiver or a Liquidator of a Protected Cell Company and any expenses properly incurred by him shall be payable, in priority to all other claims:

- (a) where the appointment involves the continuation of business of a Cell within the Company, and not the winding up of that cell from the Cellular Assets attributable to that Cell but not from any other assets of the Company;
- (b) where the appointment involves the winding up of a Cell within the Company from:
 - (i) the Cellular Assets attributable to the Cell; and
 - (ii) to the extent these may be insufficient, the Non-Cellular Assets of the Company; and
- (c) in all other cases from:
 - (i) the Non-Cellular Assets of the Company; and
 - (ii) to the extent these may be insufficient, the relevant cellular assets, in such shares or proportions as the Court may direct.

9.8. Winding up of Protected Cell Companies and Cells generally

- 9.8.1 Subject to these Rules, Parts 3, 4, 5, 9 and 10 of the AIFC Insolvency Regulations, and any other applicable AIFC Regulations or AIFC Rules, in the winding up of a Cell of a Protected Cell Company, whether under a Cell Receivership Order or by the appointment of a Receiver, Administrative Receiver or Liquidator to the Company, the Cellular Assets attributable to a particular Cell of the Company shall be used to satisfy the liabilities attributable to that Cell, and for this purpose all such liabilities rank equally and abate proportionately until the Cellular Assets have all been exhausted.
- 9.8.2 Notwithstanding any law applicable in the AIFC to the contrary, in the winding up of a Protected Cell Company or of a Cell of such a Company, a Cell Receiver, Receiver, Administrative Receiver or Liquidator shall:
- (a) be bound to deal with the assets of the Company or of the Cell, as the case may be, in accordance with the duties and requirements set out in rule 8.11 of the AIFC Companies Rules; and
 - (b) in discharge of the claims of creditors of the Company or of the Cell, apply assets to those entitled to have recourse thereto in conformity with the provisions of Part 8 of the AIFC Companies Rules
- 9.8.3 The Regulations in this rule 9.8 apply notwithstanding any provisions to the contrary in or under the AIFC Insolvency Regulations, and are subject to the power of the Court to make orders relating in particular to fraud or to inability to satisfy liabilities entirely.
-

SCHEDULE 1: MEETINGS

Note: See rule 8.2.1 and 8.2.2.

~~1.1.~~

1.1. General power to call meetings of creditors or members

~~1.1.1~~

1.1.1 The Administrator of a Company may, at any time, call and conduct meetings of creditors or members for the purpose of ascertaining their wishes on any matter relating to the relevant Insolvency Proceedings.

~~1.1.2~~

1.1.2 When a Venue for the meeting has been fixed, notice of the meeting must be given by the Administrator:

- (a) for a creditors meeting—to every creditor who is known to the Administrator or is identified in any statement of the Company's affairs prepared under these Rules; and
- (b) for a members meeting—to every Person recorded in the Company's Register of Shareholders as a Shareholder.

~~1.1.3~~

1.1.3 Notice of the meeting must be given at least 21 days before the date fixed for it, and must specify the purpose of the meeting.

~~1.1.4~~

1.1.4 The notice must specify a time and date, not more than 4 days before the date fixed for the meeting, by which, and the place where, creditors must lodge Proofs and Proxies to be entitled to vote at the meeting; and the same applies in relation to members and their Proxies.

~~1.1.5~~

The Administrator may give additional notice of the meeting by public advertisement, and must

1.1.5 give additional notice of the meeting by public advertisement if the Court orders.

~~1.2.~~

1.2. Quorum at meetings of creditors or members

~~1.2.1~~

1.2.1 Any meeting of creditors or members in Insolvency Proceedings of a Company is competent to act if a quorum is present.

~~1.2.2~~

1.2.2 A quorum is:

- (a) for a creditors meeting—at least 1 creditor entitled to vote; and
- (b) for a members meeting—at least 2 members entitled to vote or, if only 1 member is entitled to vote, that member.

~~1.2.3~~

1.2.3 For this rule, a Person is taken to be present at a meeting if the Person is present personally or is represented by Proxy by any Person (including the chair of the meeting).

~~1.2.4~~

1.2.4 If, at any meeting of creditors or members:

~~(a)~~

(a) the provisions of this rule about a quorum being present are satisfied by the attendance of:

- (i) the chair of the meeting alone; or
- (ii) 1 other Person in addition to the chair of the meeting; and

~~(b)~~

(b) the chair is actually aware, because of Proofs and Proxies received or otherwise, that 1 or

more additional Persons would, if attending, be entitled to vote;

the meeting must not commence until at least the expiry of 15 minutes after the time fixed for its commencement.

~~1.3.~~

1.3. Reports of meetings of creditors or members etc.

~~1.3.1~~

1.3.1 If a meeting of creditors or members of a Company is called, the chair of the meeting must prepare a report of the meeting.

~~1.3.2~~

1.3.2 The report must:

- (a) state whether a proposal was approved by the meeting and whether the approval was with any modifications; and
- (b) set out the resolutions that were taken at the meeting, and the decision on each resolution; and
- (c) list the creditors or members of the Company (with their respective values) who were present or represented at the meetings, and how they voted on each resolution; and
- (d) include any further information that the chair considers it appropriate to make known to the Court.

~~1.3.3~~

1.3.3 The chair of the meeting must file a copy of the report in the Court within 4 days after the day the meeting is held. The Court must endorse the date of filing on the copy of the report filed in the Court.

~~1.3.4~~

1.3.4 As soon as possible after the copy of the report is filed in the Court, the chair of the meeting must give a copy of the report to each Person who was given notice of the meeting.

~~1.4.~~

1.4. Attendance of Company personnel etc. at meetings of creditors or members

~~1.4.1~~

1.4.1 In this rule:

relevant Person, in relation to a Company, means:

- (a) a present or past officer, employee or contractor of the Company; or
- (b) any other Person who is or has been involved in the administration or management of the Company.

~~1.4.2~~

1.4.2 Whenever a meeting of creditors or members of a Company is called, the Convener must give at least 21 days notice of the meeting to the relevant Persons that the Convener considers should be told of, or be present at, the meeting.

~~1.4.3~~

1.4.3 The Convener may give notice to a relevant Person that the relevant Person is required to be present at the meeting.

~~1.4.4~~

1.4.4 Any other Person (including a relevant Person who is not given notice under subrule 1.4.3) may be admitted to the meeting, but:

~~(a)~~

(a) the Person must have given reasonable notice to the Convener of the Person's wish to be

present; and

- (b) it is a matter for the discretion of the chair of the meeting whether or not the Person is to be admitted; and
- (c) the decision of the chair is final about what (if any) intervention may be made by the Person.

~~1.4.5-~~

1.4.5 If the meeting wishes to put questions to a relevant Person who is not present at the meeting, the chair may adjourn the meeting to obtain the Person's attendance.

~~1.4.6-~~

1.4.6 If a relevant Person is present at the meeting, the only questions that may be put to the Person are those that the chair of the meeting, in the chair's discretion, allows.

~~1.5.——~~

1.5. **Calling meetings of creditors or members**

~~1.5.1-~~

1.5.1 In fixing the Venue for a meeting of creditors or members, the Convener of the meeting must have regard to the convenience of the Persons (other than the meeting chair) who are invited to attend.

~~1.5.2-~~

1.5.2 Meetings of creditors or members of a Company must be called to start between 10 a.m. and 4 p.m. on a business day.

~~1.5.3-~~

1.5.3 A proxy form must accompany a notice calling a meeting.

~~1.6.——~~

1.6. **Chair of meetings of creditors or members**

~~1.6.1-~~

1.6.1 The Convener is the meeting chair. However, if the Convener is unable to attend the meeting for any reason, the Convener may nominate another Person to be the chair of the meeting.

~~1.6.2-~~

1.6.2 The chair must not, using any Proxy held by the chair, vote to increase or reduce the amount of the remuneration or expenses of an Administrator, Nominee or Supervisor unless the Proxy specifically directs the chair to vote in that way.

~~1.6.3-~~

1.6.3 The chair may exclude any present or former Director or Officer of the Company from attendance at a meeting, either completely or for any part of it.

~~1.7.——~~

1.7. **Entitlement to vote at meetings of creditors**

~~1.7.1-~~

1.7.1 Subject to this rule, every creditor of a Company who has notice of a creditors meeting of the Company is entitled to vote at the meeting or any adjournment of it.

~~1.7.2-~~

1.7.2 Votes are to be calculated pro rata according to the amount of each creditor's Debt at the date of the meeting (after deducting any repayment of Debt made by the Company).

~~1.7.3-~~

1.7.3 A creditor may vote in relation to a Debt for an unliquidated amount or any Debt with an unascertained value and, for the purposes of voting (but not otherwise), the creditor's Debt must be valued at US\$1 unless the chair of the meeting agrees to put a higher value on it.

~~1.7.4-~~

1.7.4 A secured creditor may vote only in relation to the unsecured part of the creditor's Debt.

~~1.7.5-~~

1.7.5 A Person is entitled to vote at the creditors meeting only if the Person has given, not later than midday on the business day before the day fixed for the meeting, Written details of the Debt that the Person claims to be due to the Person from the Company, and the claim has been duly admitted.

~~1.7.6~~

1.7.6 The chair of the meeting may allow a creditor to vote even though the creditor has Failed to comply with subrule 1.7.5, if satisfied that the Failure was caused by circumstances beyond the creditor's control.

~~1.7.7~~

1.7.7 The chair of the meeting may call for any Document or other evidence to be produced to the chair if the chair considers it necessary for the purpose of substantiating the whole or any part of the claim.

~~1.8.~~

1.8. Admission of claims of creditors for voting purposes

~~1.8.1~~

1.8.1 Subject to this rule, at any creditors meeting of a Company the chair of the meeting must ascertain the entitlement of Persons wishing to vote and must admit or reject their claims accordingly.

~~1.8.2~~

1.8.2 The chair of the meeting may admit or reject a claim in whole or part.

~~1.8.3~~

1.8.3 Any creditor or member of the Company may appeal to the Court against decision of the chair of the meeting on any matter under this rule.

~~1.8.4~~

1.8.4 If the chair of the meeting is in doubt about whether a claim should be admitted or rejected, the chair must mark it as objected to and allow votes to be cast in relation to it, subject to the votes being subsequently declared invalid.

~~1.8.5~~

1.8.5 If on an appeal a decision of the chair is reversed or varied, or votes are declared invalid, the Court may order that another meeting be called or make any other order that it considers just. However, the Court may make an order under this subrule only if it considers that there has been unfair prejudice or material irregularity.

~~1.8.6~~

1.8.6 The chair of the meeting is not personally liable for any costs incurred by any Person in relation to an appeal to the Court under this rule.

~~1.9.~~

1.9. Majority required for meetings of creditors

~~1.9.1~~

1.9.1 Unless these Rules otherwise require, at any creditors meeting of a Company a resolution is taken to be passed only if it is passed by a majority of more than one-half in value of the creditors present in person or by Proxy and voting on the resolution.

~~1.9.2~~

1.9.2 Any creditor or member of the Company may appeal to the Court against any decision of the chair of the meeting on any matter relating to whether a resolution has been passed at the meeting.

~~1.10.~~

1.10. Entitlement to vote at meetings of members

~~1.10.1~~

1.10.1 At a meeting of members of a Company, members of the Company vote according to the rights respectively attaching to their Shares, or any other interests in the Company, under the Company's Articles of Association.

~~1.10.2~~

1.10.2 At a meeting of members of a Company, if a Person is liable to contribute to the assets of the Company, but has no voting rights under the Company's Articles of Association, the Person does not have a vote at the meeting. However, if the Person would ordinarily acquire voting rights under the Articles of Association if the contribution were to be made, the Person is entitled to those voting rights.

~~1.11.~~

1.11. Majority require for meetings of members

Subject to any express provision of the Articles of Association of a Company, at a meeting of the members of the Company a resolution is taken to have been passed only if it is passed by a majority of more than one-half in value of the members present in person or by Proxy and voting on the resolution. The value of members is determined by reference to the number of votes given to each member by the Articles of Association. If the votes for and against a question are equal, the chair of the meeting has a casting vote.

~~1.12.~~

1.12. Role of chair of meetings of creditors or members etc.

~~1.12.1~~

1.12.1 A creditors meeting and a members meeting of a Company may be held together if the chair (or chairs) of the meetings considers it appropriate.

~~1.12.2~~

1.12.2 The chair of a creditors or members meeting of a Company may, and must if the meeting so resolves, adjourn that meeting for no longer than 14 days.

~~1.12.3~~

1.12.3 If there are subsequently further adjournments of the meeting, the final adjournment must not be to a day later than 14 days after the day the meeting was originally held.

~~1.12.4~~

1.12.4 If, following the only or final adjournment of the meeting, a proposal (with or without modifications) has not been approved by the meeting, the proposal is taken to have been rejected.

~~1.12.5~~

1.12.5 The chair of a creditors or members meeting of a Company must make a record of the proceedings. The record must be kept as part of the records of the relevant Insolvency Proceedings. The record of the meeting must include a list of the Persons who were present or represented at the meeting and, if a creditors committee is established at the meeting, the names and addresses of the members appointed to the committee.

~~1.12.6~~

1.12.6 If the chair of a creditors or members meeting of a Company holds a Proxy that requires the chair to vote for a particular resolution, and no other Person proposes that resolution:

- (a) the chair must propose the resolution, unless the chair considers that there is good reason for not doing so; and
- (b) if the chair does not propose the resolution, the chair must, as soon as possible after the meeting, tell the Person who gave the chair the Proxy why the chair did not propose the resolution.

~~1.13.~~

1.13. Expenses of calling meetings of creditors or members etc.

~~1.13.1~~

1.13.1 Subject to this rule, the expenses of calling and holding a meeting of creditors or members of a Company at the request of a Person (other than the Administrator) must be paid by the Person.
~~The Person must deposit security for payment of the expenses with the Administrator.
Person must deposit security for payment of the expenses with the Administrator.~~

~~1.13.2~~

1.13.2 The Administrator must decide the amount to be deposited as security and need not act on the request unless the amount is deposited.

~~1.13.3~~

1.13.3 If a meeting of creditors is called at the request of a Person other than the Administrator, the meeting may vote that the expenses of calling and holding the meeting, and of calling and holding any meeting of members called at the same time, are to be payable out of the assets of the Company as an expense of the administration.

~~1.13.4~~

1.13.4 If a meeting of members is called at the request of members, the meeting may vote that the expenses of calling and holding the meeting are to be payable out of the assets of the Company,

but subject to the right of creditors to be paid in full with interest.

~~1.13.5~~

1.13.5 The Administrator must refund any amount deposited by a Person under subrule 1.13.1 to the extent that it is not required for the payment of expenses of calling and holding the requested meeting.

~~1.14.~~

1.14. Requests by creditors and members for meetings

~~1.14.1~~

1.14.1 Any request by a creditor to the Administrator of a Company for a meeting of creditors or members to be called must include, or be accompanied by:

- (a) a list of the creditors who have agreed to the request and the amount of their respective claims in the winding up; and
- (b) for each creditor agreeing to the request—Written confirmation of the agreement; and
- (c) a statement of the purpose of the proposed meeting.

~~1.14.2~~

1.14.2 If the Administrator considers the request to be properly made in accordance with the AIFC Insolvency Regulations and these Rules, the Administrator must fix the Venue for the meeting. The date fixed must not be more than 35 days after the day the Administrator receives the request.

~~1.14.3~~

1.14.3 The Administrator must give the creditors or members, as the case may be, 21 days notice of the meeting and the Venue for it.

~~1.14.4~~

1.14.4 Subrules 1.14.1 to 1.14.3 apply to a request by a member of a Company for a members meeting as if:

- (a) the reference in subrule 1.14.1(a) to the *respective claims* of creditors were a reference to substitute the members' respective voting rights (worked out in accordance with rule 1.10 (Entitlement to vote at meetings of members) of this Schedule); and
- (b) the Persons to be given notice under subrule 1.14.3 were those appearing (by the Company's books or otherwise) to be members of the Company or otherwise entitled to vote at the meeting under rule 1.10 of this Schedule; and
- (c) all other necessary changes were made.

SCHEDULE 2: CREDITORS COMMITTEE

Note: See rule 8.2.3.

~~2.1.~~

2.1. Establishment of Creditors Committee etc.

~~2.1.1~~

2.1.1 A creditors committee may be established for a Company:

- (a) if an Administrator is appointed for the Company—at the Administrator’s request; or
- (b) by a creditors meeting.

~~2.1.2~~

2.1.2 The committee must consist of at least 3 and not more than 5 creditors of the Company.

~~2.1.3~~

2.1.3 Any creditor of the Company is eligible to be a member of the committee if the creditor’s claim has not been rejected for the purpose of the creditor’s entitlement to vote. A creditor of the Company who is not an individual may only act through a named representative.

~~2.1.4~~

2.1.4 The committee is not established until at least 3 of the Persons who are to be members of the committee have agreed to become members.

~~2.2.~~

2.2. Functions and meetings of creditors committee

~~2.2.1~~

2.2.1 The creditors committee of a Company must assist the Administrator to Exercise the Administrator’s Functions, and must act in relation to the Administrator in the way that may be agreed from time to time.

~~2.2.2~~

2.2.2 The creditors committee may consent on behalf of creditors to any proposal by the Administrator. If the creditors committee consents to a proposal on behalf of the creditors, the proposal is binding on all creditors.

~~2.2.3~~

2.2.3 The creditors committee may withdraw its consent to a proposal. However, any withdrawal takes effect from when it is made, and does not invalidate the original consent.

~~2.2.4~~

2.2.4 Meetings of the creditors committee are to be held when and where the Administrator decides.

~~2.2.5~~

2.2.5 However, the Administrator must call a first meeting of the committee to take place within 3 months after the day it is established. After the first meeting of the committee, the Administrator must call a meeting:

- (a) if requested by a member of the committee or the representative of a member; and
- (b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

~~2.2.6~~

2.2.6 A meeting called because of a request under paragraph (a) must be called for a date not later than 21 days after the day the Administrator receives the request.

~~2.2.7~~

2.2.7 The Administrator must give 7 days notice of the Venue of a meeting to every member of the committee (or the member’s representative, if designated for that purpose), unless in any case the requirement of notice has been waived by or on behalf of any member. Waiver

may be indicated either at or before the meeting.

~~2.3.~~

2.3. Proceedings at meetings of creditors committee etc.

~~2.3.1~~

2.3.1 The chair of any meeting of the creditors committee must be the Administrator or a Person nominated in Writing by the Administrator.

~~2.3.2~~

2.3.2 A meeting of the committee is duly constituted if due notice has been given to all the members, and at least 2 members are present or represented.

~~2.3.3~~

2.3.3 A member of the committee may, in relation to the business of the committee, be represented by an individual authorised by the member.

~~2.3.4~~

2.3.4 However, a committee member may not be authorised to represent another committee member and an individual may not be authorised to represent 2 or more committee members at the same time.

~~2.3.5~~

2.3.5 The chair at any meeting of the committee may call on an individual claiming to represent a member to produce the individual's letter of authority, and may exclude the individual if it appears that the authority is deficient.

~~2.3.6~~

2.3.6 If a member's representative signs a Document on the member's behalf, the fact that the representative signs on the member's behalf must be stated below the representative's signature.

~~2.3.7~~

2.3.7 A member of the committee may resign by notice given to the Administrator. ~~2.3.8~~

2.3.8 A member of the committee automatically ceases to be a member if:

- (a) the member becomes bankrupt; or
- (b) the member is not present or represented at 3 consecutive meetings of the committee (unless at the third of those meetings it is resolved that this paragraph is not to apply to the member in relation to some or all of those meetings); or
- (c) the member ceases to be, or is found never to have been, a creditor.

~~2.3.9~~

2.3.9 A member of the committee may be removed by a resolution passed at a meeting of creditors. At least 14 days notice must be given of the resolution.

~~2.3.10~~

2.3.10 If a member of the creditors committee ceases to be a member of the committee, the Administrator may appoint any creditor to fill the vacancy, if a majority of the members of the committee agree to the appointment and the creditor consents to act. However, if there are at least 2 members of the Committee after the vacancy, the vacancy need not be filled if the Administrator and the remaining members of the committee agree.

~~2.3.11~~

2.3.11 At any meeting of the committee, each member of the committee (whether present personally or by the member's representative) has 1 vote. A resolution is passed if a majority of the members present or represented vote in favour of it.

~~2.3.12~~

2.3.12 Every resolution passed must be recorded in Writing, either separately or as part of the minutes of the meeting. The record must be signed by the chair of the meeting and kept with the records of the relevant Insolvency Proceedings.

~~2.3.13~~

2.3.13 The Administrator may seek the agreement of the members of the committee to a resolution by sending a copy of the proposed resolution to every member (or the member's representative designated for the purpose). The proposed resolution must be set out so that agreement or disagreement with the resolution may be indicated by the recipient on the copy sent to the recipient, separately from any other resolution sent to the recipient at the same time. Any member of the committee may, within 7 business days after the day the member receives the resolution, require the Administrator to call a meeting of the committee to consider the matters raised by the resolution. In the absence of such a request, the resolution is taken to have been passed by the committee if the Administrator is notified in Writing by a majority of the members that they agree with it.

~~2.4.~~

2.4. Expenses of members of creditors committee

The Administrator of a Company must reimburse, out of the assets of the Company in the prescribed order of priority, any reasonable travelling expenses directly incurred by members of the creditors committee or their representatives in relation to their attendance at committee meetings or otherwise on committee business.

~~2.5.~~

2.5. Dealings of creditor committee members with Company

~~2.5.1~~

2.5.1 Membership of the creditors committee of a Company does not prevent a Person from dealing with the Company while there is an Administrator of the Company if any transactions between the Company and the Person are entered into in good faith and for value.

~~2.5.2~~

2.5.2 The Court may, on the application of any Person interested, set aside a transaction between the Company and a member of the creditors committee if the transaction was not entered into in good faith and for value, and may give the consequential directions that it considers appropriate to compensate the Company for any loss that it may have incurred as a result of the transaction.

~~2.6.~~

2.6. Formal defects in relation to creditors committee

The acts of the creditors committee of a Company are valid despite any defect in the appointment, election or qualifications of any member of the committee or any member's representative or in the formalities of its establishment.

SCHEDULE 3: REQUIRED CONTENT FOR STATEMENT OF AFFAIRS

Note: See rules 2.2.2, 4.4.3, 5.5.3 and 5.50.2.

~~3.1.~~

3.1. Required content for statement of affairs

A statement of a Company's affairs must include particulars of the following matters:

- (a) the Company's assets, divided into the categories that are appropriate for easy identification, with estimated values assigned to each category;
- (b) the extent (if any) to which the assets are secured in favour of creditors, with in each case particulars of the claim and its amount, and of how and when the Security Interest was created;
- (c) the nature and amount of the Company's Liabilities;
- (d) amounts due to Preferential Creditors;
- (e) creditors who are, or claim to be, secured;
- (f) whether any and, if so, what guarantees have been given of the Company's Debts by other Persons, specifying which (if any) of the guarantors are Persons connected with the Company;
- (g) the jurisdictions where assets of the Company are situated;
- (h) whether there are, to the knowledge of the Person or Persons preparing the statement, any circumstances giving rise to the possibility that, if the Company were to go into liquidation, claims may be made under section 96 (Transactions at undervalue), 97 (Preferences) or 99 (Invalid security interests) of the AIFC Insolvency Regulations;
- (i) the names and addresses of the Company's Preferential Creditors, with the amounts of their respective claims;
- (j) the names and addresses of the Company's secured creditors, with details of their Security Interests, valuations of their Collateral, and information about the size of their respective claims;
- (k) the names and addresses of the Company's unsecured creditors, with the amounts of their respective claims;
- (l) any Debts owed by or to the Company to or by Persons connected with it;
- (m) the names and addresses of the Company's members, with details of their respective shareholdings.

SCHEDULE 4: INTERPRETATION

SCHEDULE 4.1. —: INTERPRETATION

Note: See rule 1.5.

4.1. Meaning of Debt and Liability

~~4.1.1~~

4.1.1 In these Rules:

Debt, in relation to the winding up of a Company, means, subject to subrule 4.1.2, any of the following:

- (a) any debt or Liability to which the Company is subject on the day it Goes into Liquidation;
- (b) any debt or Liability to which the Company may become subject after that day because of any obligation incurred on or before that day;
- (c) any interest accrued on any debt mentioned in paragraph (a) or (b) that is provable;

but excludes any obligation of the Company under or in relation to Excluded Property.

~~4.1.2~~ 4.1.2 In working out whether, for any provision of the AIFC Insolvency Regulations or these Rules about the winding up of a Company, any Liability in tort is a debt provable in the winding up, the Company is taken to become subject to that Liability because of an obligation incurred when the cause of action accrued.

~~4.1.3~~

4.1.3 For any provision of the AIFC Insolvency Regulations or these Rules about the winding up of a Company, a reference to a *Liability* is a reference a liability to pay money or money's worth, including, for example, any liability under any AIFC Regulations or AIFC Rules, any liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution or as otherwise provided under the AIFC Regulations on Obligations.

~~4.1.4~~

4.1.4 In working out whether, for any provision of the AIFC Insolvency Regulations or these Rules about winding up of a Company, an obligation (however described) is a debt or liability, it is immaterial whether is a present or future obligation, whether it is certain or contingent, or whether its amount is fixed or liquidated or is capable of being ascertained by fixed rules or as a matter of opinion.

~~4.2.~~

4.2. Definitions for these Rules

Administration: a Company is in *Administration* if there is an Administrative Receiver appointed for it.

AFSA Rules means rules adopted by the Board of Directors of the AFSA.

Authorised Market Institution means an Authorised Market Institution under the AIFC Financial Services Framework Regulations.

Authorised Person means an Authorised Person under the AIFC Financial Services Framework Regulations.

Collateral, in relation to a Security Interest, has the meaning given by Schedule 1 (Interpretation) of the AIFC Security Regulations.

Convener, of a meeting, means the Person who calls the meeting.

Creditor Member, of the liquidation committee in the winding up of a Company, means a member of the committee appointed by the creditors or under rule 5.39 (Creditor Member vacancy on liquidation committee).

Debt, in relation to the winding up of a Company, has the meaning given by rule 4.1 (Meaning of *Debt* and *Liability*) of this Schedule.

Director, in relation to a Company, means a director of the Company.

Excluded Property, in relation to a Company that is an Investment Intermediary, means:

- (a) if section 36 (Effect of insufficiency on Account Holders' rights) of the AIFC Personal Property Regulations applies in relation to the Company—any property to that section applies in relation to the Company; or
- (b) if any AFSA Rules relating to the holding by Investment Intermediaries of Money belonging to third parties apply in relation to the Company—any Money to which those Rules apply in relation to the Company.

First Meeting of Creditors and **First Meeting of Contributories** have the meanings respectively given by rule 5.10.4 (First meetings of creditors and contributories).

Future has the meaning given by Schedule 1 (Interpretation) of the AIFC Personal Property Regulations.

Insolvency Proceedings means any proceedings, whether in the Court or otherwise, under the AIFC Insolvency Regulations or these Rules.

Investment has the meaning given by Schedule 1 (Interpretation) of the AIFC Personal Property Regulations.

Investment Account has the meaning given by Schedule 1 (Interpretation) of the AIFC Personal Property Regulations.

Investment Entitlement has the meaning given by Schedule 1 (Interpretation) of the AIFC Personal Property Regulations.

Investment Intermediary has the meaning given by Schedule 1 (Interpretation) of the AIFC Personal Property Regulations.

Liability, in relation to the winding up of a Company, has the meaning given by rule 4.1 (Meaning of *Debt* and *Liability*) of this Schedule.

Money includes money, or a money claim (including a claim in relation to a balance credited to an account or arising in connection with a close out Netting Agreement), in any currency.

Netting Agreement has the meaning given by Schedule 1 (Interpretation) of the AIFC Netting Regulations.

Preferential Creditor means a creditor who, under any provision of the Acting Law of the AIFC,

is entitled to be paid in priority to ordinary creditors.

Proof and ***Proving***, in relation to the winding up of a Company, have the meanings respectively given by rule 5.16.1 (Proof of Debts in liquidation).

Proxy has the meaning given by rule 8.5.1 (Proxies).

Responsible Insolvency Practitioner, for any Insolvency Proceedings in relation to a Company, means the Insolvency Practitioner who is the Supervisor of an approved Voluntary Arrangement for the Company or the Administrator of the Company.

Secured Party, in relation to a Security Interest, has the meaning given by Schedule 1 (Interpretation) of the AIFC Security Regulations.

Security Interest has the meaning given by Schedule 1 (Interpretation) of the AIFC Security Regulations.

Venue, for a meeting, means the time, date and place of the meeting.