



Astana Financial Services Authority

Consultation Paper

No. 14 of 2018

**Proposed Additional
Amendments to the AIFC Legal
Entities Framework**

November 16, 2018

Introduction

1. The Astana Financial Services Authority (AFSA) has issued this Consultation Paper to invite public comments on the proposed additional rules intended to revise the framework for legal entities in the AIFC. The proposed rules are also consistent with the relevant OECD, IOSCO and FATF standards.
2. The proposals in this Consultation Paper will be of interest to Authorised Persons, Designated Non-Financial Business or Professions, Registered Auditors and individuals, financial organizations and investors who are interested in doing business in the AIFC.
3. All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use "Consultation Paper No 14" in the subject line. You may, if relevant, identify the organisation you represent when providing your comments. The AFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise. Comments supported by reasoning and evidence will be given more weight by the AFSA.
4. The deadline for providing comments on the proposals is **December 15, 2018**. Once we receive your comments, we shall consider if any refinements are required to this proposal.
5. Comments to be addressed by post:
Policy and Strategy Division
Astana Financial Services Authority (AFSA)
8 Kunayev Street, Building B, Astana, Kazakhstan
or emailed to: consultation@afsa.kz
Tel: +8 7172 613781
6. The remainder of this Consultation Paper contains the following:
 - (a) background to the proposals;
 - (b) Annex 1: Draft AIFC Foundations Regulations
 - (c) Annex 2: Draft AIFC Common Reporting Standard Rules
 - (d) Annex 3: Draft AIFC Co-Operation and Exchange of Information Rules
 - (e) Annex 4: Proposed amendments to AIFC General Rules
 - (f) Annex 5: Proposed amendments to AIFC Employment Regulations

Background

7. The Astana Financial Services Authority (AFSA) intends to enhance the legislative framework governing legal entities in the Astana International Financial Centre (AIFC).
8. This legislation comprises regulations and rules covering the functioning of the AIFC Registrar of Companies (the Registrar) and the operation of different types of entity within the AIFC (that is, companies, partnerships, and non-profit incorporated organisations).
9. The AFSA's objectives are to ensure that this framework for legal entities:
 - (a) reflects a more effective and coherent structure for the Registrar;
 - (b) meets international standards set by the Organisation for Economic Co-operation and Development (OECD), the Financial Action Task Force (FATF) and the International Organisation of Securities Commissions (IOSCO), including in relation to beneficial ownership, tax transparency, and co-operation and exchange of information between regulators; and
 - (c) meets the needs of AIFC participants by expanding the range of legal entity types available within the AIFC.
10. Consequently, it is now consulting on the following changes to the legal entities framework:
 - (a) introducing legal framework for foundations as a new legal form in the AIFC;
 - (b) introducing common reporting standard (CRS) to meet the OECD requirements;
 - (c) introducing requirements for cooperation and the exchange of information to meet the IOSCO requirements;
 - (d) specifying criteria to carry on Regulated activities by way of business;
 - (e) introducing requirements for protecting whistleblowers.
11. We are consulting if there are any concerns relating to the proposed regulatory requirements to legal entities framework. If so, what are they, and how should they be addressed?

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PART 1: GENERAL

1. **Name**

These Regulations may be cited as the *AIFC Foundations Regulations* [****].

2. **Date of enactment**

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

3. **Commencement**

These Regulations commence on [****].

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:

- (a) within the jurisdiction of the AIFC;
- (b) to any Foundation established in accordance with these Regulations.

6. **Interpretation**

- (1) Schedule 1 contains definitions and other interpretative provisions used in these Regulations. Other words and expressions used in these Regulations are set out in the Glossary.
- (2) Schedule 2 contains provisions relating to the application of the Arbitration Regulations in relation to these Regulations.
- (3) Schedule 3 contains fines applicable for contravention of these Regulations, and fees in respect of notifications and applications in relation to these Regulations.

PART 2: NATURE OF AN AIFC FOUNDATION

7. **Nature of a Foundation**

- (1) A Foundation is a body corporate with a legal personality separate from that of its Founder(s) and any other person.
- (2) The property of a Foundation is not held by it upon trust for any other person.



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- (3) A Founder has such rights (if any) in respect of a Foundation as provided for in its By-laws.
- (4) A person specified in the By-laws (other than a Founder, a member of the Council, the Registered Agent and any Guardian) has such rights (if any) in respect of a Foundation as provided for in its By-laws.
- (5) Any rights a person may have in respect of a Foundation may be assigned to some other person, if its By-laws so provide.
- (6) If rights are assigned under section 7(5), the person assigning the rights must within a period of thirty (30) days provide a copy of the assignment to the Registered Agent or, if there is no Registered Agent, to the Registrar. A person who fails to comply with this requirement is liable to a fine, as set out in Schedule 3.

8. **Duration of a Foundation**

- (1) A Foundation may, but need not, be established for a fixed period or for a specified limited period, provided that it may be dissolved at an earlier time in accordance with the provisions of these Regulations.
- (2) If a Foundation is to be wound up and dissolved upon:
 - (a) the happening of some event; or
 - (b) the expiration of a fixed period of time,the details of the event or period must be specified in its By-laws.
- (3) If a person is to have the right to wind up and dissolve a Foundation, the details of such right must be specified in its By-laws, subject to any right arising under any applicable law.

9. **Objects and categories of Foundations**

- (1) A Foundation's objects:
 - (a) must be certain, reasonable and possible; and
 - (b) must not be unlawful or contrary to public policy in the AIFC.
- (2) A Foundation may be established for:
 - (a) objects which are exclusively charitable; and
 - (b) one or more of the following:
 - (i) objects which are not charitable; and
 - (ii) objects to benefit persons by name, category or class.



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- (3) It is sufficient, for purposes of subsection 9(2)(b)(i), for the Charter to provide that a Foundation is to hold property selected in accordance with its By-laws.
- (4) It is sufficient, for purposes of subsection 9(2)(b)(ii), for the Charter to provide that a person or class of persons to receive benefits may be determined in accordance with the By-laws.
- (5) A Foundation may not carry out any commercial activities, except those necessary for, and ancillary or incidental to, its objects.
- (6) The objects of a Foundation may only be amended:
 - (a) where there is an express power to do so in the Charter; or
 - (b) by order of the Court.
- (7) If there is no express power to amend the objects in a Foundation's Charter then, subject to subsections 12(1) and 12(2), an object may be amended by order of the Court on an application made by or on behalf of a Founder, the Foundation or a Guardian where:
 - (a) the object has been, as far as may be, fulfilled;
 - (b) the object cannot be carried out or cannot be carried out in accordance with the original intention or spirit in which the Foundation was established;
 - (c) the object provides a use for only part of the property of the Foundation;
 - (d) the object was laid down by reference to a class of persons or to a matter which has for any reason since ceased to be:
 - (i) suitable; or
 - (ii) practicable in administering the Foundation;
 - (e) in the case of a charitable object, the object has ceased to be charitable (by being useless or harmful to the community or otherwise); or
 - (f) the object has ceased in any other way to provide a suitable and effective method of using the property of the Foundation,and, in these cases, the property, or the remainder of the property, as the case may be, shall be held for such other charitable or non-charitable object as the Court may order to be consistent with the original intention of the Founder(s), or the spirit in which the Foundation was established.
- (8) An application to the Court pursuant to subsection 12(7) may be brought by any one of:
 - (a) the AFSA;
 - (b) the Council of the Foundation; or
 - (c) any other Person with Sufficient Interest,



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upon notice to the Founder(s) (if still alive), the Guardian (if any), the Council and (if applicable) any other Person with Sufficient Interest.

10. Matters determined by AIFC law

- (1) Subject to subsection 10(2), all matters arising in regard to a Foundation or in regard to any disposition of property to or by a Foundation, including questions as to:
 - (a) the capacity of a Founder or Contributor;
 - (b) any aspect of the validity of the disposition or the interpretation or effect thereof;
 - (c) the administration of the Foundation (whether the administration is conducted in the AIFC or elsewhere), including questions as to the powers, obligations, liabilities and rights of the officers of the Foundation and their appointment and removal; or
 - (d) the existence and extent of powers, conferred or retained, including powers of variation of the Charter or By-laws or dissolution of the Foundation, and the validity of any exercise thereof,

shall be determined in accordance with the laws of the AIFC without reference to the laws of any other jurisdictions with which the Foundation or disposition may be connected.

- (2) Subject to sections 11, 12 and 13, subsection 10(1) shall:
 - (a) not validate any disposition of property which is neither owned by a Founder or Contributor, nor is the subject of a power vested in a Founder or Contributor;
 - (b) not validate any trust or disposition of immovable property situated in a jurisdiction other than the AIFC in which such trust or disposition is invalid according to the laws of such jurisdiction;
 - (c) not validate any testamentary trust or disposition which is invalid according to the laws of the testator's last domicile;
 - (d) not affect the recognition of Foreign Laws in determining whether a Founder or Contributor is or was the owner of any property transferred to the Foundation or is or was the holder of a power to dispose of such property;
 - (e) not affect the recognition of the laws of its place of incorporation in relation to the capacity of a corporation; and
 - (f) not affect the recognition of Foreign Laws prescribing generally, without reference to the existence or the establishment of the Foundation, the formalities for the disposition of property within the jurisdiction of those Foreign Laws.



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11. **Limitations in Foreign Law**

- (1) Without limiting the generality of subsection 10(1), no disposition of property to a Foundation that is valid under the laws of the AIFC is void, voidable, liable to be set aside or defective in any manner by reference to a Foreign Law; nor is the capacity of any Founder in relation to the Foundation or disposition to be questioned nor is the Foundation or any other person to be subjected to any liability or deprived of any power or right, by reason that:
 - (a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a foundation;
 - (b) the disposition voids or defeats any rights, claims or interests conferred by Foreign Law upon any person by reason of a Personal Relationship to a founder or any other person related to the foundation or by way of Heirship Rights or contravenes any rule of Foreign Law or any foreign, judicial or administrative order, arbitration award or action intended to recognise, protect, enforce or give effect to any such rights, claims or interests; or
 - (c) the Foreign Law or foreign judicial or administrative order or arbitration award or imposes any obligation or liability on a founder, foundation or any other party in relation to the foundation or the property of the foundation.
- (2) Subject to subsection 11(3), a transfer of property to a Foundation shall not be void, voidable or liable to be set aside by reason of a Founder or a Contributor's bankruptcy, the liquidation of a Founder or Contributor, or any action or claims made against a Founder or Contributor by any creditor, notwithstanding any foreign statute providing otherwise.
- (3) Notwithstanding subsection 11(2), where the Court determines that, at the time when the property was transferred to a Foundation, a Founder or Contributor, as applicable, was insolvent or intended to defraud any creditor of a Founder or Contributor, as applicable, it may declare that the transfer of property was void to the extent of the creditor's claim.
- (4) In making claims to set aside transfers of property to a Foundation under subsection 11(3), the burden of proof shall rest with the creditor.

12. **Heirship rights**

An Heirship Right conferred by Foreign Law in relation to the property of a living person shall not be recognised as:

- (1) affecting the ownership of immovable property in the AIFC and movable property wherever it is situated for the purposes of subsections 10(2)(a) and (b) or for any other purpose; or
- (2) constituting an obligation or liability for any purpose.

13. **Foreign judgments**



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A foreign judgment shall not be recognised or enforced or give rise to any estoppels insofar as it is inconsistent with sections 11 and 12.

PART 3: ESTABLISHMENT OF AN AIFC FOUNDATION

14. Creation

- (1) The Founder(s) may apply for the establishment of a Foundation by signing and filing with the Registrar an application for its establishment in the manner prescribed by the Registrar.
- (2) The application filed with the Registrar under subsection 14(1) shall be signed by each Founder and shall include:
 - (a) the name of the proposed Foundation;
 - (b) the address of the proposed Foundation's registered office in the AIFC;
 - (c) the full name, nationality and address of each Founder;
 - (d) the full name, nationality and address of each of the proposed members of the Council of the proposed Foundation;
 - (e) if applicable, the name and business address of the proposed Registered Agent in the AIFC;
 - (f) the Charter of the proposed Foundation;
 - (g) unless a Registered Agent is proposed to be appointed, the By-laws of the proposed Foundation; and
 - (h) such other particulars as the Registrar may require.
- (3) The provisions of Article 21 of the Companies Regulations shall apply to a Foundation in respect of the use of misleading, deceptive or conflicting names.
- (4) A person may not be named as a Registered Agent unless that person is a Qualified Person
- (5) Upon lodgment of the application and payment of the prescribed fee, the Registrar shall either:
 - (a) register the Foundation;
 - (b) seek further information in respect of the proposed Foundation; or
 - (c) refuse the application.
- (6) On the registration of a Foundation, the Registrar shall:



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- (a) issue a certificate that the Foundation is established and such certificate shall expressly set out its status as a Foundation;
 - (b) assign to the Foundation a number, which shall be the Foundation's registered number; and
 - (c) issue a Commercial Licence in its favour.
- (7) The provisions of section 8 of the Companies Regulations apply to a Commercial Licence issued to a Foundation. A Foundation which fails to maintain a valid Commercial Licence is liable to a fine, as set out in Schedule 3.

15. **Constitution**

- (1) The constitution of a Foundation comprises:
- (a) its Charter; and
 - (b) subject to subsection 17(4), its By-laws.

16. **Charter**

- (1) A Foundation must have a Charter which shall be in the English language.
- (2) The Charter must contain the following:
- (a) its name;
 - (b) the object(s);
 - (c) a description of the initial capital;
 - (d) the duration of the Foundation (if it is to subsist for a limited period only); and
 - (e) a declaration by each Founder requesting the Council to comply with the terms of the Charter.
- (3) The Charter may contain any matter:
- (a) that is otherwise required or permitted to be in the By-laws in accordance with section 17; or
 - (b) that the Founder(s) think fit,
- provided that there is no provision which is contrary to or inconsistent with these Regulations or the Regulations.
- (4) The Charter may be amended only if:
- (a) the Charter so provides; or

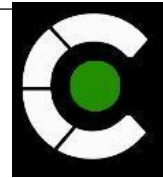


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- (b) the Court so orders under section 41.
- (5) Where a Charter specifies an exclusively charitable object, it may not provide for the amendment of the Charter so as to specify a non-charitable object in place of the charitable object.
- (6) Each Founder must subscribe to the Charter, if a Founder is:
 - (a) an individual, by signing the Charter in his own name; or
 - (b) a body corporate, by an authorised signatory signing the Charter.
- (7) The Board of Directors of the AFSA may prescribe in the Regulations model provisions to be known as the “Standard Charter”, and a Foundation may, for its Charter, adopt the whole or any part thereof as are applicable to that Foundation.
- (8) If a Foundation proposes to amend its Charter, it must after completing its internal processes necessary to amend the Charter, lodge the amended Charter with the Registrar within a period of thirty (30) days after such amendment.
- (9) The amended Charter shall come into force upon it being registered by the Registrar, and, if the change involves a change of name, upon the issue of a certificate by the Registrar pursuant to subsection 31(1).
- (10) The Charter may provide that if at any time the property of the Foundation includes any property which by reason of the law of the Republic of Kazakhstan or any other specified jurisdiction may be held only by a national of that country the only persons who may be officers of the Foundation or Qualified Recipients under the Foundation are nationals of that jurisdiction at that time, and may further provide that such provision may not be amended or revoked.
- (11) If the Charter contains an irrevocable provision of the type referred to in subsection 16(10) then notwithstanding any other provision of these Regulations, that provision may not be amended or revoked.

17. **By-laws**

- (1) The By-laws must:
 - (a) prescribe the functions of the Council;
 - (b) detail the procedures for the appointment, resignation and removal of members of the Council and any Guardian;
 - (c) if the members of the Council or any Guardian are to be remunerated, the details in respect thereof;
 - (d) set out how the decisions of the Council are to be made and, if any decision requires the approval of any other person, specify the decisions and that person;



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- (e) if the functions of the Council must or may be delegated or exercised in conjunction with any other person, the extent to which this must or may be done; and
 - (f) specify what is to happen to any property of the Foundation that remain should the Foundation be wound up and dissolved.
- (2) The By-laws may:
- (a) prescribe the manner in which the property of the Foundation may be distributed, accumulated or applied;
 - (b) detail whether, and if so how, further property may be endowed upon the Foundation;
 - (c) provide for the addition or removal of a person or class of persons as recipients or for the exclusion from the category of recipient of a person or class of persons, either revocably or irrevocably;
 - (d) detail any person's powers in relation to the Foundation (including, but not limited to, the power to appoint or remove any official, to take investment decisions or to approve the use of property);
 - (e) impose obligations upon recipients as a condition of receipt of any amount from the Foundation;
 - (f) make the potential right of a recipient in relation to a receipt of any amount from the Foundation:
 - (i) liable to termination;
 - (ii) subject to a restriction on alienation or dealing; or
 - (iii) subject to diminution or termination in the event of the recipient becoming bankrupt;
 - (g) detail the name and address of a default recipient, failing which the default recipient shall be the AFSA; and
 - (h) contain any other matter that the Founder(s) deem fit.
- (3) The By-laws may be amended only if:
- (a) the Charter so provides, or
 - (b) the Court so orders under section 41.
- (4) To the extent to which matters required or authorised to be in the By-laws under subsection 17(1) are contained within the Charter, such matters need not also be in the By-laws, and if all of the matters in subsections 17(1) and (2) are contained in the Charter, a Foundation need not have any By-laws.



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- (5) The Board of Directors of the AFSA may prescribe in the Regulations model provisions to be known as the “Standard By-laws”, and a Foundation may adopt the whole or any part thereof as are applicable to that Foundation.
- (6) The Registered Agent, or the Registrar if there is no Registered Agent, shall be notified of any change to the By-laws and a copy of the amended By-laws shall be provided to the Registered Agent or filed with the Registrar, whichever is applicable, within thirty (30) days of such change. A Foundation which fails to comply with this requirement is liable to a fine, as set out in Schedule 3.

18. **Default recipient**

- (1) The Charter or By-laws may identify a default recipient to whom all property of a Foundation for which provision has not otherwise been made shall pass in the event of the termination thereof.
- (2) Unless otherwise provided in the Charter or By-laws, a default recipient is not entitled to information about the Foundation, and has no rights in respect of it.
- (3) If:
 - (a) no default recipient is named in the Charter or By-laws; or
 - (b) any such default recipient no longer exists,any property of a Foundation existing at its termination shall, unless the Charter or By-laws provide otherwise, become property of the AFSA.

19. **Council**

- (1) A Foundation must have a Council to administer its property and to carry out its objects.
- (2) The Council shall comprise at least two (2) members.
- (3) A Founder or a body corporate may be appointed as a member of the Council.
- (4) A member of the Council:
 - (a) must be so named in the Register;
 - (b) must ensure that the Council keeps accurate Accounting Records for the Foundation; and
 - (c) must comply with the provisions of these Regulations, the Charter and By-laws.
- (5) A person must not be appointed as a member of a Council, or be so referred to in the Register, unless he has consented in writing to being a member of the Council.
- (6) The appointment of a person as a member of a Council is void and will have no effect if



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that person is also a Guardian of the Foundation.

- (7) The members of a Council must conduct the Foundation's affairs in accordance with its Charter and By-laws, these Regulations and any other applicable law.
- (8) A Council member must:
 - (a) act honestly and in good faith with a view to the best interests of the Foundation;
 - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances; and
 - (c) declare any interest in a transaction of the Foundation at any Council meeting at which such transaction is considered.
- (9) The duty under subsection 19(8)(a) is fiduciary in nature.
- (10) An act of a member of the Council is valid despite any defect that may afterwards be found in:
 - (a) the appointment of the member; or
 - (b) the member's qualifications.
- (11) The Registrar must be notified of the details of any change in the membership of a Foundation's Council within thirty (30) days of the occurrence of the change. A Foundation which fails to comply with this requirement is liable to a fine, as set out in Schedule 3.

20. **Guardian**

- (1) If a Foundation has a charitable object, or a specified non-charitable object, the Foundation must have a Guardian in relation to that object.
- (2) A Foundation may, but need not, have a Guardian in respect of an object to provide some or all of its property to a person or class of persons:
 - (a) whether or not immediately ascertainable; or
 - (b) ascertained by reference to a Personal Relationship.
- (3) A Founder or a body corporate may be appointed as Guardian of a Foundation.
- (4) A Guardian:
 - (a) must be so named in the Register;
 - (b) must keep and retain accurate accounts and records of his guardianship for so long as his guardianship subsists and for a period of six (6) years thereafter; and



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- (c) must comply with the provisions of these Regulations, the Charter and the By-laws.
- (5) A person must not be appointed as a Guardian, or be so referred to in the Register, unless he has consented in writing to being the Guardian of the Foundation.
- (6) The appointment of a person as Guardian is void and shall have no effect if the person is also a member of the Council of the Foundation.
- (7) The Guardian must take reasonable steps to ensure that the Council of the Foundation carries out its functions.
- (8) Accordingly, the Guardian may require the Council to account to the Guardian for the way in which it has:
 - (a) administered the Foundation's property; and
 - (b) acted to further the Foundation's objects.
- (9) The By-laws may give a Guardian the power to approve or disapprove any specified actions of the Council.
- (10) Except to the extent that the By-laws provide otherwise, a Guardian may sanction or authorise any action taken or to be taken by the Council that would not otherwise be permitted by the By-laws if the Guardian considers that it is appropriate to do so.
- (11) However, the Guardian must not sanction or authorise any action taken or to be taken by the Council unless he is satisfied:
 - (a) that it is in the best interests of the Foundation; and
 - (b) that the Council has acted, or will be acting, in good faith.
- (12) If a Guardian sanctions or authorises any action of the Council under subsection 20(10), the Council, in taking that action, may be presumed by third parties to have acted in good faith.
- (13) Nothing in subsection 20(10) is to be construed as permitting a Guardian to sanction or to authorise any action taken or to be taken by the Council that would be inconsistent with these Regulations or any other applicable law.

21. **The Registered Agent**

- (1) A Foundation may, but need not, have a Registered Agent.
- (2) The Registered Agent of a Foundation:
 - (a) must be appointed in accordance with these Regulations; and
 - (b) has, in respect of the Foundation, the functions specified in these Regulations and the Bylaws.



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- (3) On the establishment of a Foundation, the proposed Registered Agent named under subsection 14(2)(f) becomes the Registered Agent of the Foundation.
- (4) Details of any change of the Registered Agent must be provided to the Registrar within thirty (30) days of the occurrence of the change. A Foundation which fails to comply with this requirement is liable to a fine, as set out in Schedule 3.
- (5) A Foundation may not have more than one Registered Agent at any time.

22. **Liability of Council members and others**

- (1) This section applies to a person appointed under the Charter or By-laws of a Foundation when acting or purporting to be acting in the course of that appointment.
- (2) Nothing:
 - (a) in the Charter or By-laws; or
 - (b) in a contract between the Foundation and a person to whom this Article applies, relieves, releases or excuses that person from any liability for fraud, wilful misconduct or gross negligence.
- (3) Any insurance purchased and maintained by the Foundation in respect of a person to whom this Article applies must not include insurance in respect of any liability the person may incur:
 - (a) to the Foundation;
 - (b) to pay a fine in respect of a contravention of these Regulations; or
 - (c) any costs the person may incur:
 - (i) in defending criminal proceedings in which the person is convicted; or
 - (ii) in defending civil proceedings brought by the Foundation in which judgment is given against the person.

23. **Reservation to Founder of powers to amend, revoke, vary or terminate**

- (1) Subject to subsection 23(2), a Founder may not reserve to himself any powers to amend, revoke or vary the Charter or By-laws or to terminate the Foundation.
- (2) A Founder may reserve the following powers:
 - (a) a power to amend, revoke or vary the terms of the Charter or By-laws, or both of them, in whole or in part;
 - (b) subject to subsection 9(2), a power to amend, revoke or vary the objects of the Foundation, in whole or in part; and



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(c) a power to terminate the Foundation,

provided that the power to amend, revoke, vary or terminate, as the case may be, is detailed in full in the Charter, and provided that these powers are only reserved:

- (a) for a period not exceeding the duration of a Founder's life, if he is a natural person; or
- (b) for a period not exceeding fifty (50) years from the date of establishment of the Foundation, if the Founder is a legal person,

and thereafter any such powers so reserved shall lapse, notwithstanding the terms of the Charter.

(3) If, at any time in respect of a Foundation:

- (a) any power has been reserved or granted under subsection 23(1) to more than one Founder; and
- (b) more than one Founder is capable of exercising it at that time,

then such power must be exercised by those Founders unanimously unless the Charter provides otherwise

PART 4: PROPERTY OF AN AIFC FOUNDATION

24. Capital endowment

- (1) The initial capital of a Foundation is the capital endowed upon the Foundation in order that the Foundation may be established.
- (2) The initial capital may comprise any property, and may be provided by way of gift or for valuable consideration.
- (3) Following the endowment of the initial capital, further property may be endowed upon the Foundation by any person if the Charter so permits.
- (4) A Founder does not have any interest in a Foundation by virtue only of endowing it with its initial capital or further property or otherwise by virtue of being a Founder thereof.
- (5) No person has any interest in a Foundation, or is a Founder of a Foundation, by virtue only of endowing it with further property in accordance with subsection 24(3).

25. Financial resources

The property of a Foundation shall consist of:

- (1) the initial capital of the Foundation;
- (2) any further amount endowed upon the Foundation and accepted by its Council;



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- (3) the proceeds of investment of the capital of the Foundation; and
- (4) any other property acquired by its Council in accordance with applicable law and these Regulations.

26. **Qualified Recipients**

- (1) A Foundation's By-laws may provide for the distribution of property of the Foundation to Qualified Recipients.
- (2) A Qualified Recipient shall be one or more of the following:
 - (a) a person holding an entitlement specified in, or pursuant to, the By-laws to a fixed share of the property and income of the Foundation when the Foundation distributes it;
 - (b) a person holding a depository receipt;
 - (c) a person who is a prospective recipient of a fixed, or discretionary, share of the property of the Foundation upon the happening of a future event specified in the By-laws;
 - (d) a person who is nominated pursuant to the By-laws to be a recipient of a fixed, or discretionary, share of the property and income of the Foundation at a time following the establishment of the Foundation;
 - (e) a charity; and
 - (f) a default recipient.
- (3) A Qualified Recipient has no right to or interest in the property of the Foundation other than a right to payment of amounts which arises by virtue of the terms of the By-laws or pursuant to the By-laws, or a contract with the Foundation, including a contract in relation to a depository receipt.
- (4) If:
 - (a) a Qualified Recipient becomes entitled to receive an amount from a Foundation in accordance with the Charter or the By-laws; and
 - (b) the amount is not provided,the Qualified Recipient, or a person acting on behalf of the Qualified Recipient, may seek an order of the Court ordering the Foundation to pay the amount
- (5) Except as provided by subsection 26(6), a Qualified Recipient must seek an order pursuant to subsection 26(4) within the period of three (3) years from the time when the Qualified Recipient became aware of the entitlement to receive the amount.



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- (6) If the Qualified Recipient has not attained the age of 18 years when he or she became aware of his or her entitlement to receive the amount, the period referred to in subsection 26(5) begins to run on the day on which the Qualified Recipient attains that age.

27. **Depository receipts**

- (1) A Foundation may issue securities, including depository receipts, representing specific rights to payment quantified by reference to specific parts of the property owned by the Foundation or relating to other rights or interests, whether present or future, to which the Foundation is or might be entitled.
- (2) Any such securities issued by a Foundation may be subscribed for or issued in favour of any individual or legal entity.
- (3) The Foundation retains full ownership of the properties and full entitlement to the rights or interest in any property in respect of which it issued securities under subsection 27(1).
- (4) Any payments to holders of securities issued pursuant to subsection 27(1) shall be made in accordance with the terms and conditions set forth in the By-laws, or agreed to by the Foundation in accordance with procedures contained in the By-laws.
- (5) In case of securities issued in connection with shares or other securities held by the Foundation, the Foundation shall retain any voting rights that may be attached to the securities it owns, unless the terms and conditions of the securities concerned expressly provide otherwise.

28. **Limitation to the transferability of rights in respect of a Foundation**

- (1) Unless otherwise provided in the By-laws, the right to receive payments from a Foundation are transferable.
- (2) The By-laws may limit the right to transfer a right to payment in one (1) or more of the following cases:
 - (a) the transferee is already a holder of certificates or depository receipts of the same kind, and issued by the same Foundation;
 - (b) the transferee is a Founder;
 - (c) the transferee is a Qualified Recipient of the Foundation; or
 - (d) the transferee is a legal entity or a natural person acting in the name or on behalf of one (1) of the persons indicated under subsections 28(2)(a), (b) or (c).



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PART 5: ADMINISTRATION OF AIFC FOUNDATIONS

29. Registered office and conduct of business

- (1) A Foundation shall at all times have a registered office in the AIFC to which all communications and notices may be delivered.
- (2) Subject to the provisions of subsection 9(5), a Foundation shall carry on its activities in the AIFC and elsewhere as permitted by law.
- (3) A document may be served on a Foundation by leaving it at, or sending it by post to, the registered office of the Foundation or by other means agreed by the Foundation.

30. Particulars in correspondence and other communications

Subject to applicable law, the name of a Foundation and its registered number shall appear in legible characters on the common seal of the Foundation (if applicable), and on every business letter, statement of account, invoice, official notice, publication or any other instrument issued by the Foundation, including communications through electronic means.

31. Change of name

- (1) Where a Foundation changes its name under subsection 16(4), the Registrar shall enter the new name on the Register in place of the former name, and shall issue a certificate of name change showing the previous name and the new name of the Foundation, provided that any such name change shall also be subject to subsection 14(3).
- (2) The name change will take effect from the date on which the Registrar issues the certificate of name change.
- (3) A change of name by a Foundation under these Regulations does not affect any rights or obligations of the Foundation or render defective any legal proceedings by or against it and any legal proceedings that might have been continued or commenced by or against it under its former name may be continued or commenced under its new name.

32. Accounts and Accounting Record

- (1) Unless inconsistent with this section 32, sections 128 to 132 of the Companies Regulations shall apply to a Foundation, as if it were a private company and any reference to “Director(s)” or “Officer(s)” in relevant sections in the Companies Regulations shall be interpreted to refer to member(s) of the Council. A Foundation which fails to keep and maintain accounts or make them available as required under these Regulations is liable to a fine, as set out in Schedule 3.
- (2) A Foundation’s accounts shall be approved by the Council and signed on their behalf by at least two members of the Council. A Foundation which fails to comply with this requirement is liable to a fine, as set out in Schedule 3.
- (3) A Foundation shall within thirty days (30) after the accounts have been approved by the Council:



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- (a) if it has not appointed a Registered Agent, file a copy of its annual accounts with the Registrar; or
 - (b) if it has appointed a Registered Agent, provide a copy of its annual accounts to its Registered Agent.
- (4) A Foundation which fails to comply with the requirements in subsection 32(3) is liable to a fine, as set out in Schedule 3.
- (5) A person who makes a statement that is false, misleading or deceptive in a material way to the Registrar or the Registered Agent in respect of accounts, is liable to a fine as set out in Schedule 3.

PART 6: REGISTRAR

33. Exercise of functions of the Registrar

- (1) The Registrar shall administer these Regulations.
- (2) In the exercise of his functions under these Regulations, the Registrar has all the powers and duties conferred upon him by:
 - (a) sections 9 and 10 of the Companies Regulations; and
 - (b) sections 183 to 194 of the Companies Regulations,including the power of delegation.
- (3) In exercising any powers and duties conferred upon the Registrar in subsection 33(2), any reference to “Director(s)” or “Officer(s)” shall be interpreted as referring to member(s) of the Council.

34. Register to be kept and made available for public inspection

- (1) The Registrar must keep a Register for the purposes of these Regulations.
- (2) The Register must include the information contained in subsections 14(2)(a) to (e), inclusive of the details of any changes filed with the Registrar.
- (3) The Registrar must, on payment of any prescribed fee, make the Register available for public inspection at any reasonable time.
- (4) On payment of any prescribed fee, the Registrar must supply a person with a certificate stating whether or not a named body is a Foundation and, if it is, the following details as they appear in the Register:
 - (a) the date of its establishment;
 - (b) its registration number;



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- (c) if applicable, the name and business address of the Registered Agent in the AIFC; and
 - (d) the registered office of the Foundation in the AIFC.
- (5) On payment of any prescribed fee, the Registrar must supply a Person with Sufficient Interest with a certified copy of the Charter as filed with the Register.
- (6) The following documents are admissible in evidence in legal proceedings:
- (a) a certificate supplied by the Registrar under subsection 34(4); or
 - (b) a certified copy of the Charter supplied under subsection 34(5).

35. **Keeping of records by Registrar**

- (1) A record delivered to the Registrar under these Regulations may be kept by the Registrar in any form:
- (a) that is approved by the Board of Directors of the AFSA; and
 - (b) that is capable of being reproduced in a legible form.
- (2) The Registrar is to be taken to have complied with an obligation to keep a record if he has complied with subsection 33(1) in respect of the record.
- (3) The Registrar may destroy a record kept by the Registrar if:
- (a) it is an original record and it has been recorded and kept in accordance with subsection 35(1); or
 - (b) it relates solely to a Foundation that has been dissolved more than six (6) years previously.

36. **Registrar may change registration number of Foundation**

The Registrar may, for good cause, change the registration number of a Foundation, provided that he must inform the Foundation if he does so.

37. **Foundation to make annual return**

- (1) A Foundation must file an annual return with the Registrar.
- (2) The annual return must be filed in the form and manner prescribed by the Registrar and must contain the information required by the Registrar
- (3) The annual return must be made up to the Foundation's return date, which shall be each anniversary of the date it received its Licence, or such other date the Registrar considers appropriate, and must be submitted to the Registrar together with the renewal of its Licence but in any event not later than thirty (30) days after the return date.



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- (4) A Foundation which fails to file an annual return by the date specified in subsection 37(3) is liable to a fine, as set out in Schedule 3.
- (5) A Foundation must pay the prescribed Licence fees to the Registrar as prescribed in Regulations.

38. **Power of the Registrar to refuse documents**

- (1) The Registrar may refuse to accept any document delivered under these Regulations if:
 - (a) it does not comply with these Regulations;
 - (b) it has not been duly completed;
 - (c) it contains any material error;
 - (d) it is not legible; or
 - (e) is not accompanied by the prescribed fee.
- (2) If the Registrar refuses to accept a document, the Registrar must return it to the person who submitted it together with a notice specifying the grounds upon which the document was refused.
- (3) Subject to subsection 38(5), a document refused by the Registrar is deemed not to have been delivered.
- (4) A person who is aggrieved by the refusal of a document by the Registrar may appeal to the Court within thirty (30) days after the date of refusal or such further time as the Court may allow.
- (5) On hearing an appeal under subsection 38(4), the Court may confirm the refusal or make such determination in the matter as it sees fit.

PART 7: JUDICIAL AND NON-JUDICIAL PROCEEDINGS

39. **Role of the Court in administration of Foundations**

- (1) The Court may intervene in the administration of a Foundation to the extent its jurisdiction is invoked by a Person with Sufficient Interest or as provided by Law.
- (2) A Foundation is not subject to continuing judicial supervision unless so ordered by the Court.
- (3) Unless specifically stated otherwise, any Person with Sufficient Interest in respect of a Foundation may apply to the Court to make any order or take any action specified in this Part.
- (4) If the Court has to determine whether a person is a Person with Sufficient Interest in respect of a Foundation, the reference in subsection 39(1) to a Person with Sufficient Interest, for the purpose of determining that question, shall include such a person.



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40. Power of the Court to order compliance

- (1) If the Court is satisfied that a person has failed to comply with:
 - (a) a requirement of these Regulations, the Charter or By-laws of a Foundation; or
 - (b) an obligation imposed on the person by these Regulations, the Charter or By-laws of a Foundation,the Court may order the person to comply with the requirement or obligation.
- (2) If the Court is satisfied that a Foundation, acting through its Council, has failed to carry out its objects or any of them, the Court may order the Foundation to do so.
- (3) An order under this section may specify the action the person or Foundation is required to take.

41. Power of the Court to order amendment of Charter or By-laws

- (1) The Court may on an application made by or on behalf of a Founder, the Foundation or a Guardian order the amendment of the Charter or the By-laws of a Foundation, if the Court is satisfied:
 - (a) that the change will assist the Foundation to administer its property or to attain its objects; or
 - (b) that those objects are no longer attainable and that the change will assist the Foundation to attain objects as near as reasonably possible to those objects.
- (2) If the order is to amend a Foundation's Charter, the thirty (30) day period referred to subsection 16(8) to file an amended Charter with the Registrar shall be calculated from the date of the Court order.
- (3) Without limiting subsection 41(1), the Court may make an order under Article 44(1) in the event that a Foundation does not have By-laws, or that the relevant provisions of the Bylaws cannot be readily ascertained or are otherwise incomplete.
- (4) The Court may, on an application made by or on behalf of a Founder, in its absolute discretion and on such terms and conditions as it thinks fit, by order authorise the rectification of any error, defect or omission in the Charter or the By-laws of a Foundation.

42. Power of the Court to give directions

- (1) This Article applies if the Court is satisfied:
 - (a) that if it gives a direction it will assist a Foundation to administer its property or to carry out its objects; or
 - (b) that it is otherwise desirable for the Court to give a direction.



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- (2) The Court may on an application made by or on behalf of a Founder, the Foundation or a Guardian give a direction as to:
- (a) the meaning and effect of a provision or term in the Charter or By-laws of a Foundation;
 - (b) the manner in which the Council is required to carry out the administration of the Foundation's property or to carry out its objects;
 - (c) the functions of the Council or of any of its members;
 - (d) the functions of any other person appointed under the By-laws of a Foundation;
 - (e) whether a person is a Qualified Recipient of a Foundation;
 - (f) the rights of Qualified Recipients under a Foundation as between themselves or as between themselves and the Foundation; or
 - (g) such other matters as the Court considers relevant to the Foundation, its Charter, its By-laws, the administration of its property or the carrying out of its objects.
- (3) The Court may, in addition to giving a direction under subsection 42(2), make such an order as it thinks fit to give effect to the direction.

43. **Power of the Court to protect interests under a Foundation**

- (1) The Court may in any proceeding under this Part by order appoint a person to protect the interests of a person who the Court is satisfied is a Qualified Recipient under a Foundation, where the Court is satisfied that the person is unable to act on his, her or its own behalf and may by order determine the terms of such appointment, remove such person and give directions as to service of such person.
- (2) A person so appointed may represent the person whose interests he has been appointed to protect in any dealing with the Foundation or in any proceeding under this Part.
- (3) Where a representative has been appointed under subsection 43(1), no settlement affecting a person to whom subsection 43(1) applies shall be valid without the approval of the Court.

44. **Power of the Court to dismiss or appoint a Registered Agent**

- (1) If the Court is satisfied that it is in the interest of a Foundation to do so, it may order:
- (a) the removal of its Registered Agent; and/or
 - (b) the appointment of a Qualified Person to be its Registered Agent.



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- (2) The Foundation must give notice of the change of Registered Agent to the Registrar within thirty (30) days of the order of the Court under subsection 44(1). A Foundation which fails to comply with this requirement is liable to a fine, as set out in Schedule 3.

45. Power of the Court to take action on behalf of others

- (1) This Article applies where the Court is satisfied that a person has failed to comply with:
- (a) a requirement of these Regulations, the Charter or By-laws of a Foundation; or
 - (b) an obligation imposed on the person by these Regulations, the Charter or By-laws of a Foundation.
- (2) The Court may, by order, require the Registrar comply with the requirement or obligation on behalf of the person who has failed to do so.
- (3) The Court must not do so unless it is satisfied:
- (a) that to do so will assist the Foundation in the administration of its property or the attainment of its objects; or
 - (b) that it is otherwise desirable that it should do so.
- (4) Where the Court does so, its order has the same effect as if it were an action taken by the person required to comply with the requirement or obligation.

46. General power of the Court in respect of orders

- (1) An order made by the Court under this Part in respect of a Foundation may, in particular, provide for the appointment or removal of a person appointed under its By-laws.
- (2) Any order made by the Court under this Part may be made on such terms, and may impose such conditions, as the Court thinks fit.

47. Power to set aside a transfer or disposition of property due to mistake

- (1) In this Article:
- (a) 'person exercising a power' means a person who exercises a power to transfer or make other disposition of property to a Foundation on behalf of a Founder and a person who exercises a power over a Foundation or property of a Foundation; and
 - (b) 'mistake' includes (but is not limited to):
 - (i) a mistake as to:
 - (A) the effect of;
 - (B) any consequences of; or



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- (C) any of the advantages to be gained by,
 - a transfer or other disposition of property to a Foundation, or the exercise of a power over or in relation to a Foundation or property of a Foundation;
 - (ii) a mistake as to a fact existing either before or at the time of, a transfer or other disposition of property to a Foundation, or the exercise of a power over or in relation to a Foundation or property of a Foundation; or
 - (iii) a mistake of law including a law of a foreign jurisdiction; and
 - (c) references to a transfer or other disposition of property to a Foundation do not include a testamentary disposition.
- (2) The Court may on the application of any person specified in section 49(1), and in the circumstances set out in section 47(3), declare that a transfer or other disposition of property to a Foundation:
- (a) by a Founder or Contributor acting in person (whether alone or with any other Founder or Contributor); or
 - (b) through or by reason of a person exercising a power or the exercise of a power by a person over the Foundation or property of a Foundation is voidable and:
 - (i) has such effect as the Court may determine; or
 - (ii) is of no effect from the time of its exercise.
- (3) The circumstances are where a Founder, Contributor or person exercising a power:
- (a) made a mistake in relation to the transfer or other disposition of property to a Foundation; and
 - (b) would not have made that transfer or other disposition but for that mistake;
- and the mistake is of so serious a character as to render it just for the Court to make a declaration under this Article.

48. Power to set aside a transfer or disposition of property exercised by fiduciary power

- (1) In this Article, 'person exercising a power' means a person who exercises a power to transfer or make other disposition of property to a Foundation on behalf of a Founder and who owes a fiduciary duty to such Founder in relation to the exercise of his or her power.
- (2) The Court may on the application of any person specified in subsection 48(1), and in the circumstances set out in subsection 48(3), declare that a transfer or other disposition of property to a Foundation by a Founder or Contributor (whether alone or with any other Founder or Contributor) through a person exercising a power, is voidable and:



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- (a) has such effect as the Court may determine; or
 - (b) is of no effect from the time of its exercise.
- (3) The circumstances referred to in subsection 48(2) are where, in relation to the exercise of his or her power, the person exercising a power:
- (a) failed to take into account any relevant considerations or took into account irrelevant considerations; and
 - (b) would not have exercised the power, or would not have exercised the power in the way it was so exercised, but for the failure to take into account relevant considerations or the taking into account of irrelevant considerations.
- (4) This section applies whether or not the circumstances set out in subsection 48(3) occurred as a result of any lack of care or other fault on the part of the person exercising a power, or on the part of any person giving advice in relation to the exercise of the power.

49. Applications and orders under sections 47 and 48

- (1) An application under subsections 47(2) or 48(2) may be made by any Founder or Contributor or any of his or her personal representatives or successors in title, the Foundation or any person to whom property of a Foundation has been appointed.
- (2) The Court may, consequential upon a declaration made under either of sections 47 and 48, make such order as it thinks fit.
- (3) Nothing in sections 47 or 48 shall prejudice:
 - (a) any application for a declaration that a transfer or other disposition of property to a Foundation, or the exercise of any power over or in relation to a Foundation or property of a Foundation, is void or voidable on grounds other than those specified in those Articles; or
 - (b) any personal remedy which may be available against any person.

50. Provisions for facilitating Foundation division or amalgamation

- (1) This Article applies where the members of the Council of one or more Foundations unanimously resolve that the property of a Foundation should be divided amongst two (2) or more Foundations, or that two (2) or more Foundations should be combined into a single Foundation.
- (2) An application may be made to the Court under subsection 50(1) for the division of the Foundation, or the amalgamation of the Foundations, on notice to all persons with sufficient interest in any Foundation affected by the making of such an order.
- (3) On any application under subsection 50(1), the Court may make such orders as it considers appropriate to facilitate the division or amalgamation.



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- (4) Each of the Foundations affected by any order of the Court shall give details of the change of status of the Foundations to the Registrar in such manner as he may require.
- (5) The Registrar shall make such entries in the Register as are required to give effect to the order of the Court and ensure any new or amalgamated Foundation is correctly registered.

51. Arbitration of Foundation disputes

- (1) Where the Charter or By-laws of a Foundation provide that any dispute or Administrative Question arising between any of the parties in relation to the Foundation shall be submitted to arbitration, that provision shall, for all purposes under the Arbitration Regulations have effect as between those parties as if were an arbitration agreement and as if those parties were parties to that agreement.
- (2) Where the Charter or By-laws of a Foundation do not provide that any dispute or Administration Question arising in relation to the Foundation shall be submitted to arbitration but the parties to that dispute agree in writing to have it resolved by arbitration, that agreement shall, for all purposes under the Arbitration Regulations, have effect as between those parties as if it were an arbitration agreement.
- (3) The Arbitration Regulations shall apply to an arbitration under these Regulations in accordance with the provisions of Schedule 2.
- (4) The Court may make such orders in relation to an arbitration or possible arbitration which supplement or vary the application of Schedule 2 as the Court deems appropriate in the circumstances.

52. Powers of the arbitral tribunal

- (1) This section shall apply except to the extent otherwise provided in the Charter or By-laws of a Foundation.
- (2) The arbitral tribunal may, in addition to all other powers of the tribunal, at any stage in an arbitration under these Regulations, exercise all the powers of the Court (whether arising by law, including these Regulations, under the inherent jurisdiction of the Court or otherwise) in relation to the administration of a Foundation or the rights of any party in relation to the Foundation.
- (3) The arbitral tribunal has the same powers to appoint a person to represent the interests of any person (including a minor, a person unborn or unascertained) or class of person in an arbitration concerning a Foundation as the Court has in relation to proceedings before the Court.

53. Provision of information by a Foundation

- (1) A Person with Sufficient Interest in a Foundation may make written requests to the Foundation for full and accurate information in respect of any of the following:
 - (a) the financial statements of the Foundation;



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- (b) the property of the Foundation;
- (c) the manner in which the Foundation's property are being administered;
- (d) the way in which the Foundation is carrying out its objects; and
- (e) the administration of the Foundation,

and the Foundation shall comply as soon as practicable after receipt of such requests provided that any such requests shall be subject to subsection 53(2).

- (2) Subject to subsection 53(4), a Foundation is not required to provide any person with information about the Foundation where the provision of that information is prohibited under the Foundation's Charter or By-laws, unless the obligation to make such disclosure is imposed by an order of the Court.
- (3) If subsection 53(2) applies, the person making the request may apply to the Court under section 39 for an order authorising or requiring the provision of the requested information, in which case it must be shown to the Court that the provision of the information is necessary or expedient to enable the determination as to whether or not:
 - (a) the Foundation is carrying out its objects;
 - (b) the Council of the Foundation is carrying out its functions;
 - (c) the property of the Foundation is being properly administered; and
 - (d) the Foundation is being properly administered.

PART 9: DISSOLUTION OF FOUNDATIONS

54. Dissolution

- (1) A Foundation shall be dissolved where:
 - (a) the Foundation is established for a definite period and that period expires;
 - (b) the object(s) of the Foundation are fulfilled or become incapable of fulfillment, and the members of the Council, by unanimous decision, so resolve;
 - (c) any provision of the Charter or By-laws of the Foundation so requires;
 - (d) the Court orders that the Foundation be dissolved under section 55; or
 - (e) the Registrar strikes the Foundation off the Register in accordance with section 58.
- (2) Where a Foundation is dissolved pursuant to the provisions of subsection 54(1), the members of the Council, or such other person as may be authorized by the Charter or



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By-laws of the Foundation to supervise the dissolution of the Foundation, shall do all things that are necessary for orderly supervision of dissolution of the Foundation, and shall collect the property of the Foundation, and after discharging or making adequate provision for the discharge of the obligations of the Foundation shall distribute the remaining property in the manner provided in section 56.

55. Court dissolution

- (1) A Foundation may, upon application, by an order of the Court be dissolved if the Court is of the opinion that:
 - (a) the Foundation is insolvent;
 - (b) it is just and equitable that the Foundation be dissolved; or
 - (c) it is prejudicial to the interest of the AIFC for a Foundation to remain on the Register.
- (2) An application for the dissolution of a Foundation under subsections 55(1)(a) or (b) may be made by the Foundation, a member of the Council of the Foundation, a Guardian of the Foundation or by a creditor of the Foundation.
- (3) An application for the dissolution of a Foundation under subsection 55(1)(c) may be made by the AFSA.
- (4) Where the Court orders that a Foundation be dissolved under this section, the Court may appoint a person to supervise the dissolution of the Foundation and may, from time to time, direct the manner in which the dissolution is to be conducted.

56. Distribution of property

- (1) Subject to subsection 56(2), where a Foundation is dissolved and there remains some property after its dissolution such property shall be the property of the person who, according to the Charter or Bylaws, is entitled to receive any property remaining after the dissolution of the Foundation.
- (2) In the event that:
 - (a) there is no person entitled to receive the remaining property of the Foundation as provided in subsection 56(1); or
 - (b) the person entitled to receive the remaining property refuses to accept the transfer of the property,and there is no relevant provision in the Charter or By-laws of the Foundation, the remaining property shall vest in the AFSA.

57. Application of insolvency rules in winding up

In the winding up of an insolvent Foundation the same rules concerning rights of creditors, proof of debts, valuation of liabilities and preferential payments as are in operation for the time



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being under the Insolvency Regulations and the Insolvency Rules with respect to the estates of insolvent companies apply and must be observed.

58. Dissolution by the Registrar

- (1) If the Registrar has reason to believe that:
 - (a) a Foundation is acting in contravention of these Regulations; or
 - (b) it is prejudicial to the interest of the AIFC for a Foundation to remain on the Register,he may give notice to the Foundation that at the conclusion of three (3) months from the date of the notice, the Foundation shall be struck off the Register unless reason is shown to the contrary.
- (2) If by the end of the three (3) month period, the Registrar has not received from the Foundation an objection to the striking off of the Foundation from the Register or from any other party sufficient reason as to why the Foundation should not be struck off the Register, the Registrar may strike the name of the Foundation off the Register and the Foundation shall be dissolved.
- (3) When a Foundation has been struck off the Register under subsection 58(2), the Foundation or its liquidator may apply to have the name of the Foundation reinstated on the Register, provided such application is made prior to the sixth anniversary of its removal from the Register.
- (4) Where an application is made under subsection 58(3) and upon payment of all outstanding fees and penalties to the Registrar, the Registrar may reinstate the Foundation on the Register.
- (5) Where the Foundation is reinstated on the Register under subsection 58(4), the Foundation is deemed to have continued in existence as if it had not been dissolved or struck off the Register.
- (6) Upon dissolution of a Foundation under this section, its outstanding property shall become the property of the AFSA, provided that if it is reinstated to the Register such property shall once again become the property of the Foundation.

59. Publication of dissolution

The Registrar shall publish the dissolution of a Foundation on the website of the AIFC.

PART 10: FINES AND FEES

60. Fines

- (1) A Foundation which contravenes a requirement of these Regulations to provide information to the Registrar, or its Registered Agent, is liable to a fine, as set out in Schedule 3.



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- (2) A Foundation which in any document or other communication provided to the Registrar, or its Registered Agent, makes a statement which is false or intentionally misleading in any particular, is liable to a fine, as set out in Schedule 3.
- (3) Part 1 of Schedule 3 to these Regulations contains a list of fines applicable to any contravention of these Regulations.
- (4) Articles 171 to 173 of the Companies Regulations apply in relation to proceedings by the Registrar in respect of contraventions, or possible contraventions, of these Regulations.
- (5) Article 170 of the Companies Regulations applies in respect of the involvement of persons knowingly concerned in a contravention of these Regulations.

61. Fees

Part 2 of Schedule 3 to these Regulations contains a list of fees payable to the Registrar in connection with these Regulations.



AIFC FOUNDATIONS REGULATIONS

SCHEDULE 1

INTERPRETATION

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.

Administration Question means any relief or question in respect of which an action, application or other reference to the Court could be brought or made under these Regulations.

Arbitration Regulations means the AIFC Arbitration Regulations.

Board of Directors of the AFSA means the Board of Directors of the Astana Financial Services Authority.

By-law includes any document, by whatever name called, which complies with the requirements of these Regulations relating to the by-laws of a Foundation.

Charter includes any document, by whatever name called, which complies with the requirements of these Regulations relating to the charter of a Foundation.

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

Companies Regulations means the AIFC Companies Regulations.

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

Contribute in the context of a Contributor, to pass, or covenant to pass, the title in property absolutely, with or without consideration, to a Foundation so that the property is an asset of the Foundation (and “to pass”, for the objects of this definition, includes whatever act may be necessary in relation to that property to transfer title effectively) and “contribution” is to be construed accordingly.



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Contributor means a person, other than a Founder, who contributes property to a Foundation.

Council means the council of a Foundation established to administer a Foundation's property and to carry out its objects under section 19.

Court means the Astana International Financial Centre Court.

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

Enforce in relation to a Foundation means to require or compel members of the Council to execute, carry out and perform their duties under the Foundation's Charter and By-laws in relation to its non-charitable objects and to bring and prosecute proceedings to enforce the terms of the Charter and By-laws.

Foundation means a foundation established in accordance with these Regulations.

Founder means a person who contributes property to a Foundation in order to establish it in accordance with section 14(1).

Guardian means the person who is the guardian of a Foundation by virtue of section 20.

Heirship Right means any right, claim or interest in, against or to property of a person arising, accruing or existing in consequence of, or in anticipation of, that person's death, other than any such right, claim or interest created by will or other voluntary disposition by such person or resulting from an express limitation in the disposition of the property of such person.

Income includes rents and profits.

Insolvency Regulations means the AIFC Insolvency Regulations.

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

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

Object includes a purpose.

Person with Sufficient Interest in respect of a Foundation, means:

- (a) the Foundation;
- (b) a Founder;
- (c) a Contributor;
- (d) if any rights a Founder had in respect of the Foundation have been assigned to some



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other person, that other person;

- (e) a member of the Council;
- (f) a Guardian;
- (g) the Registered Agent;
- (h) a person appointed under the By-laws;
- (i) a Qualified Recipient in respect of an application under subsection 26(4);
- (j) in respect of a specified object of the Foundation which is charitable, the AFSA or a person designated by it;
- (k) a person who, in the view of the Court, can reasonably claim to speak on behalf of an object or object of the Foundation; or
- (l) a person who the Court determines to be a Person with Sufficient Interest under subsection 39(4).

Personal Relationship includes every form of relationship by blood adoption marriage or cohabitation regardless of whether the law of any jurisdiction recognises the validity, legitimacy or existence of the relationship, including a former personal relationship which has in law or in fact terminated and in particular a personal relationship between two persons exists if:

- (a) one is the child of the other, natural or adopted, whether or not the adoption is recognised by law, legitimate or illegitimate;
- (b) one is married to the other, whether or not the marriage is recognised by law;
- (c) one cohabits with the other or so conducts himself or herself in relation to the other as to give rise in any jurisdiction to any rights;
- (d) obligations or responsibilities analogous to those of parents and child or husband and wife; or
- (e) personal relationships exist between each of them and a third person, but no change in circumstances shall cause a personal relationship once established to terminate.

Power includes a discretion as to the way in which an obligation is performed.

Property means any movable or immovable property, and includes rights and interests, whether present or future and whether vested or contingent and where it concerns the property of a Foundation, it shall include:

- (a) any property (including money, investments and other property) contributed to the Foundation;



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- (b) any capitalised income added to the property so contributed; and
- (c) the money, investments and property from time to time representing those assets and capitalised income.

Qualified Person means a person:

- (a) licensed by the AFSA to undertake the activity of acting as a registered agent of Foundation as part of its permitted activities; and
- (b) registered as a DNFBP.

Qualified Recipient means in respect of a Foundation that has the provision of a benefit to a person or to a class of persons as one of its objects, means a person (whether or not yet born or otherwise in existence) who is or who becomes a member of a class of persons that is:

- (a) specified in the Charter; or
- (b) determined in accordance with:
 - (i) the By-laws; or;
 - (ii) a direction of the Court under subsection 42(2).

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

Register means the register to be kept by the Registrar pursuant to section 35.

Registrar means the Registrar of Companies appointed under section 9 of the Companies Regulations.

Registered Agent means a Qualified Person who is the registered agent of a Foundation pursuant to section 21.

Schedule means a schedule to these Regulations.



AIFC FOUNDATIONS REGULATIONS

SCHEDULE 2

APPLICATION OF THE ARBITRATION REGULATIONS

1. The Arbitration Regulations shall apply and be construed with respect to a Foundation arbitration, as stated hereunder.
2. In the Arbitration Regulations, "dispute" includes an Administration Question.
3. Section 10(b) of the Arbitration Regulations shall apply as if it read:

"A Founder or Contributor of a Foundation shall be free to determine (by provision in the Charter or By-laws of the Foundation) how, in relation to a Foundation, disputes are resolved, subject only to such safeguards as are necessary in the public interest;"
4. Where in the Arbitration Regulations reference is made to a matter agreed between the parties to an arbitration agreement (including a matter which may be authorised, chosen, conferred, designated, nominated or vested by the parties) that matter shall (except where no effective provision is made) be determined as provided in the Foundation's Charter or By-laws.
5. Neither section 15 of the Arbitration Regulations nor any rule of law or construction treating an arbitration agreement separate to any agreement of which it is a part shall apply in relation to a Foundation arbitration.
6. The term "action" in section 16 of the Arbitration Regulations includes an application or other reference to the Court concerning an Administration Question which the Charter or By-laws of the Foundation requires to be submitted to arbitration and a stay of that application or other reference may be sought by any of the parties in relation to the Foundation, whether or not a party to that application or other reference.
7. In any application or other reference to the Court referred to in paragraph 6, the Court may stay the proceedings on its own volition unless all parties in relation to the Foundation affected by the application are before it or are represented by persons before it.
8. For the objects of enforcing an arbitral award under section 44(2)(a)(iii) of the Arbitration Regulations, the term "dispute" includes an Administration Question.



AIFC FOUNDATIONS REGULATIONS

SCHEDULE 3

FINES AND FEES

PART 1

<i>Section</i>	<i>Contravention</i>	<i>Maximum Fine</i>
7(6)	Person failing to provide a copy of assignment of rights	
14(7)	Foundation failing to maintain a Licence	
17(6)	Foundation failing to notify Registered Agent or Registrar of changes to By-laws	
19(11)	Foundation failing to notify Registrar of changes to Council	
21(4)	Foundation failing to notify Registrar of changes to Registered Agent	
32(1)	Foundation failing to keep accounts or Accounting Records, or to make them available	
32(2)	Foundation failing to have its accounts approved by Council members	
32(4)	Foundation failing to file accounts	
32(5)	Person making a statement that is misleading, false or deceptive in a material way in respect of accounts	
37(4)	Foundation failing to file an annual return	
44(2)	Foundation failing to give notice of changes in Registered Agent	
60(1)	Foundation failing to provide information to the Registrar or Registered Agent as applicable	
60(2)	Foundation making a false or misleading statement to the Registrar	



AIFC FOUNDATIONS REGULATIONS

PART 2

The following fees are payable in respect of applications and notifications made in accordance with the Regulations:

Application or notification	Fee Payable
Application for registration of a Foundation	
Application for renewal of a Foundation (Annual Fee)	
Notification of a change in registered office address	
Notification of appointment and cessation of a Registered Agent (if appointed)	
Notification of change of particulars of the appointed Registered Agent	
Notification of an appointment and cessation of a Councillor	
Notification of change of particulars of a Councillor	
Notification of an appointment and cessation of a Guardian	
Notification of change of particulars of a Guardian	
Notification of a change of name of a Foundation	
Amendment of the Charter by the Founder(s) or in the event of Founder's death by Court Order	
Request for information from the Registrar	
Application to strike off	
Reinstatement of a Foundation on the Register	

Draft AIFC COMMON REPORTING STANDARD RULES

**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 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.

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 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;
 - (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 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.

- 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.
 - 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.

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

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 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.
 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 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.
- (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.
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 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 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
 - (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 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:
 - (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 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 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 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 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.
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.
 - 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 by the Competent Authority 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 Kazakhstan.

Draft AIFC CO-OPERATION AND EXCHANGE OF INFORMATION RULES



AIFC CO-OPERATION AND EXCHANGE OF INFORMATION RULES

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AIFC CO-OPERATION AND EXCHANGE OF INFORMATION RULES

Guidance: Purpose of this rulebook

The purpose of this rulebook, "CEI", is to set out the arrangements made by the AFSA in relation to co-operation and the exchange of information with other regulatory authorities outside the AIFC.

This rulebook is intended to ensure that the AFSA may provide the fullest assistance permissible to other regulators. In particular, it contains guidance on the scope of the AFSA's existing powers under other AIFC laws and provides additional powers to the AFSA where appropriate.

CEI supports section 131 of the Framework Regulations, which requires the AFSA to implement policies and procedures to ensure that it:

- complies with relevant international standards for co-operation and the exchange of information with Financial Services Regulators;
- is able to exercise sufficient powers to obtain information that has been appropriately requested by Financial Services Regulators;
- protects the confidentiality of information received from other Financial Services Regulators; and
- restricts the disclosure of such confidential information by limiting the purposes for which, and the persons to whom, such disclosure may be made.

CEI is intended to enable the AFSA to comply with international standards on co-operation and the exchange of information, including the IOSCO Multilateral Memorandum of Understanding (MMoU), the IOSCO Enhanced MMoU and the IAIS MMoU.



AIFC CO-OPERATION AND EXCHANGE OF INFORMATION RULES

1. GENERAL

1.1. Name

These Rules are the AIFC Co-operation and Exchange of Information Rules [****].

1.2. Commencement

These Rules will commence on [****].

1.3. Application of these Rules

These Rules apply within the jurisdiction of the AIFC.

2. RELATIONS WITH OTHER FINANCIAL SERVICES REGULATORS

2.1. Arrangements for co-operation and the exchange of information

The AFSA may at its discretion, and in relation to its obligations under section 131 of the Framework Obligations, enter into memoranda of understanding or other arrangements for co-operation and the exchange of information with Financial Services Regulators.

Guidance: Obligation in section 131 of the Framework Regulations

Section 131 of the Framework Regulations requires the AFSA to implement policies and procedures to ensure that it complies with relevant international standards for co-operation and the exchange of information with Financial Services Regulators.

3. PROTECTING CONFIDENTIAL INFORMATION

3.1. Confidentiality of information

3.1.1. Nature of confidential information

For the purposes of these Rules, information is confidential if:

- (a) it is received by the AFSA or an officer, employee, delegate or agent of the AFSA in the exercise of a function under these Rules or any other AIFC legislation; and



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- (b) it has not been made available to the public in circumstances in which disclosure is not prohibited under these Rules or any other AIFC legislation.

3.1.2. General prohibition on disclosure of confidential information

Subject to subsection 3.2.1, confidential information must not be disclosed to a third party by the AFSA or by an officer, employee, delegate or agent of the AFSA, or by any person coming into possession of the information, without the consent of the person to whom the duty of confidentiality is owed.

3.2. Disclosure of confidential information

3.2.1. Permitted disclosures

The AFSA is permitted to disclose confidential information obtained from a Financial Services Regulator under these Rules or any other AIFC legislation where such disclosure is:

- (a) permitted or required under these Rules or under other any other AIFC legislation;
- (b) made to:
 - (i) the National Bank of Kazakhstan;
 - (ii) a Financial Services Regulator;
 - (iii) a governmental or regulatory authority exercising powers and performing functions relating to anti-money laundering, counter-terrorist financing or sanctions compliance;
 - (iv) a self-regulatory body or organisation exercising and performing powers and functions in relation to Financial Services;
 - (v) a law enforcement agency;
 - (vi) the AIFC Court; 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;



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for the purpose of assisting the performance by any such person of its regulatory functions; and

- (c) made in good faith for the purposes of the performance and exercise of the functions and powers of the AFSA.

3.2.2. **Obligation to keep disclosed information confidential**

If the AFSA is requested to disclose confidential information to an entity referred to in subsection 3.2.1(c), in circumstances other than those referred to in subsection 117(2) of the Framework Regulations, the AFSA shall:

- (a) ensure that the information must be used for the sole purpose of assisting the requesting entity in performing its regulatory functions; and
- (b) require the requesting entity:
 - (i) to keep the information confidential; and
 - (ii) not to disclose the information to any other person without the written consent of the AFSA.

Guidance: Obligation in subsection 117(2) of the Framework Regulations

Under subsection 117(2) of the Framework Regulations, the AFSA must disclose an individual's compelled testimony to a law enforcement agency for the purpose of criminal proceedings if:

- (i) the person consents to the disclosure; or
- (ii) the AFSA is required by law or court order to disclose the statement.

3.3. **Requests to obtain information**

3.3.1. **Requests made under an MoU**

The AFSA may obtain confidential information following a request made under a Memorandum of Understanding (MoU) or other information-sharing agreement with another Financial Services Regulator.



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3.3.2. Powers to obtain information

The AFSA may, in accordance with the powers granted under section 114 of the Framework Regulations, conduct an investigation and obtain confidential information from Centre Participants at the request of a Financial Services Regulator.

3.3.3. Scope of powers to obtain information

In order to respond to a request from a Financial Services Regulator, the AFSA may require a Centre Participant to provide information, including but not limited to the following:

- (a) information sufficient to reconstruct orders and transactions;
- (b) information that identifies or traces funds or assets into which such funds are converted;
- (c) auditing information, including audit work papers, communications and other information relating to audit or review of financial statements;
- (d) subscriber records held or maintained by telephone service providers that identify subscribers (name and address), payment details and identification of phone numbers from which communications are made or received;
- (e) subscriber records held or maintained by internet service providers and other electronic communications providers that identify subscribers (name and address), payment details, length of service, type of service utilised, network addresses, and session times/dates and durations; and/or
- (f) recordings of telephone conversations or other electronic communications held or maintained by Centre Participants.

3.3.4. Freezing assets

If a Financial Services Regulator requests the freezing or sequestration of funds or assets in the AIFC, the AFSA shall seek to ensure that this is executed, to the extent permissible under applicable law. If this is not permissible, the AFSA shall endeavour to assist the Financial Services Regulator by way of legal procedures and other means to freeze or sequester such funds or assets.



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3.3.5. Confidentiality of requests for information

The existence and content of requests for assistance by a Financial Services Regulator and any communications between the AFSA and the Financial Services Regulator must not be disclosed by:

- (a) the AFSA or by an officer, employee, delegate or agent of the AFSA; or
- (b) any person coming into possession of the information,

without the consent of that Financial Services Regulator unless, and to the extent that, the AFSA is required by law or court order to disclose such information.

3.3.6. Disclosing information

The AFSA may, where considered appropriate, disclose information to a Financial Services Regulator, unless:

- (a) the request requires the AFSA to act in a manner that would violate applicable criminal laws of the Republic of Kazakhstan or any AIFC legislation;
- (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 is prejudicial on the grounds of public or national interest;
- (d) the requesting authority refuses to give reciprocal assistance within its jurisdiction in response to a comparable request from the AFSA;
- (e) complying with the request would be so burdensome as to prejudice or disrupt the performance of the AFSA's regulatory functions and duties; or
- (f) the requesting authority fails to demonstrate a legitimate reason for the request.



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3.3.7. Legitimate reasons for requesting confidential information

In deciding whether to comply with a request for assistance and/or the disclosure of confidential information, the AFSA will assess if:

- (a) there are legitimate reasons for the request; and
- (b) the authority requesting the information has appropriate standards in place for dealing with confidential information.

Guidance: Factors determining legitimate requests

In determining the legitimacy of a request, the AFSA may consider if:

- (a) 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) 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) 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) 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) 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) fulfilling the request will foster the integrity of, and confidence in, the financial services industry in the AIFC and the requesting jurisdiction.

3.3.8. Applications to request confidential information

The AFSA may require that an application submitted by a Financial Services Regulator requesting confidential information shall:

- (a) be in writing, except that an urgent request may be oral provided that it is confirmed in writing within ten business days;



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- (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;
- (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.



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3.3.9. Procedures for handling disclosure of confidential information

The AFSA must implement appropriate procedures for assessing and approving the disclosure of confidential information on request, which shall take into account these Rules.

Guidance: Appropriate procedures for handling disclosure

The procedures for assessing whether or not to disclose confidential information should include the following:

- (a) the receiving party must be notified of the protected status of the confidential information;
- (b) the providing Financial Services Regulator must be approached to request written approval for the disclosure of the confidential information to the receiving party;
- (c) if a providing Financial Services Regulator does not approve the release of the confidential information, the AFSA must take 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, the AFSA must:
 - (i) inform the providing Financial Services Regulator; and
 - (ii) request that the receiving party does not make the confidential information public or disclose it to a third party.

3.3.10. Notice of disclosure

If the AFSA intends to disclose confidential information received from a Financial Services Regulator to any of the persons specified in section 3.2.1(c), the AFSA may give notice to the person(s) to whom the disclosure relates in the following circumstances:

- (a) the disclosure relates to a person's compelled testimony to a law enforcement agency for the purpose of criminal proceedings against that person;
- (b) the disclosure relates to private civil litigation, in order that the person may challenge the request according to the Rules of the AIFC Court; or



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- (c) there are serious and legitimate concerns about the appropriateness of the disclosure, including where the body requesting the confidential information does not perform a financial services related regulatory function.

Guidance: Factors in determining not to give notice of disclosure

The AFSA will not normally give notice of disclosure to the person that is the subject of disclosure if giving notice may:

- (a) 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, including freezing assets;
- (b) reveal the identity of persons who have made reports in accordance with the provisions on whistleblowing under the Companies Act;
- (c) prejudice or jeopardise the AFSA's ability to effectively discharge its monitoring and other regulatory functions
- (d) result in disclosure of information that is not adverse to the person concerned;
- (e) undermine other Financial Services Regulators' fitness and propriety tests; or
- (f) seriously prejudice the AFSA's relations with Financial Services Regulators, taking into account the AFSA's bilateral and international obligations and the need for effective mutual cooperation and information sharing.

3.4. Where information is subject to a legally enforceable demand

If the AFSA receives a legally enforceable demand requiring the disclosure of confidential information obtained from a Financial Services Regulator under a MoU or similar arrangement, the AFSA will:

- (a) notify the providing Financial Services Regulator; and
- (b) seek to enforce any legal rights, exemptions or privileges to protect such confidential information that are legally available to it.

Guidance: Examples of legally enforceable demands

Examples of legally enforceable demands (such as a subpoena, notice or court order) may include:



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- (a) An order from the AIFC Court requiring the AFSA to disclose confidential information. The Constitutional Statute provides the AIFC Court with jurisdiction in proceedings other than criminal and administrative proceedings in the AIFC and over AIFC bodies including the AFSA.

- (b) An legally enforceable order from a competent authority responsible for administering the criminal laws in the Republic of Kazakhstan. The criminal laws of the Republic of Kazakhstan apply in the AIFC, requiring the AFSA to comply with any legally enforceable order .

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 RULES
(GEN)



1. LICENSING OF CENTRE PARTICIPANTS

1.1. Authorised Firms

1.1.1. Definition of Regulated Activities

An activity shall be a Regulated Activity that may be carried on by an Authorised Firm, subject to the terms of its Licence, if that activity:

(a) is specified in the list of activities in Schedule 1; and

(b) is carried on by way of business as described in GEN 1.1.9.

1.1.2. Form and content of application for a Licence

A Person may apply to the AFSA for a Licence authorising a Centre Participant to carry on one or more Regulated Activities by:

- (a) completing the form prescribed in Schedule 3 and filing the form with the AFSA accompanied by such documents as are specified in the form;
- (b) providing such further information as the AFSA may require; and
- (c) paying the fee prescribed in the Fees Rules.

Guidance: AFSA discretion to waive requirements

A Person may apply to the AFSA to waive the requirements as to the contents of the Form prescribed in Schedule 3 pursuant to section 32(4) of the Framework Regulations.

1.1.3. Adequate and appropriate financial resources

In assessing whether an applicant has adequate and appropriate financial resources for the purposes of section 34(1)(a) of the Framework Regulations, the AFSA will consider:

- (a) how the applicant will comply with the applicable provisions of the Prudential Rules (PRU);
- (b) the applicant's liabilities, including contingent and future liabilities;
- (c) the means by which the applicant manages the risks to its business;
- (d) the applicant's business plan;



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- (e) whether the applicant's assets are appropriate given the applicant's liabilities;
- (f) the liquidity of the applicant's resources;
- (g) the nature and scale of the business which will be carried on by the applicant;
- (h) the risks to the continuity of the services which will be provided by the applicant;
- (i) the applicant's membership of a Group and any relevant effect which that membership may have; and
- (j) whether the applicant is capable of meeting its debts as they fall due.

1.1.4. Adequate and appropriate non-financial resources

In assessing whether an applicant has adequate and appropriate non-financial resources for the purposes of section 34(1)(a) of the Framework Regulations, the AFSA will consider:

- (a) the skills and experience of those who will manage the applicant's affairs;
- (b) the applicant's resources to identify, monitor, measure and take action to remove or reduce risks as to its safety and soundness;
- (c) the effectiveness of the applicant's business management; and
- (d) whether the applicant's non-financial resources are sufficient to enable the applicant to comply with the Regulations and Rules that are likely to be relevant to the applicant.

1.1.5. Fitness and propriety

In assessing whether an applicant is fit and proper for the purposes of section 34(1)(b) of the Framework Regulations, the AFSA will consider:

- (a) the fitness and propriety of the members of its Governing Body;
- (b) the applicant's connection with any Person or membership of any Group;
- (c) the fitness and propriety of the applicant's Controllers or any other Person associated with the applicant;



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- (d) the impact a Controller might have on the applicant's ability to comply with the applicable requirements;
- (e) the Regulated Activities undertaken or to be undertaken by the applicant and the risks to their continuity;
- (f) the nature (including the scale and complexity) of the activities of the applicant and any associated risks that those activities pose to the AFSA's Regulatory Objectives;
- (g) the complexity of any products or services that the applicant may offer or provide in carrying on those activities;
- (h) whether the applicant's business model will allow for its affairs and business to be conducted and managed in a sound and prudent manner, having regard to, amongst other things, the interests of its Clients and the integrity of the AIFC;
- (i) any matter which may harm or may have harmed the integrity or the reputation of the AFSA or AIFC, including through the carrying on of a business by the applicant for a purpose connected with a Financial Crime; and
- (j) any other relevant matters.

1.1.6. Effective supervision

In assessing whether an applicant is capable of being effectively supervised by the AFSA for the purposes of section 34(1)(c) of the Framework Regulations, the AFSA will consider:

- (a) the nature, including the complexity, of the Regulated Activities that the applicant will carry on; and
- (b) the way in which the applicant's business is organised; and
- (c) (if the applicant is a member of a Group) whether membership of the Group is likely to prevent the AFSA's effective supervision of the applicant; and
- (d) whether the applicant is subject to consolidated supervision.

1.1.7. Compliance arrangements

In assessing whether an applicant has adequate compliance arrangements for the purposes of section 34(1)(d) of the Framework Regulations, the AFSA will consider whether it has:



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- (a) clear and comprehensive policies and procedures relating to compliance with all applicable legal requirements; and
- (b) adequate means to implement those policies and procedures and monitor that they are operating effectively and as intended.

1.1.8. Modification or withdrawal of an Authorised Firm's Licence

An Authorised Firm may apply to the AFSA to change the scope of its Licence, to have a condition or restriction varied or withdrawn, or to have its Licence withdrawn by:

- (a) completing the form prescribed in Schedule 3 and filing the form with the AFSA accompanied by such documents as are specified in the form;
- (b) providing such further information as the AFSA may require; and
- (c) paying the fee prescribed in the Fees Rules.

1.1.9. Activities carried on by way of business

Subject to GEN 1.1.10-1.1.16, a Person carries on an activity by way of business for the purposes of GEN 1.1.1 if that Person:

- (a) engages in the activity in a manner which in itself constitutes the carrying on of a business;
- (b) holds himself out as willing and able to engage in that activity; or
- (c) regularly solicits other Persons to engage with him in transactions constituting that activity.

1.1.10. Acting as nominee

Subject to GEN 1.1.16, a Person does not carry on any of the Regulated Activities specified in 1, 2, 3, 5, 6, 10, 11, 12 or 15 of Schedule 2 by way of business if the Person enters into transactions solely as a nominee for another Person and is bound to and does act on that other Person's instructions.



1.1.11. Acting with or for Group companies

Subject to GEN 1.1.16, a Person does not carry on any of the Regulated Activities specified in 1, 2, 3, 5, 6, 10, 11, 12 or 15 of Schedule 2 by way of business if the Person is a Body Corporate and carries on that activity solely as principal with or for other Bodies Corporates:

- (a) which are within the same Group as that Person; or
- (b) which are or propose to become participators in a joint enterprise and the transaction is entered into for the purposes of or in connection with that enterprise;

and for the purposes of the activities specified in paragraphs 3, 5, 6 and 12 of Schedule 2 the assets in question belong to a Body Corporate falling within (a) or (b).

1.1.12. Non-financial business

Subject to GEN 1.1.16, a Person does not carry on any of the Regulated Activities specified in 1, 2, 3, 5, 6, 10, 11, 12 or 15 of Schedule 2 by way of business if the Person carries on the activity solely for the purposes of or in connection with the sale of goods or the supply of services to a customer of the Person or a member of the same Group, provided that:

- (a) the supplier's main business is to sell goods or supply services and not to carry on any Financial Service; and
- (b) the customer is not an individual;

and for the purposes of the activities specified in 3, 5, 6 and 2 of Schedule 2 the assets in question belong to that customer or member.

1.1.13. Dealing in commodity derivatives

A Person who is a Body Corporate does not carry on the Regulated Activity specified in 1 or 2 of Schedule 2 by way of business, if:

- (a) the Person carries on such activities as a member of an Authorised Market Institution or Recognised Non-AIFC Market Institution;
- (b) the Person carries on such activities for its own account or for another Body Corporate which is in the same Group as the Person, provided that any such



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- member of the Group for which the Person acts is a wholly-owned Subsidiary of a Holding Company within the Group or is the Holding Company itself;
- (c) the Person restricts such activities to transactions involving or relating only to commodity derivatives on that Authorised Market Institution or Recognised Non-AIFC Market Institution;
- (d) the main business of the Person is dealing in relation to Commodity Derivatives;
and
- (e) the Person is not part of a Group whose main business is the provision of financial services.

1.1.14. Acquisition or disposal of a Body Corporate

A Person does not carry on a Regulated Activity specified in 1, 2, 10 or 11 of Schedule 2 by way of business if the activity is carried on solely for the purposes of or in connection with the acquisition or disposal of Shares in a Body Corporate, other than an Investment Company, provided that:

- (a) such Shares carry at least 50 per cent of the voting rights or the acquisition will take an existing holding to at least 50 per cent; or
- (b) the object of the transaction may reasonably be regarded as being the acquisition of day to day control of the Body Corporate; and
- (c) he is to enter as principal into the transaction.

1.1.15. Trustee

- (a) A Person who is a trustee does not carry on a Regulated Activity specified in 1, 3, or 5 of Schedule 2 by way of business in circumstances where he is acting as a trustee.
- (b) A Person who is an individual does not carry on a Regulated Activity specified in 7 of Schedule 2 by way of business where he is acting as trustee, enforcer or protector or where he is arranging for a Person to act as trustee, in respect of less than three (3) trusts.



1.1.16. Single Family Office

A Person does not carry on an a Regulated Activity specified in 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, or 15 of Schedule 2 by way of business if:

- (a) that Person is licensed as a Single Family Office in the AIFC; and
- (b) the activity is carried on exclusively for the purposes of, and only in so far as it is, carrying out its duties as a Single Family Office.



Schedule 1: REGULATED ACTIVITIES

1. Dealing in Investments as Principal

Dealing in Investments as Principal means buying, selling, subscribing for or underwriting any Investment as principal.

2. Dealing in Investments as Agent

Dealing in Investments as Agent means buying, selling, subscribing for or underwriting any Investment as agent.

3. Managing Investments

Managing Investments means managing on a discretionary basis assets belonging to another Person where the assets include any Investment.

4. Managing a Collective Investment Scheme

- (1) Managing a Collective Investment Scheme means establishing, managing or otherwise operating or winding up a Collective Investment Scheme.
- (2) To the extent that any activity under (1) constitutes Managing Assets, Providing Fund Administration, Dealing as Agent, Dealing as Principal, Arranging Deals in Investments, or Providing Custody, such a Regulated Activity is taken to be incorporated within Managing a Collective Investment Scheme.

5. Providing Custody

Providing Custody means one or more of the following activities:

- (a) safeguarding and administering Investments belonging to another Person;
- (b) in the case of a Fund, safeguarding and administering Fund Property; or
- (c) safeguarding and administering Private E-currencies belonging to another Person.

6. Arranging Custody

Arranging Custody means arranging for one or more Persons to carry on the Regulated Activity of Providing Custody.



7. Providing Trust Services

Providing Trust Services means:

- (a) the provision of services with respect to the creation of an express trust;
- (b) arranging for any Person to act as a trustee in respect of any express trust;
- (c) acting as trustee in respect of an express trust;
- (d) the provision of Trust Administration Services in respect of an express trust; or
- (e) acting as protector or enforcer in respect of an express trust.

8. Providing Fund Administration

Providing Fund Administration means providing one or more of the following services in relation to a Fund:

- (a) processing dealing instructions including subscriptions, redemptions, stock transfers and arranging settlements;
- (b) valuing of assets and performing net asset value calculations;
- (c) maintaining the share register and Unitholder registration details;
- (d) performing anti money laundering requirements;
- (e) undertaking transaction monitoring and reconciliation functions;
- (f) performing administrative activities in relation to banking, cash management, treasury and foreign exchange;
- (g) producing financial statements, other than as the Fund's registered auditor; or
- (h) communicating with participants, the Fund, the Fund Manager, and investment managers, the prime brokers, the Regulators and any other parties in relation to the administration of the Fund.



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9. Acting as the Trustee of a Fund

- (1) Acting as the Trustee of a Fund means holding the assets of a Fund on trust for the Unitholders where the Fund is in the form of an Investment Trust.
- (2) To the extent that any activity under (1) constitutes Providing Fund Administration or Providing Custody, such a Financial Service is taken to be incorporated within Acting as the Trustee of a Fund.

10. Advising on Investments

- (1) Advising on Investments means giving advice to a Person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor, on the merits of his buying, selling, holding, subscribing for or underwriting a particular Investment (whether as principal or agent).
- (2) In sub-paragraph (1), "advice" includes a statement, opinion or report:
 - (a) where the intention is to influence a Person, in making a decision, to select a particular Investment or an interest in a particular Investment; or
 - (b) which could reasonably be regarded as being intended to have such an influence.

11. Arranging Deals in Investments

Arranging Deals in Investments means making arrangements with a view to another Person buying, selling, subscribing for or underwriting an Investment (whether that other Person is acting as principal or agent).

12. Managing a Restricted Profit Sharing Investment Account

Managing a Restricted Profit Sharing Investment Account means managing an account or portfolio which is a Restricted Profit Sharing Investment Account (RPSIA).

13. Islamic Banking Business

Islamic Banking Business means providing financing or making Investments by entering as principal or agent into any Islamic Financial Contract while raising funds for those activities through either or both of the following:



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- (a) raising, accepting and managing funds or money placements;
- (b) managing Unrestricted Profit Sharing Investment Accounts (UPSIA);

provided that all such activities are carried out in a Shari'ah-compliant manner.

14. Providing Islamic Financing

Providing Islamic Financing means providing financing in a Shari'ah-compliant manner by entering into any Islamic Financial Contract.

15. Insurance Intermediation

- (1) Insurance Intermediation means:
 - (a) advising on a Contract of Insurance;
 - (b) acting as agent for another Person in relation to the buying or selling of a Contract of Insurance for that other Person; or
 - (c) making arrangements with a view to another Person, whether as principal or agent, buying a Contract of Insurance.
- (2) In (1)(a), 'advising' means giving advice to a Person in his capacity as a Policyholder, or in his capacity as agent for a Policyholder on the merits of his entering into a Contract of Insurance whether as principal or agent.
- (3) In (2), 'advice' includes a statement, opinion or report:
 - (a) where the intention is to influence a Person, in making a decision, to select a Contract of Insurance or insurance cover; or
 - (b) which could reasonably be regarded as being intended to have such influence.
- (4) The arrangements in (1)(c) include arrangements which do not bring about the transaction.
- (5) The arrangements in (1)(c) do not include the mere provision of information about:
 - (a) a Contract of Insurance, insurer, insurance intermediary or insurance manager to a Policyholder; or



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- (b) a Policyholder to an insurer, insurance intermediary or insurance manager, if the Person providing that information does not take any further steps to assist in concluding the Contract of Insurance.

16. Operating a Representative Office

- (1) Operating a Representative Office means the marketing, from an establishment in the AIFC, of one or more financial services or investments which are offered in a jurisdiction other than the AIFC.
- (2) For the purposes of this paragraph, "marketing" means:
 - (a) providing information on one or more investments or financial services;
 - (b) engaging in promotions in relation to such information provision; or
 - (c) making introductions or referrals in connection with the offer of financial services or investments;provided that such activities do not constitute:
 - (d) advising on Investments; or
 - (e) receiving and transmitting orders in relation to an Investment.
- (3) An Authorised Person which is authorised to Operate a Representative Office may not have a Licence to carry on any other Regulated Activity.
- (4) An Authorised Person which does not have a Licence to Operate a Representative Office does not Operate a Representative Office if it undertakes any activities of the kind described in sub-paragraph (2) that constitute marketing.
- (5) Any communication which amounts to marketing in respect of a Financial Service or Investment, which is issued by or on behalf of a Government or non-commercial governmental entity, does not constitute marketing for the purposes of sub-paragraph (2).



17. Accepting Deposits

Accepting Deposits means accepting money or funds received as a Deposit if that money or funds are:

- (a) lent to other Persons; or
- (b) used to finance wholly, or partly, any other activity of the Person accepting the Deposit.

18. Providing Credit

- (1) Providing Credit means providing a Credit Facility to another Person.
- (2) A Person does not carry on the Regulated Activity of Providing Credit if the Credit Facility is to be provided by the Authorised Person in the course of carrying on one or more of the following activities:
 - (a) Dealing in Investments as Agent;
 - (b) Arranging Deals in Investments;
 - (c) Managing Investments;
 - (d) Managing a Collective Investment Scheme;
 - (e) Providing Custody.

19. Advising on a Credit Facility

- (1) Advising on a Credit Facility means giving advice to a Person in his capacity as a borrower or a potential borrower, or as an agent for a borrower or a potential borrower, on the merits of his entering into a particular Credit Facility.
- (2) In sub-paragraph (1), "advice" includes a statement, opinion or report:
 - (a) where the intention is to influence a Person, in making a decision, to enter into a particular Credit Facility; or
 - (b) which could reasonably be regarded as being intended to have such an influence.



20. Arranging a Credit Facility

- (1) Arranging a Credit Facility means making arrangements for the provision of a Credit Facility by one or more Persons.
- (2) A Person does not carry on the Regulated Activity of Arranging a Credit Facility if
 - (a) he is to be a party to the Provision of Credit Facilities in question; or
 - (b) he merely provides the means by which a Person providing a Credit Facility communicates with the Person to whom the Credit Facility is or is to be provided.
- (3) A Person does not carry on the Regulated Activity of Arranging a Credit Facility if it:
 - (a) is carried on in the course of Providing Legal Services or Providing Accountancy Services, which does not otherwise consist of the carrying on of Financial Services;
 - (b) may reasonably be regarded as a necessary part of any other services provided in the course of Providing Legal Services or Providing Accountancy Services; and
 - (c) is not remunerated separately from the other services.

21. Providing Money Services

- (1) Providing Money Services means providing currency exchange or money transmission services.
- (2) In sub-paragraph (1), “money transmission” includes, without limitation:
 - (a) selling or issuing payment instruments;
 - (b) selling or issuing stored value; or
 - (c) receiving money or monetary value for transmission, including electronic transmission, to a location within or outside the AIFC.
- (3) An Authorised Person does not provide Money Services, if it does so in relation to the carrying on of another Regulated Activity where providing Money Services is in connection with and a necessary part of that other Regulated Activity.

In this document the underlining indicates a new text in the proposed amendments

Proposed Amendments to AIFC EMPLOYMENT REGULATIONS



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PART 12: WHISTLEBLOWING

67. Whistleblowing

Employees and other workers who disclose information in accordance with the criteria specified in Part 17 of the AIFC Companies Regulations shall be entitled to the protections set out therein.



AIFC EMPLOYMENT REGULATIONS

SCHEDULE 1: INTERPRETATION

1. Definitions

In these Regulations, unless the contrary intention appears:

AIFC means Astana International Financial Centre.

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.

Basic Pay, of an Employee of an Employer, means the Employee's Wages excluding any part of them received:

- (a) in kind; or
- (b) as allowance for housing, travel, currency exchange (cashier), children's education, social and entertainment; or
- (c) as any other type of allowance, bonus or commission payment; or
- (d) as overtime pay.

Board means the Board of the Astana International Financial Centre Authority.

Business Day, for an Employee of an Employer, means a normal business day for the Employer as defined in the Employee's Contract of Employment.

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

Contract of Employment, of an Employee of an Employer, means the Employee's contract of employment with the Employer.

Court means the Astana International Financial Centre Court.

Daily Wage, of an Employee of an Employer, means the compensation received by the Employee as Wages from the employer for the work done or services provided by the Employee for the Employer during a Business Day.

Day means a calendar day.

Data Subject, in relation to an Employer, means an *Employee* of the Employer or any individual providing services to the Employer on a non-employment basis (including, for example, an individual providing services to the Employer on a self-employed or contractor basis or through a temporary or other employment agency).

Disability, of an Employee, means a physical or mental impairment that has a substantial and long-term adverse effect on the Employee's ability to perform the Employee's duties in accordance with the Employee's Contract of Employment. For this definition, an impairment has a long-term effect if it has lasted at least 12 months or it is likely to last at least 12 months.



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Employee means an individual who works or will work in the service of another person under an express or implied contract of hire under which the other person has the right to control the details of work performance. The other person is the Employee's Employer.

Employer means a person who enters into a contract of hire with an individual under which the individual is an Employee. The individual is the Employer's Employee.

Kazakhstan National means a person who is a national of Kazakhstan.

Kazakhstan means the Republic of Kazakhstan.

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

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

National Holidays, for an Employee of an Employer, means a national holiday that is announced in Kazakhstan for:

- (a) if the Employer is a public sector entity – the public sector; or
- (b) if the Employer is a private sector entity – the private sector.

Pay Period, of an Employee, means:

- (a) if the Employee is paid by the hour, Day, week or month – the hourly, daily, weekly or monthly period for which the Employee is or is to be paid; or
- (b) if the Employee is paid on a flat rate, piece rate, commission or other incentive basis – the relevant period for which the Employee is or is to be paid.

Personal Data means any information relating to a Data Subject who can be identified, directly or indirectly, in particular by reference to an identification number or to 1 or more factors specific to the Data Subject's biological, physical, biometric, physiological, mental, economic, cultural or social identity.

Processing, in relation to Personal Data, means obtaining, recording or holding the Personal Data or performing any operation or set of operations on the Personal Data, including:

- (a) organisation, adaptation or alteration of the Personal Data; or
- (b) retrieval, consultation or use of the Personal Data; or
- (c) disclosure of the Personal Data by transmission, dissemination or otherwise making available; or
- (d) alignment, combination, blocking, erasure or destruction of the Personal Data.

Wages, of an Employee, means all payments made to the Employee in return for work done or services



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provided under the Employee's Contract of Employment.