



## **AIFC COMPANIES REGULATIONS**

### **AIFC REGULATIONS No. 2 of 2017**

(with amendments as of 17 October 2024,  
which commence on 1 January 2025)

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Astana, Kazakhstan



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## PART 1: GENERAL

### CHAPTER 1—PRELIMINARY

#### 1. Name

These Regulations are the *AIFC Companies Regulations 2017*.

#### 2. Date of enactment

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

#### 3. Commencement

These Regulations commence on 1 January 2018.

#### 4. Legislative authority

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

#### 5. Application of these Regulations

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Financial Centre Participants 2017* as in force immediately before the commencement of these Regulations are repealed.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

#### 6. Interpretation

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

### CHAPTER 2 CERTIFICATES

#### 7. Prohibition against conduct of business without incorporation or registration in the AIFC

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



- (a) is an exempt Person under the Rules.
- (b) ***[intentionally omitted]***
- (3) Contravention of this section is punishable by a fine.
- (4) Where a Person enters into a contract with a third party and that third party knows (or ought reasonably to know that entry into that contract is) in contravention of subsection (1), that contract may be terminated at the sole option of that third party unless a court or other tribunal determines otherwise.

**8. Certificates**

- (1) The Registrar may issue a certificate subject to any conditions or restrictions.
- (2) The AIFC Participant must not Contravene a condition or restriction to which the certificate is subject.
- (3) The Registrar may suspend the activity of the AIFC Participant on the Registrar's own initiative or on the application of the AIFC Participant.
- (4) The Registrar may exercise a power under subsection (3) in relation to an activity of the AIFC Participant on the Registrar's own initiative only if the Registrar:
  - (a) complies with the Decision-making Procedures; and
  - (b) either:
    - (i) is satisfied that the AIFC Participant, or an officer, employee or agent of the AIFC Participant, has Contravened, is Contravening or is likely to Contravene these Regulations; or
    - (ii) considers that the exercise of the power is necessary or desirable in the interests of the AIFC.
- (5) ***[intentionally omitted]***
- (6) ***[intentionally omitted]***
- (7) Contravention of subsection (2) is punishable by a fine.



## PART 2: THE APPOINTMENT AND ROLE OF REGISTRAR

### 9. Appointment of Registrar

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

### 10. Registrar's Objectives and Functions

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



- (f) Exercising any Function delegated to the Registrar under these Regulations or any other Legislation Administered by the Registrar.
- (5) The Registrar may permit or require the use of an electronic or computer-based system for the filing, delivery or deposit of Documents or information required under or for these Regulations, the Rules or any other Legislation Administered by the Registrar and may specify the circumstances in which Persons are taken to have signed or certified Documents on an electronic or computer-based system for any purpose under these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (6) The Registrar must, through the Exercise of the Registrar's Functions, assist Kazakhstan to comply with its obligations under any international treaty or other agreement to which it is a party.
- (7) The Registrar may do anything the Registrar considers necessary or desirable to be done for or in connection with, or reasonably incidental to, the Exercise of the Registrar's Functions subject to any applicable Decision-making Procedures.
- (8) The Registrar may delegate all or any of the Registrar's Functions to another Person in accordance with the Rules.



**PART 3: INCORPORATION AND REGISTRATION OF COMPANIES**

**11. Types of companies**

- (1) The types of companies that may be incorporated under these Regulations are:
  - (a) Private Companies, if they meet the requirements in section 36(1) (Requirements for Public and Private Companies); and
  - (b) Public Companies, if they meet the requirements in section 36(2) (Requirements for Public and Private Companies).
- (2) A Foreign Company may be registered under these Regulations as a Recognised Company if it meets the requirements in Part 12 (Recognised Companies).

**12. Legal personality**

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



**PART 4: COMPANY FORMATION AND INCORPORATION**

**13. Formation of companies**

- (1) A company may be incorporated under these Regulations on the application of any 1 or more Persons in accordance with this Part.
- (2) A company must not be incorporated for an unlawful purpose.
- (3) An application for the incorporation of a company must be filed with the Registrar by the Incorporators or their duly authorised representative.
- (4) The application must state the following:
  - (a) the proposed name of the Company;
  - (b) whether the proposed Company is to be a Private Company or a Public Company;
  - (c) the nature of the business to be conducted by the proposed Company;
  - (d) the amount of the initial share capital and shareholdings of the Incorporators;
  - (e) the nominal value of each Share;
  - (f) the address of the proposed Company's registered office;
  - (fa) the registered email address of the Company;
  - (g) the following information for each Incorporator:
    - (i) the full name, nationality and address of the Incorporator;
    - (ii) if the Incorporator is an individual and is to hold Shares in trust for another Person—the full name, nationality and address of the beneficial owner of the Shares;
    - (iii) if the Incorporator is a Body Corporate—the beneficial ownership information of the Body Corporate required by the Rules;
  - (h) the full name (including any previous names), nationality, address, business occupation (if any) and date of birth of the individuals who are to serve as the Directors and, if applicable, the Secretary;
  - (i) the other particulars (if any) required by the Registrar or the Rules; and
  - (j) the particulars required by Part 14-1 (Ultimate Beneficial Owners) of these Regulations.
- (5) Unless the Standard Articles are adopted by a Company in their entirety, the proposed Articles of Association, signed by or on behalf of each Incorporator, must be filed with the application.





**14. Articles of Association**

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

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

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

**16. Effects of incorporation etc.**

- (1) On the incorporation of a Company, the Registrar must:



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

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

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

**18. Effect of Articles of Association**

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



**19. Amendment of Articles of Association**

- (1) Subject to these Regulations and the Rules, a Company may amend its Articles of Association by Special Resolution or by any other means provided by the Company's Articles of Association.
- (2) The Company must, within 14 days after the amendments to the Articles of Association are made, submit to the Registrar:
  - (a) a copy of the amended Articles of Association;
  - (b) a certificate given by at least 1 of the Directors of the Company stating that the proposed amendment complies with the requirements of these Regulations and the Rules and all other applicable AIFC Regulations and AIFC Rules; and
  - (c) a copy of a Special Resolution, agreement, enactment, order or any other document by which the Articles of Association are amended.
- (2-1) The Registrar may rely on the certificate, provided in accordance with subsection 2 (b), as sufficient evidence of the matters stated in it.
- (3) If the Articles of Association of a Company are amended, the rights and obligations of the Shareholders and the Company that arose under the Articles of Association before the amendment is made are not be affected unless the amendment expressly provides for it to have such an effect.
- (4) Despite anything in the Articles of Association of a Company, a Shareholder of the Company is not bound by an amendment made to the articles after the day the Shareholder became a Shareholder so far as the amendment:
  - (d) requires the Shareholder to take or subscribe for more Shares than those held by the Shareholder at the end of the day immediately before the amendment is made; or
  - (e) in any way increases the Shareholder's Liability at the end of that day to contribute to the Company's share capital or otherwise to pay an amount to the Company.
- (5) Subsection (4) does not apply in relation to the Shareholder if the Shareholder, either before or after the amendment is made, agreed to be bound by it.

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

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

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

- (1) A Company must not use a name that, because of any fact, matter or circumstance, is, or is reasonably likely to become, misleading, deceptive or conflicting with another name (including an existing name of another Company or Recognised Company).



- (2) If, because of the happening or likely happening of any fact, matter or circumstance, a Company's name is, has become, or is reasonably likely to become, misleading, deceptive or conflicting with another name (including an existing name of another Company or Recognised Company), the Company must change its name within 30 days or, if the Registrar agrees to a longer period, that longer period.
- (3) Contravention of this section is punishable by a fine.

**22. Change of Company name**

- (1) A Company must not change its name otherwise than by Special Resolution or by other means provided for by the Company's Articles of Association and must not change its name to a name that is not acceptable to the Registrar.
- (2) If a Company changes its name in accordance with subsection (1), the Company must file the accompanying notice or a statement that the change of name has been made by the means provided for by the Company's Articles of Association with the Registrar within 14 days after the day the change is made.
- (3) Contravention of subsection (1) or (2) is punishable by a fine.
- (4) If a Company changes its name and complies with subsection (2) in relation to the change, the Registrar must, as soon as practicable:
  - (a) enter the new name in the Register in place of the former name; and
  - (b) issue a certificate of name change showing the previous name and the new name of the Company.
- (5) The change of name takes effect on the day the Registrar issues the certificate of name change.
- (6) The change of name does not:
  - (a) affect any rights or obligations of the Company; or
  - (b) render defective any legal proceedings by or against it.
- (7) Any legal proceedings that could have been commenced or continued against the Company under its former name may be commenced or continued against it under its new name.
- (8) A Company may obtain the prior approval of the Registrar to the new name before the name is changed.

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

- (1) Without limiting section 21 (Prohibition against misleading, deceptive or conflicting names), if, in the opinion of the Registrar, the name by which a Company is registered is, has become, or is reasonably likely to become, misleading, deceptive, conflicting with another name (including an existing name of another Company), or otherwise undesirable, the Registrar may direct the Company to change it.
- (2) The Registrar must comply with the Decision-making Procedures in deciding whether to



give a direction under subsection (1).

- (3) A Company must comply with a direction given by the Registrar under subsection (1) within 30 days after the date specified in the direction unless the Registrar allows a longer period to comply with the direction.
- (4) Contravention of subsection (3) is punishable by a fine.

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

- (1) A Company must, at all times, have a registered office in the AIFC to which all communications and notices to the Company may be addressed.
- (2) A Document may be served on a Company by leaving it at, or sending it by post to, the registered office of the Company in the AIFC.
- (3) A Company must conduct its principal business activity in the AIFC, unless the Registrar otherwise permits.
- (3-1) A Company may change the address of its registered office by giving notice to the Registrar. The change takes effect upon the notice being registered by the Registrar.
- (4) Contravention of subsection (1) or (3) is punishable by a fine.

**24-1. Registered email address**

- (1) A Company must have a registered email address to which all communications and notices to the Company may be addressed.
- (2) A Company may change its registered email address by giving notice to the Registrar. The change takes effect upon the notice being registered by the Registrar.
- (3) Contravention of this section is punishable by a fine.

**25. Particulars in Company communications**

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

**26. Annual returns**

- (1) Annual return must be filed with the Registrar by:
  - (a) A Public Company;
  - (b) a Private Company with an annual turnover of more than U.S. \$500,000 or an



- average of more than 20 Shareholders during the year for which the annual return is being prepared; or
- (c) a Private Company which has not made an election under section 26-1 (Annual confirmation of accuracy of information in the register).
- (1-1) A Company which is subject to subsection (1) must, within 6 months of the end of each financial year, or other date the Registrar considers appropriate, file with the Registrar an annual return containing:
- (a) its financial statements for the last financial year for which the Company's accounts have been prepared; and
- (b) a statement, for each class of Shares in the Company, setting out either:
- (i) the name and address of each Shareholder who, on the filing date, held not less than 5% of the allotted Shares of that class and the number of Shares of that class held by the Shareholder, together with the number of Shareholders each of whom, on that date, held less than 5% of the allotted Shares of that class and the total number of Shares held by them; or
- (ii) the name and address of every Shareholder who, on the filing date, held any Shares of that class and the number of Shares of that class held by the Shareholder; and
- (c) the particulars mentioned in section 13(4)(j) (Formation of companies) for each Director and, if applicable, the Secretary; and
- (d) if Shares are held by the Company as treasury Shares—the entry required by section 62(8)(a) (Treasury Shares); and
- (e) the other information, and declarations, (if any) required by the Rules.
- (2) The annual return must be accompanied by the filing fee prescribed by the Rules.
- (2-1) A Shareholder may request a Company to provide a copy of an annual return of the Company to the Shareholder. If the Shareholder pays the reasonable fee (if any) that the Company requires, the Company must, within 10 days after the day the request is received or the day any required payment is made (whichever is later), either give the Shareholder a written copy of the annual return or make a written copy of the annual return available for the Shareholder at the Company's registered office.
- (3) A Person may request a Public Company to provide a copy of an annual return of the Public Company to the Person. If the Person pays the reasonable fee (if any) that the Public Company requires, the Public Company must, within 10 days after the day the request is received or the day any required payment is made (whichever is later), either give the Person a written copy of the annual return or make a written copy of the annual return available for the Person at the Public Company's registered office.
- (4) Contravention of subsection (1), (2-1) or (3) is punishable by a fine.



**26-1. Annual confirmation of accuracy of information in the register**

- (1) A Private Company which is not subject to section 26 (1)(b) may make an election in Writing to file an annual confirmation statement instead of an annual return.
- (2) The Private Company which files the annual confirmation statement must, before the end of the period of 14 days after the end of each review period, deliver to the Registrar:
  - (a) such information as is necessary to ensure that the Private Company is able to make the statement referred to in paragraph (b); and
  - (b) a statement (a “confirmation statement”) confirming that all information required to be delivered by the Private Company to the Registrar in relation to the confirmation period concerned under any duty mentioned in subsection (2) either:
    - (i) has been delivered, or
    - (ii) is being delivered at the same time as the confirmation statement.
- (3) The following duties require notification in Writing:
  - (a) the duty to give notice of a change in the address of the Private Company's registered office;
  - (b) the duty to give notice of a change in the Shareholders or in particulars required to be included in the Register of Shareholders;
  - (c) the duty to give notice of a change in the Directors or in particulars required to be included in the Register of Directors;
  - (d) in the case of a Private Company with a Secretary, the duty to give notice of a change in the Secretary or joint Secretaries or in particulars required to be included in the Register of Secretaries;
  - (e) the duty to give notice of a change in the Nominee Directors or in particulars required to be included in the Register of Nominee Directors;
  - (f) the duty to give notice of a change in the UBO Details in relation to each of its Ultimate Beneficial Owners in the Register of Ultimate Beneficial Owners;
  - (g) in the case of a Private Company which keeps any company records at a place other than its registered office, any duty under these Regulations to give notice of a change in the address of that place;
  - (h) the duty to notify a change in the Private Company's principal business activities;
  - (i) the duty to give notice of a change in number of Shares held by the Private Company as treasury Shares;
  - (j) the duty to give notice of a change in other information (if any) required by the Regulations and Rules.
- (4) In this section:



***confirmation period***

- (a) in relation to a Private Company's first confirmation statement, means the period beginning with the day of the Private Company's incorporation and ending with the date specified in the statement ("the confirmation date");
  - (b) in relation to any other confirmation statement of a Private Company, means the period beginning with the day after the confirmation date of the last such statement and ending with the confirmation date of the confirmation statement concerned.
- (5) The confirmation date of a confirmation statement must be no later than the last day of the review period concerned.
  - (6) For the purposes of this section, each of the following is a review period:
    - (a) the period of 12 months beginning with the day of the company's incorporation;
    - (b) each period of 12 months beginning with the day after the end of the previous review period.
  - (7) Where a Private Company delivers a confirmation statement with a confirmation date which is earlier than the last day of the review period concerned, the next review period is the period of 12 months beginning with the day after the confirmation date.
  - (8) For the purpose of making a confirmation statement, a Private Company is entitled to assume that any information has been properly delivered to the Registrar if it has been delivered within the period of 5 days ending with the date on which the statement is delivered.
  - (9) Subsection (8) does not apply in a case where the Private Company has received notice from the Registrar that such information has not been properly delivered.
  - (10) The confirmation statement must be accompanied by the filing fee prescribed by the Rules.
  - (11) A Shareholder may request a Private Company to provide a copy of a confirmation statement of the Private Company to the Shareholder. If the Shareholder pays the reasonable fee (if any) that the Private Company requires, the Private Company must, within 10 days after the day the request is received or the day any required payment is made (whichever is later), either give the Shareholder a written copy of the confirmation statement or make a written copy of the confirmation statement available for the Shareholder at the Private Company's registered office.
  - (12) Contravention of this section is punishable by a fine.

**27. Company Records**

- (1) This section applies to Records that a Company is required to keep under these Regulations and the Rules.
- (2) The Company may keep the Records in the form of a bound or loose-leaf book, or photographic film, or may enter or record the Records by a system of mechanical or electronic data processing or any other medium that is capable of reproducing any





required information in intelligible written form within a reasonable time.

- (3) The Company must take reasonable precautions:
  - (a) to prevent the loss or destruction of Records; and
  - (b) to prevent the falsification of entries in them; and
  - (c) to facilitate the detection and correction of inaccuracies in them.
- (3) If any Records are kept otherwise than in intelligible written form, any duty imposed on the Company under these Regulations and the Rules to allow inspection and copying of, or to require the giving or production of, information or Documents is to be treated as a duty to allow inspection and copying of, or to require the giving or production of, information or Documents in intelligible written form.

**28. Filing of Special Resolutions and certain other Resolutions and agreements affecting a Company's Constitutional Documents**

- (1) This section applies to the following Resolutions and agreements in relation to a Company's Constitutional Documents:
  - (a) any Special Resolution;
  - (b) any Ordinary Resolution or agreement agreed to by all the Shareholders of the Company that, if not agreed to by all the Shareholders, would not have been effective for its purpose, unless passed as a Special Resolution;
  - (c) any Ordinary Resolution or agreement agreed to by all the Shareholders of a class of Shares that, if not agreed to by all those Shareholders, would not have been effective for its purpose, unless passed by some particular majority or otherwise in some particular way;
  - (d) any Ordinary Resolution or agreement that effectively binds all the Shareholders of a class of Shares, although not agreed to by all those Shareholders.
- (2) A reference in subsection (1) to the Shareholders of a Company, or to the Shareholders of class of Shares in a Company, does not include a reference to the Company itself if the Company is a Shareholder, or a Shareholder of that class of Shares, only because it holds Shares as treasury Shares.
- (3) A Company must file a written copy of every Resolution or agreement to which this section applies or, if a Resolution or agreement is not in Writing, a written memorandum setting out its terms with the Registrar within 15 days after the day it is passed or made.
- (4) Contravention of subsection (3) is punishable by a fine.



## PART 5: CORPORATE CAPACITY AND TRANSACTIONS

### 29. Capacity of Company

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

### 30. Form of contracts

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

### 31. Pre-incorporation contracts

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

### 32. Participation in Holding Company

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



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

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



**PART 6: CLASS RIGHTS**

**33. Variation or abrogation of class rights**

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

**34. Shareholders' right to object to variation or abrogation**

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



- (6) If an application is made to the Court in accordance with this section, the variation or abrogation has no effect (and, if the variation or variation has taken effect before the application is made, is taken never to have taken effect) unless and until it is confirmed by the Court.
- (7) If, after hearing the applicant and any other Persons who appear to the Court to be interested in the application, the Court is satisfied that this section has been complied with in relation to the application and that the variation or abrogation would unfairly prejudice the interests of the holders of Shares of the class, the Court may disallow the variation or abrogation. If the Court is not so satisfied, the Court must confirm the variation or abrogation.



**PART 7: PRIVATE COMPANIES AND PUBLIC COMPANIES**

**CHAPTER 1–FEATURES OF A COMPANY**

**35. Limited Liability**

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

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

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

**37. Name of Private Company**

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

**38. Name of Public Company**

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

**CHAPTER 2–ALTERATION OF COMPANY TYPE**

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

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



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



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

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





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

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

## CHAPTER 3—SHAREHOLDERS AND SHARES GENERALLY

### 41. Shareholders

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

### 42. Nature of Shares

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



provided in its Articles of Association.

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

**43. Minimum share capital**

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

**44. Alteration of share capital**

- (1) A Company may, by Resolution, alter its share capital, unless the alteration is prohibited by its Articles of Association or results in the Company not having the share capital required by section 43 (Minimum share capital).
- (2) A Company may:
  - (a) increase its share capital by creating new Shares of an existing class with the same nominal value, or a new class of Shares of the nominal value it considers appropriate; or
  - (b) consolidate and divide its share capital (whether allotted or not) into Shares representing a larger nominal value than their existing nominal value; or
  - (c) subdivide its Shares, or any of them, into Shares representing a smaller nominal value than their existing nominal value, if the proportion between the amount paid and the amount unpaid (if any) on each subdivided Share is the same as it was for the Share from which the sub-divided Share was derived.
- (3) A Company must not alter its share capital:
  - (a) otherwise than by Resolution or decision of the board of Directors subject to subsection (5) below; or
  - (b) if the alteration, or any alteration of its share capital, is prohibited by its Articles of Association; or
  - (c) if the alteration would result in the Company not having the share capital required by section 43 (Minimum share capital).
- (4) Contravention of subsection (3) is punishable by a fine



- (5) Subject to section 48 (Shareholders' pre-emption rights), the board of Directors of a Company may, if authorised by the Articles of Association or Resolution, exercise a power of the Company:
  - (a) to allot and issue Shares; or
  - (b) to grant rights to subscribe for or convert any Securities into Shares.

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

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

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

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



- (b) a copy of the valuation report has been given to the proposed allottee; and
  - (c) copies of the valuation report and the relevant resolutions of the board of Directors have been given to the Registrar along with the notice of the Allotment
- (2) A Public Company must not accept, in part or full payment for its Shares or any premium on them, an undertaking given by a Person that the Person or another Person is to undertake work or provide services for the Company or any other Person, unless the work is to be undertaken or the services provided within 5 years after the date of Allotment of the Shares.
- (3) Subsections (1) and (2) do not apply to:
- (a) the Allotment of Shares in the Company in connection with a Share exchange; or
  - (b) the Allotment of Shares in the Company in connection with a proposed merger with another Body Corporate; or
  - (c) the Allotment of Shares in the Company on the conversion of any convertible Securities; or
  - (d) the exercise of an option to acquire Shares in the Company; or
  - (e) the Allotment of Shares that are fully Paid-up from the reserves of the Company to all Shareholders in proportion to the number of Shares held by each Shareholder; or
  - (f) the consolidation and division, or subdivision, of Shares, or any class of Shares, in the Company in proportion to the Shares or the Shares in that class; or
  - (g) the Company provided that the number of Shares to be so allotted when aggregated with the number of Shares allotted for non-cash consideration (otherwise than under the exemptions in subsections (3) (a) to (f)) in the current financial year does not exceed 5% of the total number of the Company's issued Shares (other than Shares held by the Company in treasury) immediately prior to such allotment.
- (4) A valuation report required under subsection (1) must be made by a Person registered as an auditor under these Regulations who is not:
- (a) an Employee of the Company; or
  - (b) a partner, officer or employee of an Employee of the Company or of a partnership in which an Employee of the Company is a partner; or
  - (c) an officer or employee of an associated undertaking of the Company; or
  - (d) a partner, officer or employee of an associated undertaking of the Company or of a partnership in which an associated undertaking of the Company is a partner; or
  - (e) connected with the Company in a way prescribed under the Rules.
- (5) The Person conducting the valuation (the **valuer**) may request an Employee of the Company to provide the information and explanation that the valuer considers necessary



for the valuation. The Employee must comply with the request or take reasonable steps to ensure that the request is complied with.

- (6) A Person must not:
  - (a) make a statement, or give information, to the valuer (whether orally, in a Document or in any other way) that is false or misleading in a material particular; or
  - (b) give a Document to the valuer that is false or misleading in a material particular; or
  - (c) conceal information if the concealment is likely to mislead or deceive the valuer.
- (7) Contravention of subsection (5) or (6) is punishable by a fine.
- (8) For this section:
  - (a) an Allotment is in connection with a Share exchange if the consideration for the Allotment is the transfer of Shares in another Body Corporate or the cancellation of Shares in another Body Corporate, and the Allotment is open to all holders (or all of a particular class of holders) of Shares in the other Body Corporate; and
  - (b) an Allotment is in connection with a proposed merger of a Company with another Body Corporate, if the Company proposes to acquire all the assets and Liabilities of the other Body Corporate in exchange for the issue of its Shares or other Securities to the shareholders or members of the other Body Corporate.

**47. Bearer Shares**

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

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

- (1) Subject to section 49 (Exceptions of pre-emption right), a Company must not allot Equity Securities to a Person on any terms unless:
  - (a) it has made an offer to each Person who holds Equity Securities to allot to the Person, on the same or more favourable terms, a proportion of the Equity Securities that is as nearly as practicable equal to the proportion of the Equity Securities held by the Person in the Company's share capital; and
  - (b) the period during which any offer may be accepted has expired or the Company has received notice of the acceptance or refusal of every offer made.
- (2) For purposes of subsection (1), the Company allots Equity Securities if it:
  - (a) grants a right to subscribe for, or to convert Securities into, Ordinary Shares; and
  - (b) sells Equity Securities in the Company that were held by the Company immediately before the sale as treasury Shares.
- (3) Shares held by the Company as treasury Shares are disregarded for this section, so that



the Company is not treated as a Person who holds Equity Securities and treasury Shares are not treated as forming part of the Company's share capital.

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

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

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

- (a) that are bonus Shares; or
- (b) that would be held under, or allotted or transferred under, an Employee Share Scheme; or
- (c) that are wholly or partly Paid-up otherwise than in cash in accordance with section 45 (Non-cash consideration for Shares in Private Company) or 46 (Non-cash consideration for Shares in Public Company); or



- (d) in a Private Company, to the extent that the Pre-emption right has been excluded or varied by its Articles of Association; or
- (e) by any Company, to the extent that the restrictions prescribed by section 48 (Shareholders' pre-emption rights) have been excluded or varied by Special Resolution (unless a higher threshold is required by the Articles of Association), if the Special Resolution has been recommended by the Directors of the Company in a Written statement circulated to all Shareholders that sets out:
  - (i) the Directors' reasons for making the recommendation; and
  - (ii) the amount to be paid to the Company in respect of allotment; and
  - (iii) the Directors' justification of that amount.

#### **CHAPTER 4—PROHIBITION OF PUBLIC OFFERS BY PRIVATE COMPANIES**

##### **50. Prohibition of public offers by Private Companies**

- (1) A Private Company must not:
  - (a) make an offer of its Securities to the public; or
  - (b) allot or agree to allot its Securities to any Person with a view to the Securities being offered to the public.
- (2) Unless the contrary is proved, an allotment or agreement to allot Securities is presumed to be made with a view to such Securities being offered to the public if an offer of the Securities (or any of them) is made to the public:
  - (a) within 6 months after the allotment or agreement to allot; or
  - (b) before the receipt by the Company of the whole of the consideration to be received by the Company in respect of the Securities.
- (3) A Private Company does not Contravene subsection (1) if it:
  - (a) acts in good faith under arrangements under which it is to re-register as a Public Company before the Securities are allotted;
  - (b) undertakes, as part of the terms of the offer, to re-register as a Public Company within 6 months after the day the offer is first made, and the undertaking is complied with; or
  - (c) offers Securities by way of placement as provided in the Rules made by the AFSA; or
  - (d) offers, allots, or allots by agreement Debt Securities at the Authorised Investment Exchange and notifies the Registrar; or
  - (e) offers, allots, or allots by agreement Debt Securities at exchanges, other than Authorised Investment Exchange, subject to Registrar's approval.
- (4) For this section:



- (a) an **offer to the public** includes an offer to any section of the public, however selected; and
- (b) an offer is not regarded as an **offer to the public** if:
  - (i) it can be properly regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the Securities becoming available to Persons other than those receiving the offer; or
  - (ii) it can be properly regarded, in all the circumstances, as being made to an existing Shareholder or Employee of the Company (or a member of the Person's immediate family), an existing holder of a Debt Security of the Company, or a trustee for any of them, and, if it is made on terms renounceable, it can only be renounced in favour of another Person who is entitled to receive that offer; or
  - (iii) it can be properly regarded, in all the circumstances, as being an offer for Securities to be held under an Employee Share Scheme and, if it is made on terms renounceable, it can only be renounced in favour of another Person who is entitled to receive that offer.
- (5) Contravention of subsection (1) is punishable by a fine.

**51. Enforcement of section 50(1) prohibition**

- (1) This section applies if:
  - (a) an application is made to the Court by a Shareholder or Creditor of a Company for an order under this section; or
  - (b) an application is made to the Court by a Shareholder of a Company for an order under section 175 (Orders for unfair prejudice to Shareholders); or
  - (c) an application is made to the Court by the Registrar for an order under this section in relation to a Company.
- (2) If it appears to the Court that the Company is Contravening or is proposing to Contravene section 50(1) (Prohibition of public offers by Private Companies), the Court may order restraining the Company from Contravening or continuing to Contravene the subsection.
- (3) If it appears to the Court that the Company has Contravened section 50(1), the Court may make 1 or more order under subsection (4).
- (4) If subsection (3) applies, the Court may:
  - (a) order the Company to re-register as a Public Company; or
  - (b) if it appears to the Court that the Company does not meet the requirements for re-registration as a Public Company or it is impractical or undesirable to require the Company to re-register as a Public Company, make any of the following orders against either the Company or any Person Knowingly Concerned in the Contravention (whether or not the Person is an Officer of the Company):
    - (i) a remedial order to put an affected party back in the position that the party





- would have been in apart from the Contravention;
- (ii) without limiting subparagraph (i), an order that any Person Knowingly Concerned in the Contravention must offer to purchase Securities at the price and on the other terms the Court considers appropriate;
  - (iii) if a remedial order is made against the Company—an order that the Company's share capital be reduced accordingly;
  - (iv) an order that the Company be subject to a compulsory winding up;
  - (v) any other order the Court considers appropriate.
- (5) In this section:
- affected party*** means a Shareholder or Creditor of the Company.

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

### **52. Register of Shareholders**

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



- (4) A Private Company may make an election to keep information in the Register kept by the Registrar.
- (5) An election may be made under this section by:
  - (a) the applicant wishing to incorporate a Private Company under these Regulations; or
  - (b) the Private Company itself once it is incorporated.
- (6) In paragraph (b) of subsection (5), the election is of no effect, without prior agreement of all the Shareholders of the Private Company at the particular time to the making of the election.
- (7) An election under this section is made by giving notice of election to the Registrar.
- (8) If the notice is given by Person(s) wishing to incorporate a Private Company:
  - (a) it must be given together with the application for the incorporation under section 13; and
  - (b) it must be accompanied by a statement containing all the information under subsection (2).
- (9) If the notice is given by the Private Company, it must be accompanied by:
  - (a) a statement by the Private Company that all the Shareholders of the Private Company have assented to the making of the election; and
  - (b) a statement containing all the information that is required under subsection (2) to be contained in the Private Company's Register of Shareholders as at the date of the notice in respect of matters that are current as at that date.
- (10) An election made under subsection (4) takes effect when the notice of election is registered by the Registrar.
- (11) The election remains in force until either:
  - (a) the Private Company ceases to be a Private Company; or
  - (b) a notice of withdrawal sent by the Private Company under subsection (15) is registered by the Registrar, whichever occurs first.
- (12) While an election under subsection (4) is in force, a Private Company must continue to keep a Register of Shareholders in accordance with subsection (2) containing all the information that was required to be stated in that Register as at the time immediately before the election took effect, but the Private Company does not have to update that Register to reflect any changes that occur after that time.
- (13) The date to be recorded in the Register kept by the Registrar is to be the date on which the document containing that information is registered by the Registrar.
- (14) During the period when an election under subsection (4) is in force, a Private Company must deliver to the Registrar any information under subsection (2) which the Private



Company would, in the absence of any such election, have been obliged under these Regulations to enter in its Register of Shareholders and it must do so as soon as reasonably practicable after any relevant change but in any event within a period of 14 days.

- (15) A Private Company may by giving notice of withdrawal to the Registrar withdraw an election made by or in respect of it under subsection (4), where:
- (a) the withdrawal takes effect when the notice is registered by the Registrar;
  - (b) the effect of withdrawal is that the Private Company's obligation under subsection (1) to maintain a Register of Shareholders applies from then on with respect to the period going forward;
  - (c) the Private Company must place a note in its Register of Shareholders—
    - (i) stating that the election under subsection (4) has been withdrawn;
    - (ii) recording when that withdrawal took effect; and
    - (iii) indicating that information about its Shareholders relating to the period when the election was in force that is no longer current, is available for public inspection in the Register kept by the Registrar.
- (16) All notices and information to be delivered to the Registrar under this section must be made in Writing.
- (17) Contravention of subsections (4) to (16) is punishable by a fine.

### **53. Register of Debt Security Holders**

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

### **54. Transfer and registration of Shares and Debt Securities**

- (1) Despite anything in the Articles of Association of a Company, the Company must not register a transfer of a Share in, or Debt Security of, the Company unless it has been given a written instrument of transfer by the transferee or the transfer is in accordance with a provision of the Rules that enables title to Securities to be evidenced and transferred without a written instrument of transfer.
- (2) Subject to subsection (6), the Company must promptly register a transfer of a Share in, or Debt Security of, the Company if it is permitted to register the transfer under subsection (1).
- (3) Subsection (1) does not affect any power of the Company to register as a Shareholder or



Debt Security holder any Person to whom the right to any Share in, or Debt Security of, the Company has been transmitted by operation of these Regulations, including under any order made by a court of competent jurisdiction.

- (4) An application for the transfer of a Share or Debt Security made by the Personal Representative of a deceased Shareholder or Debt Security holder is as effective as it would been if it had been made personally by the deceased Shareholder or Debt Security holder.
- (5) On the application of the transferor of a Share in or Debt Security of a Company, the Company must promptly enter in its Register of Shareholders or Register of Debt Security Holders (as the case may be) the name of the transferee in the same way and subject to the same conditions as if the application for the entry had been made by the transferee.
- (6) If a Company has reasonable grounds to refuse to register a transfer of Shares in, or Debt Securities of, the Company, the Company must, as soon as reasonably practicable but within 14 days after the day the transfer was lodged with it, give the transferor and transferee Written notice of its reasons for the refusal.
- (6-1) Subsections (1) to (6) do not apply to a transfer of Shares and Debt Securities in a Public Company made on the Authorised Investment Exchange.
- (6-2) A transfer of Shares and Debt Securities on the Authorised Investment Exchange must be made in accordance with the rules of the Authorised Investment Exchange.
- (7) Contravention of this section is punishable by a fine.

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

- (1) A Company's Register of Shareholders and, if it has issued Debt Securities, its Register of Debt Security Holders, must be kept at its registered office.
- (2) However, a register may be maintained by an agent of the Company at the premises of the agent in the AIFC and kept at that office, if the Company has immediate access to the register. The Company may keep a copy of the register at its registered office and, if it does so, the Company must update the copy of the register to reflect any changes to the information contained in the register within 10 days after the day the register is changed by the agent.
- (3) Contravention of this section is punishable by a fine.

**55-1. Branch register**

- (1) A Public Company may cause a branch register to be kept by an agent of the Company in the jurisdiction outside the AIFC, where such Public Company seeks to have or has Shares or Debt Securities admitted to trading on a Recognised Exchange.
- (2) A branch register is regarded as part of the Company's Register of Shareholders or Register of Debt Security Holders (if any). A branch register if kept must reflect entries relating to holdings of Shares or Debt Securities, which are sought to be or had been admitted to trading on a Recognised Exchange and contain the information that is required under sections 52(2) (Register of Shareholders) and 53(2) (Register of Debt Security Holders) (as the case may be).



- (3) A Public Company must give notice to the Registrar within 14 days after the event:
  - a) of the situation of the office at which the Company begins to keep a branch register;
  - b) of any change in its situation; and
  - c) if the keeping of the register is discontinued, of its discontinuance.
- (4) A Public Company may discontinue a branch register and thereupon all entries in that register must be transferred to some other branch register in the same place or to the Company's Register of Shareholders or Register of Debt Security Holders (if any).
- (5) Contravention of this section is punishable by a fine.

**56. Inspection of registers**

- (1) A Company must ensure that its Register of Shareholders and its Register of Debt Security Holders (if any) are open for inspection by, respectively, any Shareholder or Debt Security holder of the Company during business hours without charge, and, if the Company is a Public Company, by any other Person on application under subsection (3) and on payment of the reasonable amount (if any) required by the Company, at the registered office of the Company or, if the register is maintained by an agent at the office of the agent in the AIFC.
- (2) If a Public Company caused a branch register to be kept by an agent in accordance with section 55-1, the Company must keep a copy of the branch register at its registered office and that subsection applies to the Company as if a reference to the register were a reference to the copy kept at its registered office.
- (3) An application by a Person under this subsection must be made in Writing to the Company and must include the following information:
  - (a) if the applicant is an individual—the applicant's name and address;
  - (b) if the applicant is an organisation—the name and address of an individual responsible for making the application on behalf of the organisation;
  - (c) the purpose for which the information obtained is to be used;
  - (d) whether the information will be disclosed to any other Person and, if so:
    - (i) if the other Person is an individual—the individual's name and address; and
    - (ii) if the other Person is an organisation—the name and address of an individual responsible for receiving the information on its behalf; and
    - (iii) the purpose for which the information is to be used by the other Person.
- (4) If a Company refuses to allow a Person to inspect a register under subsection (1), the Registrar may, on the Person's application, direct the Company to immediately allow the Person to inspect the register. An application made under this subsection by a Person



other than a Shareholder or Debt Security holder must include the information set out in subsection (3).

- (5) A Company must comply with a direction given to it under subsection (4).
- (6) Contravention of subsection (1) or (5) is punishable by a fine.

**57. Rectification of registers**

- (1) If:
  - (a) without reasonable excuse, the name of a Person, or the number of Shares held or the class of Shares held by a Person, is not entered correctly in, or is omitted from, a Company's Register of Shareholders; or
  - (b) there is a Failure or unnecessary delay in entering in the Register of Shareholders of a Company the fact that a Person has ceased to be a Shareholder;

the Person (an **aggrieved Person**), or any Shareholder of the Company, may apply to the Registrar for rectification of the register.

- (2) If:
  - (a) without sufficient reason, the name of a Person, or the number of Debt Securities held or the type of Debt Securities held by a Person, is, not entered correctly in, or is omitted from, a Company's Register of Debt Security Holders; or
  - (b) there is a Failure or unnecessary delay in entering in the Register of Debt Security Holders of a Company the fact that a Person has ceased to be a Debt Security holder;

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

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



Register of Debt Security Holders or to do, or not do, anything else;

- (c) on the application of an aggrieved Person in relation to a Company, an order requiring the Company to pay damages.
- (6) Contravention of subsection (4) is punishable by a fine.

**58. Share certificates**

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

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

- (1) A Public Company may give a Written notice to any Person whom it knows or has reasonable grounds to believe:
  - (a) is interested in the Company's Shares; or
  - (b) has been interested in the Company's Shares at any time within 3 years before the date of the notice.
- (2) The notice may require the Person to confirm any interest that Person has, or has had, in the Shares and to provide the details relating to the interest that are specified in the notice.
- (3) For this section, a Person has an interest in Shares of a Company if the Person:
  - (a) has entered into a contract to acquire the Shares; or
  - (b) is not the registered holder of the Shares, but is entitled to:
    - (i) exercise any right given by holding the Shares; or
    - (ii) control the exercise of any such right.
- (4) If a Person Fails to comply with a notice given to the Person by a Company under subsection (1), the Company may apply to the Court for an order directing that the Shares in which the Person has an interest be subject to any 1 or more of the following restrictions:
  - (a) that any transfer of, or agreement to transfer, the Shares is void;



- (b) that voting rights are not exercisable in respect of the Shares;
  - (c) that no further Shares be issued instead of the Shares or under an offer made to their holder;
  - (d) that, except in a liquidation, no payment be made of amounts owed by the Company on the Shares, whether in respect of capital or otherwise.
- (5) On the application, the Court may make the order that the Court considers appropriate, having regard, in particular, to the rights of third parties in respect of the Shares in relation to which the application is made.
- (6) Any Person whose rights are, or are likely to be, unfairly affected by an order of the Court made under subsection (5) may apply to the Court on that ground. If the Court is satisfied that the order unfairly affects the rights of the applicant or any other third party, the Court may, for the purpose of protecting the rights of the applicant or any third party, and subject to the terms that it considers appropriate, order that, to the extent stated in the order:
  - (a) restrictions imposed by the order under subsection (5) do not apply in relation a stated Person or Persons (or a stated category of Persons); or
  - (b) relevant Shares are to cease to be subject to restrictions imposed by the order under subsection (5).
- (7) If there is a restriction applying in relation to Shares under an order under subsection (5) (as affected by any order made under subsection (6)), each the following are void to the extent that they Contravene the restriction:
  - (a) any transfer of, or agreement to transfer, the Shares;
  - (b) any vote cast, or any other action taken relying on a vote cast, in respect of the Shares;
  - (c) any issue of Shares instead of the Shares or under an offer made to their holder;except in a liquidation, any payment made of amount owed by the Company on the Shares, whether in respect of capital or otherwise.
- (8) An application may be made to the Court, by the Company concerned or any Person aggrieved, for an order directing that Shares subject to restrictions under an order under subsection (5) are to cease to be subject to the restrictions. The Court may not make the order unless:
  - (a) it is satisfied that the relevant facts about the Shares have been disclosed to the Company and no Person has received an unfair advantage because of the earlier Failure to make the disclosure; or
  - (b) the Shares are to be transferred for valuable consideration and the Court approves the transfer.





CHAPTER 6—REDEMPTION AND PURCHASE OF SHARES

60. Power to issue redeemable Shares

- (1) Subject to section 61 (Power of Company to purchase its own Shares), a Company may, if authorised to do so by its Articles of Association, issue and allot, or convert existing non-redeemable shares (whether allotted or not) into, Shares that are to be redeemed, or are liable to be redeemed, either in accordance with their terms or at the option of the Company or the Shareholder.
- (2) However, the Company must not convert existing non-redeemable Shares into redeemable Shares if, as a result, there are no issued Shares that are not redeemable.
- (3) A Company may redeem Shares in the Company only if they are fully paid and from the following sources:
  - (a) for the nominal value of the Shares—from the Paid-up share capital, share premium and other reserves of the Company; and
  - (b) for any premium—from realised or unrealised profits, share premium or other reserves of the Company.
- (4) A Company must not redeem any of its Shares unless all of the Directors sign a certificate stating that they have formed the opinion:
  - (a) that, immediately following the day payment for the redemption is proposed to be made, the Company will be able to discharge its Liabilities as they fall due; and
  - (b) that, having regard to:
    - (i) the prospects of the Company and to the intentions of the Directors with regard to the management of the Company's business; and
    - (ii) the amount and character of the financial resources that will be available to the Company;the Company will be able to continue to conduct its business, and discharge its Liabilities of they fall due, for 12 months immediately after the day payment for the redemption is proposed to be made.
- (5) A Director must not sign a certificate under subsection (4) unless the Director has reasonable grounds for the matters stated in the certificate.
- (6) Contravention of subsection (5) is punishable by a fine.
- (7) If Shares are redeemed under this section, the Shares must be treated as cancelled and the amount of the Company's share capital must be reduced by the nominal value of the Shares redeemed, unless they are held by the Company as treasury Shares.
- (8) If a Company is about to redeem Shares under this section, it may issue Shares up to the value of the Shares to be redeemed, as if those Shares had never been issued.
- (9) A Company must not redeem its Shares under this section if because of the redemption:



- (a) there would no longer be a Shareholder of the Company holding Shares other than redeemable Shares; or
  - (b) the Company would cease to have the share capital required by section 43 (Minimum share capital) or any other applicable AIFC Regulations and AIFC Rules.
- (10) If a Company redeems any of its Shares, the Company must, within 14 days after the day the redemption is completed, notify the Registrar of the redemption and tell the Registrar what the Company's share capital is after completion of the redemption.

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

- (1) Subject to any restrictions in its Articles of Association, a Company may purchase its own Shares to the extent permitted by this section.
- (2) A Company must not purchase its own shares unless the purchase is approved by:
  - (a) a Special Resolution, if it is an off-market purchase and the Company is not a Wholly-Owned Subsidiary; or
  - (b) an Ordinary Resolution, if it is a market purchase or the Company is a Wholly-Owned Subsidiary.
- (3) The holders of the Shares to be purchased do not have a right to vote on the Resolution required under subsection (2). The Company must ensure that the holders of those Shares do not vote on the Resolution.
- (4) A Company must not purchase its Shares under this section if:
  - (a) because of the purchase, there would no longer be a Shareholder of the Company holding Shares other than redeemable Shares or Shares held as treasury Shares; or
  - (b) the Shares are not fully paid; or
  - (c) the Company would cease to have the share capital required by section 43 (Minimum share capital).
- (5) The provisions of section 60(4) to (5) (Power to issue redeemable Shares) apply, with any necessary changes, to the purchase by a Company under this section of its own Shares as they apply to the redemption by the Company of its redeemable Shares.
- (6) If a Company purchases its own Shares, the Company must ensure that the Shares are paid for:
  - (a) if it is an off-market purchase—on purchase; or
  - (b) if it is a market purchase—in accordance with the rules of the relevant Regulated Market.
- (7) If a Company proposes to purchase its own Shares, the Company must:
  - (a) send a copy of the contract setting out the terms for the purchase of the Shares



- to each Shareholder at or before the proposed Resolution approving the purchase is sent to the Shareholder; and
- (b) ensure that a copy of the contract is available for inspection by Shareholders at the Company's registered office for at least 15 days before the day of the meeting to consider the Resolution and at the meeting itself.
- (8) If a Public Company purchases its own Shares, the Company must ensure that a copy of the contract setting out the terms of the purchase is kept available for inspection, at the request of any Shareholder, at the Company's registered office for 10 years after the day the Shares are purchased.
- (9) For this section:
- (a) a purchase of Shares is a **market purchase** if it is made by a Public Company on a Regulated Market; and
  - (b) a purchase of Share is an **off-market purchase** if it is not made by a Public Company on a Regulated Market.
- (10) If a Company purchases its own Shares under this section, the Company must, within 14 days after the day the purchase is completed, notify the Registrar of the purchase and tell the Registrar what the Company's share capital is after completion of the purchase.
- (11) Contravention of this section is punishable by a fine.
- (12) Contravention of section 60(5) as applied by subsection (5) is punishable by a fine.

## 62. Treasury Shares

- (1) A Company may hold any Shares that have been purchased by it under section 61 (Power of Company to purchase its own Shares) as treasury Shares if:
- (a) there is no restriction in its Articles of Association that prohibits it from holding the Shares as treasury Shares; and
  - (b) it is approved by an Ordinary Resolution; and
  - (c) it complies with the other requirements of this section.
- (2) A Company that holds Shares as treasury Shares may:
- (a) cancel the Shares; or
  - (b) sell the Shares; or
  - (c) transfer the Shares for the purposes of, or under, an Employee Share Scheme; or
  - (d) transfer the Shares to existing Shareholders as fully paid bonus Shares; or
  - (e) continue to hold the Shares.
- (3) If a Company cancels Shares held as treasury Shares, the amount of the Company's



share capital must be reduced by the nominal value of the cancelled Shares.

- (4) While Shares are held by a Company as treasury Shares:
- (a) the Company must not, for sections 95 (Meeting requests) and 98 (General provisions about meeting and votes), be treated as being a Shareholder or as holding Shares in the Company; and
  - (b) no voting rights (direct or through proxy) attach to the Shares held as treasury Shares; and
  - (c) if, for a Resolution to be passed or any act or decision to be taken (or not taken) by any Person, a provision of these Regulations and the Rules requires:
    - (i) a proportion of votes attaching to Shares held in the Company to be obtained; or
    - (ii) a proportion of the holders of Shares of the Company (which may include Persons representing by proxy other holders of Shares of the Company) to consent or not to consent;
- the Shares held as treasury Shares must not, for that provision, be taken into account in working out the total number of Shares held by the Company or whether the required proportion has been attained; and
- (d) the Company must not make or receive any dividend, or any other Distribution (whether in cash or otherwise) of the Company's assets (including any Distribution of assets to Shareholders on a winding up), in respect of the Shares held as treasury Shares; and
  - (e) the rights in respect of the treasury Shares must not be exercised by or against the Company; and
  - (f) the obligations in respect of the treasury Shares must not be enforceable by or against the Company; and
  - (g) any purported exercise or enforcement of a right, obligation, requirement or anything else mentioned in paragraphs (b) to (f) is void.
- (5) However, subsection (4) does not prevent:
- (a) an Allotment of Shares as fully paid bonus Shares in respect of treasury Shares; or
  - (b) the payment of any amount payable on the redemption of redeemable Shares that are held as treasury Shares.
- (6) If a Company is about to cancel Shares under subsection (2)(a), it may issue Shares up to the Paid-up amount of the Shares to be cancelled as if those Shares had never been issued.
- (7) Any Shares allotted by a Company as fully paid bonus Shares in respect of Shares held as treasury Shares must be treated as if they were purchased by the Company at the time they were allotted.



- (8) If Shares are held by a Company as treasury Shares:
  - (a) the Register of Shareholders must include an entry relating to the number of Shares held as treasury Shares; and
  - (b) the Register must, to the extent it contains details of the Shareholders of the Company, include an entry relating to the number of Shares held as treasury Shares; and
  - (c) the annual return filed under section 26 (Annual return) must include an entry relating to the number of Shares held as treasury Shares on 1 January in the year of the return.

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

- (1) A Company must not:
  - (a) if it is a Public Company—provide financial assistance for a Person to acquire Shares, or any units of Shares, in itself or its Holding Company; and
  - (b) if it is a Private Company—provide financial assistance for a Person to acquire Shares, or units of Shares, in a Holding Company that is a Public Company, unless the provision of the financial assistance is authorised under any 1 or more of subsections (2) to (6).
- (2) The provision of the financial assistance is authorised if the provision of the financial assistance:
  - (a) does not materially prejudice the interests of the Company or its Shareholders or the Company's ability to discharge its Liabilities as they fall due; and
  - (b) is approved by a Resolution of Shareholders holding not less than 90% in nominal value of the Shares giving a right to attend and vote at any Shareholders' meeting.
- (3) The provision of the financial assistance is authorised if the Company's ordinary business includes providing finance and the financial assistance is provided in the ordinary course of that business and on ordinary commercial terms.
- (4) The provision of the financial assistance is authorised the financial assistance is provided in connection with, or for the purposes of, an Employee Share Scheme of the Company.
- (5) The provision of the financial assistance is authorised if the provision of the financial assistance is only an incidental part of some larger purpose of the Company and the financial assistance is given in good faith in the interests of the Company.
- (6) The provision of the financial assistance is authorised if the financial assistance is of a kind prescribed by the Rules for this subsection.
- (7) Each Officer of a Company must ensure that the Company does not Contravene this section.
- (8) Contravention of this section is punishable by a fine.
- (9) In this section:



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

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

but does not include any of the following:

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

## CHAPTER 7—REDUCTION OF CAPITAL

### 64. Reduction of Share Capital

- (1) A Private Company may reduce its Share Capital by a Special Resolution supported by a solvency statement under section 65 (Reduction of Share Capital by Private Company supported by solvency statement).
- (2) A Public Company or Private Company may reduce its Share Capital by a Special Resolution confirmed by the Court, following the procedures in sections 66 (Reduction of Share Capital by Special Resolution confirmed by Court order) and 67 (Court order confirming reduction of Share Capital).
- (3) A Company must not reduce its Share Capital under subsection (1) or (2) if:
  - (a) its Articles of Association contain any prohibition or restriction relating to capital reduction; or
  - (b) because of the reduction, there would no longer be any Shareholder of the Company other than holders of redeemable Shares; or
  - (c) if the Company is a Public Company—the reduction in the Share Capital would result in the Company not having the share capital required by section 43 (Minimum share capital) or any other applicable AIFC Regulations and AIFC Rules, except in the circumstances to which section 69 (Public Company reducing its Share Capital below its authorised minimum) applies.
- (4) Subject to subsection (3), a Company may reduce its Share Capital in any way, and on the terms, decided by it, including, for example:



- (a) by extinguishing or reducing the Liability on any of its Shares in respect of Share Capital not Paid-up, or
  - (b) either with or without extinguishing or reducing Liability on any of its Shares, by
    - (i) cancelling any Paid-up Share Capital that is lost or unrepresented by available assets, or
    - (ii) by repaying any Paid-up Share Capital in excess of the Company's requirements; or
  - (c) by causing any of its Shares that have been issued otherwise than as fully Paid-up to be forfeited for Failure to pay any amount payable on them or by accepting their surrender instead of causing them to be forfeited.
- (5) For this Chapter, a redemption or purchase by a Company of its Shares in accordance with Chapter 6 is not a reduction of the Share Capital of the Company.
- (6) A Company must not reduce its Share Capital otherwise than in accordance with this Chapter. Contravention of this subsection is punishable by a fine.

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

- (1) A Resolution for reducing Share Capital of a Private Company is supported by a solvency statement for section 64(1) (Reduction of share capital) if:
- (a) on a day not more than 30 days and not less than 15 days before the date the reduction of the Share Capital is to have effect, the Company has published a notice in the Appointed Publications stating the following:
    - (i) the amount of the Share Capital as most recently determined by the Company;
    - (ii) the nominal value of each Share;
    - (iii) the amount by which the Share Capital is to be reduced;
    - (iv) the date the reduction is to have effect; and
  - (b) the notice contains a solvency statement that complies with subsection (2).
- (2) A solvency statement is a statement by each Director of the Company that the Director:
- (a) has formed the opinion, as regards the Company's situation at the date of the statement, that there is no ground on which the Company could be found to be unable to discharge its debts as they fall due; and
  - (b) has also formed the opinion that:
    - (i) if the Company intended to commence its winding up within 12 months after the date of the statement, the Company would be able discharge its debts in full within 12 months of the commencement of the winding up; or
    - (ii) in any other case, the Company would be able to discharge its debts as



they fall due during the year immediately after the date of the statement.

- (3) A Director of the Company must not make a solvency statement mentioned in subsection (1)(b) unless the Director has reasonable grounds for the opinion expressed in the statement. In forming the opinion, the Director must take into account all of the Company's Liabilities (including any contingent or prospective Liabilities).
- (4) Contravention of subsection (3) is punishable by a fine.
- (5) If a Company reduces the amount of its Share Capital, the Company must, within 14 days after the day the reduction takes effect, file with the Registrar a copy of the notice under subsection (1)

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

- (1) If a Company is permitted to do so under its Articles of Association and has passed a Special Resolution for reducing its Share Capital, it may apply to the Court for an order confirming the reduction.
- (2) If the proposed reduction of Share Capital involves the payment to a Shareholder of any Paid-up Share Capital or a diminution of Liability in respect of any unpaid Share Capital, the subsections (3), (4) and (5) apply, except so far as the Court directs otherwise under subsection (6).
- (3) Any Creditor of the Company is entitled to object to the reduction of capital if the Creditor, at the date fixed by the Court, is entitled to a debt or claim that would be admissible in proof against the Company, if that date were the commencement of the winding up of the Company.
- (4) The Court must settle a list of Creditors entitled to object under subsection (3). For that purpose, the Court:
  - (a) must ascertain, as far as possible, without requiring an application from any Creditor, the names of the Creditors and the nature and amount of their debts or claims; and
  - (b) may publish notices fixing a day or days by which Creditors not entered on the list are to claim to be entered in the list or are to be excluded from the right of objecting to the reduction of capital.
- (5) If, for a Creditor entered on the list, the Creditor's debt or claim is not discharged or has not determined and the Creditor has not consented to the reduction, the Court may dispense with the consent of that Creditor, on the Company securing payment of the Creditor's debt or claim by appropriating, as the Court may direct, the following amount:
  - (a) if the Company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it—the full amount of the debt or claim;
  - (b) if the Company does not admit, and is not willing to provide for, the full amount of the debt or claim or the amount is contingent or not ascertained—an amount fixed by the Court.
- (6) The Court may, having regard to any special circumstances of the case, direct that subsections (3), (4) and (5) do not apply, or apply with stated modifications, in relation to





any class or any classes of Creditors.

- (7) An Officer of the Company must not:
  - (a) intentionally or recklessly:
    - (i) conceal the name of a Creditor entitled to object to the reduction of Share Capital, or
    - (ii) misrepresents the nature or amount of the debt or claim of a Creditor, or
  - (b) be Knowingly Concerned in any such concealment or misrepresentation.
- (8) Contravention of subsection (7) is punishable by a fine.

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

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

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

- (1) If the Court confirms the reduction of a Company's Share Capital, the Company must give the Registrar:
  - (a) a copy of the order of the Court confirming the reduction; and
  - (b) a statement of capital, approved by the Court, showing in respect of the Company's Share Capital:
    - (i) the total number of issued Shares; and
    - (ii) the aggregate nominal value of those Shares; and
    - (iii) the amount Paid-up and unpaid (if any) on each Share (whether on



account of the nominal value or by way of premium).

- (2) The Registrar must register the order and statement of capital. On that registration the Special Resolution for reducing the Share Capital as confirmed by the order takes effect.
- (3) The Registrar must certify the registration of the order and statement of capital. The certificate:
  - (a) must be signed by the Registrar; and
  - (b) is conclusive evidence that all the requirements of these Regulations and the Rules in relation to the reduction of Share Capital have been complied with and that the Company's Share Capital is as stated in the statement of capital.
- (4) On its registration, the statement of capital is taken to be substituted for the corresponding part of the Articles of Association.

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

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

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

- (1) This section applies if:
  - (a) a Creditor entitled to object to the reduction of the Share Capital of a Company is not entered on the list of Creditors under section 66 (Reduction of Share Capital by Special Resolution confirmed by Court order) because of the Creditor's ignorance of the proceedings for the reduction or of the nature and effect of the proceedings on the Creditor's claim; and
  - (b) after the reduction of capital, the Company is unable to pay the amount of the Creditor's debt or claim.
- (2) Every Person who was a Shareholder of the Company on the day the Special Resolution for reducing the Share Capital took effect under section 68(2) (Registration of order and statement of capital) is liable to contribute, towards payment of the Creditor's debt or claim, an amount not exceeding the amount that the Person would have been liable to contribute if the Company had commenced to be wound up on the previous day.



- (3) If the Company is wound up under these Regulations, the Court, on the application of the Creditor and proof that the Creditor is a Creditor mentioned in subsection (1)(a), may settle a list of Persons liable to contribute under subsection (2), and may make and enforce calls and orders on the Persons included on the list as if they were ordinary contributories in a winding up.
- (4) This section does not affect the rights of the listed Persons among themselves.

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

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

### CHAPTER 8—DISTRIBUTIONS

#### 72. Restrictions on Distributions

- (1) A Company must not make a Distribution unless the Distribution is made out of profits available for Distribution. The profits available for Distribution are the Company's accumulated, realised profits (so far as not previously utilised by Distribution or capitalisation) less its accumulated, realised losses (so far as not previously written off in a reduction or reorganisation of capital duly made).
- (2) A Public Company must not make a Distribution:
  - (a) unless the amount of its net assets is not less than the aggregate of its share capital and undistributable reserves; and
  - (b) unless, and only to the extent that, the Distribution does not reduce the amount of those net assets to less than that aggregate.
- (3) Whether a Distribution may be made by a Company without Contravening this section is determined by reference to the following items as stated in the relevant accounts:
  - (a) profits, losses, assets and Liabilities;
  - (b) provisions of any kind;
  - (c) share capital and reserves (including undistributable reserves).
- (4) The **relevant accounts** are the Company's last annual accounts, except that:
  - (a) if the Distribution would be found to Contravene this section by reference to the Company's last annual accounts—it may be justified by reference to interim accounts; and
  - (b) if the Distribution is proposed to be declared during the Company's first accounting reference period or before any accounts have been prepared in respect of that period—may be justified by reference to initial accounts.



- (5) If the relevant accounts are:
- (a) the Company's last annual accounts—the accounts must be the accounts that were sent to Shareholders under section 131(4) (Accounts); and
  - (b) interim accounts—the accounts must be properly prepared so as to enable a reasonable judgement to be made about the amounts of the items mentioned in subsection (3); and
  - (c) initial accounts—the accounts must be properly prepared so as to enable a reasonable judgement to be made about the amounts of the items mentioned in subsection (3) and, if the Company is a Public Company, accompanied by a report from the Company's auditor stating whether, in the auditor's opinion, the accounts have been properly prepared.
- (6) If any applicable requirement in subsection (5) is not complied with in relation to any accounts, the accounts may not be relied on for this section and the Distribution is accordingly treated as a Contravention of this section.

- (7) In this section:

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

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

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

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

- (a) its share premium account;
- (b) any capital redemption reserve;
- (c) the amount by which its accumulated, unrealised profits (so far as not previously utilised by Distribution or capitalisation) exceeds its accumulated, unrealised losses (so far as not previously written off in a reduction or reorganisation of capital duly made);



(d) any other reserve that the Company is prohibited from distributing by its Articles of Association or under any applicable AIFC Regulations or AIFC Rules.

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

### **73. Consequences of unlawful Distribution**

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

## **CHAPTER 9—DIRECTORS AND SECRETARIES**

### **74. Directors**

(1) A Private Company must have at least 1 director and a Public Company must have at least 2 directors.

(2) A Person must not be a Director if the Person:

(a) is not a natural person; or

(b) is under 18 years old; or

(c) is disqualified from being a Director because of:

(i) having been convicted of a criminal offence, involving dishonesty or moral turpitude, in any jurisdiction in the past 10 years; or

(ii) having been found guilty of insider trading or the equivalent in any jurisdiction at any time; or

(iii) having been judged disqualified by any court; or

(iv) having been disqualified by the AFSA; or

(v) a disqualification specified in the Articles of Association; or

(d) is an undischarged bankrupt.

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

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

(1) The first directors of a Company must be elected by the Incorporators. Subsequent directors must be elected by the Shareholders by Ordinary Resolution, or as otherwise provided by the Articles of Association, for the term that the Shareholders decide.

(2) Each director holds office until the director's successor takes office or until the director's earlier death, resignation or removal by Ordinary Resolution or as otherwise provided by the Articles of Association.



- (2-1) If a Director of a Company resigns his or her office, the Director must deliver a Written notice of his or her resignation to the Company and notify the Registrar.
- (3) A vacancy created by the death, resignation or removal of a director may be filled by Ordinary Resolution or, if the vacancy is not filled by an Ordinary Resolution, by the remaining directors. However:
  - (a) any director appointed by the remaining directors is subject to reappointment by Ordinary Resolution at the next General Meeting; and
  - (b) if an Ordinary Resolution of reappointment of the director is not passed at the next General Meeting—the director ceases to be a director at the conclusion of the General Meeting.
- (4) The number of directors must be fixed by the Articles of Association subject to the requirements of section 74(1) (Directors).
- (5) If, at a General Meeting, it is proposed that 2 or more persons be appointed as directors, the appointments must be made by a separate Resolution in respect of each person, unless unanimously agreed otherwise by the Shareholders at the meeting.

**76. Duties of Directors**

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

**77. Duty to act within powers**

A Director of a Company must:

- (a) act in accordance with the Constitutional Documents; and
- (b) only exercise the powers of a Director for the purposes for which the powers have been given.

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

- (1) A Director of a Company must act in the way the Director honestly considers, in good



faith, would be most likely to promote the success of the Company for the benefit of its Shareholders as a whole and, in doing so, must have regard, among other matters, to:

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

**79. Duty to exercise independent judgement**

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

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

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

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

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

- (1) A Director of a Company must avoid a situation in which the Director has, or can have, a direct or indirect interest that conflicts, or may possibly conflict, with the interests of the Company.



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

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

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

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

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

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

- (1) This section applies if a Director of a Company becomes aware, or ought reasonably to have become aware, that the Director is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the Company.
- (2) The Director must declare the nature and extent of the interest to the other Directors of the Company in accordance with section 85 (Duty to declare interest in existing transaction or arrangement).
- (3) But the declaration must be made before the proposed transaction or arrangement is entered into. For a declaration under this section, section 85 (Duty to declare interest in existing transaction or arrangement) applies to the Director with any other necessary





changes.

**84. Breaches of Directors' duties**

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

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

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



under subsection (8) in relation to it if, despite a Failure to comply with this section:

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

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

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

***Connected Person***, in relation to a Director, means:

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



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

- (1) Subject to subsection (4), a Company must not provide financial assistance of any of the following kinds to a Director:
  - (a) making a loan, issuing a Debt Security or granting a credit facility or other similar form of financial assistance;
  - (b) giving a guarantee or security or indemnity in connection with a loan, Debt Security, credit facility or other similar form of financial assistance, whether the financial assistance is provided by the Company or another Person;
  - (c) any other form of financial assistance prescribed by the Rules,unless:
  - (d) consent is given by Shareholders attending (in person or by proxy) a General Meeting who together hold not less than 90% of the Shares that are voted at the meeting; and
  - (e) all of the Directors of the Company certify that providing the financial assistance would not materially prejudice either of the following:
    - (i) the interests of the Company and its Shareholders; or
    - (ii) the Company's ability to discharge its Liabilities as they fall due.
- (2) Any financial assistance provided under subsection (1) must be:
  - (a) documented in Writing; and
  - (b) before it is provided, recorded in the minutes of a meeting of the Directors of the Company, under signature of all of the Directors, as being provided in accordance with the requirements of that subsection.
- (3) Financial assistance may not be provided to a Connected Person for a Director of a Company except in accordance with this section.
- (4) Subsection (1) does not apply to the provision of financial assistance by a Company if:
  - (a) the financial assistance consists of remuneration paid in the ordinary course to a Director for services as a Director; or
  - (b) the financial assistance is for liability indemnity insurance related to the discharge of a Director's duties to the Company; or
  - (c) the Company's ordinary business includes providing finance and the financial assistance is provided in the ordinary course of that business and on ordinary commercial terms; or
  - (d) the financial is of a kind prescribed by the Rules as exempt from this section.
- (5) Sections 81 (Duty to avoid conflicts of interest) and 82 (Duty not to accept benefits from third parties) do not apply to any financial assistance provided in accordance with this



section.

**88. Validity of acts of Director**

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

**89. Secretary**

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

**90. Register of Directors and Secretaries**

- (1) Every Company must keep, at its registered office, a Register of its Directors and, if applicable, a Register of its Secretaries. The Company must ensure that a register contains the particulars required by the Rules. An election may be made in relation to a Private Company for the information, which otherwise would require to be kept in the Register of Directors and Secretaries, to be kept by the Registrar.
- (1-1) Every Company must notify the Registrar if the particulars required by the Rules change.
- (2) If a Company keeps a register at its registered office, the Company must ensure that the register is open to inspection, during business hours and without charge, by the Registrar or any Shareholder or Director of the Company.
- (3) The Company may, by its Articles of Association or a decision in General Meeting, impose reasonable restrictions on the availability of a register for inspection under subsection (2), but must nevertheless ensure that the register is open to inspection for at least 2 hours on each day that its registered office is open.



- (4) If a Company Fails to make a register available for inspection under subsection (2) by the Registrar or a Shareholder or Director of the Company, the Registrar may, by Written notice given to the Company, direct the Company to immediately make the register available for inspection by that Person. The Company must comply with the direction.
- (5) Contravention of subsections (1) to (4) is punishable by a fine.
- (6) A Private Company may make an election to keep information in the Register kept by the Registrar.
- (7) An election may be made under this section by:
  - (a) the applicant wishing to incorporate a Private Company under these Regulations; or
  - (b) the Private Company itself once it is incorporated.
- (8) In paragraph (b) of subsection (7), the election is of no effect, without prior agreement of all the Shareholders of the Private Company at the particular time to the making of the election.
- (9) An election under this section is made by giving notice of election to the Registrar.
- (10) If the notice is given by Person(s) wishing to incorporate a Private Company:
  - (a) it must be given together with the application for the incorporation under section 13; and
  - (b) it must be accompanied by a statement containing all the information prescribed by the Rules.
- (11) If the notice is given by the Private Company, it must be accompanied by:
  - (a) a statement by the Private Company that all the Shareholders of the Private Company have assented to the making of the election; and
  - (b) a statement containing all the information prescribed by the Rules to be contained in the Private Company's Register of Directors and Secretaries as at the date of the notice in respect of matters that are current as at that date.
- (12) An election made under subsection (6) takes effect when the notice of election is registered by the Registrar.
- (13) The election remains in force until either:
  - (a) the Private Company ceases to be a Private Company; or
  - (b) a notice of withdrawal sent by the Private Company under subsection (17) is registered by the Registrar, whichever occurs first.
- (14) While an election under subsection (6) is in force, a Private Company must continue to keep a Register of Directors and Secretaries in accordance with the Rules, containing all the information that was required to be stated in that Register as at the time immediately before the election took effect, but the Private Company does not have to update that



Register to reflect any changes that occur after that time.

- (15) The date to be recorded in the Register kept by the Registrar is to be the date on which the document containing that information is registered by the Registrar.
- (16) During the period when an election under subsection (6) is in force, a Private Company must deliver to the Registrar any information in accordance with the Rules, which the Private Company would, in the absence of any such election, have been obliged under these Regulations to enter in its Register of Directors and Secretaries and it must do so as soon as reasonably practicable after any relevant change but in any event within a period of 14 days.
- (17) A Private Company may by giving notice of withdrawal to the Registrar withdraw an election made by or in respect of it under subsection (6), where:
  - (a) the withdrawal takes effect when the notice is registered by the Registrar;
  - (b) the effect of withdrawal is that the Private Company's obligation under subsection (1) to keep a Register of Directors and Secretaries applies from then on with respect to the period going forward;
  - (c) the Private Company must place a note in its Register of Directors or Secretaries—
    - (i) stating that the election under subsection (6) has been withdrawn;
    - (ii) recording when that withdrawal took effect; and
    - (iii) indicating that information about its Directors or Secretaries relating to the period when the election was in force that is no longer current is available for public inspection on the Register kept by the Registrar.
- (18) All notices and information to be delivered to the Registrar under this section must be made in Writing.
- (19) Contravention of subsections (6) to (18) is punishable by a fine.

**91. Assumptions in relation to Directors and Secretary**

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



**92. Disqualification orders**

- (1) Without limiting any other powers available to the Registrar, if the Registrar considers that it is in the public interest that an individual should not, without the leave of the Court, be a Director of, or in any way (whether directly or indirectly) be concerned or take part in the management of, a Company, the Registrar may apply to the Court for an order to that effect against the Person.
- (2) The Court may make the order applied for if satisfied that the Person's conduct (including, for example, any Breach by the person of any 1 or more of the duties under sections 77 to 83 and section 85) makes the person unfit to be concerned or take part in the management of a Company.

An order under subsection (2) may be made:

- (a) in the case of a first offence, for the period, not longer than 15 years; or
  - (b) in the case of a repeated offence, for an unlimited period, as the Court considers appropriate.
- (3) A Person must not Contravene an order under subsection (2).
  - (4) Contravention of subsection (4) is punishable by a fine.

**CHAPTER 10—MEETINGS**

**93. Participation in meetings**

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

**94. Annual General Meeting**

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

**95. Meeting requests**

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

**96. Registrar's power to call meeting in default**

- (1) If a meeting of a Company is not held as required by section 94 (Annual General Meetings) or 95 (Meeting requests), the Registrar may, on the application of any Director or Shareholder of the Company, call, or direct the Company to call, the meeting.
- (2) If a Company is given a direction under subsection (1), the Company must not, without reasonable excuse, fail to comply with the direction. Contravention of this subsection is punishable by a fine.

**97. Notice of meetings**

- (1) Any General Meeting of a Private Company must be called by at least 7 days Written notice. Any General meeting of a Public Company (other than an Annual General Meeting of a Public Company or an adjourned such meeting) must be called by at least 14 days Written notice. An Annual General Meeting of a Public Company must be called by at least 21 days Written notice.
- (2) If a General Meeting is called by shorter notice than that specified in subsection (1), it is taken to have been duly called if the required majority of the Shareholders agree that the meeting should be taken to have been duly called.
- (3) For subsection (2), the **required majority** is:
  - (a) for a Private Company—a majority together holding not less than 90% of the share capital represented by the Shares giving a right to attend and vote at the General Meeting; and





- (b) for a General Meeting other than an Annual General Meeting of a Public Company—a majority together holding not less than 95% of the share capital represented by the Shares giving a right to attend and vote at the General Meeting; and
  - (c) for an Annual General Meeting of a Public Company—all Shareholders of the Company.
- (4) A notice of a General Meeting of a Company must:
- (a) set out the time, date and place for the General Meeting; and
  - (b) state the general nature of the General Meeting’s business; and
  - (c) set out the intention to propose any Ordinary Resolution or Special Resolution and, if so, set out the terms of the Resolution; and
  - (d) for a Public Company—include a copy of any accounts and auditor’s report that are to be laid before the General Meeting.

**98. General provisions about meetings and votes**

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

- (a) a notice of every meeting must be given to every Shareholder entitled to receive it:
  - (i) by delivering or posting it to the Shareholder’s registered address; or
  - (ii) in the electronic form (if any) agreed to by the Shareholder; or
  - (iii) by making it available on the website (if any) agreed to by the Shareholder; or
  - (iv) in the other way or form (if any) agreed to by the Shareholder;
- (b) except for a Company with a single Shareholder, at any General Meeting of the Company, 2 Shareholders personally present or represented by proxy are a quorum;
- (c) at any meeting dealing with a variation of any class rights other than an adjourned meeting, the quorum is the number of Shareholders holding or representing by proxy at least 1/3 in nominal value of the issued Shares of the class, and at an adjourned meeting,<sup>1</sup> Shareholder holding Shares of the class or the Shareholder’s proxy is a quorum;
- (d) any Shareholder elected by the Shareholders present at the meeting may chair the meeting;
- (e) on a show of hands, every Shareholder present in person at the meeting has 1 vote and, on a poll, every Shareholder has 1 vote for every Share held by the Shareholder;



- (f) if practicable, voting can be arranged in any other form, determined in the Articles of Association.

**99. Representation of Body Corporate at meetings**

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

**100. Resolutions in writing of Private Companies**

- (1) Subject to any restrictions in a Private Company's Articles of Association, anything that may be done by a Resolution of the Company passed at a Shareholders' meeting (other than a Resolution to remove a Director or a Person who is registered as an auditor under these Regulations) may be done either by a resolution in writing in accordance with this section.
- (2) A resolution in writing is passed as an Ordinary Resolution if it is passed by Shareholders representing a simple majority of the total voting rights of Shareholders who, at the relevant time, would be entitled to vote.
- (3) A resolution in writing is passed as a Special Resolution only if:
  - (a) it stated that it was proposed as a Special Resolution; and
  - (b) it is passed by Shareholders representing not less than 75% of the total voting rights of Shareholders who, at the relevant time, would be entitled to vote.
- (4) An Ordinary Resolution or Special Resolution in writing may consist of several instruments in the same form each signed by or on behalf of 1 or more Shareholders.
- (5) An Ordinary Resolution or Special Resolution under this section is taken to be passed on the day the instrument, or the last of several instruments, is last signed or, if the resolution specifies a later date, on that date.
- (6) Any Document attached to an Ordinary Resolution or Special Resolution in writing under this section is taken to have been laid before a meeting of the Shareholders signing the Ordinary Resolution or Special Resolution.
- (7) Section 104 (Minutes and examination of minute books) applies to an Ordinary Resolution or Special Resolution in writing under this section as if it had been passed at a meeting.
- (8) This section does not affect or limit any provisions in the Articles of Association relating to the effectiveness of the consent of Shareholders, or any class of Shareholders, of a Private Company given to any Document, or anything else, otherwise than at a meeting of them.



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

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

**102. Proxies**

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

**103. Demand for poll**

- (1) A provision in the Articles of Association is void in so far as it would have the effect either of:
  - (a) excluding the right to demand a poll at a General Meeting, or at a meeting of the holders of any class of Shares, on a question, other than the election of the chair of the meeting or the adjournment of the meeting; or
  - (b) making ineffective a demand for a poll on any such question that is made either:
    - (i) by not less than 5 Shareholders having the right to vote on the question; or
    - (ii) by a Shareholder or Shareholders representing not less than 10% of the total number of Shares having the right to a vote on the question.



- (2) The instrument appointing a proxy to vote at such a meeting is taken also to provide authority to demand or join in demanding a poll and, for subsection (1), a demand by a Person as proxy for a Shareholder is the same as a demand by the Shareholder.
- (3) On a poll taken at such a meeting, a Shareholder entitled to more than 1 vote need not, if that Shareholder votes (in person or by proxy), use all the Shareholder's votes in the same way.

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

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



## CHAPTER 11—PROTECTION OF MINORITIES IN TAKEOVERS

## 105. Takeover Offers

(1) In this Chapter:

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

(2) In subsection (1):

**Shares** means Shares that:

- (a) have been allotted on the date of the offer; or
- (b) are subsequently allotted before a date specified in or determined in accordance with the terms of the offer; or
- (c) any rights convertible into Shares before a date specified or determined in accordance with the term of the offer.

(3) The terms offered in relation to any Shares are, for this section, to be treated as being the same in relation to all the Shares, or all the Shares of a class to which the offer relates, despite any variation permitted by subsection (4).

(4) A variation is permitted if:

- (a) the law of a country or territory outside the AIFC precludes the acceptance of an offer in that jurisdiction in the form or the forms specified, or precludes it except after compliance by The Offeror with conditions with which it is unable to comply or that it regards as unduly onerous; and
- (b) the variation is such that the Persons by whom the acceptance of an offer in that form is precluded are able to accept an offer in a different form but of substantially equivalent value.

(5) The reference in subsection (1) to Shares already held by The Offeror includes a reference to Shares that The Offeror has an unconditional right to acquire under an unconditional option to acquire.

(6) If the terms of an offer make provision for their revision and for an acceptance on the previous terms to be treated as an acceptance on the revised terms, the revision must not be regarded for this Chapter as the making of a fresh offer and a reference in this Chapter to the date of the offer is made is accordingly to be taken to be a reference to the date the original offer was made.

(7) In this Chapter:

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

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



Offer.

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

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

The Offeror must be treated for this section as having acquired or contracted to acquire



those Shares because of acceptances of the offer; but in any other case those Shares must be treated as excluded from those to which the offer relates.

**107. Effect of notice under section 106**

- (1) Subject to section 110 (Applications to Court), the following provisions have effect if a notice is given in respect of any Shares under section 106 (Right of The Offeror to buy out minority Shareholders).
- (2) The Offeror is entitled and bound to acquire the Shares on the terms of the offer.
- (3) If the terms of the offer give the holder of any Shares a choice of payment for the Shares, the notice must give particulars of the choice and state:
  - (a) that the holder of the Shares may, within 6 weeks after the date of the notice, indicate the holder's choice by a Written communication sent to The Offeror at an address specified in the notice; and
  - (b) which payment specified in the offer is to be taken as applying if holder indicate the holder's choice;

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

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

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

- (5) At the end of 6 weeks after the date of the notice, The Offeror must immediately:
  - (a) send a copy of the notice to The Company; and
  - (b) make payment to The Company on behalf of the holders of the Shares to which the notice relates.
- (6) The copy of the notice sent to The Company under subsection (5)(a) must be accompanied by an instrument of transfer executed on behalf of the Shareholder by a Person appointed by The Offeror. On receipt of that instrument, The Company must register The Offeror as the holder of those Shares.
- (7) If the payment referred to in subsection (5)(b) is to be made in Securities to be issued by The Offeror, the reference in that section to making payment is a reference to the issue of the Securities to The Company on behalf of the holders of the Shares to which the notice relates.
- (8) Any amount or other payment received by The Company under subsection (5)(b) is not the property of The Company but must be held by The Company on behalf of the Person



entitled to the Shares in respect of which the amount or other payment was received.

- (9) Any amount received, including any dividend or other amount accruing from any other payment, by The Company under subsection (5)(b) must be paid into a separate bank account, the balance of which bears interest at an appropriate rate and can be withdrawn by the notice (if any) that is appropriate.

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

- (1) If, for a Takeover Offer does not relate to Shares of different classes, at any time before the end of the period within which the offer can be accepted:
- (a) The Offeror has, because of acceptances of the offer, acquired or contracted to acquire some (but not all) of the Shares to which the offer relates; and
  - (b) those Shares, with or without any other Shares in the Company that The Offeror has acquired, or contracted to acquire, amount to not less than  $\frac{9}{10}$  in value of all the Shares in the Company;

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

- (2) If, subsection (1) does not apply to a Takeover Offer and, at any time before the end of the period within which the offer can be accepted:
- (a) The Offeror has, because of acceptances of the offer, acquired or contracted to acquire some (but not all) of the Shares of any class to which the offer relates; and
  - (b) those Shares, with or without any other Shares of that class that The Offeror has acquired, or contracted to acquire, amount to not less than  $\frac{9}{10}$  in value of all the Shares of that class;

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

- (3) No later than 1 month after the end of the period within which the offer can be accepted The Offeror must give any Shareholder or holder of Shares of that class who has not accepted the offer a notice setting out:
- (a) the rights that are exercisable by the Shareholder or holder of Shares of that class under subsection (1) or (2); and
  - (b) the period within which the rights are exercisable;

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

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





- (5) Subsection (3) does not apply to any Shares if The Offeror has given the Shareholder notice in respect of the Shares under section 106 (Right of The Offeror to buy out minority Shareholders).
- (6) Contravention of subsection (3) is punishable by a fine.
- (7) If The Offeror is not a Company, then, in a proceeding against The Offeror for an alleged Failure to comply this section, it is a defence for The Offeror to prove that The Offeror took all reasonable steps to ensure that this section was complied with.

**109. Effect of requirement under section 108**

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

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

**110. Applications to Court**

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



and bound to acquire the Shares are the terms that the Court considers appropriate.

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

#### 111. Joint offers

- (1) A Takeover Offer may be made by 2 or more Persons jointly, and in that event, this Chapter has effect with the following modifications.
- (2) The conditions for the exercise of the rights given by sections 106 (Right of The Offeror to buy out minority Shareholders) and 108 (Right of minority Shareholder to be brought out by The Offeror) are satisfied by the joint offerors acquiring, or contracting to acquire, the necessary Shares jointly (as respects acquisitions because of acceptances of the offer) and either jointly or separately (in other cases) and, subject to the following provisions, the rights and obligations of The Offeror under those sections and sections 107 (Effect of notice under section 106) and 109 (Effect of requirement under section 108) are respectively joint rights and joint and several obligations of the joint offerors.
- (3) It is sufficient compliance with any provision of those sections requiring or authorising a notice or other Document to be given or sent by or to the joint offerors that it is given or



sent by or to any of them, except that the declaration required by section 106(4) must be made by all of them and, for a joint offeror that is a Body Corporate, signed by a Director of the Body Corporate.

- (4) In sections 105, 107(7) and 112, a reference to **The Offeror** is a reference to the joint offerors or any of them.
- (5) In section 107(4)(a), the reference to **The Offeror being no longer able to make the payment** is a as reference to none of the joint offerors being able to do so.
- (6) In section 107(6), a reference to **The Offeror** is a reference to the joint offerors or such of them as they may determine.
- (7) In section 110, a reference to The Offeror is a reference to the joint offerors, except that any application under section 110(3) or (6) may be made by any of them. However, the reference in section 110(6)(a) to The Offeror having been unable to trace 1 or more of the Persons holding Shares is a reference to none of the joint offerors having been able to do so.

#### 112. Associates

- (1) The requirement in section 105(1) (Takeover Offers) that a Takeover Offer must extend to all the Shares, or all the Shares of any class or classes, in a Company may be satisfied even though the offer does not extend to Shares that associates of The Offeror hold or have contracted to acquire. Shares that an associate holds or has contracted to acquire, whether at the time when the offer is made or subsequently, must be disregarded for the purposes of any reference in this Chapter to the Shares to which a Takeover Offer relates.
- (2) If, during the period within which a Takeover Offer can be accepted, any associate of The Offeror acquires, or contracts to acquire, any of the Shares to which the offer relates, then, if the condition specified in section 106(9)(a) or (b) (Right of The Offeror to buy out minority Shareholders) is satisfied in respect of those Shares, the Shares must be treated for section 106 as Shares to which the offer relates.
- (3) In section 108(1)(b) and (2)(b) (Right of minority Shareholder to be bought out by The Offeror), the reference to Shares that The Offeror has acquired or contracted to acquire includes a reference to Shares that any associate of The Offeror has acquired or contracted to acquire.
- (4) In this section:  
**associate**, in relation to The Offeror, means any of the following:
  - (a) a nominee of The Offeror;
  - (b) a Holding Company, Subsidiary or fellow Subsidiary of The Offeror or a nominee of such a Holding Company, Subsidiary or fellow Subsidiary;
  - (c) a Body Corporate in which The Offeror has a substantial interest.
- (5) For subsection (4), a Company is a **fellow Subsidiary** of another Body Corporate if both are Subsidiaries of the same Body Corporate, but neither is a Subsidiary of the other.
- (6) For subsection (4), The Offeror has a **substantial interest** in a Body Corporate if:



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- (a) the Body Corporate or its Directors are accustomed to act in accordance with The Offeror's directions or instructions; or
  - (b) The Offeror is entitled to exercise or control the exercise of 1/2 or more of the voting power at General Meetings of the Body Corporate; or
  - (c) The Offeror owns or controls directly or indirectly more than 20% of the share capital of the Body Corporate.
- (7) If The Offeror is an individual, The Offeror's associates also include The Offeror's spouse and any child, stepchild or grandchild of The Offeror.



## PART 8: MERGERS

## CHAPTER 1—MERGERS: GENERAL

## 113. Application and interpretation of Part 8

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

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

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



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

## CHAPTER 2—MERGERS REQUIREMENTS

### 114. Merger agreement

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



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

#### 115. Resolutions and certificates for merger

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



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

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

#### 116. Approval of merger

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





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

**117. Objection to merger by Shareholders**

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



**CHAPTER 3—CREDITORS**

**118. Notice to Creditors of merger**

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



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

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

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

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



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

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

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



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



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



**objection** means:

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

## CHAPTER 4—COMPLETION OF MERGER AND GROUNDS FOR OPINIONS

### 122. Effect of completion of merger

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



**123. Grounds for opinion relating to merger**

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





**PART 9: COMPROMISES AND ARRANGEMENTS**

**124. Power of Company to compromise with Creditors and Shareholders**

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

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

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

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



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

**125. Information relating to compromise to be circulated**

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

**126. Provisions for facilitating Company reconstruction or amalgamation**

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

In this section:

**Company** may be taken to include a Body Corporate incorporated outside the AIFC.



**PART 10: ACCOUNTS, REPORTS AND AUDIT**

**CHAPTER 1—ACCOUNTS, REPORTS AND AUDIT: GENERAL**

**127. Application of Part 10**

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

**128. Waiver etc. by the Rules**

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



## CHAPTER 2—ACCOUNTS AND REPORTS

### 129. Accounting Records of Companies

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

### 130. Financial years

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



is within 7 days either shorter or longer than the 12 months, as may be decided by the Directors.

**131. Accounts**

- (1) The Directors of every Company must ensure that accounts are prepared in relation to each financial year of the Company and that the accounts comply with the requirements in this section.
- (2) The accounts must:
  - (a) be prepared in accordance with accounting principles or standards prescribed by the Rules or otherwise approved by the Registrar; and
  - (b) show a true and fair view of the profit or loss of the Company for the period and of the state of the Company's affairs at the end of the period; and
  - (c) comply with any other requirements of these Regulations and the Rules.
- (3) The Directors of a Company must approve the Company's accounts and must ensure that they are signed on their behalf by at least 1 Director.
- (4) The Directors of a Company must ensure that, within 6 months after the end of each financial year of the Company, the accounts for that year are:
  - (a) prepared and approved by the Directors; and
  - (b) examined and reported upon by an Auditor; and
  - (c) if the Company is a Public Company—laid before a General Meeting, together with a copy of the Auditor's report and Directors' report, for discussion and, if considered appropriate, approval by the Shareholders; and
  - (d) for all Companies—sent, together with (if applicable) a copy of the Auditor's report or Directors' report (or both), to every Shareholder, other than a Shareholder for whom the Company does not have a current address.
- (4-1) In this section, a Company has a "**current address**" for a person if —
  - (1) a postal or email address have been notified to the Company by the Shareholder as one at which documents may be sent to him or her; and
  - (2) the Company has no reason to believe that documents sent to the Shareholder at that email address or postal address will not reach him or her.
- (5) A Company must file with the Registrar, within 14 days after the day subsection (4)(d) is complied with in relation to a financial year, a copy of the accounts and the Auditor's report for the financial year and, if the Company is a Public Company, a copy of the Directors' report prepared under section 133 (Directors' reports for Public Companies) for the financial year.
- (6) Unless otherwise provided in its Articles of Association, a Private Company and its Directors are not required to comply with subsections (4)(b) and (5) if the Company has



an annual turnover of not more than U.S. \$5,000,000.

- (7) However, the Shareholders representing not less than 10% of the nominal value of the share capital of a Private Company to which subsection (6) applies may, by Written notice given to the Company no earlier than the start of any financial year and no later than 1 month before the end of the financial year, require the Company to obtain an audit of its accounts for financial year. The Directors of the Company must ensure that the request is complied with.
- (8) If a provision of this section requires the Directors of a Company to do something, each of the Directors are severally liable if the thing is not done as required by this section.
- (9) Contravention of this section is punishable by a fine.

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

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

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

- (1) The Directors of a Public Company must prepare a Directors' report for each financial year of the Company.
- (2) The Directors' report for a financial year must:
  - (a) state the names of the persons who, at any time during the financial year, were Directors; and
  - (b) state the principal activities of the Company during the financial year; and
  - (c) state the amount (if any) that the Directors recommend should be paid by way of dividend or other Distribution; and
  - (d) include a business review containing:
    - (i) a fair view of the Company's business; and
    - (ii) a description of the risks and uncertainties facing the Company; and
    - (iii) an analysis of the development, performance and position of the Company's business; and
    - (iv) the other information necessary for an understanding of the development, performance and position of the Company's business; and



- (e) state that the Directors are not aware of any relevant audit information of which the Company's Auditor is not aware, and that they have taken all reasonable steps to become aware of such relevant audit information; and
  - (f) include the other matters prescribed by the Rules.
- (3) The Directors' report must be signed on behalf of the Directors by a Director or the Secretary of the Company.
  - (4) Each Director of a Company must ensure that the requirements of this section are complied with in relation to the Company in relation to each financial year of the Company.
  - (5) Contravention of subsection (4) is punishable by a fine.

## CHAPTER 3—AUDITORS

### 134. Qualification and registration of Auditors

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

### 135. Register of Auditors

- (1) The Registrar must keep and publish a register of current and past registrations of auditors under these Regulations, including any restrictions and conditions applying to



registrations. The Rules may make provision for or in relation to the register.

- (2) The Registrar must make a current version of the register freely available for viewing by the public during the normal business hours of the Registrar.

### **136. Appointment and removal of Auditors**

- (1) If a Company is required by these Regulations to have its accounts examined and reported on by an Auditor, the Company must appoint an Auditor to examine and report on, in accordance with these Regulations and the Rules, the accounts prepared under section 131 (Accounts).
- (2) A Person who is not an Auditor must not:
  - (a) consent to be appointed as an Auditor of a Company; or
  - (b) act as an Auditor of a Company; or
  - (c) prepare any report required by these Regulations and the Rules to be prepared by an Auditor.
- (3) Contravention of subsection (2) is punishable by a fine.
- (4) The appointment of a firm as an Auditor of a Company is taken to be an appointment of each Person who is a partner of the firm.
- (5) A Public Company must, at each Annual General Meeting at which the accounts for the previous financial year are laid, appoint an Auditor to hold office from the conclusion of that meeting to the conclusion of the next Annual General Meeting at which the accounts are laid.
- (6) Subject to section 131(6) (Accounts), a Private Company must, within 6 months after the end of a financial year or, if earlier, before the day the accounts are sent to the Shareholders, appoint an Auditor to hold office from that date until the end of the next period for appointing Auditors.
- (7) The appointment of an Auditor by a Private Company must be by a resolution of its Directors unless the Shareholders, at a General Meeting, have appointed an Auditor by an Ordinary Resolution.
- (8) The Directors of a Public Company may, at any time before the first General Meeting at which the accounts for the previous financial year are laid, appoint an Auditor to hold office to the conclusion of the first General Meeting.
- (9) The Directors of a Company may fill any casual vacancy in the office of Auditor on the terms they consider appropriate. An Auditor appointed to fill a casual vacancy holds office:
  - (a) for a Public Company—until the conclusion of the next General Meeting at which the accounts for the previous financial year are laid; or
  - (b) for a Private Company—until the end of the next period for appointing Auditors.
- (10) Subject to subsection (9), the Company may, by Ordinary Resolution, fix the Auditor's remuneration.





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

**137. Auditor's report to Company**

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

**138. Auditors' Functions**

- (1) A Company's Auditor must, in preparing a report in relation to the accounts of the Company, conduct the investigations necessary to enable the Auditor to form an opinion



about the following matters:

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

**139. Resignation of Auditor**

- (1) An Auditor of a Company may resign from office by depositing a Written notice to that effect, together with a statement under subsection (2), at the Company's registered office. The notice operates to bring the Auditor's term of office to an end on the day the notice is deposited or, if a later date is stated in the notice, on that date. The Company must send a copy of the notice to the Registrar.
- (2) If an Auditor of a Company ceases to hold office for any reason, the Auditor must deposit at the Company's registered office either:
  - (a) a statement to the effect that there are no circumstances connected with the Auditor ceasing to hold office that the Auditor considers should be brought to the notice of the Shareholders or Creditors of the Company; or
  - (b) a statement of any circumstances mentioned in paragraph (a).
- (3) If an Auditor of a Company deposits a statement under subsection (2)(b), the Company must, within 14 days after the day the Auditor deposits the statement, send a copy of the statement to every Shareholder of the Company and to every Person entitled to receive



notice of General Meetings.

- (4) If an Auditor of a Company ceases to hold office for any reason, the Directors of the Company must, within 30 days after the day the Auditor ceases to hold office, appoint a replacement under section 136(9) (Appointment and removal of Auditors).
- (5) Contravention of this section is punishable by a fine.

**140. Cooperation with Auditors**

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



**141. Obligation of disclosure by Auditor**

- (1) An Auditor is subject to obligations of disclosure under section 196 (Obligation of disclosure to Registrar).
- (2) Without limiting any other provision of these Regulations, the Rules or any other Legislation Administered by the Registrar, an Auditor does not Contravene any duty to which the Auditor is subject merely because the Auditor:
  - (a) makes a disclosure under section 196; or
  - (b) gives the Registrar any other information or opinion in relation to a matter to which the disclosure applies or any related matter.

**142. Court orders**

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



**PART 11: OTHER TYPES OF COMPANY**

**143. Incorporation of prescribed types of Company**

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



## PART 12: RECOGNISED COMPANIES

### 144. Foreign Companies

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

### 145. Refusal to register Foreign Company

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

### 146. Effect of registration as Recognised Company

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

### 147. Requirements of Recognised Company

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



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

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

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

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

**149. Accounting Records of Recognised Companies**

- (1) A Recognised Company must keep Accounting Records that are sufficient to show and explain its transactions so as to:



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

**150. Inspection and remedies**

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





**PART 13: TRANSFER OF INCORPORATION**

**151. Transfer of incorporation to AIFC**

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

**152. Certificate of continuation**

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

**153. Effect of certificate**

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

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



**154. Copy of certificate of continuation**

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

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

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

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

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

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

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

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



PART 14: POWERS AND REMEDIES

CHAPTER 1—POWERS OF INVESTIGATION

158. Application and interpretation of Part 14

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



can reasonably be inferred.

**159. Appointment of Inspectors**

- (1) The Registrar of Companies may appoint a Person as an inspector to investigate and report on the affairs of a Regulated Entity (the **relevant Regulated Entity**), if the Registrar considers it necessary or desirable to do so in pursuit the Registrar's Objectives.
- (2) The Person appointed as an Inspector may, with the consent of the Registrar of Companies, also investigate and report on the affairs of another Regulated Entity that, in the Registrar's opinion, is or was related to the relevant Regulated Entity.
- (3) The Registrar of Companies may also appoint a Person as an Inspector to investigate and report on an alleged Contravention of these Regulations.
- (4) Any of the following Persons, without limitation, may be appointed as an Inspector under this Part:
  - (a) an officer or employee of the office of the Registrar;
  - (b) an officer or employee of any other division, department or office (however described) of the AFSA; or
  - (c) an independent third party.
- (5) To remove any doubt, the powers of investigation set out in the Part are, in the first instance, vested in the Registrar of Companies and nothing in this Part limits the authority of the Registrar of Companies to exercise such powers.

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

- (1) If an Inspector considers that a Person may be able to give information or produce a Document that is or may be relevant to the investigation for which the Inspector was appointed (including any investigation under section 159(2) (Appointment of Inspectors), the Inspector may do any of the following:
  - (a) enter the business premises of the Person during normal business hours for the purpose of inspecting, obtaining and copying information or Documents, in any form, on the premises;
  - (b) require the Person to produce, or arrange for the production of, any books, Records or other Documents in the Person's custody or power relating to the investigation;
  - (c) require the Person to give, or arrange for the giving of, specified information relating to the investigation;
  - (d) require the Person to attend before the Inspector at a specified time and place (but on reasonable notice) and to answer all questions put to the Person by or on behalf of the Inspector relating to the investigation (a **compulsory interview**);
  - (e) require the Person to give reasonable assistance of any other kind to the Inspector in connection with the investigation.



- (2) The Inspector may, for the exercise of powers under subsection (1)(a) in relation to premises:
  - (a) require any appropriate Person to make available any relevant information or Documents, in any form, on the premises for inspection or copying; and
  - (b) require any appropriate Person to convert any relevant information or Documents on the premises into a form capable of being copied; and
  - (c) use the facilities of the occupier of the premises, free of charge, to make copies.
- (3) If the Inspector requires a Person (the **interviewee**) to attend a compulsory interview under subsection (1)(d), the Inspector may give directions:
  - (a) about who may be present at the compulsory interview, including a direction requiring the interviewee to answer questions put to the interviewee in private; and
  - (b) preventing any Person present during any part of the compulsory interview from disclosing to any other Person any information provided to the interviewee or questions asked by or on behalf of the Inspector during the compulsory interview; and
  - (c) about the conduct of any Person present at the compulsory interview, including about how the Person must participate in the interview; and
  - (d) requiring the interviewee to swear an oath or give an affirmation that the answers of the interviewee will be true; and
  - (e) requiring the interviewee to answer any questions relevant to the investigation; and
  - (f) requiring the interview to be audio or video recorded.
- (4) If an Inspector has reasonable grounds to suspect that a Regulated Relevant Person for a Regulated Entity the subject of the investigation maintains or has maintained a bank account of any description, whether alone or jointly with another Person, into or out of which has been paid amounts that are in any way related to the affairs of the Regulated Entity, the Inspector may require the Person to obtain and produce all books and Records in the Person's custody or power relating to the bank account.
- (5) If an Inspector makes a requirement of, or gives a direction to, a Person under this section, the Person must comply with the requirement.
- (6) A Person required under this section to answer a question that is put to the Person by or on behalf of an Inspector must not, knowingly or recklessly:
  - (a) make a statement, or give information, (whether orally, in a Document or in any other way) that is false or misleading in a material particular; or
  - (b) withhold any information if withholding the information makes any information given by the Person false or misleading in a material particular or likely to mislead or deceive the Inspector.



- (7) An Inspector may exercise any of the powers under this section in respect of any Person within, or outside of, the AIFC. However, if the Person is outside the AIFC, the Inspector must either:
- (a) use any arrangements with a relevant authority in the jurisdiction in which the Person is resident or domiciled, or the premises are located, to assist it to exercise the power; or
  - (b) apply to the Court for an order compelling the Person to give or arrange for the giving of information, to produce or arrange for the production of Documents, to answer questions or to permit the Inspector or any Person assisting the Inspector to enter premises of the Person and exercise any powers on or in relation to the premises.
- (8) Contravention of subsection (5) or (6) is punishable by a fine.

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

- (1) Information or a Document given, produced or obtained because of the exercise by an Inspector of powers under section 160 (Powers of Inspectors to obtain information and Documents etc.) is admissible in evidence in any proceedings, if the information or Document complies with any requirements relating to the admissibility of evidence in the proceedings.
- (2) A requirement under section 160 to give, produce, or arrange for the giving or production of, information or a Document does not apply if the information or a Document is subject to legal professional privilege.
- (2-1) Where information or a Document has not been produced to an Inspector on the grounds that it is subject to legal professional privilege and the Inspector disputes this claim, the Inspector may make an application to the Court for an order to produce that information or Document.
- (3) An Inspector must not disclose a statement made by a Person in answer to any question asked under section 160 to any law enforcement agency for the purpose of criminal proceedings against the Person unless:
- (a) the Person consents to the disclosure; or
  - (b) the Inspector is required by law or court order to disclose the statement.
- (4) An Inspector may retain possession of any information and Document obtained under section 160 for so long as is necessary:
- (a) for the purposes of the relevant investigation; or
  - (b) for a decision to be made about whether or not a proceeding to which the information or Document may be relevant should be commenced; or
  - (c) for a proceeding mentioned in paragraph (b) to be finally completed.
- (5) A Person is not entitled to claim a lien on a Document as a basis for Failing to comply with a requirement under section 160, but any lien is not otherwise prejudiced.



- (6) If a Person is unable to produce information or a Document in compliance with a requirement made by an Inspector under section 160, the Inspector may require the Person to state, to the best of the Person's knowledge or belief, where the information or Document may be found and who last had possession, custody or control of the information or Document.
- (7) If an Inspector considers that, if disclosed, the fact of the issuing of a notice requiring a Person to do anything under section 160, may hinder an investigation, the Inspector may direct the Person not to disclose any information about the notice or the Person's compliance with it to any other Person, other than the first Person's legal representative under a duty of confidentiality.
- (8) A Person is entitled to legal representation during the course of an investigation.

**162. Obstructing or hindering Inspectors**

- (1) A Person must not, without reasonable excuse, engage in conduct intended to obstruct or hinder an Inspector in the Exercise of any Functions under sections 160 (Powers of Inspectors to obtain information and Documents etc.) and 161 (Use and effect of information and Documents obtained for investigations) or any other provision of these Regulations, or under the Rules or any other Legislation Administered by the Registrar, including, for example, by engaging in any of the following conduct:
  - (a) destroying or concealing a Document;
  - (b) Failing to give or produce information or a Document required by the Inspector;
  - (c) Failing to attend before the Inspector at a specified time and place to answer questions;
  - (d) making a statement, or giving information, (whether orally, in a Document or in any other way) that is false or misleading in a material particular;
  - (e) Failing to give any assistance in relation to an investigation that the Person is required and able to give;
  - (f) Failing to comply with any other requirement made of the Person, or any direction given to the Person, by the Inspector under these Regulations.
- (2) If a Person Fails to comply with a requirement or direction of an Inspector (whether under section 160 or 161 or otherwise), the Inspector may certify the Failure in Writing to the Court. The Court may inquire into the matter and make the orders that it considers appropriate.
- (3) Contravention of subsection (1) is punishable by a fine.

**163. Inspectors' reports**

- (1) At the conclusion of an Inspector's investigation, the Inspector must give the Registrar of Companies a Written report on the investigation, in the form and covering the matters that the Registrar may require.
- (2) An Inspector must make the interim reports (if any) to the Registrar of Companies that the Registrar may require.



- (3) If the Registrar of Companies receives a report from an Inspector, the Registrar may do any 1 or more of the following:
- (a) provide a copy of the report, or any part of the report, to any Regulated Entity to which the report relates, with or without a direction that it be disclosed to any shareholders, members, partners or any other Persons stated in the direction;
  - (b) provide a copy of the report, or any part of the report, to any Person whose financial interests may have been affected by the matters dealt with in the report;
  - (c) publish the report, or any part of the report, in the way the Registrar considers appropriate-

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

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

**CHAPTER 2—OTHER POWERS OF REGISTRAR OF COMPANIES**

**165. Direction to comply with Legislation Administered by the Registrar**

- (1) This section applies if a Regulated Entity, or a Regulated Relevant Person for a Regulated Entity, Fails to comply with a requirement (however expressed and including, to remove any doubt, a requirement applying for the benefit of a Person other than the Registrar of Companies):
- (a) under a provision of these Regulations, the Rules or any other Legislation Administered by the Registrar; or
  - (b) made by the Registrar under these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (2) The Registrar of Companies may, by Written notice, direct the Regulated Entity, the Regulated Relevant Person, or another Regulated Relevant Person for the Regulated Entity, to comply with the requirement, or ensure that the requirement is complied with,





within the time stated in the notice.

- (3) If the Regulated Entity or Regulated Relevant Person Fails to comply with the direction under subsection (2), the Registrar of Companies may apply to the Court for 1 or more of the following orders:
  - (a) an order directing the Regulated Entity or Regulated Relevant Person, or another Regulated Relevant Person for the Regulated Entity, to comply with the direction or with any relevant provision of these Regulations, the Rules or any other Legislation Administered by the Registrar, or ensure that the direction is complied with, within the time stated in the order;
  - (b) an order directing the Regulated Entity or Regulated Relevant Person to pay any costs incurred by the Registrar or any other Person relating to:
    - (i) the giving of the direction by the Registrar; or
    - (ii) the relevant Contravention of these Regulations;
  - (c) any other order that the Court considers appropriate.
- (4) This section does not affect the operation of any other provision of these Regulations, the Rules or any other Legislation Administered by the Registrar imposing penalties in respect of a Failure to comply with a requirement to which this section applies, or any powers that the Registrar, another Person or the Court may have under any other provision of these Regulations, the Rules or any other AIFC Regulations or AIFC Rules.

**166. General power to obtain information**

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



- (6) The Registrar of Companies may apply to the Court for an order to require a Person to comply with a requirement under subsection (1) or (2), and the Court may make the orders that it considers appropriate.

**167. Powers to strike off names of Regulated Entities from the Register**

- (1) The Registrar of Companies may strike the name of a Regulated Entity off the Register if the Registrar has reason to believe that:
- (a) the Regulated Entity is not conducting business or is not in operation;
  - (b) the Regulated Entity is Contravening these Regulations; or
  - (c) it is prejudicial to the interests of the AIFC for the Regulated Entity to remain in the Register.
- (1-1) The Registrar of Companies may conclude that a Regulated Entity is not conducting business or is not in operation where:
- (a) the annual return, annual confirmation statement, or annual accounts of the Regulated Entity has not been filed by the relevant date pursuant to section 26 (Annual returns) or section 26-1 (Annual confirmation of accuracy of information in the register) of the AIFC Companies Regulations; or section 19 (Limited Partnerships: accounting records) or section 20 (Limited Partnerships: accounts) of the AIFC Limited Partnership Regulations; or section 28 (Accounting Records of Limited Liability Partnerships) or section 30 (Accounts of Limited Liability Partnerships) of the AIFC Limited Liability Partnership Regulations; or section 19 (Accounting Records of General Partnership) or section 20 (Accounts of General Partnership) of the AIFC General Partnership Regulations.
  - (b) a fee due to the Registrar has not been paid on the date due, and in each case, the Regulated Entity has failed to file the annual return, annual confirmation statement, or annual accounts pay the fee due or to respond to correspondence with the Registrar and a period of 12 months has elapsed since the date on which the annual return, annual confirmation statement, or annual accounts was due to be filed or the relevant fee was due to be paid.
- (2) The Registrar of Companies may also strike the name of a Regulated Entity off the Register if the Regulated Entity is being wound up in a Creditors Voluntary Winding Up and:
- (a) the Registrar has reason to believe either that:
    - (i) no liquidator is acting; or
    - (ii) the affairs of the Regulated Entity are fully wound up; and
  - (b) the returns required to be made by the liquidator have not been made for a period of at least 6 consecutive months.
- (3) In deciding whether to strike the name of a Regulated Entity off the Register under subsection (1) or (2), the Registrar of Companies comply with the Decision-making Procedures and must also:



- (a) publish a notice in the Appointed Publications of the Registrar's intention to strike the name of the Regulated Entity off the Register and dissolve the Regulated Entity before doing so; and
  - (b) if the Regulated Entity is licensed, registered or recognised by the AFSA—obtain the AFSA's consent before publishing the notice under paragraph (a).
- (4) If an application is made by a Regulated Entity to strike the Regulated Entity's name off the Register, the Registrar of Companies may strike the Regulated Entity's name off the Register if the requirements of subsections (5) to (9) are met.
- (5) An application under subsection (4) must:
  - (a) be made on the Regulated Entity's behalf by its Governing Body or a majority of its Shareholders, partners or members; and
  - (b) be in the form prescribed by the Rules.
- (6) Within 7 days after the day that an application under subsection (4) is made, the applicants must give a copy of the application to every Person who, on the day the application is made, is:
  - (a) a Shareholder, partner or member of the Regulated Entity; or
  - (b) an Employee of the Regulated Entity; or
  - (c) a Creditor of the Regulated Entity; or
  - (d) a member of the Governing Body of the Regulated Entity who is not a party to the application.
- (7) An application must not be made on behalf of a Regulated Entity under subsection (4):
  - (a) if at any time in the previous 3 months, the Regulated Entity has:
    - (i) changed its name; or
    - (ii) traded or otherwise carried on business; or
    - (iii) made a disposal for value of property or rights held, before the disposal, for gain in the normal course of trading; or
    - (iv) engaged in any other activity, other than an activity that is necessary or desirable for the purposes of making an application under subsection (4) for concluding the affairs of the Regulated Entity or complying with associated legal requirements; or
  - (b) at a time when any process in respect of the Regulated Entity, or its property, has commenced under the AIFC Insolvency Regulations.
- (8) The Registrar of Companies must not strike the Regulated Entity's name off the Register under subsection (4) unless the Registrar has published a notice in the Appointed Publications, containing the matters required by subsection (9), and at least 3 months have elapsed since the day of publication of the notice.



- (9) A notice under subsection (8) must:
  - (a) state that the Registrar of Companies may exercise the power to strike the Regulated Entity's name off the Register; and
  - (b) invite any Person to show cause why that should not be done.
- (10) If the name of a Regulated Entity is struck off the Register under subsection (1), (2) or (4), the Liability of every member, partner, Director and Shareholder of the Regulated Entity continues and may be enforced as if the Company had not been dissolved.
- (11) If the Registrar of Companies strikes the name of the Regulated Entity off the Register, the Regulated Entity must be dissolved.
- (12) If the name of a Public Company is struck off the Register under this section, the Regulated Entity must maintain its books and Records for a period of 6 years after the day its name is struck off the Register.

**168. Restoration of a Regulated Entity**

- (1) The Court may, on application under subsection (2), make an order or orders to restore a Regulated Entity to the Register and any other order that it considers appropriate.
- (2) The application may be made by any 1 or more of the following:
  - (a) the Registrar of Companies;
  - (b) any former Director of the Regulated Entity;
  - (c) any Person with an interest in any property that was subject to rights vested in the Regulated Entity or that was benefited by obligations owed by the Regulated Entity;
  - (d) any Person who, apart from, the Regulated Entity's dissolution would have been in a contractual relationship with it;
  - (e) any Person with a potential legal claim against the Regulated Entity;
  - (f) any former Shareholder, partner or member of the Regulated Entity;
  - (g) any Person who was a Creditor of the Regulated Entity when its name was struck off the Register or it was dissolved;
  - (h) any other Person appearing to the Court to have an interest in the matter.
- (3) However, an order under subsection (1) must not be inconsistent with any provision of the AIFC Insolvency Regulations relation to the dissolution of Companies.
- (4) If the Court makes an order under subsection (1) to restore a Regulated Entity to the Register, general effect of the order is that the Regulated Entity is taken to have continued existence as if its name had not been struck off the Register and it had not been dissolved. However, the Regulated Entity is not liable to a fine for Failure to deliver accounts for any financial year in relation to which the period for filing accounts ended after the day of the striking off or dissolution and before the restoration of the Regulated Entity to the Register.



- (5) If the Court makes an order under subsection (1) to restore a Regulated Entity to the Register, the Court may give directions and make the provisions it considers just for placing the Regulated Entity and all other Persons in the same position (as nearly as may be) as if the Regulated Entity's name had not been struck off the Register and the Regulated Entity had not been dissolved.
- (6) If the Court makes an order under subsection (1) to restore a Regulated Entity to the Register, the applicant for the order must deliver a copy of the order to the Registrar of Companies within 14 days after the day the order is made or, if the Court allows a longer period, that longer period.
- (7) The Registrar of Companies must, as soon as practicable after receiving a copy of the Court order, restore the Regulated Entity to the Register.
- (8) The restoration of the Regulated Entity takes effect on a copy of the Court's order being delivered to the Registrar of Companies.
- (9) The Registrar of Companies may, without the need to make an application to the Court, reinstate a Regulated Entity that has been struck off the Register by the Registrar of Companies where the Registrar of Companies is satisfied that the Regulated Entity should be restored to the Register.

## CHAPTER 3—GENERAL CONTRAVENTIONS

### 169. When does a Person Contravene these Regulations

- (1) A Person **Contravenes** these Regulations if the Person:
  - (a) does something that the Person is prohibited from doing by or under these Regulations, the Rules or any other Legislation Administered by the Registrar; or
  - (b) does not do something that the Person is required or directed to do (however described) by or under these Regulations, the Rules or any other Legislation Administered by the Registrar; or
  - (c) otherwise Contravenes these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (2) This section does not apply to anything done, or omitted to be done, by the Governor, AFSA, AIFCA or Registrar of Companies.

### 170. Involvement in Contraventions of these Regulations

- (1) If a Person is Knowingly Concerned in a Contravention of these Regulations committed by another Person, the first Person as well as the other Person Contravenes these Regulations and is liable to be proceeded against and dealt with accordingly.
- (2) Without limiting subsection (1), if an Officer of a Company or another Body Corporate is Knowingly Concerned in a Contravention of these Regulations committed by the Body Corporate, the Officer as well as the Body Corporate Contravenes these Regulations and is liable to be proceeded against and dealt with accordingly.
- (3) If the affairs of a Body Corporate are managed by its members, subsection (2) applies in relation to the acts and omissions of a member in connection with the member's



management Functions as if the member were an Officer of the Body Corporate.

- (4) For these Regulations, a Person is **Knowingly Concerned** in a Contravention of these Regulations if the Person:
- (a) aided, abetted, counselled or procured the Contravention; or
  - (b) induced the Contravention, whether by threats or promises or otherwise; or
  - (c) was in any way, whether by act or omission and whether directly or indirectly, knowingly involved in, or a party to, the Contravention; or
  - (d) conspired with another Person or others to affect the Contravention; or
  - (e) whether alone or in concert with others and whether directly or indirectly, did, attempted or planned any of the following:
    - (i) concealing the existence, extent or nature of the Contravention;
    - (ii) obstructing, hindering, impeding or preventing competent authorities within the AIFC from detecting, investigating or prosecuting the Contravention.
- (5) In this section:
- member**, of a Body Corporate that is a Company, includes a Shareholder.
- Officer**, of a Company or other Body Corporate, includes a Person who is, acts as or purports to be any of the following:
- (a) a member of a committee of management of the Body Corporate, whether or not a Director of the Body Corporate;
  - (b) a chief executive officer, Secretary or similar officer of the Body Corporate;
  - (c) a controller of the Body Corporate.
- (6) This section does not apply to anything done, or omitted to be done, by the Governor, AFSA, AIFCA or Registrar of Companies.

## CHAPTER 4—ENFORCEMENT

### 171. Enforceable agreements

- (1) The Registrar of Companies may accept a written undertaking given by a Person if the Registrar considers that accepting the undertaking is necessary or desirable in the pursuit of the Registrar's Objectives.
- (2) The Person may withdraw or vary the undertaking at any time, but only with the consent of the Registrar of Companies.
- (3) If the Registrar of Companies considers that the Person who gave the undertaking has Breached or is Breaching any of its terms, the Registrar may apply to the Court for an order under subsection (4).



- (3-1) The Registrar of Companies may, if it considers it appropriate, publish the terms of any undertaking given by a Person under this section.
- (4) If the Court is satisfied that the Person has Breached or is Breaching a term of the undertaking, the Court may make 1 or more of the following orders:
  - (a) an order directing the Person to comply with that term;
  - (b) an order directing the Person to pay to any other Person or to the Registrar an amount up to the amount of any profit, gain or benefit that the Person has obtained directly or indirectly and that is reasonably attributable to the Breach;
  - (c) any order that the Court considers appropriate directing the Person to compensate any other Person who has suffered loss or damage because of the Breach;
  - (d) any other order the Court considers appropriate.

**172. Administrative censures**

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

**173. Administrative imposition of fines**

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

**CHAPTER 5—APPLICATIONS TO COURT**

**174. Orders for compensation**

- (1) If a Person intentionally, recklessly or negligently Contravenes any requirement, direction, duty, prohibition, responsibility or obligation that is imposed by or under these Regulations, the Rules or any other Legislation Administered by the Registrar, the Person is liable to compensate any other Person for any loss or damage caused to the other Person because of the conduct, and is otherwise liable to restore the other Person to the position the other Person was in before the conduct.
- (2) If a Person suffers loss or damage caused because of conduct mentioned in subsection (1), the Court may, on application brought by the Person or the Registrar on behalf of the Person, make orders for the recovery of damages, for compensation or for the recovery



of property or any other order as the Court considers appropriate, unless liability for the loss or damage is excluded under these Regulations, the Rules or any other AIFC Regulations or AIFC Rules.

- (3) This section does not limit or otherwise affect any rights that a Person may have, or any powers that the Court may have, apart from this section.

#### **174A Liability of officers and others**

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

#### **175. Orders for unfair prejudice to Shareholders**

- (1) If a Company's affairs are being or have been conducted in a way that is unfairly prejudicial to the interests of its Shareholders generally or any of its Shareholders, or an actual or proposed act or omission of the Company (including an act or omission on its behalf) is or would be so unfairly prejudicial, the Court may, on application of a Shareholder, make 1 or more of the following orders:
  - (a) an order regulating the conduct of the Company's affairs in the future;
  - (b) an order requiring a Person to do, or not to do, anything;
  - (c) an order authorising proceeding to be brought in the name of and on behalf of the Company and on the terms the Court considers appropriate;
  - (d) an order providing for the purchase of the rights of any Shareholders of the Company by other Shareholders or by the Company itself and, for a purchase by the Company itself, the reduction of the Company's capital accounts accordingly;
  - (e) any other order that the Court considers appropriate.
- (2) If an order under this section requires the Company not to make any, or any specified, amendments of its Articles of Association, the Company must not, without leave of the Court, make any such amendment.
- (3) An amendment of the Articles of Association of the Company made under an order under this section has the same effect as if it had been duly made by Special Resolution of the Company, and these Regulations, the Rules and any other Legislation Administered by the Registrar apply to the Articles of Association as so amended accordingly.
- (4) If the Court makes an order under this section amending the Company's Articles of Association, the Company must deliver a copy of the order to the Registrar of Companies for registration within 14 days after the day the order is made or, if the Court allows a longer period, the longer period.
- (5) This section does not limit or otherwise affect any rights that a Person may have, or any powers that the Court may have, apart from this section.





**176. Compulsory winding up**

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

**177. Appointment of receivers**

- (1) In this section:

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



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

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

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

**179. Effect of provisions**

To remove any doubt, nothing in any section of this Part limits any other section of this Part, or limits any other provision of these Regulations, the Rules or any other Legislation Administered by the Registrar if the provision provides for administrative remedies or the commencement of proceedings in the Court.



## PART 14-1: ULTIMATE BENEFICIAL OWNERS

## CHAPTER 1—BENEFICIAL OWNERSHIP OF RELEVANT PERSONS

## 179-1 Meaning of Ultimate Beneficial Owner

- (1) In this Part, a reference to an “*Ultimate Beneficial Owner*” of a Relevant Person is a reference to a natural person (other than a person acting solely in the capacity of a professional adviser or professional manager) who:
  - (a) in relation to a company:
    - (i) owns or controls (directly or indirectly) Shares in the share capital of the company or other Ownership Interests in the Relevant Person of at least 25%;
    - (ii) owns or controls (directly or indirectly) voting rights in the Relevant Person of at least 25%;
    - (iii) owns or controls (directly or indirectly) the right to appoint or remove the majority of the Directors of the Relevant Person; or
    - (iv) has the legal right or through other ownership interests to exercise, or actually exercises, significant control or influence over the activities of the company; or
  - (b) in relation to a partnership, has the legal right to exercise, or actually exercises, significant control or influence over the activities of the partnership;
  - (c) in relation to a Foundation or a Non-Profit Incorporated Organisation, has the legal right to exercise, or actually exercises, significant control or influence over the activities of the Governing Body, Person or other arrangement administering the property or carrying out the objects of the Foundation, or Non-Profit Incorporated Organisation; or
  - (d) in relation to a Trust, is defined in the AIFC Trust Regulations.
- (2) Beneficial ownership may be traced through any number of Persons or arrangements of any description.
- (3) If 2 or more natural persons jointly own or control an interest in a Relevant Person in accordance with subsection (1), each of them is treated for the purposes of these Regulations as owning or controlling that interest.
- (4) A Relevant Person may have any number of natural persons each identified as its Ultimate Beneficial Owner.
- (5) If no natural person is identified as an Ultimate Beneficial Owner of a Relevant Person under subsection (1), any natural person upon whose instructions the Relevant Person or its Governing Body is required or is accustomed to act, shall be an Ultimate Beneficial Owner.
- (6) If there is no Ultimate Beneficial Owner of a Relevant Person under either of subsection (1) or (5), each:



- (a) natural person that is a member of its Governing Body; and
  - (b) Ultimate Beneficial Owner of a body corporate member of its Governing Body,
- shall be deemed to be an Ultimate Beneficial Owner of the Relevant Person.

**179-2 Ultimate Beneficial Ownership information**

- (1) Each Relevant Person shall at all times take reasonable steps to obtain, maintain and hold adequate, accurate and current UBO Details in relation to each of its Ultimate Beneficial Owners and (if applicable) the information required under section 179-9 (Ownership through an exempt entity).
- (2) A Relevant Person shall be taken to have obtained, and shall hold, all information in relation to its Ultimate Beneficial Owners which is supplied to the Registrar in connection with its application for incorporation, formation, registration or continuation, as the case may be.
- (3) A Relevant Person who is provided with a share transfer or other document relating to a change in ownership shall not register, recognise or give effect to that transfer or document, unless it is also provided with a statement by or on behalf of the transferee, which states:
  - (a) whether the transfer will result in a change in the Ultimate Beneficial Ownership of the Relevant Person;
  - (b) if it will result in such a change, the nature of the change; and
  - (c) the UBO Details in respect of each new Ultimate Beneficial Owner, as a result of the change.

**179-3 Notice in respect of Ultimate Beneficial Ownership**

- (1) Without prejudice to the generality of section 179-2(1) (Ultimate Beneficial Ownership information), a Relevant Person shall, subject to subsection (3), give any Person it has reasonable cause to believe is an Ultimate Beneficial Owner and whose UBO Details are not correctly or fully recorded on its Beneficial Ownership Register, the notice referred to in subsection (2).
- (2) The notice referred to in subsection (1) is a Written notice that:
  - (a) states that it is given under these Regulations;
  - (b) sets out the relevant UBO Details that the Relevant Person reasonably knows or believes to be the relevant particulars and leaves a space in the appropriate place to indicate that a relevant particular is not known;
  - (c) requests the addressee to:
    - (i) state whether or not he or she is a beneficial owner of the Relevant Person;
    - (ii) confirm or correct any particulars that are included in the notice; and



- (iii) supply any particulars that are missing; and
    - (d) states that should the addressee fail to comply with the notice within thirty (30) days of receipt of the notice, the notified particulars will be entered in the Beneficial Ownership Register maintained by the Relevant Person.
- (3) A Relevant Person is not required to give a notice under subsection (1), if:
  - (a) it has already been supplied with all the required UBO Details by that Person or with the knowledge of that Person; or
  - (b) the Relevant Person has made an inquiry (whether formal or informal) as to a natural person's status as an Ultimate Beneficial Owner of it, and thirty (30) days has not elapsed since the making of those enquiries.
- (4) For the purpose of identifying natural persons who are Ultimate Beneficial Owners, a Relevant Person is entitled to rely in good faith, without further enquiry, on the response of a Person to whom a notice was given under subsection (1), unless the Relevant Person has reason to believe that the response is misleading or false.
- (5) Contravention of subsection (1) is punishable by a fine.
- (6) A Person who provides information that is false or misleading in a material particular in relation to a notice given under subsection (1) shall be liable to a fine.

## **CHAPTER 2: BENEFICIAL OWNERSHIP REGISTER**

### **179-4 Requirements relating to Beneficial Ownership Register**

- (1) A Relevant Person shall keep and maintain a Beneficial Ownership Register within the time specified in subsections (3) and (4), in which the UBO Details in respect of each of its Ultimate Beneficial Owners and (if applicable) the information required under section 179-9 (Ownership through the Exempt entity), shall be recorded. The Relevant Person shall record any changes to this information in the Beneficial Ownership Register within fourteen (14) days of becoming aware of such change.
- (1-1) An election may be made in relation to a Private Company for the information, which otherwise would require to be kept in the Beneficial Ownership Register, to be kept by the Registrar. If an election is made under subsection (9), to keep information in the Register kept by the Registrar, subsections (1) to (8) shall not apply.
- (2) The Beneficial Ownership Register shall be kept and maintained at the address of the Relevant Person's registered office or any other address in the AIFC notified in Writing by the Relevant Person to the Registrar.
- (3) Each Relevant Person in existence at the Commencement Date shall establish a Beneficial Ownership Register within ninety (90) days of such commencement.
- (4) Each Relevant Person which comes into existence on or after the Commencement Date shall establish a Beneficial Ownership Register within thirty (30) days of its incorporation or registration.
- (5) Subject to section 179-9 (Ownership through the Exempt entity), the Relevant Person shall cause the following information to be entered in its Beneficial Ownership Register in



respect of each Ultimate Beneficial Owner:

- (a) full legal name;
  - (b) residential address and, if different, an address for service of notices under these Regulations;
  - (c) date and place of birth;
  - (d) nationality;
  - (e) information identifying the Person from their passport or other government-issued national identification document acceptable to the Registrar, including:
    - (i) identifying number;
    - (ii) country of issue; and
    - (iii) date of issue and of expiry;
  - (f) the date on which the Person became an Ultimate Beneficial Owner of the Relevant Person; and
  - (g) the date on which the Person ceased to be an Ultimate Beneficial Owner of the Relevant Person.
- (6) If after having exhausted all reasonable means:
- (a) no natural person is identified as the Ultimate Beneficial Owner of the Relevant Person; or
  - (b) there is reasonable doubt that that any natural person so identified is an Ultimate Beneficial Owner of the Relevant Person,
- the Relevant Person shall enter on its Beneficial Ownership Register, the UBO Details of the natural persons who are deemed to be the Ultimate Beneficial Owners pursuant to section 179-1(6).
- (7) If a Relevant Person causes an entry to be made in its Beneficial Ownership Register naming a natural person as an Ultimate Beneficial Owner, and the information and particulars were not provided either by that natural person or with his or her knowledge, the Relevant Person shall within thirty (30) days of making the entry, notify the Person whose name has been included in the Beneficial Ownership Register of that fact.
- (8) Contravention of subsection (1) is punishable by a fine.
- (9) A Private Company may make an election to keep information in the Register kept by the Registrar.
- (10) An election may be made under this section by:
- (a) the applicant wishing to incorporate a Private Company under these Regulations;
- or



- (b) the Private Company itself once it is incorporated.
- (11) In paragraph (b) of subsection (10), the election is of no effect, without prior agreement of all the Shareholders of the Private Company to the making of the election.
- (12) An election under this section is made by giving notice of election to the Registrar.
- (13) If the notice is given by Person(s) wishing to incorporate a Private Company:
  - (a) it must be given together with the application for the incorporation under section 13; and
  - (b) it must be accompanied by a statement containing all the information prescribed by the Rules.
- (14) If the notice is given by the Private Company, it must be accompanied by:
  - (a) a statement by the Private Company that all the Shareholders of the Private Company have assented to the making of the election; and
  - (b) a statement containing all the information prescribed by the Rules to be contained in the Private Company's Beneficial Ownership Register as at the date of the notice in respect of matters that are current as at that date.
- (15) An election made under subsection (9) takes effect when the notice of election is registered by the Registrar.
- (16) The election remains in force until either:
  - (a) the Private Company ceases to be a Private Company; or
  - (b) a notice of withdrawal sent by the Private Company under subsection (20) is registered by the Registrar, whichever occurs first.
- (17) While an election under subsection (9) is in force, a Private Company must continue to keep a Beneficial Ownership Register in accordance with the subsection (5) of section 179-4, containing all the information that was required to be stated in that Register as at the time immediately before the election took effect, but the Private Company does not have to update that Register to reflect any changes that occur after that time.
- (18) The date to be recorded in the Register kept by the Registrar is to be the date on which the document containing that information is registered by the Registrar.
- (19) During the period when an election under subsection (9) is in force, a Private Company must deliver to the Registrar any information under subsection (5) which the Private Company would, in the absence of any such election, have been obliged under these Regulations to enter in its Beneficial Ownership Register and it must do so as soon as reasonably practicable after any relevant change but in any event within a period of 14 days.
- (20) A Private Company may by giving notice of withdrawal to the Registrar withdraw an election made by or in respect of it under subsection (9), where:
  - (a) the withdrawal takes effect when the notice is registered by the Registrar;



- (b) the effect of withdrawal is that the Private Company's obligation under subsection (1) of section 179-4 to keep and maintain a Beneficial Ownership Register applies from then on with respect to the period going forward;
  - (c) the Private Company must place a note in its Register of Beneficial Ownership—
    - (i) stating that the election under subsection (9) has been withdrawn;
    - (ii) recording when that withdrawal took effect; and
    - (iii) indicating that information about its Beneficial Owners relating to the period when the election was in force that is no longer current is available for public inspection on the Register kept by the Registrar.
- (21) All notices and information to be delivered to the Registrar under this section must be made in Writing.
- (22) Contravention of subsections (9) to (21) is punishable by a fine.

**179-5 Application to the Court to rectify the Beneficial Ownership Register**

- (1) If:
- (a) the name of any Person is, without sufficient cause, entered in or omitted from; or
  - (b) no entry is made in; or
  - (c) unnecessary delay takes place in:
    - (i) entering the name of any Person in; or
    - (ii) removing the name of any Person who has ceased to be a beneficial owner from,
- a Relevant Person's Beneficial Ownership Register, the Person aggrieved, or any other interested party may apply to the Court for rectification of the Beneficial Ownership Register.
- (2) Where an application is made under subsection (1), the Court may either:
- (a) refuse the application; or
  - (b) order rectification of the Beneficial Ownership Register and if appropriate order payment by the Relevant Person of compensation for any loss sustained by any party aggrieved.
- (3) On such an application, the Court may:
- (a) decide any question as to whether the name of any Person who is a party to the application should or should not be entered in or omitted from the Beneficial Ownership Register; and
  - (b) decide any question necessary or expedient to be decided for rectification of the Beneficial Ownership Register.





- (4) The reference in subsection (1) to “any other interested party” is a reference to:
  - (a) any member of the Relevant Person;
  - (b) any Person who is an Ultimate Beneficial Owner of the Relevant Person; and
  - (c) any Person named as an Ultimate Beneficial Owner of the Relevant Person.

### **CHAPTER 3: NOMINEE DIRECTORS**

#### **179-6 Duty of Nominee Directors**

- (1) A Nominee Director shall inform the company that he is a nominee and provide all the required particulars referred to in section 179-7(1)(a) to (e) (Register of Nominee Directors) of the Person for whom the Nominee Director is a nominee within:
  - (a) sixty (60) days of the Commencement Date, where the company is incorporated, registered or continued prior to the Commencement Date; or
  - (b) thirty (30) days of the later of:
    - (iii) the date of incorporation or registration of the company; or
    - (iv) the Nominee Director becoming a nominee.
- (2) A Nominee Director shall inform the company of any change to the particulars provided under subsection (1) within thirty (30) days of the change.
- (3) A Nominee Director shall also inform the company that he ceased to be a nominee within thirty (30) days of the cessation.
- (4) For the purposes of this Chapter, a Director is a Nominee Director if he is under an obligation to act in accordance with the directions or instructions of another Person, notwithstanding his duties owed to a Company as referred to in section 76 (Duties of Directors).
- (5) Contravention of subsection (1) is punishable by a fine.

#### **179-7 Register of Nominee Directors**

- (1) A company which has one (1) or more Nominee Directors shall keep and maintain a Register of Nominee Directors in which they shall be entered. An election may be made in relation to a Private Company for the information, which otherwise would require to be kept in the Register of Nominee Directors, to be kept by the Registrar.
- (1-1) The following information obtained pursuant to section 179-6(1) (Duty of Nominee Directors) or otherwise known by it, shall be entered in relation to the Person on whose behalf, each Nominee Director acts:
  - (a) full legal name;
  - (b) residential address and, if different, an address for service of notices under these Regulations;



- (c) date of birth;
  - (d) nationality;
  - (e) information identifying the Person from their passport or other government-issued national identification document acceptable to the Registrar of Companies, including:
    - (i) identifying number;
    - (ii) country of issue; and
    - (iii) date of issue and of expiry,and, in respect of each Nominee Director;
  - (f) the date on which the Nominee Director became a Nominee Director of the Company; and
  - (g) the date on which the Nominee Director ceased to be a Nominee Director of the Company.
- (2) Contravention of subsection (1) is punishable by a fine.
- (3) A Private Company may make an election to keep information in the Register kept by the Registrar.
- (4) An election may be made under this section by:
- (a) the applicant wishing to incorporate a Private Company under these Regulations; or
  - (b) the Private Company itself once it is incorporated.
- (5) In paragraph (b) of subsection (4), the election is of no effect, without prior agreement of all the Shareholders of the Private Company to the making of the election.
- (6) An election under this section is made by giving notice of election to the Registrar.
- (7) If the notice is given by Person(s) wishing to incorporate a Private Company:
- (a) it must be given together with the application for the incorporation under section 13; and
  - (b) it must be accompanied by a statement containing all the information prescribed by the Rules.
- (8) If the notice is given by the Private Company, it must be accompanied by:
- (a) a statement by the Private Company that all the Shareholders of the Private Company have assented to the making of the election; and
  - (b) a statement containing all the information prescribed by the Rules to be contained in the Private Company's Register of Nominee Directors as at the date of the



notice in respect of matters that are current as at that date.

- (9) An election made under subsection (3) takes effect when the notice of election is registered by the Registrar.
- (10) The election remains in force until either:
  - (a) the Private Company ceases to be a Private Company; or
  - (b) a notice of withdrawal sent by the Private Company under subsection (14) is registered by the Registrar, whichever occurs first.
- (11) While an election under subsection (3) is in force, a Private Company must continue to keep a Register of Nominee Directors in accordance with the subsection (1) of section 179-7, containing all the information that was required to be stated in that Register as at the time immediately before the election took effect, but the Private Company does not have to update that Register to reflect any changes that occur after that time.
- (12) The date to be recorded in the Register kept by the Registrar is to be the date on which the document containing that information is registered by the Registrar.
- (13) During the period when an election under subsection (3) is in force, a Private Company must deliver to the Registrar any information under subsection (1-1) which the Private Company would, in the absence of any such election, have been obliged under these Regulations to enter in its Register of Nominee Directors and it must do so as soon as reasonably practicable after any relevant change but in any event within a period of 14 days.
- (14) A Private Company may by giving notice of withdrawal to the Registrar withdraw an election made by or in respect of it under subsection (3), where:
  - (a) the withdrawal takes effect when the notice is registered by the Registrar;
  - (b) the effect of withdrawal is that the Private Company's obligation under subsection (1) of section 179-7 to keep and maintain a Register of Nominee Directors applies from then on with respect to the period going forward;
  - (c) the Private Company must place a note in its Register of Nominee Directors —
    - (i) stating that the election under subsection (3) has been withdrawn;
    - (ii) recording when that withdrawal took effect; and
    - (iii) indicating that information about its Nominee Directors relating to the period when the election was in force that is no longer current is available for public inspection on the Register kept by the Registrar.
- (15) All notices and information to be delivered to the Registrar under this section must be made in Writing.
- (16) Contravention of subsections (3) to (15) is punishable by a fine.

**CHAPTER 4—EXEMPTIONS****179-8 Exemptions**

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

- (1) has its Securities listed or traded on a Recognised Exchange;
- (2) [intentionally omitted];
- (3) is a Recognised Company, Recognised General Partnership, Recognised Limited Partnership or Recognised Limited Liability Partnership, which satisfies the Registrar that it is subject to equivalent international standards, which ensure adequate transparency of ownership information in its home jurisdiction;
- (4) is a Non-Profit Incorporated Organisation which does not, as its primary function, engage in raising or disbursing funds for charitable, religious, cultural, educational, social, fraternal or similar purposes;
- (5) is wholly owned by a government or government agency of a Relevant Jurisdiction; or
- (6) is established under a law of Kazakhstan to perform governmental functions.

**179-9 Ownership through an exempt entity**

Notwithstanding Chapters 1 to 3 and Chapter 5, where a Person referred to in section 179-8(1) to (6) (Exemptions) beneficially owns or controls (directly or indirectly) at least 25% of a Relevant Person, the Relevant Person shall:

- (1) not be required to make any further inquiry as to its Ultimate Beneficial Ownership, to the extent that such ownership is directly or indirectly held by or through such an entity; and
- (2) record the following information in respect of each such entity on its Beneficial Ownership Register:
  - (a) full legal name;
  - (b) registered address;
  - (c) the category under section 179-8 that applies to the entity; and
  - (d) if the entity:
    - (i) has its securities listed or traded on a Recognised Exchange, the name of the Recognised Exchange;
    - (ii) [intentionally omitted];
    - (iii) is wholly owned by a government or government agency, its name and the Relevant Jurisdiction; or
    - (iv) is established under a law of Kazakhstan to perform governmental functions, the name of such law.



## CHAPTER 5: PROVISION OF INFORMATION TO REGISTRAR

### 179-10 Access to Registers

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

### 179-11 Notification to the Registrar

- (1) A Relevant Person which makes a change in its Beneficial Ownership Register or Register of Nominee Directors, shall within thirty (30) days of the date of making the change, notify the Registrar of the particulars of the change.
- (2) The Registrar may pursuant to subsection (1) and section 179-10(2) (Access to Registers) require the provision of such further information in relation to any Ultimate Beneficial Owner on the Beneficial Ownership Register or Nominee Directors on the Register of Nominee Directors, as the Registrar may require.
- (3) Contravention of subsection (1) is punishable by a fine.

### 179-12 Notices issued by the Registrar of Companies

- (1) The Registrar of Companies may, by Written notice, require a Relevant Person or any other Person (without prejudice to any lien claimed by such a Person on any documents produced by him) who may have information or documents related to Ultimate Beneficial Owners or Nominee Directors, whichever is applicable, to:
  - (a) provide; or
  - (b) produce for the purposes of inspection; or



- (c) furnish, to the Registrar of Companies' officers, servants or agents authorised for the purposes of inspection under this section, on production of evidence of such authority,

such information or documents, in such form and manner, within such time and at such place as may be specified in the notice, as the Registrar of Companies may require for the performance of his functions under these Regulations.

- (2) The powers conferred on the Registrar of Companies by subsection (1) to require a Person to provide information or produce any documents includes the power:
  - (a) where the documents are produced, to take copies of them or extracts from them, in circumstances where the Registrar of Companies is satisfied that the taking of such copies or extracts is necessary for the proper exercise of powers under or in relation to these Regulations;
  - (b) where the documents are not produced, to require the Person who was required to produce them to state, to the best of his knowledge and belief, where they are;
  - (c) to attend at such time and place as may be required and explain and answer questions relating to any matters in relation to which the production of the information may be required; and
  - (d) where required by the urgency of the situation or other relevant circumstances, to attend at the Relevant Person's place of business or its registered office in the AIFC, without prior notice and to request any such information or documents to be produced immediately.
- (3) A Person to whom a notice or other request is directed is not required to provide any information that is subject to legal professional privilege.
- (4) A statement made by a Person in response to a requirement imposed by or under subsections (1) or (2) may be used in evidence against him in:
  - (a) proceedings other than criminal proceedings; and
  - (b) in criminal proceedings:
    - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that Person; or
    - (ii) for:
      - (A) an offence under these Regulations;
      - (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency;
      - (C) perjury; or
      - (D) perverting the course of justice.
- (5) If a Relevant Person is in the process of being wound up or dissolved, the liquidator or



other person responsible for the winding up of the affairs of the Relevant Person shall deliver to the Registrar the Beneficial Ownership Register and (if applicable) the Register of Nominee Directors of the Relevant Person or a true copy thereof, within thirty (30) days of his or her appointment.

- (6) In the case where a Relevant Person is in the process of being struck off the Register under Chapter 2 of Part 14 (Powers and remedies), the members of the Governing Body shall deliver to the Registrar the Beneficial Ownership Register and (if applicable) the Register of Nominee Directors of the Relevant Person or a true copy thereof, within thirty (30) days of an application for strike off made by the Relevant Person or a notice of strike off issued by the Registrar of Companies.
- (7) A Contravention of subsection (1), (5) or (6) is punishable by a fine.

## **CHAPTER 6: OBLIGATIONS OF REGISTRAR OF COMPANIES**

### **179-13 Obligations of the Registrar of Companies**

- (1) The Registrar of Companies shall collect and process information relating to Ultimate Beneficial Owners and Nominee Directors obtained by him under these Regulations only for the purposes of regulation in relation to money laundering and terrorism financing, unlawful organisations and sanctions compliance in the AIFC, or to comply with the Acting Law of the AIFC.
- (2) Except as required for the purpose of subsection (1) or (4), the Registrar of Companies shall:
  - (a) not retain in his possession such information; and
  - (b) shall make arrangements for its secure destruction.
- (3) The Registrar of Companies shall, unless the Relevant Person consents to such disclosure, disclose such information only at the request of a regulator, a law enforcement agency or other government authority prescribed by the Acting Law of the AIFC, and then only to the regulator, agency or authority which made the request, for the purpose of such a request.
- (4) In the case of a Relevant Person that has been wound up, dissolved, terminated or struck off, the Registrar of Companies shall retain any records delivered to him pursuant to section 179-12(5) (Notices issued by the Registrar of Companies) relating to that legal person as at the date of its dissolution, termination or striking off (as the case may be) for a period of 6 years after that date.

## **CHAPTER 7: ENFORCEMENT**

### **179-14 Removal of Ultimate Beneficial Owner**

- (1) Where the Registrar of Companies is notified or becomes aware that an Ultimate Beneficial Owner of a Relevant Person is:
  - (a) the subject of a sanction imposed by any:
    - (i) government;



- (ii) entity that is a representative, constituent part or extension of a sovereign state or political subdivision thereof; or
- (iii) entity that is established under international law or the laws of any two (2) or more sovereign states; or
- (b) involved or has been involved in any proceedings that are law enforcement related or criminal, civil, regulatory, tax or administrative in nature, and

the Registrar of Companies considers that having such a Person as an Ultimate Beneficial Owner of a Relevant Person in the AIFC is:

- (c) contrary to the law of Kazakhstan or any other Legislation administered by the Registrar of Companies; or
- (d) prejudicial to the interests of the AIFC,

the Registrar of Companies may, by Written notice, require the Relevant Person to remove such a Person as an Ultimate Beneficial Owner of the Relevant Person within the time specified in the notice to the extent permissible by law, and require the steps sets out in section 59(4) (Rights of Public Company to request information about interests in its Shares) to be taken in respect of any shares in the share capital of the Relevant Person in which such a Person has an interest.

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

**179-15 Strike off**

If a Relevant Person Fails to comply with a requirement of this Part 14-1 (Ultimate Beneficial Ownership) or notice thereunder, the Registrar of Companies may, after following any relevant procedures set out in these Regulations, strike the Relevant Person off the Register.





**PART 14-2: WHISTLEBLOWING**

**CHAPTER 1–INTERPRETATION**

**179-16 Meaning of Protected Report, Protected Reporter, Worker, and Employer**

In this Part:

***Protected Report*** means a report that meets all of the following requirements:

- (1) it is about an AIFC Participant or a person connected with a AIFC Participant;
- (2) it is made to the AIFC Participant itself or a Person specified or referred to in section 179-17(1) (Protected Reports and Protected Reporters);
- (3) if it is made to an authority or officer, the authority or officer is responsible for matters of the kind reported;
- (4) it is given in good faith;
- (5) it gives information that the reporter reasonably believes shows that any of the following has happened, is happening, or is likely to happen:
  - (a) a criminal offence (whether under the law of the Republic of Kazakhstan or of another jurisdiction);
  - (b) a person is in contravention of a legal requirement, or is failing to comply with any legal obligation to which he is subject;
  - (c) the endangering of the health and safety of an individual;
  - (d) a breach of an AIFC Participant’s policies and procedures (including, for example, a breach of any code of conduct or policy in relation to ethical behaviour); or
  - (e) the deliberate concealment of a matter referred to in any of (a) to (d).

***Protected Reporter*** means a Worker who makes a Protected Report.

***Worker*** means:

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



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

***Employer*** means:

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

**CHAPTER 2–RIGHTS AND REMEDIES FOR WHISTLEBLOWERS**

**179-17 Protected Reports and Protected Reporters**

- (1) A Protected Report shall be protected provided that it is made to:
  - (a) the AIFC Participant concerned;
  - (b) an auditor of the AIFC Participant or a member of the audit team;
  - (c) a legal adviser in the course of obtaining legal advice;
  - (d) a prosecuting authority;
  - (e) a law enforcement authority;
  - (f) an AIFC Body;
  - (g) a regulatory or governmental authority, body or agency in a jurisdiction outside the AIFC (whether in the Republic of Kazakhstan or not), including a body or officeholder responsible for enforcing the criminal law of that jurisdiction; or
  - (h) any other Person designated under the Acting Law of the AIFC.
- (2) An AIFC Participant that receives a report that purports to be a Protected Report:



- (a) must treat the individual who made the report as a Protected Reporter; and
  - (b) must treat the report as a Protected Report;
- until the AIFC Participant has decided, acting reasonably and on the basis of a proper investigation, that the report is not a Protected Report.
- (3) If an AIFC Participant becomes aware that an individual has made a report that purports to be a Protected Report about the AIFC Participant to a Person specified or referred to in subsection (1), then the AIFC Participant must treat the individual as a Protected Reporter until the AIFC Participant establishes, acting reasonably and on the basis of a proper investigation, that the report is not a Protected Report.
  - (4) If an AIFC Participant proposes, in accordance with subsections (2) or (3), not to treat an individual as a Protected Reporter or a report as a Protected Report, then it must, where possible, provide adequate notice to that individual in order to allow that individual sufficient time to apply to the AIFC Court for an order pursuant to subsection (5) to retain his status as a Protected Reporter and that of the report as a Protected Report.
  - (5) The AIFC Court may order an AIFC Participant to:
    - (a) treat an individual who has made a report as a Protected Reporter; and
    - (b) treat that report as a Protected Report.

**179-18 Right not to suffer detriment**

- (1) A Protected Reporter has the right:
  - (a) not to be subjected to any detriment by any act, or any deliberate failure to act, done by:
    - (i) his Employer;
    - (ii) another Worker of the Protected Reporter's Employer in the course of that other Worker's employment; or
    - (iii) an agent of the Protected Reporter's Employer acting with the Employer's authority,on the ground that the Protected Reporter has made a Protected Report; and
  - (b) not to be dismissed where the reason (or, if more than one, the principal reason) for the dismissal is that the Protected Reporter has made a Protected Report.
- (2) Where a Protected Reporter is subjected to detriment by anything done as mentioned in subsections (1)(a)(ii) or (iii), that thing is treated as also done by the Worker's Employer and it is immaterial, for the purposes of this subsection (2), whether the thing is done with the knowledge or approval of the Worker's Employer.
- (3) A Protected Reporter may present a complaint to the AIFC Court that he has been subjected to a detriment in contravention of subsection (1)(a) or he has been dismissed in contravention of subsection (1)(b).



- (4) In proceedings against a Protected Reporter's Employer in respect of anything alleged to have been done as mentioned in subsection (1)(a)(ii), it is a defence for the Employer to show that the Employer took all reasonable steps to prevent the other Worker from doing that thing or from doing anything of that description.
- (5) A Worker or agent of a Protected Reporter's Employer is not liable by reason of subsections (1)(a)(ii) or (iii) for an act that subjects the Protected Reporter to detriment if:
  - (a) the Worker or agent does that thing in reliance on a statement by the Employer that doing it does not Contravene this section; and
  - (b) it is reasonable for the Worker or agent to rely on the statement,but this does not prevent the Employer from being liable by reason of subsection (2).
- (6) A Protected Reporter must not be subject to any civil or contractual Liability for making a Protected Report and no contractual, civil or other remedy or right may be enforced against the Protected Reporter by another Person for making the Protected Report or any consequence resulting from the Protected Report.
- (7) Contravention of subsection (1) is punishable by a fine.

**179-19 Remedies where detriment is suffered**

- (1) Where the AIFC Court finds a complaint made under section 179-18(3) (Right not to suffer detriment) well-founded, the AIFC Court:
  - (a) shall make a declaration to that effect; and
  - (b) may make an award of compensation to be paid by the Employer to the complainant in respect of the act or failure to act to which the complaint relates.
- (2) The amount of the compensation awarded shall be such as the AIFC Court considers just and equitable in all the circumstances having regard to:
  - (a) the infringement to which the complaint relates;
  - (b) any loss which is attributable to the act, or failure to act, which infringed the complainant's right; and
  - (c) the extent to which the complainant has taken steps reasonably available to him to mitigate the loss referred to in subsection (2)(b).
- (3) The loss shall be taken to include:
  - (a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates; and
  - (b) loss of any benefit which he might reasonably be expected to have had but for that act or failure to act.
- (4) Where the AIFC Court finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable



having regard to that finding.

## CHAPTER 3—WHISTLEBLOWING POLICIES

### 179-20 Whistleblowing policy

- (1) An AIFC Participant must establish a written policy on whistleblowing that:
  - (a) is approved by its Governing Body;
  - (b) complies with this Part; and
  - (c) is appropriate for the nature, scale and complexity of the AIFC Participant's business.
- (2) An AIFC Participant that is a branch, or is a member of a group, may rely on the whistleblowing policy of its head office, or a group-wide whistleblowing policy, provided that the policy substantially complies with this Part.

### 179-21 Content of whistleblowing policy

- (1) An AIFC Participant's whistleblowing policy must comply with all of the following requirements:
  - (a) it must provide two or more independent channels for making a Protected Report, which may include any two of the following non-exhaustive examples:
    - (i) a dedicated email address to which reports may be sent;
    - (ii) a dedicated telephone number over which reports may be made; and
    - (iii) designated individual(s) within the AIFC Participant to whom reports may be made.
  - (b) if appropriate, it must provide for a report to be made in a language other than English;
  - (c) it must recognise that a report may be made by anybody with the necessary information (not only by an officer or employee of the AIFC Participant);
  - (d) it must allow a Protected Report to be made anonymously;
  - (e) to the extent that a Protected Reporter's identity is disclosed voluntarily or is revealed to, or inferred by, the AIFC Participant following an investigation of the Protected Report, the policy must provide for the identity of that Protected Reporter to be kept confidential (so far as possible);
  - (f) it must provide for reasonable measures to protect a Protected Reporter, anyone who assists in investigating a Protected Report, and anyone who cooperates with the investigation, against retaliation or detriment;
  - (g) it must explicitly recognise a Protected Reporter's right (and, in certain cases, obligation) to report to or communicate with the entities or individuals listed in section 179-17(1) (Protected Reports and Protected Reporters);



- (h) it must provide a suitable set of guiding principles, and clear procedures, for the assessment, investigation and escalation of a Protected Report;
  - (i) it must provide for the investigation of a Protected Report to be independent of the individual or business unit concerned, for example through the appointment of a third party investigator;
  - (j) it must provide for a Protected Report to be acknowledged by the AIFC Participant, and for the Protected Reporter who made it to be kept informed (to the extent that is appropriate in the circumstances) about the progress and outcome of the investigation;
  - (k) it must provide for the reporting, monitoring and investigation of retaliation, attempts at retaliation and threats of retaliation against, and any other actions causing detriment to, the Protected Reporter and any Persons that assist in the conduct of the investigation;
  - (l) it must provide for retaliation, an attempt at retaliation, or a threat of retaliation and any other actions causing detriment to the Protected Reporter or a Person assisting an investigation into a Protected Report to be treated as gross misconduct;
  - (m) it must provide for appropriate reporting to the AIFC Participant's governing body and the AFSA about Protected Reports, the investigation of such reports and the outcome of the investigations.
- (2) The AIFC Participant must set out the policy clearly in a document, and must ensure that all of the firm's officers and employees have access to, and understand, the document.
  - (3) The policy must also clearly set out statements of:
    - (a) the benefits to the AIFC Participant of the whistleblowing policy; and
    - (b) the AIFC Participant's commitment to it.

**179-22 Implementation of whistleblowing policy**

- (1) The Governing Body of an AIFC Participant must ensure that the AIFC Participant's whistleblowing policy is fully implemented.
- (2) In particular, the AIFC Participant's Governing Body must take reasonable steps to ensure that a Protected Reporter, anyone who assists in investigating a Protected Report, and anyone who cooperates in the investigation, are protected against retaliation and any other action causing detriment.
- (3) An AIFC Participant must nominate an appropriately senior individual to oversee the implementation of the whistleblowing policy.
- (4) An AIFC Participant that receives a Protected Report must notify the AFSA within five business days.
- (5) An AIFC Participant's Governing Body must ensure that the whistleblowing policy is reviewed and, if necessary, updated at least once every three years by:



- (a) the AIFC Participant's internal auditor; or
  - (b) an independent and objective external reviewer.
- (6) An AIFC Participant must provide regular training for all of its Employees on its whistleblowing policy and any relevant procedures contained in the policy. In particular, the AIFC Participant must provide appropriate specialist training for the Employees who are responsible for key elements of the policy.
- (7) An AIFC Participant may outsource the implementation of its whistleblowing policy. If the AIFC Participant does so, it must ensure that the outsourcing agreement:
  - (a) nominates the individual referred to in subsection (3); and
  - (b) otherwise provides appropriately for the implementation of the firm's obligations under the policy.
- (8) In the event that the AIFC Participant outsources the implementation of its whistleblowing policy, its rights and obligations under this Part shall remain unaltered, notwithstanding anything to the contrary in the outsourcing agreement.



**PART 15: GENERAL PROVISIONS**

**CHAPTER 1—BOARD OF DIRECTORS OF THE AFSA**

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

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

**181. Power to adopt Rules etc.**

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





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

**182. Publication of proposed Rules**

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



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

## **CHAPTER 2-THE REGISTRAR**

### **183. Reporting by Registrar**

- (1) The Registrar must report to the Board of Directors of the AFSA in such a way as the Board of Directors of the AFSA may direct.

### **184. Record keeping**

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

### **185. Conflicts of interest**

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

### **186. Confidential information**

- (1) For this section, information is **confidential** if:
- (a) it is received by the Registrar, or an officer, employee, delegate or agent of the



Registrar, in the Exercise of a Function under these Regulations, the Rules or any other Legislation Administered by the Registrar; and

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

**187. [intentionally omitted]**

**188. Annual budget of Registrar**

- (1) Before the end of each financial year of the AFSA an estimate of the annual income and expenditure of the Registrar for the next financial year must, be submitted to the Board of Directors of the AFSA as a part of the AFSA's annual budget.
- (2) The estimates must include figures relating to levels of remuneration and entitlement to expenses of the Registrar including its officers, employees and agents.
- (3) The Board of Directors of the AFSA may, within 30 days after the day it receives estimates for a financial year under subsection (1):
  - (a) approve the estimates; or
  - (b) on reasonable grounds, reject them.

**189. Funding and fees**

- (1) The Board of Directors of the AFSA shall provide financial resources to the Registrar from the annual budget available to the AFSA to enable the Registrar to Exercise the Registrar's Functions in an adequate manner.
- (2) The Rules may require the payment to the AFSA of fees in respect of:
  - (a) the Exercise by the Registrar of prescribed Functions under or for these Regulations, the Rules or any other Legislation Administered by the Registrar, including the receipt by the Registrar of any Document that is required to be given or delivered to, or filed with, the Registrar (however described);



- (b) the inspection of Documents or other material held by the Registrar under these Regulations, the Rules or any other Legislation Administered by the Registrar; and
  - (c) the Post-Registration Procedures service provided by the Registrar under these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (3) The Registrar may charge a fee for any services provided by the Registrar otherwise than under an obligation imposed on the Registrar by or under these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (4) If a fee is prescribed or charged under this section for the Exercise of a Function, or the provision of services, by the Registrar, no action needs to be taken by the Registrar until the fee is paid and, if the fee is payable on the receipt by the Registrar of a Document required to be given or delivered to, or filed with, the Registrar (however described), the Registrar is taken not to have received the Document until the fee is paid.

**190. Accounts of Registrar**

- (1) The Registrar must keep proper accounts of the Registrar's financial activities and provide such information to the Board of Directors of the AFSA as they may require to enable the AFSA to satisfy any accounting and audit requests applicable to it.

**191. [intentionally omitted]**

**192. [intentionally omitted]**

**193. Liability**

- (1) Neither the Registrar, the AFSA, nor an officer, employee, delegate or agent of the Registrar or AFSA, can be held liable for anything done or omitted to be done in the Exercise or purported Exercise of the Functions of the Registrar or the Board of Directors of the AFSA under these Regulations, the Rules or any other Legislation Administered by the Registrar.
- (2) Subsection (1) does not apply in relation to an act or omission if the act or omission is shown to have been in bad faith.

**194. Independent review of Registrar**

- (1) The Governor may appoint an independent Person (the **reviewer**) to review and report to the Governor on any aspect of the efficiency and effectiveness of the Registrar in the use of the Registrar's resources.
- (2) The office of the Governor must meet the reasonable expenses incurred by the reviewer in conducting the review and preparing the report.
- (3) The reviewer has a right of access, at all reasonable times, to all information that is held or controlled by any officer, employee or agent of the Registrar and that is reasonably required by the reviewer for the purposes of the review.
- (4) The reviewer is entitled reasonably to require from the Registrar, and the officers, employees and agents of the Registrar, the information and explanations that the reviewer considers necessary for the purposes of the review.



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

## CHAPTER 3—MISCELLANEOUS

### 195. Waivers and modifications of certain provisions

- (1) In this section:  
  
*relevant provision* means a provision of these Regulations, the Rules, or any other Legislation Administered by the Registrar, or any provision of other Regulations and Rules declared by the Rules to be a provision to which this section applies.
- (2) On the application or with the consent of a Person, the Registrar may, by Written notice, provide that 1 or more relevant provisions:
  - (a) do not apply to the Person; or
  - (b) apply to the Person with the modifications stated in the notice.
- (3) The notice may be given subject to conditions.
- (4) If the notice is given subject to conditions, the Person must comply with the conditions. If the Person Contravenes a condition, the Registrar may, without limiting the Registrar's other powers, apply to the Court for the order that the Registrar considers appropriate, including an order that the Person comply with the condition, whether or not in a specified way.
- (5) Unless the Registrar is satisfied that it is inappropriate or unnecessary to do so, the Registrar must publish a notice under subsection (2) in a way the Registrar considers appropriate for bringing the notice to the attention of:
  - (a) Persons likely to be affected by it; and
  - (b) others who may be likely to become subject to a similar notice.
- (6) The Registrar may withdraw or vary a notice under subsection (2), on the Registrar's own initiative or on the application of the Person to whom the notice applies.

### 196. Obligation of disclosure to Registrar

- (1) A Regulated Entity or auditor of a Regulated Entity must disclose to the Registrar any matter that reasonably tends to show:
  - (a) that the Regulated Entity has or may have Contravened these Regulations; or
  - (b) anything else prescribed by the Rules or any other Legislation Administered by the Registrar.
- (2) Contravention of subsection (1) is punishable by a fine.
- (3) Subsection (1) does not require disclosure of a privileged communication.



- (4) A Regulated Entity must establish and maintain appropriate systems and internal procedures to enable it to comply with subsection (1).
- (5) Any provision in an agreement between a Regulated Entity and a Relevant Person for the Regulated Entity or an auditor, is void so far as it purports to hinder any Person from causing or assisting a Regulated Entity to comply with an obligation under subsection (1).
- (6) A Person must not be subjected to detriment, loss or damage merely because the Person does anything to cause or assist a Regulated Entity to comply with an obligation under subsection (1).
- (7) The Court may, on the application of an aggrieved Person, make any order for relief if the Person has been subjected to any detriment, loss or damage referred to in subsection (6).
- (8) In this section:

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

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

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

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

#### 197. Disclosures to Registrar

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

#### 198. [intentionally omitted]

#### 199. Irregularities

- (1) In this section:

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

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



- (2) A procedure under these Regulations, the Rules or any other Legislation Administered by the Registrar is not invalid because of any procedural irregularity unless the Court declares the procedure to be invalid.
- (3) A Person may apply to the Court for an order:
  - (a) declaring that:
    - (i) anything purporting to have been done; or
    - (ii) any procedure purporting to have been commenced or undertaken;  
  
under these Regulations, the Rules or any other Legislation Administered by the Registrar is not invalid because of any Contravention of these Regulations, the Rules or any other Legislation Administered by the Registrar; or
  - (b) extending or abridging the period for doing anything, or commencing or undertaking any procedure, under these Regulations, the Rules or any other Legislation Administered by the Registrar;  
  
if the thing or procedure is essentially of a procedural nature.

**200. Giving false or misleading information to Registrar etc.**

- (1) A Person must not:
  - (a) make a statement, or give information, to the Registrar (whether orally, in a Document or in any other way) that is false or misleading in a material particular; or
  - (b) give a Document to the Registrar that is false or misleading in a material particular; or
  - (c) conceal information or a Document if the concealment is likely to mislead or deceive the Registrar.
- (2) Contravention of this section is punishable by a fine.

**200-1. Registrar's notice to resolve inconsistency in Documents**

Where it appears to the Registrar that the information contained in a Document delivered to the Registrar in relation to a Relevant Person is inconsistent with other information contained in Documents kept by the Registrar in relation to the Relevant Person, the Registrar may give a Written notice to the Relevant Person to which the Document relates:

- a) stating in what respects the information contained in it appears to be inconsistent with other information in Documents kept by the Registrar; and
- b) requiring the Relevant Person, within the period of 14 days beginning with the date on which the notice is issued, to take all such steps as are reasonably open to it to resolve the inconsistency by delivering replacement or additional documents or in any other way.



**201. Compliance with orders etc. of Registrar**

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

**202. Notification of Registrar's decisions and reasons**

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





**203. Publication by AFSA**

- (1) The AFSA must make Rules and Guidance available to the public without undue delay after they are adopted.
- (2) The AFSA may publish, in the form and way the AFSA considers appropriate, information and statements relating to the practices and procedures of the Registrar, decisions of the Court, and any other matters that the Registrar considers relevant to the conduct of affairs in the AIFC.
- (3) Publications made under this section may be provided with or without charge, as the Board of Directors of the AFSA may decide.

**204. Public registers**

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

**205. Language**

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

**SCHEDULE 1: INTERPRETATION**

Note: See section 6.

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

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

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

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

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



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



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

### **3. Provision of information**

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

### **4. Definitions for these Regulations**

In these Regulations:

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

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



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

**AFSA** means the Astana Financial Services Authority.

**AIFC** means the Astana International Financial Centre.

**AIFCA** means the Astana International Financial Centre Authority.

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

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

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

**AIFC Rules** means rules adopted by the Board of Directors of the AFSA, the Board of Directors of the AIFCA or the Governor and includes, for example, the Rules made under these Regulations.

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

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

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

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

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

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

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

**Authorised Investment Exchange**, has the meaning given by the AIFC Glossary.

**Beneficial Ownership Register** shall be construed in accordance with section 179-4 (Requirements relating to Beneficial Ownership Register).

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

**Breach** includes Contravene.



**Commencement Date** means 1 March 2019.

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

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

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

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

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

**Contravene** includes Fail to comply with.

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

**Court** means the Astana International Financial Centre Court.

**Creditor** includes a present, prospective or contingent creditor.

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

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

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

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

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

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

**Employee**, of a Company, means an individual who is appointed or employed by the Company and whose services are provided to, or for the purposes of, the Company, and includes an Officer of the Company. However, with respect to a Director, the Company itself must decide whether its Director is an Employee or not. If the former is the case, a contract of employment must be in



place.

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

- (a) the genuine Employees or former Employees of the Company, a Subsidiary or Holding Company of the Company or a Subsidiary of the Company's Holding Company; or
- (b) the spouses or minor children or minor step-children of the individuals referred to in paragraph (a).

**Employer**, in Part 14-2 (Whistleblowing), has the meaning given by section 179-16 (Meaning of Protected Reports, Protected Reporter, Worker, and Employer);

**Equity Securities**, of a Company, means:

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

**Exercise** a Function includes perform the Function.

**Fail** includes refuse.

**Financial Services Regulator** means a financial services regulator designated by the AFSA from time to time under these Regulations.

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

**Foundation** has the meaning given in Schedule 1 (Interpretation) of the AIFC Foundations Regulations.

**Function** includes authority, duty and power.

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

**Governing Body** means, in the case of:

- (a) a company, the board of Directors;
- (b) a Limited Partnership, the general partner;
- (c) a Non-Profit Incorporated Organisation, the board;
- (d) a Foundation, the council;
- (e) a Limited Liability Partnership, the member; and
- (f) a General Partnership, the partner.

**Governor** means the Governor of the Astana International Financial Centre.

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



interpretation of Part 8).

**Guidance** means:

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

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

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

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

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

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

**Liability** includes any debt or obligation.

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

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

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

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

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

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

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

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

**Nominee Director** has the meaning given in section 179-6(4).

**Non-Profit Incorporated Organisation** means an incorporated organisation registered under the AIFC Non-Profit Incorporated Organisations Regulations.





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

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

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

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

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

**Ownership Interest** means an interest entitling the owner to receive distributions of income or capital, or to exercise voting rights, in relation to a Relevant Person and if the proportion of distributions of either kind, or voting rights, is not identical, the highest proportion of these shall be the ownership interest.

**Paid-up** includes credited as paid-up.

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

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

**Post-Registration Procedures** means any post-registration procedure including but not limited to, changes in the Registered Details.

**Protected Report**, in Part 14-2 (Whistleblowing), has the meaning given by section 179-16 (Meaning of Protected Report, Protected Reporter, Worker, and Employer).

**Protected Reporter**, in Part 14-2 (Whistleblowing), has the meaning given by section 179-16 (Meaning of Protected Report, Protected Reporter, Worker, and Employer).

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

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



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

**Recognised Exchange** means any investment exchange recognised by AFSA as adhering to standards of corporate governance and disclosure comparable to those of the AIFC.

**Recognised General Partnership** has the meaning given in Schedule 1 (Interpretation) of the AIFC General Partnership Regulations.

**Recognised Limited Partnership** has the meaning given in Schedule 1 (Interpretation) of the AIFC Limited Partnership Regulations.

**Recognised Limited Liability Partnership** has the meaning given in Schedule 1 (Interpretation) of the AIFC Limited Liability Partnership Regulations.

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

**Register** means the register of current and past registrations of Companies and Recognised Companies kept under section 204 (Public registers).

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

**Registrar** means the Office of the Registrar of Companies of the AFSA including the individual who is appointed the Registrar of Companies for the time being.

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

**Register of Nominee Directors**, has the meaning given by section 179-7 (Register of Nominee Directors).

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

**Regulated Market** means a multilateral system or facility that:

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

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

**Relevant Jurisdiction** means Kazakhstan or any other jurisdiction that the Register of Companies may determine from time to time.



**Relevant Person** means any Body Corporate, partnership, Trust, arrangement or ownership structure incorporated, registered, continued or carrying on business in the AIFC including without limitation a Public Company, Private Company, Recognised Company, a company incorporated under Part 2 of these Regulations, Foundation, Recognised Foundation, Non-Profit Incorporated Organisation, General Partnership, Recognised General Partnership, Limited Partnership, Recognised Limited Partnership, Limited Liability Partnership or Recognised Limited Liability Partnership or any other legal body or structure created by Legislation administered by the Registrar established under the Acting Law of the AIFC.

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

**Rules** means rules adopted by the Board of Directors of the AFSA under section 181 "(Power to adopt Rules etc.), whether for these Regulations or any other Legislation Administered by the Registrar.

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

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

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

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

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

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

**Standard Articles** means standard articles of association prescribed by the Rules.

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

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

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

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

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



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

**Trust** means the legal relationship created by a Person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary for a specified purpose.

**UBO Details** is a reference to the particulars set out in section 179-4(5) (Requirements relating to Beneficial Ownership Register).

**Ultimate Beneficial Owner** has the meaning given by section 179-1 (Meaning of Ultimate Beneficial Owner).

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

**Worker**, in Part 14-2 (Whistleblowing), has the meaning given by section 179-16 (Meaning of Protected Report, Protected Reporter, Worker, and Employer).

**Writing** includes:

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