



AIFC PREFERENTIAL CREDITOR RULES

AIFC RULES NO. AFSA-L-PC-2019-0002 OF 2019

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SCHEDULE 1: INTERPRETATION

- 1.1 **Definitions for these Rules**

PART 1: GENERAL

1.1. Name

These Rules are the *AIFC Preferential Creditor Rules 2019* (or PCR).

1.2. Commencement

These Rules commence on 14 February 2019.

1.3. Legislative authority

These Rules are adopted by the Board of Directors of the AFSA under section 181 (Power to adopt rules etc.) of the AIFC Companies Regulations.

Note: Section 66(2) of the AIFC Insolvency Regulations provides that those Rules may make provision for or in relation to designating certain types of claim on a Company as preferential debts and to prescribing any priorities for their payment and as to the ranking of other claims.

1.4. Application of these Rules

These Rules apply within the jurisdiction of the AIFC.

1.5. These Rules apply to all Insolvency Proceedings

These Rules apply to all Insolvency Proceedings in relation to a Company, whether they commenced before the commencement of these Rules or the Relevant Date for the Company is a date that occurred before the commencement of these Rules.

1.6. Definitions etc.

1.6.1 Schedule 1 (Interpretation) contains definitions used in these Rules.

1.6.2 Terms used in these Rules (other than terms defined in Schedule 1) have the same meanings as they have, from time to time, in the AIFC Insolvency Regulations, or the relevant provisions of those Regulations, unless the contrary intention appears.

Note: For definitions in the AIFC Insolvency Regulations applying to these Rules, see Schedule 3 of those Regulations. The definitions in that Schedule relevant to these Rules include the following:

- Administrative Receiver
- Administrator
- AFSA
- AIFC
- Company
- Court
- Goes into Liquidation
- Insolvency
- Provisional Liquidator
- Receiver
- Registrar of Companies
- Resolution for Voluntary Winding Up
- Rules.

1.6.3 Subject to subrule 1.6.2, terms used in these Rules (other than terms defined in Schedule 1 or the AIFC Insolvency Regulations) have the same meanings as they have, from time to time, in the AIFC Companies Regulations, or the relevant provisions of those Regulations, unless the contrary intention appears.

Note: For definitions in the AIFC Companies Regulations applying to these Rules, see Schedule 1 of those Regulations. The definitions in that Schedule relevant to these Rules include the following:

- Director
- Secretary.

1.7. Administration of these Rules

These Rules are administered by the Registrar of Companies.

PART 2: PREFERENTIAL DEBTS GENERALLY

2.1 General provisions about Preferential Debts

2.1.1 This rule applies in relation to the insolvency of a Company.

2.1.2 The Company's Preferential Debts must be paid in priority to:

- (a) all debts secured by a Security Interest over all or substantially all of the undertaking of the Company; and
- (b) all unsecured debts.

2.1.3 The Company's Preferential Debts rank equally among themselves after the expenses of the Insolvency Proceedings and must be paid in full, unless the Company's assets are insufficient to meet them. If the Company's assets are insufficient, the Preferential Debts abate in equal proportions.

2.1.4 So far as the assets of the Company available for payment of general creditors are insufficient to meet the Company's Preferential Debts, the Preferential Debts have priority over the claims secured by a Security Interest over all or substantially all of the undertaking of the Company, and must be paid accordingly out of any property included in or subject to that Security Interest.

2.2 Payments to Directors and Officers

2.2.1 Despite anything in these Rules, a Director or Officer of the Company is not entitled to receive an amount payable under these Rules if the Court so orders. The Court may make an order on the application of an Administrator of the Company or on its own initiative if there is an outstanding claim against the Director or Officer in relation to the Company's Insolvency.

2.2.2 An amount payable to a Director or Officer of the Company is not a *Preferential Debt* if and to the extent that the Court decides that the Director or Officer is fully or partially responsible for the Company's Insolvency.

PART 3: COMPANY WHERE THERE IS A SECURITY INTEREST OVER ALL OR SUBSTANTIALLY ALL OF ITS UNDERTAKING

3.1. Application of Part 3

This Part applies to a Company if an Administrative Receiver is appointed on behalf of the Secured Parties under a Security Interest over all or substantially all of the undertaking of the Company.

3.2. Priority of payment of Preferential Debts

3.2.1 If the Company is not at the time in the course of being wound up, its Preferential Debts must be paid out of the assets coming to the hands of the Administrative Receiver in priority to any claims for principal or interest in relation to the obligations of the Company secured by the Security Interest over all or substantially all of the undertaking of the Company.

3.2.2 Payments made under this rule must be recouped, as far as possible, out of the assets of the Company available for payment of general creditors.

PART 4: CATEGORIES OF PREFERENTIAL DEBTS

4.1 Category 1: Contributions to pension schemes and end-of-service gratuities

An amount owed by a Company is a *Preferential Debt* of the Company if it is:

- (a) a contribution payable to a pension scheme for an individual who is or has been an employee of the Company; or
- (b) an end-of-service gratuity payable on the termination of the employment of an individual who is or has been an employee of the Company.

4.2 Category 2: Remuneration, payment in lieu of notice etc.

4.2.1 An amount owed by a Company is a *Preferential Debt* of the Company if it:

- (a) is payable by the Company to an individual who is or has been an employee of the Company; and
- (b) is payable by way of:
 - (i) remuneration in relation to the whole or any part of the period of 4 months immediately before the Relevant Date; or
 - (ii) payment in lieu of notice on the termination of the individual's employment, whether before, on or after the Relevant Date; or
 - (iii) compensation in lieu of vacation leave accrued in relation to any period of employment before the Relevant Date that is payable on the termination of the individual's employment, whether before, on or after the Relevant Date; and
- (c) does not exceed the amount (if any) prescribed by the Rules.

4.2.2 An amount owed by a Company is a *Preferential Debt* of the Company if it is owed in relation to money advanced for the purpose of the payment of a debt which, if it had not been paid, would have been a Preferential Debt under subrule 4.2.1.

4.2.3 An amount owed by a Company is a *Preferential Debt* of the Company if it:

- (a) is ordered (whether before or after the Relevant Date) to be paid by the Company under the AIFC Employment Regulations; and
- (b) is ordered to be paid in relation to a default made by the Company before the Relevant Date in the discharge of the Company's obligations under the AIFC Employment Regulations; and
- (c) does not exceed the amount (if any) prescribed by the Rules.

4.3 Interpretation for Category 2 Preferential Debts

4.3.1 For rule 4.2.1(b)(i), an amount is payable by a Company by way of remuneration in relation to any period if:

- (a) it is paid as wages or salary (whether payable for time or for piece work or earned completely or partly by way of commission) in relation to work done or services provided to the Company in that period; or

- (b) it is an amount required to be paid by the Company under the AIFC Employment Regulations and it is payable by the Company in relation to that period.
- 4.3.2 Subrule 4.3.3 applies to an individual in relation to a Company if the individual's employment by the Company has been terminated by or in consequence of the Company Going into Liquidation or a Receiver being appointed for the Company under section 14 (Appointment and Functions of Receivers and Administrative Receivers) of AIFC Insolvency Regulations.
- 4.3.3 If this subrule applies, compensation in lieu of vacation leave is taken, for rule 4.2.1(b)(iii), to have accrued to the individual in relation to a period of employment if, because of the individual's contract of employment or any AIFC Act (including any instrument under an AIFC Act), that compensation would have accrued in relation to that period if the employment had continued until the individual became entitled to be allowed the vacation.
- 4.3.4 For this rule, any compensation paid or payable by a Company to an individual in relation to a period of vacation leave, or a period of absence from work due to sickness or other good cause, is taken to be wages or salary paid or payable by the Company to the individual in relation to work done or services provided to the Company in that period.
- 4.3.5 For this rule, a reference to compensation paid or payable by a Company to an individual in relation to a period of vacation leave includes a reference to any amount that, if it had been paid, would have been treated for the purposes of the acting law of the Republic of Kazakhstan relating to social expenditures as earnings (however described) in relation to that period.

Note: For subrule 4.3.5, the relevant Law of the Republic of Kazakhstan at the commencement of these Rules was the Law *On Compulsory Social Insurance* dated 25 April 2003.

SCHEDULE 1: INTERPRETATION

Note: See rule 1.6.

1.1 Definitions for these Rules

In these Rules:

Insolvency Proceedings means any proceedings, whether in the Court or otherwise, under AIFC Insolvency Regulations, the AIFC Insolvency Rules or these Rules.

Officer, of a Company, includes any of the following in relation to the Company:

- (a) a Secretary;
- (b) a senior manager.

Preferential Debt, of a Company, means an amount that is a Preferential Debt of the Company under these Rules.

Relevant Date, for a Company, means:

- (a) if the Company is being wound up by the Court and the Company had not already passed a Resolution for Voluntary Winding Up—the earliest of the following dates:
 - (i) if a Provisional Liquidator was appointed for the Company—the date the Provisional Liquidator was appointed (or, if more than 1 Provisional Liquidator has been appointed, the date the first Provisional Liquidator was appointed);
 - (ii) if a Provisional Liquidator was not appointed for the Company—the date the winding up order is made; or
- (b) in any other case where the Company is being wound up—the date the Company passed the Resolution for Voluntary Winding Up; or
- (c) if the Company is in receivership—the date the Receiver was appointed.

Secured Party, in relation to a Security Interest, has the meaning given by Schedule 1 (Interpretation) of the AIFC Security Regulations.

Security Interest has the meaning given by Schedule 1 (Interpretation) of the AIFC Security Regulations.