



**AIFC COMPANIES RULES**



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**AIFC COMPANIES RULES**

**(COR)**

**AIFC RULES NO. GR0004 OF 2017**

(with amendments as of 5 July 2019, which commence on 5 July 2019)

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## AIFC COMPANIES RULES

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## AIFC COMPANIES RULES

### **PART 1: GENERAL**

#### **1.1. Name**

These Rules are the *AIFC Companies Rules 2017* (or COR).

#### **1.2. Commencement**

These Rules commence on 1 January 2018.

#### **1.3. Legislative authority**

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

#### **1.4. Application of these Rules**

These Rules apply within the jurisdiction of the AIFC.

#### **1.5. Definitions etc.**

1.5.1 Schedule 4 (Interpretation) contains definitions used in these Rules.

1.5.2 Terms used in these Rules (other than terms defined in Schedule 4) have the same meanings as they have, from time to time, in the AIFC 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:

- Accounting Records
- AFSA
- AIFCA
- AIFC Regulations
- AIFC Rules
- Allotment, of Shares in a Company
- Annual General Meeting, of a Company
- Articles of Association, of a Company
- Body Corporate
- Breach
- Company
- Contravene
- Court
- Creditor
- Director, in relation to a Company or another Body Corporate
- Distribution, in relation to a Company
- Document
- Exercise



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- Fail
- Financial Services Regulator
- Foreign Company
- Function
- General Meeting, of a Company
- Incorporator, of a Company (or proposed Company)
- Legislation Administered by the Registrar
- Liability
- Objectives, of the Registrar
- Officer, of a Company or another Body Corporate
- Ordinary Resolution, of a Company
- Paid-up
- Person
- Personal Representative, in relation to an individual who has died
- Private Company
- Public Company
- Recognised Company
- Registered Details
- Registrar of Companies (or Registrar)
- Resolution, of a Company
- Secretary, of a Company or another Body Corporate
- Security, of a Company
- Share, in a Company
- Shareholder, of a Company
- Special Resolution, of a Company
- Subsidiary
- Writing.

### 1.6. Administration of these Rules

These Rules are administered by the Registrar of Companies.



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### **PART 2: PROVISIONS ABOUT COMPANIES**

#### **2.1. Application for incorporation etc.**

- 2.5.1 The Person or Persons applying for the incorporation of a company must use the form prescribed by the Registrar of Companies.
- 2.5.2 If the proposed, or a proposed. company secretary is:
  - (a) a Body Corporate—the Body Corporate must be incorporated, established or registered in the AIFC or
  - (b) a partnership—the partnership must be registered or incorporated in the AIFC.
- 2.5.3 If an Incorporator is a Body Corporate that is incorporated in a jurisdiction outside the AIFC and is not registered in the AIFC, the application for incorporation of the company must be accompanied by a copy of the Incorporator's current certificate of incorporation or registration in that jurisdiction, or a Document of similar effect, certified by the relevant authority in that jurisdiction. The Document accompanying the application must be acceptable to the Registrar of Companies.
- 2.5.4 If the Document is not in the English language, the Document must be accompanied by an English translation certified to the satisfaction of the Registrar of Companies.

#### **2.2. Articles of Association**

- 2.2.1 For the definition of Standard Articles in Schedule 1 of the AIFC Companies Regulations, the provisions of Schedule 1 (Standard Articles) are the model articles of association.
- 2.2.2 If the proposed Articles of Association filed with an application for the incorporation of a company do not adopt the Standard Articles in their entirety, the proposed Articles of Association must, for section 14(2)(c) of the AIFC Companies Regulations, include provision for the following matters:
  - (a) information set out in the form prescribed by the Registrar of Companies;
  - (b) the purpose for which the company is being incorporated;
  - (c) the rights attaching to Shares or classes of Shares;
  - (d) the transfer of Shares;
  - (e) an Annual General Meeting;
  - (f) the proceedings, including voting at General Meetings;
  - (g) accounts and other information to be provided to Shareholders before Annual General Meetings;
  - (h) the maximum number of Directors;
  - (i) the appointment, retirement, disqualification and removal of Directors;
  - (j) the powers of Directors;
  - (k) proceedings of Directors;
  - (l) if the company is to have a Secretary (or joint Secretaries)—appointment of the Secretary (or joint Secretaries);
  - (m) the keeping of minutes of all proceedings at General Meetings, meetings of the holders of any class of Shares, and meetings of Directors and of committees of Directors;
  - (n) the division of powers between the Shareholders and Directors;



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- (o) the issue of new Shares;
- (p) if there are to be any to be restrictions on the transfer of Shares—the restrictions;
- (q) termination and liquidation of the company.

### 2.3. Address of registered office

2.3.1 This rule applies to the address of the registered office of a Company, as set out in an application for incorporation or notification of a change in Registered Details.

2.3.2 The address must include the following details, so far as they are applicable:

- (a) the name (or number) of the building;
- (b) the floor or level of that building.

2.3.3 The address must consist of a location address and, if different, a postal address.

### 2.4. Company names

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

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

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

- (a) the name must use letters of the English alphabet, numerals or other characters acceptable to the Registrar of Companies;
- (b) the name must not, in the opinion of the Registrar, be, or be reasonably likely to become, misleading, deceptive or conflicting with another name (including an existing name of another Company or Recognised Company);
- (c) the name must not include words that may suggest a relationship with the AIFCA, AFSA or any other governmental authority in the AIFC, Astana or the Republic of Kazakhstan, unless the relevant authority has consented in Writing to the use of the name;
- (d) the name must not include any of the following words unless the AFSA has consented in Writing to their use:
  - (i) the word 'bank', 'insurance' or 'trust';
  - (ii) words that suggest that the Company (or proposed Company) is a bank, insurance company or trust company;
  - (iii) words that suggest in some other way that it is authorised to conduct Financial Services in the AIFC;
- (e) the name must not include words that may suggest a connection with, or the patronage of, any Person or organisation, unless the Person or organisation has consented in Writing;
- (f) the name must not be, in the opinion of the Registrar, otherwise undesirable.

### 2.5. Secretary

2.5.1 A Body Corporate must not be the Secretary (or a Secretary) of a Company unless the Body Corporate is incorporated, established or registered in the AIFC.

2.5.2 A partnership must not be the Secretary (or a Secretary) of a Company unless the partnership is registered or incorporated in the AIFC.





### **PART 3: PROVISIONS ABOUT RECOGNISED COMPANIES**

#### **3.1. Initial assessment for registration as Recognised Company**

- 3.1.1 Before a Foreign Company applies to the Registrar of Companies to be registered as a Recognised Company, the Foreign Company must arrange with the Registrar to have an initial assessment made of its suitability to be registered as a Recognised Company. The Registrar may conduct an initial meeting with the Foreign Company as part of the assessment process.
- 3.1.2 For the initial assessment, the Foreign Company must provide the following to the Registrar of Companies:
- (a) a copy of the Foreign Company's current certificate of incorporation or registration in the jurisdiction in which is incorporated (the *relevant jurisdiction*), or a Document of similar effect, certified by the relevant authority in the relevant jurisdiction;
  - (b) a copy of the Foreign Company's current constitution certified as a true copy by a Secretary or Director of the Foreign Company;
  - (c) a copy of the Foreign Company's most recent accounts filed, if applicable, with the relevant authority in the relevant jurisdiction;
  - (d) a copy of the Foreign Company's certificate of good standing, or a Document of similar effect, issued by the relevant authority in the relevant jurisdiction;
  - (e) if the Foreign Company is subject to the supervision of a Financial Services Regulator in the relevant jurisdiction or any other jurisdiction and the Financial Services Regulator supports the Foreign Company being registered as a Recognised Company—any Document of support provided by the Financial services Regulator.
- 3.1.3 Each of the Documents must be acceptable to the Registrar of Companies.
- 3.1.4 If any of the Documents are not in the English language, the Documents must be accompanied by an English translation certified to the satisfaction of the Registrar of Companies.

#### **3.2. Initial assessment process**

- 3.2.1 In making an initial assessment of a Foreign Company's suitability to be registered as a Recognised Company, the Registrar of Companies may consider the following:
- (a) the matters mentioned rules 3.3 (Background and history), 3.4 (Ownership and Group) and 3.5 (Resources);
  - (b) whether the applicant is subject to supervision by a Financial Services Regulator;
  - (c) any Document of support provided for rule 3.1.2(e) (Initial assessment for registration as Recognised Company);
  - (d) any other matters the Registrar considers relevant.
- 3.2.2 For the assessment:
- (a) the Foreign Company must demonstrate to the satisfaction of the Registrar of Companies that it is fit and proper; and
  - (b) the Foreign Company must demonstrate to the Registrar's satisfaction that its principal manager is fit and proper; and
  - (c) the Registrar may consider any matter that may harm, or may have harmed, the integrity or the reputation of the AFSA or AIFC; and
  - (d) the Registrar may consider the activities of the Foreign Company and the associated



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risks, and accumulation of risks, that those activities pose to the Registrar's Objectives; and

- (e) the Registrar may consider the cumulative effect of factors that, if taken individually, may be regarded as insufficient to give reasonable cause to doubt the fitness and propriety of the Foreign Company.

3.2.3 The Registrar of Companies may require the Foreign Company to provide any information or Document that the Registrar considers relevant to making the initial assessment of the Foreign Company.

### 3.3. **Background and history**

For this rule, the Registrar of Companies may consider the following matters in relation to the Foreign Company:

- (a) any matter affecting the propriety of the Foreign Company's conduct, whether or not the conduct may have resulted in the commission of a criminal offence or the Contravention of the law or the institution of legal or disciplinary proceedings of whatever nature;
- (b) whether the Foreign Company has ever been the subject of disciplinary procedures by a government body or agency or any self-regulating organisation or other professional body;
- (c) whether the Foreign Company has been refused, or had a restriction placed on, its right to conduct a business or profession requiring a licence, registration or other permission;
- (d) whether the Foreign Company has been censured, disciplined, publicly criticised or the subject of a court order on the application (however described) of any regulatory authority, any officially appointed inquiry, or any other Financial Services Regulator.

### 3.4. **Ownership and Group**

3.4.1. For this rule, the Registrar of Companies may consider the following matters in relation to the Foreign Company:

- (a) any information provided by other regulators in relation to the Foreign Company or any entity within its Group;
- (b) the Foreign Company's connection with its controllers;
- (c) whether the Foreign Company or its Group is subject to any adverse effect or considerations arising from its jurisdiction of incorporation or the jurisdiction (or jurisdictions) of incorporation of its controllers.

3.4.2 In considering the matters mentioned in subrule 3.4.1(c), the Registrar of Companies may also consider the type and level of regulatory oversight in any relevant jurisdiction, the regulatory infrastructure in that jurisdiction, and adherence to internationally held conventions and standards by that jurisdiction.

### 3.5. **Resources**

For this rule, the Registrar of Companies may consider whether the Foreign Company has sufficient resources of all types, including whether the Foreign Company has:

- (a) sufficient and appropriate systems and procedures to support, monitor and manage its affairs, resources and regulatory obligations in a sound and prudent way; and
- (b) appropriate anti-money laundering and combating terrorist financing procedures and systems designed to ensure full compliance with applicable anti-money laundering and combating terrorist financing legislation, including arrangements to ensure all relevant staff are aware of their obligations; and
- (c) a sufficient range of individuals with appropriate skills and experience to understand, operate



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and manage the Foreign Company's affairs in a sound and prudent way; and

- (d) robust human resources policies designed to ensure high standards of conduct and integrity in the conduct of its activities.

### 3.6. Application for registration as Recognised Company

3.6.1 A Foreign Company applying to the Registrar of Companies for registration as a Recognised Company must use the applicable form prescribed by the Registrar.

3.6.2 The application must state the following:

- (a) the address of the Foreign Company's proposed principal place of business in the AIFC;
- (b) the nature of the business the Foreign Company proposes to conduct in or from the AIFC;
- (c) the name and address of each Person authorised to accept service of any Document or notice on behalf of the company;
- (d) the following information for each Director of the Foreign Company:
  - (i) the full name, nationality and address of the Director;
  - (ii) if the Director has a former name (including, for an individual, any former given or family name)—the former name or, if the Director has 2 or more former names, each former name;
  - (iii) the Director's date and place of birth, incorporation, formation or registration, as the case may be;
  - (iv) the Director's address;
- (e) the address of the Foreign Company's registered office in its place of origin or, if it is not required to have a registered office under the laws of the place of origin, the address of its principal place of business in its place of origin.

3.6.3 The application must be accompanied by the Documents mentioned in rule 3.1.2(a), (b), (c), (d) and (e) (Initial assessment for registration as Recognised Company).

3.6.4 However, the Registrar of Companies may exempt the Foreign Company from a requirement under this rule to provide any information or Document if the information or Document was provided to the Registrar for the initial assessment under rule 3.1.

3.6.5 The Registrar of Companies may also require the Foreign Company to provide any other information or Document that the Registrar considers relevant to making a decision on the application.

3.6.6 In making a decision on the application, the Registrar of Companies may take into account any assessment made under this Part of the suitability of the Foreign Company to be registered as a Recognised Company and any information or Document obtained for or in relation to such an assessment. However, this subrule does not limit the matters that the Registrar may take into account.

### 3.7. Addresses for Recognised Companies

3.7.1. This rule applies to the following addresses in relation to a Foreign Company or Recognised Company, as set out in an application for registration or notification of a change in Registered Details:

- (a) the address (or proposed address) the company's principal place of business in the AIFC;



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- (b) the address of a Person authorised to accept service of any Document or notice on behalf of the company.
- 3.7.2. The address must include the following details, so far as they are applicable:
  - (a) the name (or number) of the building;
  - (b) the floor or level of that building.
- 3.7.3. The address must consist of a location address and, if different, a postal address.



## PART 4: PRIVATE COMPANIES AND PUBLIC COMPANIES

### 4.1. Registers of Directors and Secretary

- 4.1.1. The Register of Directors kept by a Company under section 90 (Register of Directors and Secretaries) of the AIFC Companies Regulations must contain the required particulars of each Person who is or has been a Director of the Company and be kept in alphabetical order of the names.
- 4.1.2. The Register of Secretaries, if applicable, kept by a Company under section 90 of the AIFC Companies Regulations must contain the required particulars of each Person who is or has been a Secretary of the Company, and be kept in alphabetical order of the names.
- 4.1.3. In this rule:  
*required particulars*, in relation to a Person who is or has been a Director or Secretary of the Company, means the following particulars:
- (a) the Person's full name;
  - (b) if the Person has a former name (including, for an individual, any former given or family name)—the former name or, if the Person has 2 or more former names, each former name;
  - (c) the Person's date and place of birth, incorporation, formation or registration, as the case may be;
  - (d) the Person's address;
  - (e) if the Person has had a former address within the last 5 years—the former address;
  - (f) the date the Person was appointed as a Director or Secretary, as the case may be;
  - (g) if relevant, the date the Person ceased to be a Director or Secretary, as the case may be.

### 4.2. Evidence of title to Securities

- 4.2.1. Subject as otherwise provided in the Articles, for sections 54 (Transfer and registration of Shares and Debt Securities) and 58 (Share certificates) of the AIFC Companies Regulations, title to Shares may be evidenced and transferred without a Written instrument of transfer, and title to Shares may be evidenced without a Written instrument, in accordance with the following requirements:
- (a) where, following a transfer of title evidenced, to the satisfaction of the Company, otherwise than by a Written instrument, details of a Shareholder are to be deleted from, and those of another are to be added to, the Company's Register of Shareholders, the Company must provide Written notice of the deletion to the former Shareholder and Written notice of the addition to the new Shareholder;
  - (b) when the details of a Shareholder are amended in the Company's Register of Shareholders, the Company must provide Written notice of the change to the Shareholder;
  - (c) if share certificates have previously been issued by the Company, the Company must require the return of share certificates and, on their return, must cancel them;
  - (d) the Company will not recognise the rights of third parties in relation to issued Shares.
- 4.2.2. For section 54 of the AIFC Companies Regulations, title to Debt Securities may be evidenced and transferred without a Written instrument of transfer in accordance with the following requirements:
- (a) where, following a transfer of title evidenced, to the satisfaction of the Company,



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otherwise than by a Written instrument, details of a Debt Security Holder are to be deleted from, and those of another are to be added to, the Company's Register of Debt Securities Holders, the Company must provide Written notice of the deletion to the former Debt Security Holder and Written notice of the addition to the new Debt Security Holder;

- (b) when details of a Debt Security holder are amended in the Company's Register of Debt Securities Holders, the Company must provide Written notice of the change to the Debt Security holder;
- (c) the Company will not recognise the rights of third parties in relation to issued Debt Securities.

4.2.3. If a Company evidences title to Shares without a Written instrument:

- (a) an entry relating to a Person in the Register of Shareholders maintained by the Company under section 52 (Register of Shareholders) of the AIFC Companies Regulations is evidence of the following:
  - (i) the Person being a Shareholder of the Company;
  - (ii) the number of Shares held by the Person;
  - (iii) if the Company has 2 or more classes of issued Shares—the class, or classes, of Shares held by the Person and the number of shares of that class, or each of those classes, held by the Person;
  - (iv) the date the Person became a Shareholder; and
- (b) a transfer of Shares in the Company must take place in accordance with:
  - (i) if the Company's Shares are admitted to a register of listed securities—the rules of the relevant exchange and clearing house; and
  - (ii) in any other case—the Company's Articles of Association.

4.2.4. No notice of any trust, express, implied or constructive, is to be taken in account of by a Company or entered on the Register of Shareholders maintained by a Company under section 52 (Register of Shareholders) of the AIFC Companies Regulations.

### 4.3. Allotment of Shares

If a Company Allots Shares in the Company, the Company must, within 14 days after the day that it allots the Shares, notify the Registrar of Companies in Writing of the Allotment of the Shares.



## PART 5: TRANSFER OF INCORPORATION

### 5.1. Transfer of incorporation to AIFC

- 5.1.1 An application by a Foreign Company to the Registrar of Companies under section 151 (Transfer of incorporation to AIFC) of the AIFC Companies Regulations for the continuation of the Foreign Company as a Company must be accompanied by the following:
- (a) a copy of the Foreign Company's current certificate of incorporation or registration in the jurisdiction in which it is incorporated (the *relevant jurisdiction*), or a Document of similar effect, certified by the relevant authority in the relevant jurisdiction;
  - (b) a copy of the Foreign Company's current constitution certified as a true copy by a Secretary or Director of the Foreign Company;
  - (c) evidence satisfactory to the Registrar that the Foreign Company is authorised by the laws of the relevant jurisdiction to be continued under the laws of another jurisdiction and that it has complied with all the relevant requirements under the laws of the relevant jurisdiction;
  - (d) evidence satisfactory to the Registrar that all necessary consents in the relevant jurisdiction have been obtained and certified by the relevant authorities of that jurisdiction;
  - (e) a copy of the Foreign Company's most recent accounts filed, if applicable, with the relevant authority in the relevant jurisdiction;
  - (f) a copy of the Foreign Company's certificate of good standing, or a Document of similar effect, issued by the relevant authority in the relevant jurisdiction;
  - (g) if the Foreign Company is subject to the supervision of a Financial Services Regulator in the relevant jurisdiction or any other jurisdiction and the Financial Services Regulator supports the Foreign Company being registered as a Recognised Company—a Document of support provided by the Financial services Regulator;
  - (h) a declaration by the Directors of the Foreign Company under subrule 5.1.5.
- 5.1.2 Each the Documents must be acceptable to the Registrar of Companies.
- 5.1.3 If any of the Documents are not in the English language, the Documents must be accompanied by an English translation certified to the satisfaction of the Registrar of Companies.
- 5.1.4 The Registrar of Companies may require the Foreign Company to provide any information or any other Document that the Registrar considers relevant to making a decision on the application.
- 5.1.5 For subrule 5.1.1(h), the declaration by the Directors of the Foreign Company must state that:
- (a) the Foreign Company is able to pay its debts as they fall due; and
  - (b) there is no reasonable prospect of the Foreign Company being unable to pay its debts as they fall due; and
  - (c) the value of the Foreign Company's current assets exceeds the amount of its current Liabilities, taking into account its contingent and prospective Liabilities; and
  - (d) there are no applications made to any court:
    - (i) to put the Foreign Company into liquidation; or
    - (ii) to wind up the Foreign Company; or
    - (iii) to have the Foreign Company declared insolvent or otherwise unable to pay



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its debts as they fall due; or

- (iv) for the appointment of a receiver or administrative receiver (however described) for any property of the Foreign Company.

5.1.6 If the Foreign Company is an Authorised Firm, an Authorised Market Institution, an Ancillary Service Provider or a Fund, the Registrar of Companies must not approve the application unless the AFSA has given its Written consent to the approval.

5.1.7 In addition, if the Foreign Company is a Fund, the Registrar of Companies must not approve the application unless satisfied that the Foreign Company would comply the requirements of Part 6 (Investment Companies) if the application were to be approved.

5.1.8 If the Registrar of Companies approves the application and issues a certificate of continuation to the Foreign Company, the Company must file with the Registrar any certificate or other Document issued under the laws of the relevant jurisdiction evidencing the fact the Company has ceased to be incorporated under those laws.

### 5.2. Certificate of continuation

The certificate of continuation issued by the Registrar of Companies under section 152(1)(a) (Certificate of continuance) of the AIFC Companies Regulations for a Foreign Company must include:

- (a) the name of the company; and
- (b) the company's identification number; and
- (c) a statement that the company is continued as a Company; and
- (d) a statement that the company is a Private Company or a Public Company; and
- (e) the date of continuation.

### 5.3. Transfer of incorporation from AIFC

5.3.1 An application by a Company to the Registrar of Companies for authorisation under section 156(1) (Transfer of incorporation from AIFC to another jurisdiction) of the AIFC Companies Regulations to transfer its incorporation to a jurisdiction outside the AIFC (the *other jurisdiction*), and request that it be continued as a Foreign Company, must be accompanied by the following:

- (a) evidence satisfactory to the Registrar that:
  - (i) the Company is able to transfer its incorporation and be continued under the laws of the other jurisdiction; and
  - (ii) the laws of the other jurisdiction satisfy the requirements mentioned in section 156(2) of the AIFC Companies Regulations; and
- (b) if the Company is an Investment Company, Authorised Firm, Authorised Market Institution or Ancillary Service Provider—the AFSA's Written consent to the application; and
- (c) a declaration by the Directors of the Company under subrule 5.3.3.

5.3.2 The Registrar of Companies may require the Company to provide any information or any other Document that the Registrar considers relevant to making a decision on the application.

5.3.3 For rule 5.3.1(c), the declaration by the Directors of the Company must state that:

- (a) the Company is able to pay its debts as they fall due; and
- (b) there is no reasonable prospect of the Company becoming Unable to Pay its Debts (within the meaning given by section 50 of the AIFC Insolvency Regulations); and





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- (c) the value of the Company's current assets exceeds the amount of its current Liabilities, taking into account its contingent and prospective Liabilities; and
  - (d) there are no applications made to any court:
    - (i) to put the Company into liquidation; or
    - (ii) to wind up the Company; or
    - (iii) to have the Company declared Unable to Pay its Debts (within the meaning given by section 50 of the AIFC Insolvency Regulations); or
    - (iv) for the appointment of a receiver or administrative receiver (however described) for any property of the Company.
- 5.3.4 If a Company intends to make an application mentioned in subrule 5.3.1 to the Registrar of Companies, the Company must, not later than 60 days before the day the Company makes the application, publish a legible and comprehensible notice in 1 or more newspapers or other publications best suited to bring the intended transfer of incorporation to the attention of any Persons who may be affected by the transfer.



## **PART 6: INVESTMENT COMPANIES**

### **6.1. Investment Companies prescribed type of Company for Companies Regulations**

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

### **6.2. Investment Companies: modification of Companies Regulations and general powers of AFSA**

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

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

6.2.3 This Part does not limit any powers of the AFSA under AIFC Financial Services Framework Regulations, the AIFC Collective Investment Rules or any other Legislation Administered by the AFSA.

### **6.3. Incorporation of, or conversion into, Investment Company**

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

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

6.3.2 An Investment Company must either be an Open-Ended Investment Company or a Closed-Ended Investment Company.

6.3.3 However, a Company must not be incorporated as an Investment Company, an existing Company must not be converted into an Investment Company, and a Company must not operate an Investment Company, unless:

- (a) the Company is formed, and is to operate, for the sole purpose of conducting the business of a Fund; and
- (b) the AFSA has given its prior Written consent.

6.3.4 An application for the incorporation of a Company as an Investment Company, or for the conversion of an existing Company into an Investment Company, must be accompanied by a copy of any consent given by the AFSA under subrule 6.3.3.

6.3.5 An Investment Company must, ensure that, whenever it uses its name, the name is immediately



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followed by:

- (a) for a Closed-Ended Investment Company—the words ‘Closed-Ended Investment Company’ or the abbreviation ‘CEIC’; and
  - (b) for an Open-Ended Investment Company—the words ‘Open-Ended Investment Company’ or the abbreviation ‘OEIC’.
- 6.3.6 To remove any doubt, the relevant words or abbreviations mentioned in subrule 6.3.5 must be used instead of any words or abbreviation that the Investment Company would otherwise have been required or permitted to use immediately following its name under section 37 (Name of Private Company) or 38 (Name of Public Company) of the AIFC Companies Regulations.
- 6.3.7 Also, to remove any doubt, subrule 6.3.5 does not limit section 21 (Prohibition against use of misleading, deceptive or conflicting Company names) of the AIFC Companies Regulations.
- 6.3.8 The Articles of Association of an Investment Company that is an Open-Ended Investment Company must state that it is an Open-Ended Investment Company with variable share capital.
- 6.3.9 Subject as otherwise provided in the Articles of Association, Shareholders are entitled, on request, to have their Shares redeemed by the Fund Manager at a price based on the net asset value of the property of the Fund and decided in accordance with and at such intervals as may be prescribed by the Articles of Association and any relevant Legislation Administered by the AFSA.
- 6.3.10 In addition to any other requirements under the AIFC Companies Regulations and these Rules, the Articles of Association of an Investment Company must contain provisions about the following matters:
- (a) the objects of the Investment Company, including:
    - (i) detail about the kind of property in which the Investment Company is to invest; and
    - (ii) a statement that the object of the Investment Company is to invest in property of that kind with the aim of spreading investment risk or with the aim of investing in a single property, as the case may be, and of giving its Shareholders the benefit of the results of the management of that property;
  - (b) matters required to be included in the Articles of Association under the AIFC Collective Investment Rules or by the AFSA under or for those Rules.
- 6.3.11 The Articles of Association of an Investment Company that is a Closed-Ended Investment Company must state that it is a Closed-Ended Investment Company with variable share capital.
- 6.3.12 The Articles of Association of an Investment Company must comply with this Part, the AIFC Collective Investment Rules and any requirements imposed by the AFSA under or for those Rules.
- 6.3.13 An Investment Company may alter its Articles of Association by Special Resolution to comply with this Part, the AIFC Collective Investment Rules and any requirements imposed by the AFSA under or for those Rules.
- 6.4. **Investment Companies: permissible uses and AFSA consents**
- 6.4.1 An application for consent under 7.3.3 (Incorporation of, or conversion into, Investment Company) in relation to a Company must be made to the AFSA by the Company and the Operator and must be in the form, contain the information and be accompanied by the Documents and additional information, required by the AFSA.



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- 6.4.2 The AFSA may, in its absolute discretion, refuse to give its consent if it considers it necessary or appropriate to do so in the interests of the AIFC.
- 6.4.3 If the AFSA refuses to give its consent, the AFSA must, as soon as practicable after it makes the decision, give the applicants Written notice of the decision and, if requested by an applicant, give the applicants Written reasons for the decision.
- 6.5. Investment Companies: revocation of AFSA consents**
- 6.5.1 The AFSA may, at any time and at its absolute discretion, revoke a consent given for an Investment Company under rule 6.3.3 (Incorporation of, or conversion into, Investment Company) if it considers it necessary or appropriate to do so in the interests of the AIFC.
- 6.5.2 Before revoking the consent, the AFSA must consider whether any necessary and appropriate steps have been taken to secure 1 or more of the following under the AIFC Insolvency Regulations:
- (a) the appointment of a Receiver or Administrative Receiver for the Investment Company; or
  - (b) the winding up of the Investment Company.
- 6.5.3 If the AFSA revokes the consent, the AFSA must, as soon as practicable after it makes the decision, give the Investment Company and the Fund Manager Written notice of the decision and, if requested by the Company or Fund Manager, give the Company or Fund Manager Written reasons for the decision.
- 6.5.4 On receipt of the notice under subrule 6.5.3, the Investment Company and its Fund Manager must immediately give Written notice of the revocation of the AFSA's consent to:
- (a) each regulatory authority in every jurisdiction to which the consent related before its revocation; and
  - (b) each Shareholder of the Investment Company.
- 6.5.5 A notice required to be given under subrule 6.5.4 may be given jointly by the Investment Company and its Fund Manager.
- 6.6. Investment Companies: directions by AFSA**
- 6.6.1 The AFSA may, in the interests of the AIFC, give a direction under this rule to an Investment Company or any of its Directors.
- 6.6.2 Without limiting subrule 6.6.1, a direction under this rule may:
- (a) require the Investment Company to cease the issue or redemption, or both the issue and redemption, of Shares or any class of Shares in the Company; or
  - (b) require the Investment Company, or any Director of the Company, to apply to the Court under the AIFC Insolvency Regulations or AIFC Insolvency Rules for any 1 or more of the following:
    - (i) the appointment of a Receiver or Administrative Receiver for the Company;
    - (ii) the winding up of the Company; or
  - (c) require that the affairs of the Investment Company be wound up otherwise than by the Court.
- 6.6.3 If a consent given for an Investment Company under rule 6.3.3 (Incorporation of, or conversion into, Investment Company) is revoked, the revocation does not affect the operation of any direction that is then in force in relation to the Company under this rule; and a direction may be given in relation to a Company under this rule if a direction was in force under this rule in



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relation to the Company when the consent was revoked.

- 6.6.4 However, a direction may not be given under this rule in relation to an Investment Company if an order appointing a Receiver or Manager, or a winding up order, has been made by the Court in relation to the Company.
- 6.6.5 If a direction is in force under this rule in relation to an Investment Company, the AFSA may, on its own initiative or on the application of the Company or its Fund Manager, revoke or the direction if it considers it necessary or appropriate to do so in the interests of the AIFC.
- 6.6.6 A direction under this rule takes effect:
- (a) immediately, if the notice states that it is to take effect immediately; or
  - (b) on the date specified in the notice.
- 6.6.7 If the AFSA proposes to give a direction to a Person under this rule, or gives a direction to a Person under this rule with immediate effect, it must give a Written notice about the direction to the Person. If the AFSA gives a notice to a Director of the Investment Company, it must also give a Written notice about the direction to the Company.
- 6.6.8 A notice given to the Investment Company or a Director of the Company must:
- (a) give details of the direction; and
  - (b) explain when the direction takes effect; and
  - (c) state the AFSA's reasons for giving the direction and for its decision about when the direction takes effect; and
  - (d) tell the Company or Director that the Company or Director may make representations to the AFSA within the period specified in the notice.
- 6.6.9 If, having considered any representations made by the Investment Company or Director within the period specified in the notice, the AFSA decides:
- (a) to give, or not to give, the direction in the way proposed; or
  - (b) to give the direction in a way other than the way proposed; or
  - (c) if the direction has been given—to revoke, or not to revoke, the direction;
- the AFSA must, as soon as practicable after it makes the decision, give the Company or Director Written notice of the decision and must, if the Company or Director requests, give the Company or Director Written reasons for the decision.

### 6.7. **Investment Companies: Shares and Register of Shareholders**

- 6.7.1 An Investment Company may issue fractions of Shares if authorised by its Articles of Association.
- 6.7.2 The AFSA may prescribe in rules made under the AIFC Financial Services Framework Regulations the form and contents of share certificates of an Investment Company and how share certificates may be delivered by an Investment Company.
- 6.7.3 Nothing in subrule 6.7.2 must prevent an Investment Company issuing share certificates in a dematerialised (electronic) form.
- 6.7.4 Subject to any requirements that may be made by the AFSA under any Legislation Administered by the AFSA, an Investment Company may, after giving notice by press release, directly communicating with its Shareholders, posting notice on its website and, if its Fund is listed on an exchange, giving notice to the exchange, close its Register of Shareholders for any time or times not exceeding, in total, 30 days in each year.



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- 6.7.5 Subrule 6.7.6 applies if:
- (a) the Fund Manager for an Investment Company is satisfied that a Shareholder (the *defaulting Shareholder*) has Failed to make any payment in money or transfer of property due to the Fund Manager under these Rules or the Articles of Association of the Investment Company in relation to the creation and sale or resale of Shares to the Shareholder; and
  - (b) the Fund Manager receives any share certificate in relation to the Shares.
- 6.7.6 If this subrule applies, the Fund Manager must cancel or make any necessary amendments to the share certificate and make any necessary deletion or alteration in the Register of Shareholders. The Fund Manager is then entitled to the Shares in relation to which the defaulting Shareholder's name has been removed from the Register of Shareholders until the Shares are cancelled or resold by the Fund Manager and the name of the purchaser entered in the register.
- 6.7.7 The Fund Manager of an Open-Ended Investment Company is taken to hold each Share during the times that neither the Fund Manager nor any other Person is entered in the Register of Shareholders as the holder of the Share.
- 6.8. **Investment Companies: Share transfers and redemptions**
- 6.8.1 The Articles of Association of an Investment Company may contain provision about any matter in relation to Share transfers for which provision is not made by the AIFC Companies Regulations or these Rules.
- 6.8.2 If any Shares of an Investment Company are transferred to the Company, the Company must cancel the Shares.
- 6.8.3 For section 54 (Transfer and registration of Shares and Debt Securities) of the AIFC Companies Regulations, an Investment Company may refuse to register a transfer of Shares if the transfer would result in a Contravention of any provision of the Company's Articles of Association or would produce a result inconsistent with any provision of the Company's prospectus.
- 6.8.4 Subject as otherwise provided in the Articles, an Open-Ended Investment Company must redeem its Shares at a price based on the net asset value of the property of the Company in accordance with and at such intervals as may be prescribed by its Articles of Association and any relevant Legislation Administered by the AFSA. Chapters 5 (Registers of Shareholders and Debt Security Holders and share certificates) and 6 (Redemption and purchase of Shares) of Part 7 (Private Companies and Public Companies) of the AIFC Companies Regulations do not apply to the redemption of Shares by an Open-Ended Investment Company.
- 6.8.5 A Closed-Ended Investment Company must not purchase any Shares of any class of which it is the issuer, unless it does so on an Exchange Facility or another open market approved by the AFSA.



## PART 7: MISCELLANEOUS

### 7.1. Public registers

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

- (a) current name;
- (b) identification number;
- (c) date of registration;
- (d) type of company;
- (e) each former name;
- (f) the date of registration of each change of name;
- (g) the address of the current registered office;
- (h) the address of each of the former registered office;
- (i) the date of registration of each change of registered office;
- (j) the names of each of the current Directors;
- (k) the date each of the current Directors became a Director;
- (l) the names of each former Director;
- (m) the dates each of the former Directors became and ceased to be a Director;
- (n) the names of the current Secretary or, if there are 2 or more joint Secretaries, each joint Secretary;
- (o) the date the current Secretary became Secretary or the dates each joint Secretary became a joint Secretary, as the case may be;
- (p) the names of each former Secretary or, if there have at any time been 2 or more joint Secretaries, the names of each former joint Secretary;
- (q) the dates each of the former Secretaries or joint Secretaries became and ceased to be a Secretary or joint Secretary;
- (r) the number and class of issued Shares or membership interests, the nominal value of Shares, and the amount of Paid-up share capital;
- (s) names of Shareholders or members of the company or, if the Shares are listed on an exchange for trading, the 20 members holding the most number of Shares;
- (t) for a Recognised Company—the jurisdiction in which the company is incorporated;
- (u) for a Recognised Company—the address of the company's current registered principal place of business in the AIFC or, if the company is no longer registered, the address of its last registered principal place of business in the AIFC;
- (v) for a Recognised Company—the addresses of the company's former registered principal places of business in the AIFC;





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- (w) for a Recognised Company—the date of registration of every change of the company’s registered principal place of business in the AIFC;
  - (x) for a Recognised Company—the name and address of the each Person currently registered as authorised to accept service on behalf of the company or, if the company is no longer registered, the name and address of each Person last registered as authorised to accept service on behalf of the company;
  - (y) for a Recognised Company—the name and address of each Person formerly registered as authorised to accept service on behalf of the company;
  - (z) for a Recognised Company—the date of registration of every change in the details of the Persons authorised to accept service on behalf of the company;
  - (za) the Company’s financial year end;
  - (zb) the dates of the commencement and ending of each scheme of arrangement, receivership or liquidation in relation to the Company;
  - (zc) the name and address of the following in relation to the company:
    - (i) each Nominee for a proposed Voluntary Arrangement, or Supervisor of a Voluntary Arrangement, within the meaning of the AIFC Insolvency Regulations;
    - (ii) each Administrator within the meaning of the AIFC Insolvency Regulations;
  - (zd) the dates each Nominee, Supervisor or Administrator mentioned in paragraph (zc) became and ceased to be a Nominee, Supervisor or Administrator in relation to the Company and, for an Administrator, whether the Administrator was a Receiver, Administrative Receiver or Liquidator;
  - (ze) the date of the company’s dissolution; and
  - (zf) the annual accounts of a Public Company and any other applicable Company in accordance with section 131(5) of the AIFC Companies Regulations.
- 7.1.2 A certificate that appears to be signed by or on behalf of the Registrar of Companies, and states any matter that appears in a register kept by the Registrar under section 204(1) of the AIFC Companies Regulations, is evidence of the matter.
- 7.1.3 The Court must accept a certificate under subrule 7.1.2 as proof of the matters stated in it if there is no evidence to the contrary.
- 7.1.4 A Document that appears to be a copy of the certificate of registration of a Company or a certificate of recognition of a Recognised Company, and to be certified by the Registrar of Companies, is evidence of the matters stated in it.
- 7.1.5 The Court must accept a Document mentioned in subrule 7.1.4 as evidence of the matters stated in it unless the contrary is established.

### 7.2. Forms

- 7.2.1 If the Registrar of Companies issues or prescribes a form (an *approved form*) to be used for a particular purpose under or in connection with the AIFC Companies Regulations, these Rules or any other Legislation Administered by the Registrar, the form must be used for that purpose.
- 7.2.2 If the AFSA issues or prescribes a form (also an *approved form*) to be used for a particular purpose under or in connection with the AIFC Companies Regulations or these Rules, the form must be used for that purpose.
- 7.2.3 Substantial compliance with an approved form is sufficient.





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

### 7.3. Decision-Making Procedures for Registrar

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



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officers, employees or agents of the AFSA who were not involved in making the decision or by an independent third party who the Registrar considers competent to conduct the review.

### **7.3.-1 Retention**

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

### **7.4. Fine limits**

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



## **PART 8: PROTECTED CELL COMPANIES**

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

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

### **8.2. Modification of Companies Regulations and general powers of AFSA**

8.2.1 In accordance with section 143(2)(b) (Incorporation of prescribed type of Company) of the AIFC Companies Regulations, the application of:

- (a) section 74 (Directors) of the AIFC Companies Regulations is modified in relation to its application to a Protected Cell Company to permit a Protected Cell Company to be managed by 1 Director, which may be a Body Corporate;
- (b) section 13(4) of the AIFC Companies Regulations is modified such that an application for incorporation of a Protected Cell Company must state that the Protected Cell Company is to be incorporated as a Protected Cell Company; and
- (c) section 16(1)(a) of the AIFC Companies Regulations is modified such that the certificate of incorporation issued for a Protected Cell Company must state that the company is incorporated as a Protected Cell Company.

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

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

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

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

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

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

- (a) the Company is formed, and will operate, for the main purpose of conducting business which Protected Cell Companies are expressly permitted to be formed and operated for under Legislation Administered by the AFSA; and
- (b) the AFSA has given its prior written consent.

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

8.3.4 The AFSA may only grant its consent, under subrule 8.3.2, where it is satisfied that the requirements under this Part or under other applicable Legislation Administered by the AFSA are met by the applicant. If the AFSA refuses to give its consent, the AFSA must, as soon as practicable after it makes the decision, give the applicants Written notice of the decision and,



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if requested by an applicant, give the applicants Written reasons for the decision.

- 8.3.5 Where under subrule 8.3.2, the AFSA grants consent following any representations from an applicant as to the proposed activities or objectives of the Protected Cell Company, including any such representations in a business plan, the Protected Cell Company must not carry out any activity or pursue any objective contrary to the effect of those representations without obtaining the further prior written consent of the AFSA.
- 8.3.6 A Protected Cell Company must, ensure that, whenever it uses its name, the name is immediately followed by the words 'Protected Cell Company' or the abbreviation 'PCC'.
- 8.3.7 To remove any doubt, the relevant words or abbreviations mentioned in subrule 8.3.6 must be used instead of any words or abbreviation that the Protected Cell Company would otherwise have been required or permitted to use immediately following its name under section 37 (Name of Private Company) or 38 (Name of Public Company) of the AIFC Companies Regulations.
- 8.3.8 Also, to remove any doubt, subrule 8.3.6 does not limit section 21 (Prohibition against use of misleading, deceptive or conflicting Company names) of the AIFC Companies Regulations.
- 8.3.9 Each Cell of a Protected Cell Company shall have its own distinct name or designation.
- 8.3.10 The Articles of Association of a Protected Cell Company must state that it is a Protected Cell Company.
- 8.3.11 A Protected Cell Company may alter its Articles of Association by Special Resolution to comply with this Part and any requirements imposed by the AFSA under or for those Rules.
- 8.3.12 A Protected Cell Company is a single legal person and the creation by a Protected Cell Company of a cell does not create, in respect of that cell, a legal person separate from the Company.
- 8.4. **Revocation of AFSA consents**
- 8.4.1 The AFSA may, at any time and at its absolute discretion, revoke a consent given for a Protected Cell Company under rule 8.3 (Incorporation of, or conversion into, Protected Cell Company) if it considers it necessary or appropriate to do so in the interests of the AIFC. The revocation of a consent under this subrule 8.4.1 shall not have retrospective effect.
- 8.4.2 Before revoking the consent, the AFSA must consider whether any necessary and appropriate steps have been taken to secure 1 or more of the following under the AIFC Insolvency Regulations:
- (a) the appointment of a Cell Receiver in respect of 1 or more Cells;
  - (b) the appointment of a Receiver or Administrative Receiver for the Protected Cell Company; or
  - (c) the winding up of the Protected Cell Company.
- 8.4.3 If the AFSA revokes the consent, the AFSA must, as soon as practicable after it makes the decision, give the Protected Cell Company Written notice of the decision and, if requested by the Company, give the Protected Cell Company Written reasons for the decision.
- 8.4.4 On receipt of the notice under subrule 8.4.3, the Protected Cell Company must immediately give Written notice of the revocation of the AFSA's consent to:
- (a) each regulatory authority in every jurisdiction to which the consent related before its revocation; and
  - (b) each Shareholder of the Protected Cell Company.
- 8.5. **Directions by AFSA**



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- 8.5.1 The AFSA may, in the interests of the AIFC, give a direction under this rule to a Protected Cell Company or any of its Directors.
- 8.5.2 Without limiting subrule 8.5.1, a direction under this rule may:
- (a) require the Protected Cell Company to cease the issue or redemption, or both the issue and redemption, of Shares or any class of Shares in the Protected Cell Company; or
  - (b) require the Protected Cell Company, or any Director of the Company, to apply to the Court under the AIFC Insolvency Regulations or AIFC Insolvency Rules for any 1 or more of the following:
    - (i) make a Cell Receivership Order in relation to one or more Cells;
    - (ii) the appointment of a Receiver or Administrative Receiver for the Company;
    - (iii) the winding up of the Company; or
  - (c) require that the affairs of the Protected Cell Company be wound up otherwise than by the Court.
- 8.5.3 If a consent given for a Protected Cell Company under rule 8.3 (Incorporation of, or conversion into, Protected Cell Company) is revoked, the revocation does not affect the operation of any direction that is then in force in relation to the Protected Cell Company under this rule; and a direction may be given in relation to a Protected Cell Company under this rule if a direction was in force under this rule in relation to the Protected Cell Company when the consent was revoked.
- 8.5.4 However, a direction may not be given under this rule in relation to a Protected Cell Company if
- a Cell Receivership Order, an order appointing a Receiver or Administrative Receiver, or a winding up order, has been made by the Court in relation to the Company.
- 8.5.5 If a direction is in force under this rule in relation to a Protected Cell Company, the AFSA may, on its own initiative or on the application of the Protected Cell Company, revoke or the direction if it considers it necessary or appropriate to do so in the interests of the AIFC.
- 8.5.6 A direction under this rule takes effect:
- (a) immediately, if the notice states that it is to take effect immediately; or
  - (b) on the date specified in the notice.
- 8.5.7 If the AFSA proposes to give a direction to a Person under this rule, or gives a direction to a Person under this rule with immediate effect, it must give a Written notice about the direction to the Person. If the AFSA gives a notice to a Director of the Protected Cell Company, it must also give a Written notice about the direction to the Protected Cell Company.
- 8.5.8 A notice given to the Protected Cell Company or a Director of the Protected Cell Company must:
- (a) give details of the direction; and
  - (b) explain when the direction takes effect; and
  - (c) state the AFSA's reasons for giving the direction and for its decision about when the direction takes effect; and
  - (d) tell the Protected Cell Company or Director that the Protected Cell Company or Director may make representations to the AFSA within the period specified in the notice.



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- 8.5.9 If, having considered any representations made by the Protected Cell Company or Director within the period specified in the notice, the AFSA decides:
- (a) to give, or not to give, the direction in the way proposed; or
  - (b) to give the direction in a way other than the way proposed; or
  - (c) if the direction has been given to revoke, or not to revoke, the direction;
- the AFSA must, as soon as practicable after it makes the decision, give the Company or Director Written notice of the decision and must, if the Company or Director requests, give the Company or Director Written reasons for the decision.

### 8.6. Cell Shares and Share Capital

- 8.6.1 Unless the context requires otherwise, for the purposes of application of the AIFC Companies Regulations and these Rules to a Protected Cell Company, a reference to a Share is taken to include a reference to a Cell Share and a reference to a Shareholder is taken to include a reference to a holder of Cell Shares.
- 8.6.2 A Protected Cell Company may, in respect of any of its Cells, create and issue Cell Shares. The Cell Share Capital shall be comprised in the Cellular Assets attributable to the Cell in respect of which the Cell Shares were issued.
- 8.6.3 The proceeds of the issue of Shares other than Cell Shares created and issued by a Protected Cell Company shall be comprised in the Company's Non-Cellular Assets.
- 8.6.4 A Protected Cell Company may pay Cellular Dividends in respect of Cell Shares.
- 8.6.5 Cellular Dividends may be paid in respect of Cell Shares by reference only to the Cellular Assets and liabilities, or the profits and losses, attributable to the Cell in respect of which the Cell Shares were issued; and accordingly, in determining for the purposes of Chapter 8 of Part 7 of the AIFC Companies Regulations, whether or not profits are available for the purpose of paying a Cellular Distribution, no account need be taken of:
- (a) the profits and losses, or the assets and liabilities, attributable to any other Cell; or
  - (b) Non-Cellular Assets and liabilities or profits and losses.

### 8.7. Shares and Register of Shareholders

- 8.7.1 Except as provided in subrule 8.7.4, a Protected Cell Company must prepare documentary evidence of title to Cell Shares (in this section referred to as a 'certificate') as follows:
- (a) in respect of any new Cell Shares issued by it;
  - (b) where a Shareholder has transferred part only of his holding back to the Protected Cell Company, in respect of the remainder of that holding;
  - (c) where a Protected Cell Company has registered a transfer of Cell Shares made to a person other than the Protected Cell Company;
    - (i) in respect of the Cell Shares transferred to the transferee; and
    - (ii) in respect of any Cell Shares retained by the transferor which were evidenced by any certificates sent to the Protected Cell Company for the purposes of registering the transfer; and
  - (d) in respect of any Cell Shares for which the certificate has already been issued but where it appears to the Protected Cell Company that the certificate needs to be replaced as a result of being lost, stolen or destroyed, or having become damaged or worn out.
- 8.7.2 Certificates need only be prepared in the circumstances referred to in subrule 8.7.1(d) if the Protected Cell Company has received:



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- (a) a request for a new certificate;
- (b) the old certificate, if there is one;
- (c) such indemnity as the Protected Cell Company may require; and
- (d) such reasonable sum as the Protected Cell Company may require in respect of the expenses incurred by it in complying with the request.

8.7.3 Each certificate must state:

- (a) the Cell to which the Cell Shares relate;
- (b) the number of Cell Shares, the title to which is evidenced by the certificate;
- (c) where the Protected Cell Company has more than one class of Cell Shares, the class of Cell Shares, the title to which is evidenced by the certificate; and
- (d) the name of the holder.

8.7.4 Nothing in this Part requires a Company to prepare certificates in the following circumstances:

- (a) where the Articles of Association permit issuing Share certification in dematerialised form;
- (b) where a Shareholder has indicated to the Company in writing that he does not wish to receive a certificate; or
- (c) where legislation applicable in the AIFC provides otherwise for evidencing an entitlement to Shares.

8.7.5 Every Protected Cell Company must keep an index of the names of its Shareholders, which index must:

- (a) contain, in relation to each Shareholder, a sufficient indication to enable the account of that Shareholder in the register to be readily found;
- (b) specify the particular Cell or Cells to which an account or accounts of that Shareholder relate;
- (c) be readily searchable by reference to the account of the Shareholder or by reference to a Cell;
- (d) be kept at all times at the same place as the register of Shareholders; and
- (e) be altered where necessary within fourteen days after the date of any alteration made to the register of Shareholders.

8.7.6 Nothing in rules 8.7.1 to 8.7.5 is taken to remove the Protected Cell Company's obligations to identify, obtain and maintain ultimate beneficial ownership information of its Shareholders and, the Registrar's powers to obtain such information, for the purposes of the AIFC Companies Regulations.

### 8.8. Share transfers

8.8.1 The Articles of Association of a Protected Cell Company may contain provisions about any matter in relation to Share transfers for which provision is not made by the AIFC Companies Regulations or these Rules.

8.8.2 For section 54 (Transfer and registration of Shares and Debt Securities) of the AIFC Companies Regulations, a Protected Cell Company may refuse to register a transfer of Shares if the transfer would result in a Contravention of any provision of the Protected Cell Company's Articles of Association.

### 8.9. Cellular and Non-Cellular Assets





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- 8.9.1 The assets of a Protected Cell Company shall be either Cellular Assets or Non-Cellular Assets.
- 8.9.2 The Cellular Assets of a Protected Cell Company comprise the assets of the Company attributable to the Cells of the Company.
- 8.9.3 The assets attributable to a Cell of a Protected Cell Company comprise:
- (a) assets represented by the proceeds of Cell Share Capital and reserves, including retained earnings, capital reserves and share premiums, attributable to the Cell; and
  - (b) all other assets attributable to the Cell.
- 8.9.4 The Non-Cellular Assets of a Protected Cell Company comprise the assets of the Company which are not Cellular Assets.
- 8.9.5 Income, receipts and other property or rights of, or acquired by, a Protected Cell Company not otherwise attributable to any Cell shall be applied to, and comprised in, the Company's Non-Cellular Assets.

### 8.10. **Prohibition on dealings or transactions between Cells**

- 8.10.1 A Protected Cell Company shall not:
- (a) transfer a Cellular Asset attributable to one of its Cell to another of its Cell; or
  - (b) merge or consolidate a Cell of the Company with, or into, one or more other Cells of the Company;
- except under the authority of, and in accordance with the terms and conditions of, an order of the Court.
- 8.10.2 In considering whether or not to make an order relating to a proposed transfer, merger or consolidation referred to in subrule 8.10.1, the Court may:
- (a) require the applicant to establish to the satisfaction of the Court:
    - (i) that the creditors of the Protected Cell Company entitled to have recourse to the Cellular Assets attributable to the relevant Cells consent to the transfer, merger or consolidation as the case may be or otherwise would not have their interests unfairly prejudiced by the transfer, merger or consolidation; and
    - (ii) that the Shareholders of the Protected Cell Company and of each relevant Cell consent to the transfer, merger or consolidation as the case may be or otherwise would not have their interests unfairly prejudiced by the transfer, merger or consolidation; and
  - (b) hear the representations of the AFSA, if any.
- 8.10.3 The Court, on hearing an application for an order under this rule 8.10, may make an interim order or an order adjourning the hearing, conditionally or unconditionally.

### 8.11. **Separation of assets**

- 8.11.1 In this rule 8.10.3, 'Officer' means:
- (a) an Officer as defined in the AIFC Companies Regulations;
  - (b) a Cell Receiver as defined in the AIFC Insolvency Rules;
  - (c) a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of a Protected Cell Company; or
  - (d) a person in accordance with whose instructions or wishes the Directors of a Protected Cell Company are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their





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business relationship with the Directors or the Protected Cell Company).

8.11.2 Each Director and Officer of a Protected Cell Company shall:

- (a) keep Cellular Assets separate and separately identifiable from Non-Cellular Assets; and
- (b) keep Cellular Assets attributable to each Cell separate and separately identifiable from Cellular Assets attributable to other Cells.

8.11.3 The duty imposed by subrule 8.11.2 is not breached solely by reason that:

- (a) a Director or an Officer of a Protected Cell Company cause or permit Cellular Assets and Non-Cellular Assets to be held:
  - (i) by or through a nominee; or
  - (ii) by a company the shares and capital interests of which may be Cellular Assets or Non-Cellular Assets, or a combination of both; or
- (b) a Directors or an Officer of a Protected Cell Company cause or permit Cellular Assets or Non-Cellular Assets, or a combination of both, to be collectively invested, or collectively managed by an investment manager, provided that the assets in question remain separately identifiable.

8.11.4 In the event of a contravention of subrule 8.11.2:

- (a) each Director and Officer in contravention, as the case may be, shall incur personal liability for any loss or damage as a consequence of the contravention; and
- (b) each such Director or Officer shall severally have a right of indemnity against the Non-Cellular Assets of the Company, unless he was fraudulent, reckless or negligent, or acted in bad faith.

8.11.5 Subrule 8.11.4 is subject to subrule 8.13.1.

### 8.12. Disclosure of dealings with Protected Cell Company

8.12.1 A Protected Cell Company shall:

- (a) inform any Person with whom it transacts that it is a Protected Cell Company;
- (b) for the purposes of that transaction, identify or specify the Cell in respect of which that Person is transacting, unless that transaction is not a transaction in respect of a particular Cell; and
- (c) where the transaction is in respect of a particular Cell, inform the person that the Cellular Assets of that Cell, and only those assets, are available to pay the obligations and liabilities of that Cell.

8.12.2 If, in contravention of subrule 8.12.1, a Protected Cell Company:

- (a) fails to inform a Person that he is transacting with a Protected Cell Company, and that person is otherwise unaware that, and has no reasonable grounds to believe that, he is transacting with a Protected Cell Company;
- (b) fails to identify or specify the Cell in respect of which a Person is transacting, and that person is otherwise unaware of, and has no reasonable basis of knowing, which Cell he is transacting with; or
- (c) fails to inform a person that the Cellular Assets of that Cell, and only those assets, are available to pay the obligations and liabilities of that Cell;

then, in any such case:

- (a) each Director and Officer shall incur personal liability to that Person in respect of the



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transaction; and

- (b) each such Director or Officer shall severally have a right of indemnity against the Non-Cellular Assets of the Company, unless he was fraudulent, reckless or negligent, or acted in bad faith.

8.12.3 Subrule 8.12.2 is subject to subrule 8.13.1.

### 8.13. Further provisions concerning personal liability

8.13.1 Notwithstanding subrules 8.11.4 and 8.12.2, the Court may relieve a Director or an Officer, as the case may be, of all or part of his personal liability thereunder if he satisfies the Court that he ought fairly to be so relieved because:

- (a) he was not aware of the circumstances giving rise to his liability and, in being not so aware, he was neither fraudulent, reckless or negligent, nor acted in bad faith; or
- (b) he expressly objected, and exercised such rights as he had as such a Director or an Officer, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his liability.

8.13.2 Where, pursuant to subrule 8.13.1, the Court relieves a director or officer of all or part of his personal liability under subrules 8.11.4 and 8.12.2, the Court may order that the liability in question shall instead be met from such of the:

- (a) assets of the relevant Cell in respect of which the person was dealing or transacting; or
- (b) Non-Cellular Assets of the Protected Cell Company,

as may be specified in the order.

8.13.3 Any provision in the Articles of a Protected Cell Company, or any other contractual provision under which the Company may be liable, which purports to:

- (a) avoid the incurring of personal liability upon a director or officer in the circumstances described in subrules 8.11.4 and 8.12.2; or
- (b) indemnify directors or officers in respect of conduct which would otherwise disentitle them to an indemnity against Non-Cellular Assets by virtue of subrules 8.11.4 or 8.12.2,

shall be void.

### 8.14. Rights of creditors and implied terms

8.14.1 The rights of creditors of a Protected Cell Company shall correspond with the liabilities provided for in rule 8.17.

8.14.2 No such creditor shall have any rights other than the rights referred to in this rule 8.14 and in rules 8.15 and 8.16.

8.14.3 The following terms shall be implied in every transaction entered into by or on behalf of a Protected Cell Company:

- (a) that no Person shall seek, whether in any proceedings or by any other means, to use or apply any Cellular Assets attributable to any Cell to satisfy a liability not attributable to that Cell;
- (b) that if any Person shall succeed by any means in using or applying any Cellular Assets attributable to any Cell to satisfy a liability not attributable to that Cell, that Person shall be liable to the Protected Cell Company to pay a sum equal to the value of the benefit thereby obtained by that Person; and
- (c) that if any Person shall succeed in seizing or attaching or otherwise levying execution



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against any Cellular Assets attributable to any Cell to satisfy a liability not attributable to that Cell, that Person shall hold those assets or their proceeds in a fiduciary capacity for the Protected Cell Company and shall keep those assets or proceeds separate and identifiable for that purpose.

8.14.4 All sums recovered by a Protected Cell Company as a result of any such obligation as is described in subrule 8.14.3(c) shall be credited against any concurrent liability imposed under the implied term set out in subrule 8.14.3(b).

8.14.5 Any asset or sum recovered by a Protected Cell Company pursuant to the implied term set out in subrules 8.14.3(b) or 8.14.3(c) or by any other means in the events referred to in those subrules shall, after the deduction or payment of any costs of recovery, be applied by the Company so as to compensate the Cell affected.

8.14.6 In the event of any Cellular Assets attributable to a Cell being seized, attached, levied or otherwise taken in execution in respect of a liability not attributable to that Cell, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the Cell affected, the Protected Cell Company shall:

- (a) cause or procure its auditor, acting as expert and not as arbitrator, to certify the value of the assets lost to the Cell affected; and
- (b) transfer or pay to the Cell affected, from the Cellular or Non-Cellular Assets to which the liability was attributable, assets or sums sufficient to restore to the Cell affected the value of the assets lost.

8.14.7 Where under subrule 8.14.3(b) a Protected Cell Company is obliged to make a transfer or payment from Cellular Assets attributable to a Cell of the Company, and those assets are insufficient, the Company shall so far as possible make up the deficiency from its Non-Cellular Assets.

### 8.15. Availability of Cellular Assets to creditors

8.15.1 Without prejudice to the provisions of rules 8.14 and 8.16:

- (a) Cellular Assets attributable to a particular Cell:
  - (i) are available only to the creditors of the Protected Cell Company who are creditors in respect of that Cell and who are thereby entitled to have recourse to the Cellular Assets attributable to that Cell; and
  - (ii) shall be absolutely protected from the Shareholders of the Protected Cell Company and from the creditors of the Protected Cell Company who are not creditors in respect of that Cell and who accordingly are not entitled to have recourse to the Cellular Assets attributable to that Cell; and
- (b) Cellular Assets not attributable to a particular Cell of a Protected Cell Company shall not be used to satisfy any liability attributable to that Cell.

### 8.16. Satisfaction of liabilities attributable to Cells

8.16.1 Where any liability arises which is attributable to a particular Cell of a Protected Cell Company:

- (a) the Cellular Assets attributable to that Cell shall be used to satisfy the liability; and
- (b) a creditor in respect of that Cell shall not be entitled to have recourse against the Cellular Assets of any other Cell or the Non-Cellular Assets of the Protected Cell Company.

8.16.2 Where any liability arises which is not attributable to a particular Cell of a Protected Cell Company:



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- (a) the liability shall be satisfied solely from the Protected Cell Company's Non-Cellular Assets; and
- (b) a creditor in respect of that liability shall not be entitled to have recourse to the Cellular Assets of any Cell of the Protected Cell Company.

### 8.17. Disputes as to liabilities attributable to Cells

- 8.17.1 The Court, on the application of the Protected Cell Company or of the creditor in dispute with the Protected Cell Company, and without prejudice to any other right or remedy of any Person, may issue a declaration in the matter of any dispute relating to any one or more of the following:
- (a) whether any right is or is not in respect of a particular Cell;
  - (b) whether any creditor is or is not a creditor in respect of a particular Cell;
  - (c) whether any liability is or is not attributable to a particular Cell; or
  - (d) the amount to which any liability is limited.

### 8.18. Transfer of Cellular Assets from Protected Cell Company

- 8.18.1 In this rule 8.18, a Cell Transfer Order is an order of the Court authorising the transfer of Cellular Assets attributable to any Cell, but not the Non-Cellular Assets, to another Person, wherever resident or incorporated, and whether or not a Protected Cell Company.
- 8.18.2 Subject to subrule 8.18.3, no transfer of Cellular Assets attributable to a Cell of a Protected Cell Company may be made except under the authority of, and in accordance with the terms and conditions of, a Cell Transfer Order.
- 8.18.3 Nothing in this rule 8.18 requires a Protected Cell Company to obtain a Cell Transfer Order to invest, and change investment of, Cellular Assets or otherwise to make payments or transfers from Cellular Assets in the ordinary course of the Protected Cell Company's business.
- 8.18.4 In considering whether or not to make a Cell Transfer Order in relation to a Cell, the Court may:
- (a) require the applicant to establish to the satisfaction of the Court:
    - (i) that the creditors of the Company entitled to have recourse to the Cellular Assets attributable to the Cell consent to the transfer; or
    - (ii) that those creditors would not be unfairly prejudiced by the transfer; and
    - (iii) hear the representations, if any, of the AFSA thereon.
- 8.18.5 The Court, on hearing an application for a Cell Transfer Order, may make an interim order or an order adjourning the hearing, conditionally or unconditionally.
- 8.18.6 The Court may attach such conditions as it thinks fit to a Cell Transfer Order, including conditions as to the discharging of claims of creditors entitled to have recourse to the Cellular Assets attributable to the Cell in relation to which the order is sought.
- 8.18.7 The Court may make a Cell Transfer Order in relation to a Cell notwithstanding that:
- (a) a Receiver, Administrative Receiver, or Liquidator has been appointed to act in respect of the Protected Cell Company; or
  - (b) a Cell Receiver has been appointed in respect of the Cell or any other Cell of the Protected Cell Company.
- 8.18.8 A transfer under a Cell Transfer Order of Cellular Assets attributable to a Cell of a Protected Cell Company shall not of itself entitle creditors of that Protected Cell Company to have recourse to the assets of the person to whom the Cellular Assets were transferred.



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8.18.9 The provisions of this rule 8.18 are without prejudice to any power of a Protected Cell Company lawfully to make payments or transfers from the Cellular Assets attributable to any Cell to a person entitled, in conformity with the provisions of this Part 8 (Protected Cell Companies).8.18 are without prejudice to any power of a Protected Cell Company lawfully to make payments or transfers from the Cellular Assets attributable to any Cell to a person entitled, in conformity with the provisions of this Part 8 (Protected Cell Companies).



## **PART 9: RESTRICTED SCOPE COMPANIES**

### **9.1. Restricted Scope Companies prescribed type of Company for Companies Regulations**

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

### **9.2. Restricted Scope Companies: modification of Companies Regulations and general powers of AFSA**

9.2.1 This Part is additional to the provisions of any AIFC Regulations or any other provisions of AIFC Rules that may apply to the registration of a Restricted Scope Company, or that may apply to the operations and affairs and winding up of a Restricted Scope Company, including, for example, the provisions of the AIFC Companies Regulations, the AIFC Financial Services Framework Regulations, the AIFC Insolvency Regulations and the AIFC Insolvency Rules.

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

### **9.3. Restricted Scope Companies limited to certain Private Companies**

9.3.1 A Company shall only be permitted to be incorporated or registered, and operate, as a Restricted Scope Company if:

- (a) it is a Private Company (except in respect of such requirements as may be specifically disapplied in relation to Restricted Scope Companies); and
- (b) it is a subsidiary undertaking of another body corporate that prepares and publishes group accounts under the AIFC Companies Regulations or such other enactment as the Registrar may recognise for the purposes of this section; or
- (c) it is directly or indirectly wholly-owned by:
  - (i) one person; or
  - (ii) a group of persons who are members of the same family.

(for the purposes of this subsection (ii) the members of a person's family are that person's parents, spouse and children (including step-children)); or

- (d) it is subsidiary undertaking of a body corporate that has been formed by a Decree of the President of the Republic of Kazakhstan.

9.3.2 A Restricted Scope Company must not conduct activities that are the conduct of Financial Services under the AIFC Financial Services Framework Regulations unless it is authorised by the AFSA to conduct the activities.

### **9.4. Revocation of Restricted Scope Company status**

9.4.1 The Registrar of Companies may revoke the status of a Restricted Scope Company as a Restricted Scope Company if:

- (a) the Restricted Scope Company no longer complies with subrule 9.3.1; or
- (b) the Restricted Scope Company asks the Registrar to revoke its status as a Restricted Scope Company.

9.4.2 Before acting under subrule 9.4.1(a), the Registrar of Companies must, by Written notice given to the Restricted Scope Company, inform the Restricted Scope Company:

- (a) that the Registrar is considering whether to revoke its status as a Restricted Scope Company; and



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- (b) that the Restricted Scope Company may make representations, in the way stated in the notice, about the matter within the period specified in the notice.
- 9.4.3 The Registrar of Companies must consider any representations made by the Restricted Scope Company in accordance with the notice (if any) given to the Restricted Scope Company under subrule 9.4.2.
- 9.4.4 If the Registrar of Companies revokes the status of the Restricted Scope Company as a Restricted Scope Company, the Restricted Scope Company ceases to be registered as a Restricted Scope Company and these Rules cease to apply to it as a Restricted Scope Company, but it remains a Private Company.
- 9.4.5 If the Registrar of Companies revokes the status of the Restricted Scope Company as a Restricted Scope Company, the Registrar must make appropriate changes to the registers kept by the Registrar under these Rules and the AIFC Companies Regulations.

### 9.5. **Restricted Scope Company: Formation**

#### 9.5.1 **Articles of Association**

- (a) The Articles of Association of a Restricted Scope Company must state that it is a Restricted Scope Company.
- (b) If an amendment of the Articles of Association of a Restricted Scope Company is submitted to the Registrar of Companies under section 19(2) of the AIFC Companies Regulations, the Registrar may object to the amendment if the Registrar considers that the amendment is inappropriate having regard to the nature of a Restricted Scope Company.

#### 9.5.2 **Incorporation and Registration of Restricted Scope Companies**

- (a) Notwithstanding section 15(1) (Decision on incorporation application etc.) of the AIFC Companies Regulations, if an application is made under the AIFC Companies Regulations for the incorporation of a Private Company as a Restricted Scope Company, the Registrar of Companies must incorporate it as a Restricted Scope Company if satisfied that it is eligible to be registered as a Restricted Scope Company.
- (b) The certificate of incorporation issued under section 16(1)(a) (Effect of incorporation) of the AIFC Companies Regulations for a Private Company registered as a Restricted Scope Company must state that the Company is registered as a Restricted Scope Company.
- (c) On the incorporation of a Restricted Scope Company and registration of its Articles of Association, the Registrar of Companies must, in addition to entering the name of the company in the Register of Companies under section 16(1)(c) of the AIFC Companies Regulations, enter the name of the company in the Restricted Scope Companies Register.
- (d) An application for the registration of a Private Company as a Restricted Scope Company (other than on incorporation) must be filed with the Registrar by the Private Company. If such an application is made under this Part for the registration of a Private Company as a Restricted Scope Company, the Registrar of Companies must: (i) register it as a Restricted Scope Company if satisfied that it is eligible to be registered as a Restricted Scope Company; (ii) issue a certificate to the Restricted Scope Company in respect of such registration; and (iii) enter the name of the company in the Restricted Scope Companies Register.
- (e) For section 204(1) (Public registers) of the AIFC Companies Regulations, the Registrar of Companies must keep and publish a separate register of current and past registrations of Restricted Scope Company (the Restricted Scope Company Register) (in place of





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any other public register), by recording in the relevant register the following details, so far as they may be relevant, in relation to each Restricted Scope Company that is, or has been, incorporated or registered in the AIFC:

- (i) current name;
- (ii) identification number;
- (iii) date of registration;
- (iv) type of company;
- (v) each former name;
- (vi) the date of registration of each change of name;
- (vii) the address of the current registered office;
- (viii) the address of each of the former registered office;
- (ix) the date of registration of each change of registered office.

The Registrar shall not make any information in relation to a Restricted Scope Company public or publicly available, other than is set out above in this sub-rule 9.5.2(e).

### 9.5.3 Name

A Restricted Scope Company must use only the name of the Company that is entered in the Register, and must ensure that, whenever it uses that name, the name is immediately followed by the words 'Restricted Limited' or 'Restricted Ltd.' To remove any doubt, this requirement is in place of the requirement in section 37(1) of the AIFC Companies Regulations, but does not otherwise limit the application of AIFC Companies Regulations.

## 9.6 Disapplication of other provisions of Companies Regulations and Companies Rules

9.6.1 In accordance with section 143(2)(b) (Incorporation of prescribed type of Company) of the AIFC Companies Regulations:

- (a) the application of Section 56 (Inspection of registers) of the AIFC Companies Regulations is modified in relation to its application to a Restricted Scope Company such that a Restricted Scope Company has no obligation to ensure that its Register of Shareholders and its Register of Debt Security Holders (if any) are open for inspection by any Person. Shareholders or Debt Security Holders may apply to inspect the Register of Shareholders and its Register of Debt Security Holders (if any), respectively, such application to comply with Section 56(3) of the AIFC Companies Regulations, provided that the Restricted Scope Company may decline such application at its discretion;
- (b) Section 95 (Meeting requests) of the AIFC Companies Regulations shall not apply to a Restricted Scope Company; and
- (c) Section 131(5) (Accounts) of the AIFC Companies Regulations shall not apply to a Restricted Scope Company.

9.6.2 Provisions of the AIFC Companies Regulations and/or AIFC Companies Rules relating to Recognised Companies, transfer of incorporation to the AIFC, Protected Cell Companies and Investment Companies, do not apply to a Restricted Scope Company.





**SCHEDULE 1: STANDARD  
ARTICLES STANDARD ARTICLES**

**Standard Articles for [insert name]**

**1. INTERPRETATION**

1.1. In these Articles, unless the contrary intention appears:

**Companies Regulations** means the AIFC Companies Regulations and includes the AIFC Companies Rules.

**Directors** means the Directors for the time being of the Company or, as the case may be, those Directors assembled as a board or as a committee of the board.

**Ordinary Resolution** 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 has been duly given, and, if the Company is a Private Company, includes an Ordinary Resolution in writing passed under section 100 (Resolution in writing of Private Companies) of the Companies Regulations.

**Register of Directors** means the Register of Directors of the Company under the Companies Regulations.

**Register of Shareholders** means the Register of Shareholders of the Company under the Companies Regulations.

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

**Special Resolution** 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 provided that notice specifying the intention to propose the resolution as a Special Resolution has been duly given, and, if the Company is a Private Company, includes a Special Resolution in writing passed under section 100 (Resolutions in writing of Private Companies) of the Companies Regulations.

**these Articles** means these Articles of Association.

1.2. Terms used in these Articles have the same meanings as they have, from time to time, in the Companies Regulations, or the relevant provisions of the Companies Regulations, unless the contrary intention appears.

1.3. In these Articles, words in the singular include the plural and words in the plural include the singular, unless the contrary intention appears.

1.4. In these Articles, words indicating gender include every other gender, unless the contrary intention appears.

1.5. In these Articles, the word **may**, or a similar term, used in relation to a Function indicates that the Function may be Exercised or not Exercised, at discretion.

1.6. In these Articles, the word **must**, or a similar term, used in relation to a Function indicates that the Function is required to be Exercised.

1.7. In these Articles, a reference to Regulations or Rules is a reference to Regulations or Rules of the Astana International Financial Centre and, unless the contrary intention appears, a reference to particular Regulations or Rules includes a reference to those Regulations or Rules as amended from time to time.



## AIFC COMPANIES RULES

- 1.8. In these Articles, a reference to an amount of money is a reference to the amount in the currency of the United States of America.
- 1.9. For these Articles, if an Ordinary Resolution is expressed to be required for any purpose, then, subject to the Companies Regulations, a Special Resolution is also effective for that purpose.

### **2. COMPANY NAME AND TYPE**

- 2.1. The Company's name is *[insert Company name]*.
- 2.2. The Company is *[insert type of Company e.g. a Public Company/Private Company]*.

### **3. COMPANY REGISTERED OFFICE**

The address of the registered office of the Company is *[insert address in the Astana International Financial Centre]*.

### **4. NATURE OF COMPANY'S BUSINESS**

The Company is to conduct:

- A. *[insert description of the nature of the business to be conducted by the Company]*; and
- B. any other lawful activity for which companies may be incorporated under the Companies Regulations.

### **5. SHARE CAPITAL**

- 5.1. The authorised share capital of the Company is *[Insert authorised share capital in United States Dollars]*.
- 5.2. The initial share capital of the Company is *[Insert amount in United States Dollars]* represented by *[Insert number of Shares]* Shares, with a nominal value of *[Insert amount in United States Dollars]*.
- 5.3. The initial shareholding of the Incorporators is as follows: *[Insert details of the initial shareholdings of the Incorporators]*:  
*[Insert (in paragraphs numbered consecutively) the information required for each Incorporator by the Companies Regulations (see section 13(4)(g))]*
- 5.4. *[Insert (in paragraphs numbered consecutively) the details required by the Companies Regulations (see section 13(4)(h)) of the individuals who are to serve as the Directors and the Secretary]*



## AIFC COMPANIES RULES

5.5. The capital of the Company must be divided into Shares with no par value.

### **6. COMPANY'S SHARES**

6.1. Subject to the provisions of the Companies Regulations and without affecting any rights, entitlements or restrictions attached to existing Shares, a Share may be issued with the rights, entitlements or restrictions that the Company may decide by Ordinary Resolution.

6.2. Subject to the Companies Regulations, the Company may issue, or convert existing non-redeemable Shares, whether Allotted or not, into redeemable Shares at the discretion of the board of Directors.

6.3. The Company must not recognise a Person as holding a Share on trust and, except as otherwise provided by these Articles or the Companies Regulations, the Company is not bound by, and must not recognise, any interest in a Share except an absolute right of ownership.

### **7. SHARE CERTIFICATES**

7.1. Unless the conditions of the Allotment of Shares provide otherwise, on becoming the Shareholder of any Shares, a Person is entitled, free of charge:

- (a) to 1 share certificate for all the Shares of each class held by the Person; and
- (b) to 1 share certificate for any additional Shares of any class transferred to the Person; and
- (c) on transferring a part of the Person's Shares of any class, to a certificate for the balance of the holding.

7.2. A Shareholder is entitled to additional certificates, each for 1 or more of the Shareholder's Shares, on payment for every certificate after the first, of the reasonable amount (if any) decided by the Directors of the Company.

7.3. Every certificate must specify the number, class and distinguishing numbers (if any) of the Shares to which it relates, and the amount or respective amounts Paid-up on them.

7.4. The Company is not required to issue more than 1 certificate for Shares held jointly by 2 or more Persons, and delivery of a certificate to a joint holder is sufficient delivery to all of them.

7.5. If a share certificate is lost, stolen or destroyed, the Company may replace it if the Company receives the evidence of the shareholding right that it requires, the indemnity (if any) that it requires, and is paid the reasonable amount (if any) decided by the Directors for the expenses incurred by the Company in investigating the evidence and providing the replacement certificate.

7.6. If a share certificate has become damaged or worn, the Company may replace it if the Company is given the certificate and is paid the reasonable amount (if any) decided by the Directors for the expenses incurred by the Company in providing the replacement certificate.

### **8. TRANSFER OF SHARES**

8.1. Subject to the Companies Regulations, the instrument of transfer of a Share in the Company may be in any form approved by the Directors of the Company. The instrument of transfer must be executed by or on behalf of the transferor.

8.2. The Company may refuse to register the transfer of a Share in the Company only if the instrument of transfer, the share certificate, and any other evidence that the Directors may reasonably require, are not duly filed at the registered office of the Company or the office of the agent that maintains the Company's Register of Shareholders.

8.3. The Directors of the Company may suspend the registration of transfers of Shares in the



## AIFC COMPANIES RULES

Company at the times and for the periods (not exceeding 30 days in any year), as decided by them, acting reasonably.

- 8.4. The Company may charge a reasonable fee for the registration of any instrument of transfer.
- 8.5. The Company must keep any instrument of transfer that is registered.

### **9. TRANSMISSION OF SHARES**

- 9.1. If a Shareholder dies, the Shareholder's Personal Representative, or, if the Shareholder was a joint holder, the survivor or survivors, are the only Persons who may be recognised by the Company as having title to the Shareholder's Shares.
- 9.2. If a Person becomes entitled to a Share as a result of the death or bankruptcy of a Shareholder and gives notice to the Company of the entitlement, the Person must be registered as a Shareholder in relation to the Share. On registration, the Person has the same rights as other Shareholders of the same class of Shares.

### **10. ALTERATION OF SHARE CAPITAL**

- 10.1. The Company may, by Special Resolution:
  - (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.
- 10.2. Any fractions of Shares resulting from a consolidation of Shares may be sold by the Directors of the Company on behalf of the Shareholders and the net proceeds distributed proportionately among the Shareholders.
- 10.3. The Company may, in accordance with the Companies Regulations, reduce its share capital in any way and the terms that it may decide.

### **11. PURCHASE OF OWN SHARES**

Subject to the provisions of the Companies Regulations, the Company may purchase its own Shares.

### **12. GENERAL MEETINGS**

- 12.1 The Directors of the Company may call General Meetings.
- 12.2 On a Shareholders' request under section 95 of the Companies Regulations, the Directors or, if appointed, the Secretary, of a Company must 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.

### **13. REQUISITION AND NOTICE OF GENERAL MEETINGS**

- 13.1. Subject to the Companies Regulations, if the Company is a Public Company, a General Meeting of the Company (other than an Annual General Meeting or adjourned Annual General Meeting) must be called by at least 14 days Written notice to all the Shareholders, the Directors and the auditor.
- 13.2. If the Company is a Public Company, an Annual General Meeting, or adjourned Annual General Meeting, of the Company must be called by at least 21 days Written notice to all the Shareholders,



## AIFC COMPANIES RULES

the Directors and the auditor.

- 13.3. Subject to the Companies Regulations, a notice of a General Meeting must specify the time and place of the meeting, the general nature of any matters to be considered, and any proposed Resolutions of which notice has been duly given. A notice of an Annual General Meeting must state that the meeting is an Annual General Meeting to the Company or to be proposed by the Company and whether any of them is to be proposed as a Special Resolution.
- 13.4. The proceedings of a General Meeting are not invalid solely because of the inadvertent failure to give notice of the meeting to, or the failure to receive notice of the meeting by, any Person entitled to receive the notice.

### 14. PROCEEDINGS AT GENERAL MEETINGS

- 14.1. No General Meeting of the Company may take place unless there is a quorum. Unless the Company has only a single Shareholder, 2 Shareholders personally present or represented by proxy are a quorum.
- 14.2. If a quorum is not present at a General Meeting within half an hour after the time specified in the notice calling the meeting (the *meeting start time*), the meeting must be adjourned to a place and time decided by the Directors of the Company. If during the meeting a quorum ceases to be present, the meeting must be adjourned to a place and time decided by the Directors.
- 14.3. The Chair of the board of Directors of the Company chairs the meeting. However, if the Chair of the board of Directors is not present or willing to act within 15 minutes after the meeting start time, another Director elected by the Directors present must chair the meeting. If no Directors are present or willing to chair the meeting, the Shareholders present must elect a Shareholder present to chair the meeting.
- 14.4. Every Director of the Company is entitled to attend and speak at any General Meeting and at any separate meeting of the Shareholders of any class of Shares in the Company, whether or not the Director is a Shareholder or a Shareholder of that class of Shares.
- 14.5. The Person chairing the meeting (the *meeting chair*) may adjourn the meeting with the consent of the majority of the votes at the meeting. A matter must not be considered at the adjourned meeting if the matter could not have been considered at the meeting had the adjournment not taken place. It is not necessary for notice to be given of the adjourned meeting unless the meeting was adjourned for 14 days or longer. If the meeting was adjourned for 14 days or longer, at least 7 days notice of the meeting must be given. The notice must specify the time and place of the adjourned meeting, the general nature of any matters to be considered, and any proposed Resolutions of which notice has been duly given.
- 14.6. Unless a poll is demanded, a resolution put to the vote must be decided on a show of hands. A poll may be demanded, before or on the declaration of the result of a vote by show of hands:
- (a) by the meeting chair; or
  - (b) by at least 2 Shareholders having the right to vote at the meeting; or
  - (c) by a Shareholder representing not less than 5% of the total voting rights of all the Shareholders having the right to vote at the meeting.
- 14.7. Unless a poll is demanded, the meeting chair may declare that a resolution has been carried or lost by a particular majority. The entry in the minutes of the meeting of that declaration is conclusive evidence of the result of the resolution.
- 14.8. The meeting chair may consent to the withdrawal of a demand for a poll.
- 14.9. A poll must be taken in the way the meeting chair directs and the result is the resolution of the meeting at which the poll was demanded.



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- 14.10. A poll demanded on the election of the Person who is to chair the meeting or on an adjournment must be taken immediately. A poll demanded on any other question must be taken as the meeting chair directs, but not more than 30 days after the day the poll is demanded. The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll is demanded.
- 14.11. If a poll demanded at a meeting is not taken at the meeting, at least 7 days Written notice must be given of the time and place at which the poll is to be taken, unless the time and place is announced at the meeting.
- 14.12. If the Company is a Private Company, resolution in writing may be passed in accordance with the Companies Regulations.

### 15. VOTES OF SHAREHOLDERS

- 15.1. On a show of hands, every Shareholder present, including the representative of a Body Corporate Shareholder, has 1 vote. On a poll, every Shareholder has 1 vote for every Share held. This Article is subject to any rights or restrictions attached to any Shares.
- 15.2. Joint Shareholders may only exercise 1 vote or 1 vote per Share, as the case may be. If more than 1 vote is cast by joint Shareholders, only the vote of the joint Shareholder whose name appears first on the Company's Register of Shareholders may be taken into account.
- 15.3. If a Shareholder of the Company has a personal representative appointed because of a physical or mental disability, the personal representative may exercise the voting rights of the Shareholder if the personal representative has given notice to the Directors in the form of proxy used by the Company and within the time limit for filing proxies before any meeting being held or vote being taken.
- 15.4. An objection may only be raised at a General Meeting to the right of any Person to vote at the meeting or on a poll arising from the meeting. The meeting chair must rule on the objection unless the objection relates to the meeting chair. The decision of the meeting chair is final.
- 15.5. A Shareholder may vote on a poll by proxy.
- 15.6. An instrument appointing a proxy to vote at a General Meeting, or on a poll arising from a General Meeting, must be in Writing in a form approved by the Company and distributed with the notice of a meeting or poll. The form must include a section allowing the Shareholder to direct the proxy on how the proxy must act.
- 15.7. An instrument appointing a proxy must be deposited at the registered office of the Company at least 48 hours before the General Meeting at which the proxy is to be exercised. For a poll that is not being taken immediately but sometime after it is demanded, an instrument appointing a proxy may be deposited at the poll with the meeting chair, the Secretary or any Director present or at any time before the poll at the registered office of the Company.
- 15.8. A vote given or poll demanded by proxy is valid despite the revocation of the proxy by the Shareholder who appointed the proxy unless the Company receives notice from the Shareholder before the vote is taken or the poll is demanded.

### 16. NUMBER OF DIRECTORS

If the Company is a Private Company, the Company must have at least 1 Director. If the Company is a Public Company, the Company must have at least 2 Directors.

### 17. ALTERNATE DIRECTORS

- 17.1. The Chair of the board of Directors or another Director of the Company (the *appointor*) may appoint any other Director, or any other Person approved by the Directors, as the appointor's alternate (the *appointee*), and may revoke the appointment at any time. The appointee may Exercise all the Functions of the appointer as a Director and, if the appointor is the Chair of the



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board of Directors, as the Chair, but is not entitled to remuneration.

- 17.2. The appointor and appointee must both be given notice of all Directors meetings of which the appointor is entitled to receive notice.
- 17.3. The appointee is entitled to attend and vote at Directors meetings, and counts towards the quorum, if the appointor is absent.
- 17.4. The appointee is not the agent of the appointor and the appointor is not responsible for anything done or omitted to be done by the appointee.
- 17.5. The appointee holds office for as long as the appointor holds office as a Director unless the appointee's appointment is revoked by the appointor.
- 17.6. The appointor must give notice of the appointment of the appointee, and any revocation of the appointment, to the Company.

### **18. POWERS OF DIRECTORS**

- 18.1. Subject to the Companies Regulations and these Articles, the business of the Company must be managed by the Directors. No amendment of these Articles invalidates any act of a Director or the Directors.
- 18.2. The Directors of the Company may appoint a Person to be the agent of the Company.

### **19. DELEGATION OF DIRECTORS' POWERS**

The board of Directors of the Company may delegate any of its powers to a managing Director, executive Director or a committee of Directors.

### **20. APPOINTMENT AND RETIREMENT OF DIRECTORS**

- 20.1. At the first Annual General Meeting of the Company, all Directors must retire from office. At every subsequent Annual General Meeting at least one third, or number nearest to one third, of the Directors who are subject to retirement by rotation must retire.
- 20.2. The Directors subject to retirement by rotation are those that have been longest in office since their last appointment. For Directors appointed on the same day, the Director or Directors to retire must be decided by whose name appears first on the Company's Register of Directors.
- 20.3. However, a Director remains in office if the Director is willing to remain in office and the Company, at the meeting at which the Director retires by rotation, resolves not to fill the vacancy.
- 20.4. A Person (other than a Director retiring by rotation) must not be appointed a Director of the Company at a General Meeting unless the Person has been recommended by the Directors or a Shareholder and the Person's details have been included in the notice of meeting at which the appointment is considered. The details must include at least the information that would be included in the Company's Register of Directors if the Person were to be appointed.
- 20.5. Additional Directors may be appointed by the Company by resolution if the total number of Directors does not exceed any maximum number of Directors prescribed by the Companies Regulations or these Articles.
- 20.6. A Director appointed under subarticle 20.5 holds office only until the next Annual General Meeting. The Director must retire at that meeting, but may be reappointed in accordance with these Articles.

### **21. DISQUALIFICATION AND REMOVAL OF DIRECTORS**

A Director's office is automatically vacated if the Director:

- (a) is prohibited by the Companies Regulations from being a Director; or
- (b) becomes bankrupt; or





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- (c) is, because of any mental or physical disability, incapable (otherwise than on a temporary basis) of performing the duties of a Director; or
- (d) is absent from 3 consecutive meetings of the board of Directors, except on leave of absence given by the board of Directors; or
- (e) resigns by Written notice given to the Company; or
- (f) is removed by a Resolution of the Company.

### 22. REMUNERATION AND EXPENSES OF DIRECTORS

A Director is entitled to be paid the remuneration that the Company determines by Resolution and is entitled to be reimbursed all expenses reasonably incurred in carrying out of the duties of a Director.

### 23. DIRECTORS' APPOINTMENTS

Subject to the Companies Regulations, the Directors of the Company may appoint 1 or more Directors to the office of managing Director or to any other executive office under the Company. An appointment may be made on the terms that the Directors determine. Any appointment of a Director to an executive office ends if the Director ceases to be a Director. A managing Director and a Director holding any other executive office are not subject to retirement by rotation.

### 24. BENEFITS FOR DIRECTORS ETC.

The Directors of the Company may provide benefits, including gratuities and pensions, of any kind for any present or past Director, any Shareholder or the family of any present or past Director or any Shareholders.

### 25. PROCEEDINGS OF DIRECTORS

- 25.1. Subject to these Articles, the Directors of the Company may conduct their proceedings (including their meetings) as they consider appropriate.
- 25.2. The board of Directors is to meet at the times and places that it decides.
- 25.3. However, a Director may, and the Secretary at the request of a Director must, call a meeting of the board of Directors.
- 25.4. A question arising at a meeting of the Board of Directors is to be decided by a majority of Directors present, in person or by alternate, and voting. However, the Person chairing the meeting (the *meeting chair*) also has a casting vote if the votes on any question are equal.
- 25.5. Business may be conducted at a meeting of the board of Directors only if a quorum is present. A quorum is 2 or, if the Directors have fixed another number, that number. If a Director is required not to vote on a resolution because of a conflict of interest, the Director must not be counted in working out whether there is a quorum in relation to the resolution.
- 25.6. If the number of Directors of the Company is less than the number fixed as the quorum, the continuing Directors or Director may act only for the purpose of filling vacancies or of calling a General Meeting.
- 25.7. The Directors of the Company must appoint a Director to be the Chair of the board of Directors and may at any time remove the Chair from that office.
- 25.8. The Chair of the board of Directors must chair all meetings of the board of Directors at which the Chair is present. If there is no Director holding office as Chair, or if the Chair is unwilling to chair a meeting or is not present, in person or by alternate, within 5 minutes after the time appointed for the meeting, the Directors present may appoint a Director present to chair of the meeting.
- 25.9. Subject to any decision of the board of Directors, a resolution in Writing signed by all the Directors of the Company (or their alternates) is as valid and effective as if it had been passed





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at a meeting of the board of Directors of the Company. The resolution may consist of several Documents in the like form each signed by 1 or more Directors (or their alternates).

- 25.10. Without limiting the duties of a Director under the Companies Regulations, a Director must not vote at a meeting of Directors on any resolution concerning a matter in which the Director has a direct or indirect conflict of interest. For this subarticle, an interest of a Director includes an interest of any Person who is connected to the Director.
- 25.11. Subject to the Companies Regulations, the Company may, by Resolution, suspend or relax any provision of these Articles prohibiting a Director from voting at a meeting of Directors.
- 25.12. An objection may only be raised at a meeting of the Directors to the right of any Person to vote at the meeting. The chair of the meeting must rule on the objection unless the objection relates to the meeting chair. The decision of the meeting chair is final.

### 26. SECRETARY

The Secretary (or each joint Secretary) of the Company is to be appointed and removed by the Directors. A Secretary holds office on the terms and conditions of appointment decided by the Directors.

### 27. MINUTES

The Directors of the Company must ensure that minutes are kept of:

- (a) all appointments of Officers made by the Directors; and
- (b) all proceedings at General Meetings, meetings of Shareholders of any class of Shares of the Company, and meetings of the Directors and committees of Directors.

The minutes of a meeting must include the names of the Directors present at the meeting.

### 28. DIVIDENDS

28.1. Subject to the Companies Regulations, the Company may, by Ordinary Resolution, declare dividends in accordance with the respective rights of the Shareholders, but no dividend may exceed the amount recommended by the Directors of the Company.

28.2. Subject to the Companies Regulations, the Directors of the Company may pay interim dividends if it appears to them that they are justified by the profits of the Company available for Distribution. If the share capital is divided into different classes, no interim dividend may be paid on Shares with deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrears. If the Directors act in good faith, the Directors do not incur any Liability to Shareholders of Shares

with preferred rights for any loss they may suffer by the lawful payment of an interim dividend on any Shares with deferred or non-preferred rights.

28.3. The Directors of the Company may recommend, and a General Meeting may declare, that a dividend may be satisfied completely or partly by the Distribution of assets. If any difficulty arises in relation to the Distribution, the Directors may determine the method of settlement.

28.4. Any dividend or other amount payable by the Company to a Person (or 2 or more Persons) in relation to a Share of the Company may be paid by cheque.

28.5. If the amount is payable to a single Person (the *relevant Person*), the cheque must be sent by post to the registered address of the relevant Person or to the Person and to the address that the relevant Person may direct in Writing. If 2 or more Persons (the *relevant Persons*) are joint holders of the Share or are jointly entitled to it, the cheque must be sent by post to the registered address of whichever of those Persons whose name appears first in the Company's Register of Shareholders or to the Person and to the address that the relevant Persons may direct in Writing.



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- 28.6. The cheque must be made payable to the order of the relevant Person or relevant Persons or to the other Person that the relevant Person or relevant Persons may direct in Writing.
- 28.7. Payment of the cheque is a good discharge to the Company.
- 28.8. Any joint holder or other Person jointly entitled to a Share of the Company may give a receipt for any dividend or other amount payable in relation to the Share.
- 28.9. No dividend or other amount payable in relation a Share of the Company bears interest unless otherwise provided by the rights attached to the share.
- 28.10. If any dividend or other amount payable in relation to a Share of the Company has remained unclaimed for 12 years from the day it became due for payment, the Directors of the Company may resolve that the amount is forfeited. If the Directors resolve that any dividend or other amount is forfeited, the dividend ceases to be owing by the Company.

### **29. INSPECTION OF ACCOUNTING RECORDS ETC.**

A Shareholder of the Company does not have a right to inspect any Accounting Records, other books or other Documents of the Company except so far as the right is provided to the Shareholder by law or the inspection is authorised by the Directors or the Company.

### **30. CAPITALISATION OF PROFITS**

The Directors may, with the authority of a Resolution of the Company:

- (a) subject to this article, resolve to capitalise any undistributed profits of the Company not required for paying any preferential dividend (whether or not they are available for Distribution) or any amount standing to the credit of the Company's share premium account or capital redemption reserve; and
- (b) appropriate the amount resolved to be capitalised to the Shareholders who would have been entitled to it if it were distributed by way of dividend and in the same proportions and apply the amount on their behalf in allotting any Shares or Debt Securities not issued as fully Paid-up Shares or debentures of the Company of a nominal amount equal to that amount; and
- (c) make by payment in cash or otherwise as the Directors decide for Shares or debentures becoming distributable under this article in fractions; and
- (d) authorise any Person to enter into a binding agreement with the Company on behalf of all the Shareholders concerned providing for the Allotment to them respectively, credited as fully Paid-up, of any Shares or debentures to which they are entitled on the capitalisation.

For paragraph (b), the share premium account, the capital redemption reserve, and any profits that are not available for Distribution may, for the purposes of this article, only be applied in allotting Shares not issued to Shareholders as fully Paid-up.

### **31. NOTICES**

- 31.1. Any notice under these Articles must be given in Writing.
- 31.2. The Company may give any notice to a Shareholder of the Company either personally or by sending it by post in a prepaid envelope addressed to the Shareholder at the Shareholder's registered address or by leaving it at that address. For the joint holders of a Share, all notices must be given to the joint holder whose name appears first in the Company's Register of Shareholders in relation to the joint holding and notice so given is sufficient notice to all the joint holders.
- 31.3. A Person present, either in person or by proxy, at any meeting is taken to have received notice of the meeting.
- 31.4. Every Person who becomes entitled to a Share of the Company is bound by any notice in relation



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to the Share.

- 31.5. Proof that an envelope containing a notice was properly addressed, prepaid and posted is conclusive evidence that the notice was given 48 hours after it was posted. A notice is taken to be given at the end of 48 hours after the envelope containing it was posted.
- 31.6. A notice may be given by the Company to the Persons entitled (or claiming to be entitled) to a Share as a result of the death or bankruptcy of a Shareholder by sending it by post to, or leaving it at, the address provided by them to the Company. Until an address has been provided to the Company, a notice may be given by the Company in relation to the Share in any way in which it might have been given if the death or bankruptcy had not happened.

### **32. INDEMNITY**

The Company must indemnify every Person who is or has been Director, other Officer or auditor of the Company in relation to any Liability incurred by the Person in defending any proceeding in relation to the Company to the extent allowed by the Companies Regulations.

### **33. AMENDMENT OF THESE ARTICLES**

These Articles may only be amended by Special Resolution.



**SCHEDULE 2: DECISION MAKING PROCEDURES FOR REGISTRAR OF COMPANIES**

**2.1. Decisions to Schedule 2 does not apply**

- 2.1.1. This Schedule does apply in relation to the making of a decision by the Registrar of Companies:
- (a) to withdraw (however described) a direction, order, prohibition or requirement; or
  - (b) to withdraw (however described) a condition, limitation or restriction imposed in relation to an approval, authorisation, licence, registration or any other permission (however described); or
  - (c) if the Person whose interests will be affected by the decision has applied for, requested, or consented in Writing to, the making of the decision.
- 2.1.2. If the Court makes a decision (including findings of fact) in relation to a Person, this Schedule does not apply in relation to the making of any decision by the Registrar of Companies in giving effect to the decision of the Court.

**2.2. Opportunity to make representations before decision made**

- 2.2.1. If the Registrar of Companies proposes to make a decision in relation to a Person (the *affected Person*), the Registrar must give the affected Person:
- (a) a Written notice (the *preliminary notice*) in accordance with subrule 2.2.2; and
  - (b) an opportunity to make representations to the Registrar in person and in Writing about the decision the Registrar proposes to make.
- 2.2.2. The preliminary notice must:
- (a) specify the proposed decision; and
  - (b) specify the reasons for the proposed decision, including any proposed findings of fact; and
  - (c) include, or be accompanied by, a copy of the relevant materials that were considered in making the proposed decision; and
  - (d) inform the Person that the Person may make representations to the Registrar of Companies about the proposed decision; and
  - (e) specify how and by when any representations may be made.
- 2.2.3. For subrule 2.2.2(c), the Registrar of Companies:
- (a) may refer to materials (instead of providing a copy) if they are already held by the affected Person or are publicly available; and
  - (b) is not required to provide materials that are the subject of legal professional privilege.
- 2.2.4. If the Registrar of Companies receives representations in accordance with the preliminary notice, the Registrar must consider the representations in making the decision.
- 2.2.5. If, after considering the representations, the Registrar of Companies decides not to make the proposed decision, the Registrar must give the affected Person Written notice of that decision.
- 2.2.6. If the Registrar of Companies is satisfied that any delay likely to arise as a result of complying with this rule in relation to the making of a decision in relation to the affected Person would be prejudicial to the interests of direct or indirect users of Financial Services or otherwise prejudicial to the interests of the AIFC:
- (a) this rule does not apply in relation to the making of the decision; but
  - (b) the Registrar must provide the affected Person with an opportunity to make



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representations in accordance with rule 2.3 after the decision has been made.

### **2.3. Opportunity to make representations after decision made**

- 2.3.1. This rule applies in relation to the making of a decision by the Registrar of Companies in relation to a Person (the *affected Person*) if rule 2.2 (Opportunity to make representations before decision made) did not apply to the making of the decision because of rule 2.2.6.
- 2.3.2. The Registrar of Companies must:
  - (a) provide the affected Person with an opportunity to make representations to the Registrar in person and in Writing within 14 days, or any further period allowed by the Registrar, after the day the affected Person is given Written notice of the decision under section 202 (Notification of Registrar's decisions and reasons) of the AIFC Companies Regulations; and
  - (b) in that notice, inform the affected Person that the affected Person may make representations about the decision and specify how and by when any representations may be made.
- 2.3.3. If the Registrar of Companies receives representations within the period specified in the notice, the Registrar must consider the representations in deciding whether to confirm, withdraw or vary the decision.
- 2.3.4. To remove any doubt, rule 2.2 does not apply to the making of a decision under subrule 2.3.3.



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### SCHEDULE 3: FINE LIMITS

Note: See rule 7.4.

#### 3.1. Table of fine limits

The following table sets the maximum fines that may be imposed for certain Contraventions of the AIFC Companies Regulations:

| <b>column 1<br/>item</b> | <b>column 2<br/>provision contravened</b> | <b>column 3<br/>relevant section heading</b>  | <b>column 4<br/>maximum fine<br/>US\$</b> |
|--------------------------|---|---|---|
| 1                        | 7   | Prohibition against conduct of business without incorporation or registration in the AIFC | 50,000                                    |
| 2                        | 8(2)                                      | Certificates  | 25,000                                    |
| 3                        | 17  | Notification of change in Registered Details of Company                                   | 2,000                                     |
| 4                        | 20  | Copies of Articles of Association for Shareholders  | 10,000                                    |
| 5                        | 21  | Prohibition against use of misleading, deceptive or conflicting Company names             | 15,000                                    |
| 6                        | 22(1) or (2)                              | Change of Company name  | 15,000                                    |
| 7                        | 23(3)                                     | Power to require change of name   | 25,000                                    |
| 8                        | 24(1) or (3)                              | Registered office and conduct of business   | 25,000                                    |
| 9                        | 25  | Particulars in Company communications   | 5,000                                     |
| 10                       | 26(1) or (3)                              | Annual returns  | 10,000                                    |
| 11                       | 28(3)                                     | Filing of Special Resolutions and certain other Resolutions and agreements                | 5,000                                     |
| 12                       | 37  | Name of Private Company   | 10,000                                    |
| 13                       | 38  | Name of Public Company  | 15,000                                    |
| 14                       | 44(3)                                     | Alteration of share capital   | 10,000                                    |
| 15                       | 46(5) or (6)                              | Non-cash consideration for Shares in Public Company                                       | 10,000                                    |
| 16                       | 48  | Shareholders' pre-emption rights  | 25,000                                    |
| 17                       | 50(1)                                     | Prohibition of public offers by Private Companies   | 30,000                                    |
| 18                       | 52  | Register of Shareholders  | 10,000                                    |
| 19                       | 53  | Register of Debt Security Holders   | 10,000                                    |
| 20                       | 54  | Transfer and registration of Shares and Debt Securities                                   | 10,000                                    |
| 21                       | 55  | Place where registers must be kept  | 10,000                                    |
| 22                       | 56(1) or (5)                              | Inspection of registers   | 10,000                                    |
| 23                       | 57(4)                                     | Rectification of registers  | 10,000                                    |



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|    |   |   |        |
|----|---|---|--------|
| 24 | 58  | Share certificates  | 10,000 |
| 25 | 60(5) (including 60(5) as applied by section 61(5)) | Power to issue redeemable Shares  | 10,000 |
| 26 | 61  | Power of Company to purchase its own Shares                                   | 10,000 |
| 27 | 63  | Prohibition on financial assistance to acquire Shares                         | 15,000 |
| 28 | 64(6)   | Reduction of Share Capital  | 15,000 |
| 29 | 65(3)   | Reduction of Share Capital by Private Company supported by solvency statement | 10,000 |
| 30 | 66(7)   | Reduction of Share Capital by Special Resolution confirmed by Court order     | 10,000 |
| 31 | 72  | Restrictions on Distributions   | 20,000 |



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|    |               |  |        |
|----|---------------|--|--------|
| 32 | 90            | Register of Directors and Secretaries  | 15,000 |
| 33 | 92(4)         | Disqualification orders  | 25,000 |
| 34 | 94(2)         | Annual General Meeting   | 30,000 |
| 35 | 96(2)         | Registrar's power to call meeting in default                                       | 15,000 |
| 36 | 106(4) or (5) | Right of The Offeror to buy out minority Shareholders                              | 10,000 |
| 37 | 108(3)        | Right of minority Shareholder to be bought out by The Offeror                      | 10,000 |
| 38 | 123           | Grounds for opinion relating to merger   | 25,000 |
| 39 | 124(5)        | Power of Company to compromise with Creditors and Shareholders                     | 25,000 |
| 40 | 125(5)        | Information relating to compromise to be circulated                                | 15,000 |
| 41 | 129           | Accounting Records of Companies  | 25,000 |
| 42 | 131           | Accounts   | 10,000 |
| 43 | 132(2)        | Provision of copy of accounts to Shareholders                                      | 5,000  |
| 44 | 133(4)        | Directors' report for Public Companies   | 10,000 |
| 45 | 136(2)        | Appointment and removal of Auditors  | 15,000 |
| 46 | 137           | Auditor's report to Company  | 15,000 |
| 47 | 138(1) or (6) | Auditors' Functions  | 10,000 |
| 48 | 139           | Resignation of Auditor   | 15,000 |
| 49 | 140(2)        | Cooperation with auditors  | 5,000  |
| 50 | 144(1)        | Foreign Companies  | 50,000 |
| 51 | 147           | Requirements of Recognised Company   | 15,000 |
| 52 | 148           | Notification of change in Registered Details of Recognised Company                 | 15,000 |
| 53 | 149           | Accounting Records of Recognised Companies   | 25,000 |
| 54 | 160(5) or (6) | Powers of Inspectors to obtain information and Documents etc.                      | 25,000 |
| 55 | 162(1)        | Obstructing or hindering Inspectors  | 15,000 |
| 56 | 196(1)        | Obligation of disclosure to Registrar  | 10,000 |
| 57 |               | <i>[intentionally omitted]</i>   |        |
| 58 | 200           | Giving false or misleading information to Registrar etc.                           | 50,000 |
| 59 | 201           | Compliance with orders etc. of Registrar   | 25,000 |
| 60 | 179-3(5)      | Notice in respect of Ultimate Beneficial Ownership                                 | 10,000 |
| 61 | 179-3(6)      | Giving false or misleading information in respect of Ultimate Beneficial Ownership | 50,000 |





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|    |           |   |        |
|----|-----------|---|--------|
| 62 | 179-4(8)  | Requirements relating to Ultimate Beneficial Ownership Register | 10,000 |
| 63 | 179-6(5)  | Duty of Nominee Directors                                       | 10,000 |
| 64 | 179-7(2)  | Register of Nominee Directors                                   | 10,000 |
| 65 | 179-10(4) | Access to Registers   | 10,000 |
| 66 | 179-11(3) | Notification to the Registrar                                   | 10,000 |
| 67 | 179-12(7) | Notices issued by the Registrar of Companies                    | 10,000 |
| 68 | 179-18(7) | Whistleblowing  | 30,000 |



## SCHEDULE 4: INTERPRETATION

Note: See rule 1.5.

### 4.1. Meaning of *Legislation Administered by the AFSA*

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

- (a) the AIFC Financial Services Framework Regulations and the rules adopted under those Regulations;
- (b) any other AIFC Regulations or AIFC Rules if the Regulations or Rules declare that they are administered by the AFSA;
- (c) a provision of any other AIFC Regulations or AIFC Rules if the provision gives a Function to the AFSA or relates to the Exercise of a Function given to the AFSA by another provision of the AIFC Regulations or AIFC Rules.

### 4.2. Definitions for these Rules

In these Rules:

*Administrative Receiver*, in relation to a Company, has the meaning given by Schedule 3 (Interpretation) of the AIFC Insolvency Regulations.

*Ancillary Service Provider* means an Ancillary Service Provider under Legislation Administered by the AFSA.

*Authorised Firm* means an Authorised Firm under the AIFC Financial Services Framework Regulations.

*Authorised Market Institution* means an Authorised Market Institution under the AIFC Financial Services Framework Regulations.

*Cell* is a Cell created by a Protected Cell Company for the purpose of segregating and protecting Cellular Assets in the manner provided by Part 8 (Protected Cell Companies).

*Cell Receiver* has the meaning given by the AIFC Insolvency Rules.

*Cell Receivership Order* has the meaning given by the AIFC Insolvency Rules.

*Cell Share Capital* comprises the proceeds of the issue of Cell Shares.

*Cell Shares* are Shares created and issued by a Protected Cell Company in respect of one of its Cells pursuant to the provisions of Part 9 (Protected Cell Companies) the proceeds of the issue of which, the Cell Share Capital, shall be comprised in the Cellular Assets attributable to that Cell.

*Cell Transfer Order* is an order within the meaning given in rule 8.18.

*Cellular Assets* comprise the assets of the Protected Cell Company attributable to the Company's Cells pursuant to rule 8.9.

A *Cellular Dividend* is a dividend payable by a Protected Cell Company in respect of Cell Shares.

*Non-Cellular Assets* are assets of a Protected Cell Company which are not Cellular Assets, pursuant to rule 8.9.

*Closed-Ended Investment Company* means an Investment Company that is not an Open-Ended Investment Company.

*Exchange Facility* means a facility, for the transfer of Shares in an Open-Ended Investment Company, administered by an Authorised Market Institution under the AIFC Financial Services Framework Regulations.



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

**Fund** and **Fund Manager** have the meanings respectively given under the AIFC Collective Investment Rules.

**Group** means a group of entities that includes:

- (a) an entity (the **first entity**); and
- (b) any parent of the first entity; and
- (c) any Subsidiary (direct or indirect) of any parent of the first entity.

**Investment Company** means a Company that is incorporated as, or converted into, an Investment Company in accordance with Part 6 (Investment Companies).

**Legislation Administered by the AFSA** has the meaning given by rule 4.1 of this Schedule.

**Liquidator**, in relation to a Company, has the meaning given by Schedule 3 (Interpretation) of the AIFC Insolvency Regulations.

**Open-Ended Investment Company** means an Investment Company whose Articles of Association state that is an Open-Ended Investment Company with a variable share capital and otherwise comply with Part 6 (Investment Companies).

**Protected Cell Company** means a company incorporated as, or converted into, a Protected Cell Company in accordance with the Part 8 (Protected Cell Companies).

**Receiver**, in relation to a Company, has the meaning given by Schedule 3 (Interpretation) of the AIFC Insolvency Regulations.

**Restricted Scope Company** means a company incorporated as a Restricted Scope Company in accordance with the Part 9 (Restricted Scope Companies).

**Umbrella Fund** has the meaning given by the AIFC Collective Investment Rules.